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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 925

**[Doc. No. AMS–FV–06–0185; FV06–925–610 Review]**

## Grapes Grown in a Designated Area of Southeastern California; Section 610 Review

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Confirmation of regulations.

**SUMMARY:** This action summarizes the results under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA), of an Agricultural Marketing Service (AMS) review of Marketing Order No. 925 regulating the handling of grapes grown in a designated area of southeastern California (order). Based upon its review, AMS has concluded that there is a continued need for the order.

**ADDRESSES:** Interested persons may obtain a copy of the review. Requests for copies should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* The review may also be viewed online at: *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Kathie Notoro, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906; or E-mail: *Kathie.Notoro@ams.usda.gov* or *Kurt.Kimmel@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** Marketing Order 925, as amended (7 CFR part 925), regulates the handling of grapes grown in a designated area of southeastern California. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674).

The desert grape marketing order establishes the California Desert Grape Administrative Committee (Committee) as the administrative body charged with overseeing program operations. Staff is hired to conduct the daily administration of the program. The Committee consists of 12 members. Five members represent producers, five represent handlers, one represents either producers or handlers (the ''at large'' member), and one member represents the public. Each member has an alternate. Members and alternate members are elected at annual nomination meetings.

Currently, there are approximately 50 producers and 14 handlers of California desert grapes. In addition, there are approximately 100 importers of grapes. The majority of the handlers and importers may be classified as small entities and the majority of producers may not be classified as small entities. The regulations implemented under the order are applied uniformly to small and large entities, and are designed to benefit all entities, regardless of size.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Order 925, under criteria contained in section 610 of the RFA (5 U.S.C. 601–612). Updated plans were published in the **Federal Register** on January 4, 2002 (67 FR 525), August 14, 2003 (68 FR 48574), and again on March 24, 2006 (71 FR 14827). Accordingly, AMS published a notice of review and request for written comments on the California desert grape marketing order in the February 21, 2006, issue of the **Federal Register** (71 FR 8810). The deadline for comments ended April 24, 2006. Five comments were received in response to the notice, and are discussed later in this document.

The review was undertaken to determine whether the desert grape marketing order should be continued without change, amended, or rescinded to minimize the impacts on small entities. In conducting this review, AMS considered the following factors: (1) The continued need for the marketing order; (2) the nature of complaints or comments received from the public concerning the marketing order; (3) the complexity of the marketing order; (4) the extent to which the marketing order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing order.

The marketing order authorizes the following activities: Quality control with mandatory outgoing inspection; container and pack requirements; packing holidays; production research; market research and development; and reporting requirements for collection and dissemination of shipment information.

The quality control provisions of the order have helped to ensure a good quality of fruit is provided to consumers. Pack and container requirements provide uniformity in the marketing of grapes. Wholesalers and retailers are assured of consistency in the packaging of the product they receive and market. Packing holidays can help reduce buildup of excess inventories in handlers' warehouses. This can help to provide a more stable flow of product to market and relieve downward pressure on pricing. Collection and dissemination of handler information is useful to the industry in making production and marketing decisions. Finally, production research activities have helped the industry address specific issues that impact the growing of grapes in the production area. The quality control and inspection regulations are also applied to imported grapes under section 608e of the Act.

Market research and development activities are authorized under the order but have not been implemented. Should the industry determine such programs may be beneficial in the future, it may choose to implement them. Funds to administer the marketing order are obtained from handler assessments.

Based on the potential benefits of the marketing order to producers, handlers, and consumers, AMS has determined that the order should continue without change.

In regard to complaints or comments received from the public regarding this

review, USDA received five comments from interested parties. In general, the comments addressed issues that were the subject of a separate notice and comment informal rulemaking action concerning proposed changes to the regulatory period under the marketing order that was completed with publication of a final rule on February 5, 2010 (75 FR 5879). It is noted that the commenters also submitted similar comments in response to that rulemaking action. The comments have been addressed in that rulemaking proceeding.

In considering the order's complexity, AMS has determined that the marketing order is not unduly complex.

During the review, the order was also checked for duplication and overlap with other regulations. AMS did not identify any relevant Federal rules, or State and local regulations that duplicate, overlap, or conflict with the marketing order for California desert grapes.

The marketing order was established in 1980. Since its inception, AMS and the California desert grape industry have continuously monitored its operations. Changes in regulations have been implemented to reflect current industry operating practices, and to solve marketing problems as they occur. The goal of these evaluations is to assure that the order and the regulations implemented under it fit the needs of the industry and are consistent with the Act.

The Committee meets whenever needed to discuss the marketing order and the various regulations issued thereunder, and to determine if, or what, changes may be necessary to reflect current industry practices. As a result, numerous regulatory changes have been made over the years to address industry operation changes and to improve program administration. The marketing order itself has never been amended since its inception, but several regulatory changes have been made through informal rulemaking, as noted above, to ensure the program continues to meet the industry's needs.

Accordingly, AMS has determined that the California desert grape marketing order should be continued. The marketing order was established to help the desert grape industry work with USDA to solve marketing problems. The marketing order continues to be beneficial to producers, handlers, and consumers.

AMS will continue to work with the California desert grape industry in maintaining an effective program.

Dated: June 22, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–16136 Filed 6–27–11; 8:45 am]

**BILLING CODE 3410–02–P**

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 955

**[Doc. No. AMS–FV–11–0016; FV11–955–1 FR]**

## Vidalia Onions Grown in Georgia; Change in Late Payment and Interest Requirements on Past Due Assessments

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes the delinquent assessment requirements in effect under the marketing order for Vidalia onions grown in Georgia (order). The order regulates the handling of Vidalia onions grown in Georgia and is administered locally by the Vidalia Onion Committee (Committee). This rule establishes a late payment charge of 10 percent on unpaid assessments that are 10 days past due and increases the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. This action should improve handler compliance with the assessment and reporting provisions of the order and help reduce the Committee's collection expenditures.

**DATES:** *Effective Date:* June 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Manager, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 325–8793, or E-mail: *Jennie.Varela@ams.usda.gov* or *Christian.Nissen@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Laurel May, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 955, both as amended (7 CFR part 955), regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the delinquent assessment requirements in effect under the order. This rule establishes a late payment charge of 10 percent on unpaid assessments that are 10 days past due and increases the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. The change was recommended unanimously by the Committee at a meeting on February 17, 2011.

Section 955.42 of the order provides authority for imposition of a late charge or interest rate or both on delinquent assessments. Section 955.142 of the order's rules and regulations prescribes the requirements for delinquent assessments. Prior to this action, § 955.142 specified that each handler pay an interest charge of 1 percent per month on any unpaid assessments and accrued unpaid interest beginning the day after the assessments are due. This rule modifies § 955.142 to include a 10 percent late charge on delinquent assessments that are 10 days past due and increases the interest rate on delinquent assessments to 1.5 percent per month.

The order requires handlers to pay to the Committee a pro rata assessment on the volume of onions handled. The volume of onions handled is based on

a monthly shipping report handlers are required to submit to the Committee. The monthly shipping report and its associated assessments are due in the Committee office by the fifth day of the month following the month in which the shipments were made, unless the fifth day falls on a weekend or holiday, and then the due date is the first prior business day.

At the Committee's January 20, 2011, meeting, Committee staff indicated that some handlers have been late in reporting shipments and paying the associated assessments, and that this has been an ongoing problem for the last few seasons. The handlers eventually comply with the order requirements, but late payments deprive the Committee of expected operating income and increase Committee costs.

Vidalia onions are typically shipped from late April through August of each year. This creates a compressed window in which the Committee collects the funds it uses throughout the year for its operating expenses. In addition, the Committee spends the majority of funds allocated to promotion during the shipping season. With promotional expenses accounting for more than 50 percent of the Committee's total budget, timely payment of assessments is necessary for the Committee to have funds available to cover expenditures. When several handlers are late in paying assessments, the Committee can lack the operating funds required. If sufficient operating funds are not available, the Committee has to borrow money, increasing operating costs.

Further, there are costs associated with trying to collect the delinquent assessments. Some handlers require numerous contacts from Committee staff by mail and telephone, with others requiring on-site visits from the Committee's compliance officer. Throughout a season, these collection activities expend time and resources.

In addition to the costs associated with unpaid assessments, the failure of handlers to report on time is also a problem for the Committee. The monthly shipping report serves several functions, including providing volume information on which handler assessments are based. Without complete shipping information, the Committee is unable to provide timely and accurate market information to the industry. Also, monthly reports play an important role in terms of order compliance.

In an effort to address this problem, the Committee staff has provided additional information to handlers on when reports and assessments are due and on the importance of timely submission. They have also increased the number of reminder calls made to handlers when submissions are late, and visits have been made to delinquent handler facilities to collect late reports and payments. However, these efforts have not been successful in resolving this concern.

In its discussion of this issue, the Committee agreed the current interest rate applied to unpaid assessments does not provide sufficient incentive for handlers to turn in monthly reports and their associated assessments on time. As it stands, the rate is low enough that some handlers view the interest rate as a cost of doing business, and only submit reports and assessments after numerous contacts from the Committee staff.

Committee members wanted to find a solution that encourages handlers to submit their reports and payments as required. Initially, at its January meeting, the Committee favored changing the way the interest rate was compounded and calculated as a way to address the problem. However, it was determined that such a change could exceed what USDA considered reasonable and customary under marketing order programs. At its meeting in February, the Committee reviewed different scenarios imposed by other marketing orders to address this issue. Several other marketing orders utilize late payment charges to encourage compliance, and that authority is available under the order for Vidalia onions. As such, the Committee decided to impose a late payment charge, as well as increase the monthly interest rate.

Committee members agreed that establishing a 10 percent late charge on late assessments helps provide some additional incentive for handlers to submit their reports and assessments on time. The Committee also discussed an appropriate grace period to set before the late penalty was applied. Recognizing the importance of the timely receipt of reports and payments, the Committee did not want to set an overly long grace period. The Committee agreed that 10 days provides a sufficient buffer for those who may mistakenly miss a due date, while still supporting timely reports and payments.

As an added incentive to report and pay on time, the Committee also believes the monthly interest charge on delinquent assessments should also be increased. Consequently, the Committee unanimously recommended imposing a late payment charge of 10 percent on any assessments paid 10 days after the date the shipping report and assessments are due and increasing the interest rate applied to unpaid assessments by .5 percent to 1.5 percent per month.

**Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 50 handlers of Vidalia onions subject to regulation under the order and around 80 producers in the designated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those whose annual receipts are less than $7,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000 (13 CFR 121.201).

Based on National Agricultural Statistical Service and Committee data, the average annual grower price for fresh Vidalia onions during the 2010 season was around $20 per 40-pound container, and total Vidalia onion shipments were around 4,503,000 40-pound containers. Using available data, more than 90 percent of Vidalia onion handlers have annual receipts less than $7,000,000. However, the average receipts for Vidalia producers were around $1,118,970 in 2010, which is higher than the SBA threshold for small producers. Assuming a normal distribution, the majority of handlers of Vidalia onions may be classified as small entities, while the majority of producers may be classified as large entities, according to the SBA definition.

This action establishes a late payment charge of 10 percent on unpaid assessments that are 10 days past due and increases the interest rate applied to delinquent assessments from 1 percent to 1.5 percent per month. This change is expected to motivate handlers to submit shipping reports and assessments on time. This change also helps lower or offset the Committee's compliance expenditures associated with delinquent reports and

assessments. The authority for this action is provided in § 955.42 of the order. This change amends § 955.142. The Committee unanimously recommended this action at its February 17, 2011, meeting.

This rule does not impose any additional costs on handlers that are complying with the requirements under the order. This action only represents additional costs for handlers who are delinquent in submitting their reports and assessments. A 10 day grace period is also provided before the late penalty is applied, giving delinquent handlers additional time to avoid the costs associated with the late payment charge. In addition, the late charge and interest rate were considered reasonable by industry members who participated in the discussion of this issue. Since the late payment charge and interest rate are percentages of amounts due, the costs, when applicable, are proportionate and will not place an extra burden on small entities as compared to large entities. In addition, the industry overall benefits if handler reports and assessments are collected on time and the Committee's compliance costs are reduced, regardless of entity size.

The Committee discussed alternatives to this change, including not making a change to the delinquent assessment requirements. However, a number of members commented that if some handlers are not paying on time, a change was necessary. The Committee also considered increasing the interest rate accrual to daily rather than monthly, but this option could result in an interest charge that was disproportionately large and considered to be beyond the scope of what is reasonable and customary under marketing order programs. Thus, these alternatives were rejected.

This action will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the Initial Regulatory Flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

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

In addition, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 17, 2011, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on May 13, 2011 (76 FR 27919). Copies of the rule were mailed or sent via facsimile to all Committee members and Vidalia onion handlers. Finally, the rule was made available through the Internet by USDA and the Office of the Federal Register. A 15-day comment period ending May 31, 2011, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Laurel May at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because handlers are already shipping Vidalia onions from the 2011 crop and the Committee wants to implement these changes as soon as possible. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 15-day comment period was provided for in the proposed rule.

### List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

## PART 955—VIDALIA ONIONS GROWN IN GEORGIA

■ 1. The authority citation for 7 CFR part 955 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

■ 2. Section 955.142 is amended by designating the first paragraph as paragraph (a) and the second paragraph as paragraph (b), and revising newly designated paragraph (b) to read as follows:

**§ 955.142 Delinquent assessments.**

* * * * *

(b) Each handler shall pay interest of 1.5 percent per month on any assessments levied pursuant to § 955.42 and on any accrued unpaid interest beginning the day immediately after the date the monthly assessments were due, until the delinquent handler's assessments, plus applicable interest, have been paid in full. In addition to the interest charge, the Committee shall impose a late payment charge on any handler whose assessment payment has not been received within 10 days of the due date. The late payment charge shall be 10 percent of the late assessments.

Dated: June 22, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–16139 Filed 6–27–11; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF THE TREASURY

## Office of the Comptroller of the Currency

## 12 CFR Part 3

**[Docket No. –2010–0009]**

**RIN 1557–AD33**

## FEDERAL RESERVE SYSTEM

## 12 CFR Parts 208 and 225

**[Regulations H and Y; Docket No. R–1402]**

**RIN 7100–AD62**

## FEDERAL DEPOSIT INSURANCE CORPORATION

## 12 CFR Part 325

**RIN 3064–AD58**

## Risk-Based Capital Standards: Advanced Capital Adequacy Framework—Basel II; Establishment of a Risk-Based Capital Floor

**AGENCY:** Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and the Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Office of the Comptroller of the Currency (OCC), Board of

Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) are amending the advanced risk-based capital adequacy standards (advanced approaches rules) in a manner that is consistent with certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), and the general risk-based capital rules to provide limited flexibility consistent with section 171(b) of the Act for recognizing the relative risk of certain assets generally not held by depository institutions.

**DATES:** This final rule is effective July 28, 2011.

**FOR FURTHER INFORMATION CONTACT:**

*OCC:* Mark Ginsberg, Risk Expert, (202) 874–5070, Capital Policy Division; or Carl Kaminski, Senior Attorney, or Stuart Feldstein, Director, Legislative and Regulatory Activities, (202) 874–5090.

*Board:* Anna Lee Hewko, (202) 530–6260, Assistant Director, or Brendan Burke, (202) 452–2987, Senior Supervisory Financial Analyst, Division of Banking Supervision and Regulation, or April C. Snyder, (202) 452–3099, Counsel, or Benjamin W. McDonough, (202) 452–2036, Counsel, Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

*FDIC:* George French, Deputy Director, Policy, (202) 898–3929, Nancy Hunt, Associate Director, Capital Markets Branch, (202) 898–6643, Division of Risk Management Supervision; or Mark Handzlik, Counsel, (202) 898–3990, or Michael Phillips, Counsel, (202) 898–3581, Supervision and Legislation Branch, Legal Division.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *A. Overview of the Requirements of the Act*

Section 171(b)(2) of the Act [1] states that the agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Federal Reserve (covered institutions).[2] In particular, and as described in more detail below, sections 171(b)(1) and (2) specify that the minimum leverage and risk-based capital requirements established under section 171 shall not be less than the ''generally applicable'' capital requirements, which shall serve as a floor for any capital requirements the agencies may require. Moreover, sections 171(b)(1) and (2) specify that the Federal banking agencies may not establish leverage or risk-based capital requirements for covered institutions that are quantitatively lower than the generally applicable leverage or risk-based capital requirements in effect for insured depository institutions as of the date of enactment of the Act.[3]

### *B. Advanced Approaches Rules* [4]

On December 7, 2007, the agencies published in the **Federal Register** a final rule to implement the advanced approaches rules, which are mandatory for banks and bank holding companies (collectively, banking organizations) meeting certain thresholds for total consolidated assets or foreign exposure.[5] The advanced approaches rules incorporate a series of proposals released by the Basel Committee on Banking Supervision (Basel Committee or BCBS), including the Basel Committee's comprehensive June 2006 release entitled ''International Convergence of Capital Measurement and Capital Standards: A Revised Framework'' (New Accord).[6]

To provide a smooth transition to the advanced approaches rules and to limit temporarily the amount by which a banking organization's risk-based capital requirements could decline relative to the general risk-based capital rules, the advanced approaches rules established a series of transitional floors over a period of at least three years following a banking organization's completion of a satisfactory parallel run.[7] During the transitional floor periods, a banking organization's risk-based capital ratios are equal to the lesser of (i) the organization's ratios calculated under the advanced approaches rules and (ii) its ratios calculated under the general risk-based capital rules, with tier 1 and total risk-weighted assets as calculated under the general risk-based capital rules multiplied by 95 percent, 90 percent, and 85 percent during the first, second, and third transitional floor periods, respectively.[8] Under this approach, a banking organization that uses the advanced approaches rules is permitted to operate with lower minimum risk-based capital requirements during a transitional floor period, and potentially thereafter, than would be required under the general risk-based capital rules. To date, no U.S.-domiciled banking organization has entered a transitional floor period and all U.S-domiciled banking organizations are required to compute their risk-based capital requirements using the general risk-based capital rules.

### *C. Requirements of Section 171 of the Act*

Section 171(a)(2) of the Act defines the term ''generally applicable risk-based capital requirements'' to mean: ''(A) the risk-based capital requirements, as established by the appropriate Federal banking agencies to apply to insured depository institutions under the prompt corrective action regulations implementing section 38 of the Federal Deposit Insurance Act, regardless of total consolidated asset size or foreign financial exposure; and (B) includes the regulatory capital components in the numerator of those capital requirements, the risk-weighted assets in the denominator of those capital requirements, and the required ratio of the numerator to the denominator.'' Section 171(b)(2) of the Act further

[1] Public Law 111–203, section 171, 124 Stat. 1376, 1435–38 (2010).

[2] 12 U.S.C. 5371, Public Law 111–203, section 171, 124 Stat. 1376, 1435–38 (2010).

[3] On March 8, 2011, in an NPR that paralleled the agencies' rulemaking, the Office of Thrift Supervision (OTS) issued a notice in which OTS proposed to amend 12 CFR part 567, which sets forth the capital regulations applicable to savings associations. 45 FR 12,611 (March 8, 2011). OTS received one comment on its proposal. The Act specifies that the regulatory authority and other functions of OTS will transfer to OCC on the transfer date provided in the Act, which is expected to be July 21, 2011. Given that the OTS's parallel rulemaking is subject to a 90 day review by the Office of Management and Budget pursuant to Executive Order 12866, it would be impracticable for OTS to issue a final rule before the transfer date. The OTS and OCC anticipate that OCC would issue a final rule to amend the capital regulations applicable to savings associations, after the transfer date.

[4] 12 CFR part 3, Appendix C (OCC); 12 CFR part 208, Appendix F and 12 CFR part 225, Appendix G (Board); and 12 CFR part 325, Appendix D (FDIC).

[5] 72 FR 69288 (December 7, 2007). Subject to prior supervisory approval, other banking organizations can opt to use the advanced approaches rules. *Id.* at 69397.

[6] The BCBS is a committee of banking supervisory authorities established by the central bank governors of the G–10 countries in 1975. The BCBS issued the New Accord to modernize its first capital accord (''International Convergence of Capital Measurement and Capital Standards'' or ''Basel I''), which was endorsed by the BCBS members in 1988 and implemented by the agencies in 1989. The New Accord, the 1988 Accord, and other documents issued by the BCBS are available through the Bank for International Settlements' Web site at *http://www.bis.org.*

[7] 12 CFR part 3, Appendix A (OCC); 12 CFR parts 208 and 225, Appendix A (Board); 12 CFR part 325, Appendix A (FDIC).

[8] Under the advanced approaches rules, the minimum tier 1 risk-based capital ratio is 4 percent and the minimum total risk-based capital ratio is 8 percent. *See* 12 CFR part 3, Appendix C (OCC); 12 CFR part 208, Appendix F and 12 CFR part 225, Appendix G (Board); and 12 CFR part 325 Appendix D (FDIC).

provides that ''[t]he appropriate Federal banking agencies shall establish minimum risk-based capital requirements on a consolidated basis for insured depository institutions, depository institution holding companies, and nonbank financial companies supervised by the Board of Governors. The minimum risk-based capital requirements established under this paragraph shall not be less than the generally applicable risk-based capital requirements, which shall serve as a floor for any capital requirements that the agency may require, nor quantitatively lower than the generally applicable risk-based capital requirements that were in effect for insured depository institutions as of the date of enactment of this Act.''

In accordance with section 38 of the Federal Deposit Insurance Act, the Federal banking agencies established minimum leverage and risk-based capital requirements for insured depository institutions for prompt corrective action (PCA) rules.[9] All insured institutions, regardless of their total consolidated assets or foreign exposure, must compute their minimum risk-based capital requirements for PCA purposes using the general risk-based capital rules, which currently are the ''generally applicable risk-based capital requirements'' defined by Section 171(a)(2) of the Act.

*D. The Proposed Rule*

By notice in the **Federal Register** dated December 30, 2010, the agencies issued a notice of proposed rulemaking[10] (NPR) to modify the advanced approaches rules consistent with section 171(b)(2) of the Act. In particular, the agencies proposed to revise the advanced approaches rules by replacing the transitional floors in section 21(e) of the advanced approaches rules with a permanent floor equal to the tier 1 and total risk-based capital requirements of the generally applicable risk-based capital rules (''permanent floor''). Under the proposal, each quarter, each banking organization subject to the advanced approaches rules would be required to calculate and compare its minimum tier 1 and total risk-based capital ratios as calculated under the general risk-based capital rules with the same ratios as calculated under the advanced approaches risk-based capital rules. The banking organization would then compare the lower of the two tier 1 risk-based capital ratios and the lower of the two total risk-based capital ratios to the minimum tier 1 ratio requirement of 4 percent and total risk-based capital ratio requirement of 8 percent in section 3 of the advanced approaches rules[11] to determine whether it meets its minimum risk-based capital requirements.[12]

For bank holding companies subject to the advanced approaches rule, the proposal stated that in calculating their risk-based capital ratios, these organizations must calculate their floor requirements under the general risk-based capital rules for state member banks.[13] However, in accordance with the Act, they may include certain debt or equity instruments issued before May 19, 2010 as described in section 171(b)(4)(B) of the Dodd-Frank Act. The agencies also proposed to eliminate the provisions of the advanced approaches rules relating to transitional floor periods and the interagency study of any material deficiencies in the rules.[14] If the proposed permanent floor were implemented, these provisions of the advanced approaches rules would no longer serve a purpose.

The proposal also included a modification to the general risk-based capital rules to address the appropriate capital requirement for low-risk assets held by depository institution holding companies[15] or by nonbank financial companies supervised by the Board pursuant to a designation by the Financial Stability Oversight Council (FSOC), in situations where there is no explicit capital treatment for such exposures under the general risk-based capital rules. The agencies proposed that such exposures receive the capital treatment applicable under the capital guidelines for bank holding companies under limited circumstances. The circumstances are intended to allow for an appropriate capital requirement for low-risk, nonbanking exposures without creating unintended new opportunities for depository institutions to engage in capital arbitrage. Accordingly, the agencies proposed to limit this treatment to cases in which a depository institution is not authorized to hold the asset under applicable law other than under the authority to hold an asset in connection with the satisfaction of a debt previously contracted or similar authority, and the risks associated with the asset are substantially similar to the risks of assets that otherwise are assigned a risk weight of less than 100 percent under the general risk-based capital rules.[16]

## II. Comments Received

*A. Overview*

The agencies collectively received 16 comments from both domestic and international trade associations and from individual financial institutions, including insurance companies. Groups representing large banking organizations generally argued against the proposed permanent floor. These commenters asserted that it would place large U.S. banking organizations at a disadvantage relative to their international competitors, increase their costs, and undermine the risk sensitivity of the advanced approaches capital rules. In contrast, a trade organization for community banks and a financial reform advocacy organization supported the proposal.

Commenters representing insurance companies generally supported the proposed revisions to the general risk-based capital rules for selected nonbank assets, arguing that insurance companies have different risk profiles and their liabilities and assets are of different durations compared to banks. These commenters said it would not be appropriate to mechanically apply bank capital regulations to insurance companies.

*B. Impact on Banking Organizations That Use the Advanced Approaches Rules*

In response to the agencies' question on how the proposal would affect U.S.

[9] *See* 12 U.S.C. 1831o, Public Law 102–242, 105 Stat. 2242 (1991); *see also* 12 CFR part 208, subpart D (Board).

[10] 75 FR 82317 (December 30, 2010).

[11] 12 CFR part 3, Appendix C, section 3 (OCC); 12 CFR part 208, Appendix F, section 3 and 12 CFR part 225, Appendix G, section 3 (Board); and 12 CFR part 325, section 3 Appendix D (FDIC).

[12] Banking organizations that use the advanced approaches rules are subject to the same minimum leverage requirements that apply to other banking organizations. That is, advanced approaches banks calculate only one leverage ratio using the numerator as calculated under the generally risk-based capital rules. Accordingly, the agencies did not propose any change to the calculation of the leverage ratio requirements for banking organizations that use the advanced approaches rules.

[13] 12 CFR part 208, appendix A.

[14] Supra, section 21(e)(6) Interagency study. For any primary Federal supervisor to authorize any institution to exit the third transitional floor period, the study must determine that there are no such material deficiencies that cannot be addressed by then-existing tools, or, if such deficiencies are found, they are first remedied by changes to this appendix.

[15] Section 171 of the Act defines ''depository institution holding company'' to mean a bank holding company or a savings and loan holding company (as those terms are defined in section 3 of the Federal Deposit Insurance Act) that is organized in the United States, including any bank or savings and loan holding company that is owned or controlled by a foreign organization, but does not include the foreign organization. *See* section 171 of the Act, 12 U.S.C. 5371.

[16] *See* 12 U.S.C. 24 (Seventh) and 12 U.S.C. 29 (national banks); 12 U.S.C. 335; and 12 U.S.C. 1831a(a) (state nonmember banks).

banking organizations that use the advanced approaches rules, several commenters, mostly representing the largest U.S. financial institutions, expressed strong concerns about the proposed permanent floor, while acknowledging that the agencies were acting in response to a statutory requirement.[17] These commenters generally asserted that the proposal exceeds the requirements of the Act, and would undermine the risk sensitivity of the risk-based capital rules, encourage banking organizations to invest more in higher risk assets, and distort decisions regarding capital allocation. These commenters also contended that the proposal would put U.S. banks at a disadvantage relative to their foreign competitors. Some of these commenters expressed a preference for alternative approaches to implement section 171 of the Act, including a Pillar 2 supervisory approach under the New Accord.

Some of the commenters who opposed the permanent floor also criticized the proposal for retaining two regulatory capital regimes, causing confusion, and diverting significant resources into developing systems to comply with the advanced rules, without a corresponding reduction in capital costs due to the imposition of the proposed permanent floor. These commenters also expressed concern and asked the agencies to clarify how the proposal would interact with Basel III [18] (particularly, the Basel III leverage ratio and capital conservation buffer), prompt corrective action, and other Dodd-Frank Act provisions relating to capital adequacy, such as those required by section 165.[19] In particular, these commenters expressed concern about what they viewed as negative consequences of maintaining a Basel I-based floor after full implementation of Basel III.

In contrast, one commenter representing community banks and another representing a financial reform advocacy organization expressed strong support for modifying the advanced approaches rules by replacing the transitional floors with the permanent floor. These commenters asserted that it is not appropriate for the agencies to allow large banking organizations to determine their capital requirements based on internal models because it may allow them to reduce their capital levels and give them a competitive advantage over community banks, and could also increase negative procyclical outcomes.

*C. Effect on Applications by Foreign Banking Organizations*

The preamble to the proposed rule noted that in approving an application by a foreign banking organization to establish a branch or agency in the United States or to make a bank or nonbank acquisition, the Board considers, among other factors, whether the capital of the foreign banking organization is equivalent to the capital that would be required of a U.S. banking organization.[20] In addition, in approving an application by a foreign banking organization to establish a federal branch or agency, the OCC must make a similar capital equivalency determination.[21] Similarly, in order to make effective a foreign banking organization's declaration under the Bank Holding Company Act (BHC Act) to be treated as a financial holding company (FHC), the Board must apply comparable capital and management standards to the foreign banking organization ''giving due regard to the principle of national treatment and equality of competitive opportunity.'' [22] National treatment generally means treatment that is no less favorable than that provided to domestic institutions that are in like circumstances. The agencies have broad discretion to consider relevant factors in making these determinations.

The Board has been making capital equivalency findings for foreign banking organizations under the International Banking Act and the BHC Act since 1992 pursuant to guidelines developed as part of a joint study by the Board and Treasury on capital equivalency.[23] The study acknowledged the Basel Committee on Banking Supervision's 1988 Accord (Basel I) as the prevailing capital standard for internationally active banks and found that implementation of Basel I was broadly equivalent across countries. Until 2007, the agencies had generally accepted as equivalent the capital of foreign banking organizations from countries adhering to Basel I within the bounds of national discretion allowed under the Basel I framework. For foreign banking organizations that have begun operating under the New Accord's capital standards, the agencies have evaluated the capital of the foreign banking organization as reported in compliance with the New Accord, while also taking into account a range of factors including compliance with the New Accord's capital requirement floors linked to Basel I, where applicable. In some countries, Basel I floors are no longer in effect, or are expected to be phased out in the near term.

The NPR sought commenters' views on how the proposed rule should be applied to foreign banking organizations in evaluating capital equivalency in the context of applications to establish branches or make bank or nonbank acquisitions in the United States, and in evaluating capital comparability in the context of foreign banking organization FHC declarations. In raising this question, the agencies recognized the challenge of administering capital equivalency determinations where the foreign banking organization is not subject to the same floor requirement as its U.S. counterpart.

In responding to this question, most commenters asserted that extending U.S. capital requirements to a foreign banking organization operating outside of the United States would not be appropriate and would be inconsistent with the Board's supervisory practice regarding the recognition of home country capital regulations. Several commenters noted that subjecting a foreign banking organization to the proposed rule contradicts the language of the Act, which excludes foreign banking organizations from the requirements of section 171. Several commenters supported applying the proposed rule to the U.S. operations of foreign banking organizations operating in the United States to be consistent with requirements for domestic banking organizations.

Some commenters noted that foreign banking organizations operating under the advanced approaches rules would receive a competitive advantage over U.S. banking organizations subject to the proposal's permanent floor requirement. In addition, several commenters expressed concern that the applying the proposed floor to foreign banking organizations may incentivize

[17] *Id.* at 82319.

[18] The term ''Basel III'' refers to the new comprehensive set of reform measures developed by the BCBS to strengthen the regulation, supervision, and risk management of the banking sector. These releases are available on the BIS Web site, *http://www.bis.org.*

[19] *See* section 165 of the Act; 12 U.S.C. 5365.

[20] *See* 12 U.S.C. 1842(c); 1843(j); and 3105(d)(3)(B), (j)(2).

[21] *See* 12 U.S.C. 3103(a)(3)(B)(i).

[22] 12 U.S.C. 1843(*l*)(3). A foreign bank that operates a branch, agency or commercial lending company in the United States and any company that owns such a foreign bank, is subject to the BHC Act as if it were a bank holding company. The BHC Act, as amended by the Gramm-Leach Bliley Act, provides that a bank holding company may become an FHC if its depository institutions meet certain capital and management standards. *See* 12 U.S.C. 1843(*l*)(1); 12 CFR 225. Under section 606 of the Act, this requirement will be modified to require the bank holding company to be well capitalized and well managed. *See* the Act, section 606.

[23] ''Capital Equivalency Report,'' Board of Governors of the Federal Reserve System and Secretary of the U.S. Department of the Treasury (June 19, 1992). *See* 12 U.S.C. 3105(j).

home country supervisors to impose reciprocal arrangements for U.S. banking organizations operating abroad.

The agencies acknowledge that section 171, by its terms, does not apply to foreign banking organizations. Rather, the question on capital equivalency and comparability determinations was intended to seek views on practical ways to administer such determinations in the context of certain foreign bank organization applications to enter or expand operations within the United States given the proposal's requirements and longstanding supervisory practice. One of the agencies' supervisory objectives is to establish a consistent means for making capital equivalency determinations in the context of foreign banking organization applications to establish branches or to acquire banks or nonbanks in the United States, and in evaluating capital comparability in the context of foreign banking organization FHC declarations. The agencies recognize the challenges of establishing a consistent process for evaluating capital equivalency in cases where, among other things, the foreign banking organization applicant operating under advanced approaches no longer has the Basel I floor in place in its home country, and therefore no longer produces financial information based on Basel I requirements. The agencies believe that it is important to take into consideration the competitive issues highlighted by commenters. The agencies will continue to evaluate equivalency issues on a case-by-case basis taking into consideration the comments received.

*D. Proposed Capital Requirements for Certain Nonbanking Exposures*

In the NPR, the agencies sought comment on whether the proposed treatment of nonbanking exposures described above was appropriate, whether this treatment was sufficiently flexible to address the exposures of depository institution holding companies and nonbank financial companies supervised by the Board, and, if not, how the treatment should be modified.[24] Most commenters generally supported allowing flexibility for the capital treatment of nonbanking assets and agreed with the agencies' observation that automatically assigning such assets to the 100 percent risk weight category because they are not explicitly assigned to a lower risk weight category may not always be appropriate based on the economic substance of the exposure. One commenter broadly agreed with the proposal but stated that the proposed treatment needed further clarification. Another commenter noted that the rule also should provide for higher capital requirements, particularly for those exposures that that are impermissible for banks. One commenter noted that the proposal's limited flexibility to allow certain assets to receive the capital treatment applicable under the capital guidelines for bank holding companies should not include the condition that the asset be held under debt previously contracted or similar authority. This commenter stated that assignment to a risk category should be based on the risk of the asset and not on the underlying authority to own the asset.

The agencies received substantial comments from insurance companies about the capital requirements for these entities in general as well as on the proposed modifications to the general risk-based capital rules to address certain nonbank assets. These commenters argued that it would not be appropriate to apply capital requirements applicable to banking organizations to insurance companies because their risk profiles, balance sheet characteristics, and business models fundamentally differ. Several of these commenters were concerned that applying capital requirements for banking organizations to insurance companies without taking these differences into account is overly simplistic and may lead to distorted incentives, undermine efficient use of capital, curtail insurance underwriting capacity, and negatively impact insurance markets.

Some commenters suggested that significant adjustments to the risk weights applicable to banking organizations' exposures would be necessary when considering applicability to insurance companies' exposures. Other commenters suggested that adjustments to risk weights alone would be insufficient. Several commenters suggested that the agencies recognize and incorporate established insurance capital standards into any new capital regime that may apply to insurance companies. Some commenters suggested that the agencies use a principle of equivalence to evaluate insurance companies' capital adequacy similar to the practice used by the Board to determine if the capital of a foreign bank is equivalent to the capital required of a U.S. banking organization. Certain insurance industry commenters provided specific examples of exposures that should be given consideration for a lower risk weight under the general risk-based capital rules, including non-guaranteed separate accounts based on the rationale that the insurance policyholder and not the institution bears the investment risk associated with the contract. Other assets for which commenters suggested consideration regarding the capital treatment included guaranteed separate accounts, corporate debt, and private placements.

Some commenters expressed concern that the Board may require insurance companies to use U.S. generally accepted accounting principles for preparing financial statements instead of the statutory accounting principles applicable to insurance companies. These commenters noted the burden and costs associated with using two accounting systems.

*E. Quantitative Methods for Comparing Capital Frameworks*

The NPR sought comment on how the agencies should, in the future, evaluate changes to the general risk-based capital requirements to ensure they are not quantitatively lower than the ''generally applicable capital requirements'' in effect as of the enactment of section 171 of the Act.[25] Commenters generally supported looking at industry-wide aggregate capital levels, in order to conduct the analysis, rather than basing the calculation on an item-by-item comparison of capital requirements for each class of exposures. These commenters asserted that this approach would allow individual organizations to adjust their business models appropriately while satisfying the test. One commenter suggested that in comparing proposed changes to the generally applicable capital requirements, the agencies should assume a stable risk profile within the industry while assessing levels of capital. This commenter points out maintaining reliable comparative data over time could make quantitative methods for this purpose difficult. For example, evaluating asset categories with current and historic data would be difficult if banks have not maintained consistent tracking methods, or common definitions over time. This commenter also suggested that it would be misguided to compare future capital requirements without regard to risk.

*F. Costs and Benefits and Other Comments*

Several commenters were concerned about the operational expense and burden associated with determining compliance with two sets of capital rules. One stated that requiring two sets

[24] *Id.* at 82320.

[25] 75 FR at 82320–21.

of capital rules would result in permanently higher operating costs for banking organizations under the advanced approaches rules. This commenter also suggested that the proposed risk-based capital floor will reduce the incentive for banking organizations considering whether to undertake the expense and effort necessary to adopt the advanced approaches rules if minimum capital levels are determined by a less risk-sensitive capital framework. Some commenters also expressed concerns about the cost of continuing to implement the advanced approaches rules. One said that banks already have spent hundreds of millions of dollars on implementing the advanced approaches rules, and the proposal would eliminate the opportunity for banks to realize cost savings from potentially lower capital requirements under the advanced approaches rules. Another commenter suggested the agencies consider exempting from the permanent floor requirement any banking organization whose risk-weighted assets in the trading book exceeded a certain percent of total risk-weighted assets. This commenter also suggested ways of reducing the cost of compliance under the advanced approaches rules by, for example, raising the materiality standards to exempt small, relatively low-risk portfolios to save significant time and money at minimal cost in terms of lessened risk sensitivity.

Commenters generally indicated that keeping track of two sets of capital regulations (the advanced approaches rules and the generally applicable risk-based capital rules then in effect) was preferable to tracking three capital rules (the above two capital regimes and the general risk-based capital rules in effect on July 21, 2010).

Two commenters also suggested that because the FSOC has not designated any systemically important nonbank financial companies, potential designees were not provided sufficient notice and opportunity to comment on the proposal.

*G. Analysis of Comments*

As described in the preceding section, a number of the commenters expressed opinions about the appropriateness of the policy underlying section 171 of the Act. The agencies note that they are required by law to comply with the Act and sought comment in the NPR on the manner in which the agencies proposed to implement certain requirements of section 171, and on ways to mitigate banking organizations' burden in meeting the proposed requirements.

In response to comments on the burden of maintaining two systems to calculate capital requirements under both the risk-based capital rules and the advanced approaches rules, the agencies note that banking organizations in parallel run are currently reporting their capital requirements under both sets of rules. The agencies recognize that reporting capital calculations under two capital frameworks beyond the transitional floor arrangement was not expected at the onset of the advanced approaches rules. However, as discussed above, the agencies are issuing the final rule to be consistent with the requirements under section 171(b)(2) of the Act.

Generally commenters supported the proposal's amendment to the general risk-based capital rules to address the appropriate capital requirement for low risk assets that non-depository institutions may hold and for which there is no explicit capital treatment in the general risk-based capital rules. This change was focused on providing limited flexibility for future changes to the risk-based capital rules applicable to bank holding companies following an evaluation of the exposures of covered institutions that may not previously have been subject to consolidated risk-based capital requirements applicable to banking organizations. Several commenters provided specific examples of assets that warrant consideration for a risk weight lower than 100 percent. The Board will consider the risk characteristics for such assets on a case-by-case basis as it considers potential changes to the risk-based capital rules applicable to bank holding companies.

One commenter recommended that the agencies remove from this treatment the condition that the bank holds the asset in connection with the satisfaction of a debt previously contracted or similar authority. This commenter suggests that the assignment to a risk category should be based on the risk of the asset, not an authority to own the asset. The agencies agree that in the cases where this limited treatment is used, the assignment of a capital requirement in this situation would be based on an evaluation of the asset's risk profile. The condition related to legal authority is intended to limit the scope for assignments of capital requirements under this provision to assets not typically held by depository institutions, whose risks and characteristics were not contemplated when the general risk-based capital rules were developed.

Insurance-related commenters noted that some large insurance companies which engage predominantly in insurance activities have depository institution subsidiaries or affiliates that represent a relatively small portion of the consolidated entity. These commenters highlighted fundamental differences in risk profiles, balance sheet characteristics, and business models between insurance companies and banking organizations. In response to these comments, the agencies note that section 171(b)(2) of the Act does not take into account the size or other differences between a holding company and its subsidiary depository institution(s). Consistent with this section of the Act, the ''generally applicable'' capital requirements serves as a floor for any capital requirements the agencies may require.

Some commenters suggested that foreign banking organizations operating under the advanced approaches rules could hold less capital and therefore, receive a competitive advantage compared to U.S banking organizations. The agencies agree that without the proposal's floor requirement, a banking organization that uses the advanced approaches rules could theoretically operate with lower minimum risk-based capital requirements than would be required under the general risk-based capital rules. The agencies will consider these competitive equity concerns when working with the BCBS and other supervisory authorities to mitigate potential competitive inequities across jurisdictions, as appropriate.

In explaining their concern about how the proposal would interact with Basel III, a number of commenters focused on the proposed rule and future changes to regulatory capital requirements, including those related to U.S. implementation of Basel III. These commenters stated that it is not possible to understand the consequences of implementing section 171 without addressing the broader range of changes in capital regulations, such as changes to the leverage ratio and PCA provisions.

The agencies agree that implementing section 171 will require careful consideration and diligence over time, as the agencies propose and implement various enhancements to the regulatory capital rules. Consistent with the joint efforts of the U.S. banking agencies and the Basel Committee to enhance the regulatory capital rules applicable to internationally active banking organizations, the agencies anticipate that their capital requirements will be amended, establishing different minimum and ''generally applicable'' capital requirements. These amendments would reflect advances in risk sensitivity and potentially other

substantive changes to international agreements on capital requirements and capital policy changes generally.

Thus, the ''generally applicable'' capital requirements as defined under section 171 will evolve over time, and as they evolve, continue to serve as a floor for all banking organizations' risk-based capital requirements. Section 171 also requires that the minimum capital requirements established under section 171 not be ''quantitatively lower'' than the ''generally applicable'' capital requirements in effect for insured depository institutions as of the date of the Act.

The agencies anticipate performing a quantitative analysis of any new capital framework developed in the future for purposes of ensuring that future changes to the agencies' capital requirements result in minimum capital requirements that are not ''quantitatively lower'' than the ''generally applicable'' capital requirements for insured depository institutions in effect as of the date of enactment of the Act. By performing such an analysis, the agencies would ensure that all minimum capital requirements established under section 171 meet this requirement, including minimum requirements that become the new ''generally applicable'' capital requirements under section 171.

The agencies are currently considering how that analysis may be performed for anticipated changes to the capital rules. As some commenters noted, comparing capital requirements on an aggregate basis is an effective way of conducting the ''quantitatively lower'' analysis and the agencies expect to propose this method as appropriate in future rulemakings. The agencies anticipate that before proposing future changes to their capital requirements, the agencies will consider the implications for the capital adequacy of banking organizations, the implementation costs, and the nature of any unintended consequences or competitive issues. The agencies note that section 171 does not require a ''permanent Basel-I based floor'' as some commenters have suggested. The agencies also note that they do not anticipate proposing to require banking organizations to compute two sets of generally applicable capital requirements from current and historic frameworks as the generally applicable requirements are amended over time.

In addition, the agencies agree with commenters that the relationship between the requirements of section 171 and other aspects of the Act, including section 165, must be considered carefully and that all aspects of the Act should be implemented so as to avoid imposing conflicting or inconsistent regulatory capital requirements.

## III. Final Rule

### *A. Implementation of a Risk-Based Capital Floor*

The agencies have considered the comments received on the NPR, and continue to believe that the rule as proposed is consistent with the requirements of section 171 of the Act with respect to risk-based capital requirements. Therefore, the agencies have decided to implement the rule as proposed, effective July 28, 2011.

Thus, each organization implementing the advanced approaches rules will continue to calculate its risk-based capital requirements under the agencies' general risk-based capital rules, and the capital requirement it computes under those rules will serve as a floor for its risk-based capital requirement computed under the advanced approaches rules. The agencies note that the effect of this rule on banking organizations is to preclude certain reductions in capital requirements that might have occurred in the future, absent the rule and absent any further changes to the capital rules. The agencies also note that in practice, the rule will not have an immediate effect on banking organizations' capital requirements because all organizations subject to the advanced approaches rules are currently computing their capital requirements under the general risk-based capital rules.

For bank holding companies subject to the advanced approaches rule, as noted above, the final rule provides that they must calculate their floor requirement under the general risk-based capital rules for state member banks.[26] However, in accordance with the Act, these organizations may include certain debt or equity instruments issued before May 19, 2010 as described in section 171(b)(4)(B) of the Act. The agencies expect the phase-in of restrictions on the regulatory capital treatment of the debt or equity instruments described in section 171(b)(4)(B) of the Act will be addressed in more detail in a subsequent rule. As indicated in the proposal, other aspects of section 171 are not addressed in this final rule.

### *B. Capital Requirements for Certain Nonbanking Exposures*

Commenters generally supported the agencies' proposed treatment of certain low-risk, nonbanking exposures. The agencies believe the proposed treatment provides flexibility to address situations where exposures of a depository institution holding company or a nonbank financial company supervised by the Board not only do not wholly fit within the terms of a risk weight category applicable to banking organizations, but also impose risks that are not commensurate with the risk weight otherwise specified in the generally applicable risk-based capital requirements. Therefore, the final rule retains the proposed rule's treatment for these assets without modification.

As a general matter, the Board and the other federal banking agencies retain a reservation of authority to assign alternate risk-based capital requirements if such action is warranted.

## Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed rulemaking.[27] The regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

As discussed in greater detail above, the purpose of the final rule is to establish a risk-based capital floor for the advanced approaches rules in a manner that is consistent with section 171 of the Act. In addition, the final rule also amends the general risk-based capital rules for depository institutions to provide flexibility consistent with section 171 of the Act for addressing the appropriate capital requirement for low-risk assets held by depository institution holding companies or by nonbank financial companies supervised by the Board, in situations where there is no explicit capital treatment for such exposures under the general risk-based capital rules.

As discussed above, the agencies solicited public comment on the rule in a notice of proposed rulemaking. The agencies did not receive any comments regarding burden to small banking organizations. After considering the comments on the proposal, the agencies decided to issue the proposed rule text as a final rule without change.

[26] 12 CFR part 208, appendix A.

[27] *See* 5 U.S.C. 603(a).

The final rule would affect bank holding companies, national banks, state member banks, and state nonmember banks that use the advanced approaches rules to calculate their risk-based capital requirements according to certain internal ratings-based and internal model approaches. A bank holding company or bank must use the advanced approaches rules only if: (i) It has consolidated total assets (as reported on its most recent year-end regulatory report) equal to $250 billion or more; (ii) it has consolidated total on-balance sheet foreign exposures at the most recent year-end equal to $10 billion or more; or (iii) it is a subsidiary of a bank holding company or bank that would be required to use the advanced approaches rules to calculate its risk-based capital requirements.

With respect to the changes to the general risk-based capital rules, the final rule has the potential to affect the risk weights applicable only to assets that generally are impermissible for banks to hold. These changes are, accordingly, unlikely to have a significant impact on banking organizations. The agencies also note that the changes to the general risk-based capital rules would not impose any additional obligations, restrictions, burdens, or reporting, recordkeeping or compliance requirements on banks including small banking organizations, nor do they duplicate, overlap or conflict with other Federal rules.

The agencies estimate that zero small bank holding companies (out of a total of approximately 4,493 small bank holding companies), one small national bank (out of a total of approximately 664 small national banks), one small state member bank (out of a total of approximately 398 small state member banks), and one small state nonmember bank (out of a total of approximately 2,639 small state nonmember banks) are required to use the advanced approaches rules.[28] In addition, each of the small banks that is required to use the advanced approaches rules is a subsidiary of a bank holding company with over $250 billion in consolidated total assets or over $10 billion in consolidated total on-balance sheet foreign exposures. Therefore, the agencies believe that the final rule will not result in a significant economic impact on a substantial number of small entities.

OCC Unfunded Mandates Reform Act of 1995 Determinations

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that its final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995,[29] the agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Each of the agencies has an established information collection for the paperwork burden imposed by the advanced approaches rule.[30] This final rule would replace the transitional floors in section 21(e) of the advanced approaches rule with a permanent floor equal to the tier 1 and total risk-based capital requirements under the current generally applicable risk-based capital rules. The proposed change to transitional floors would change the basis for calculating a data element that must be reported to the agencies under an existing requirement. However, it would have no impact on the frequency or response time for the reporting requirement and, therefore, does not constitute a substantive or material change subject to OMB review.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338, 1471) requires the agencies to use plain language in all proposed and final rules published after January 1, 2000. In light of this requirement, the agencies have sought to present the final rule in a simple and straightforward manner.

[28] All totals are as of December 31, 2010.

[29] 44 U.S.C. 3501–3521.

[30] *See* Risk-Based Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework, FFIEC 101, OCC OMB Number 1557–0239, Federal Reserve OMB Number 7100–0319, FDIC OMB Number 3064–0159.

**List of Subjects**

*12 CFR Part 3*

Administrative practice and procedure, Banks, banking, Capital, National banks, Reporting and recordkeeping requirements, Risk.

*12 CFR Part 208*

Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Risk.

*12 CFR Part 225*

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

*12 CFR Part 325*

Administrative practice and procedure, Banks, banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

**Department of the Treasury**

*Office of the Comptroller of the Currency*

*12 CFR Chapter I*

Authority and Issuance

For the reasons stated in the common preamble, the Office of the Comptroller of the Currency amends part 3 of chapter I of Title 12, Code of Federal Regulations as follows:

## PART 3—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

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

**Authority:** 12 U.S.C. 93a, 161, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, and 3909.

■ 2. In Appendix A to part 3, in section 3, add new paragraph (a)(4)(xi) as follows:

### Appendix A to Part 3—Risk-Based Capital Guidelines

* * * * *

#### Section 3. Risk Categories/Weights for On-Balance Sheet Assets and Off-Balance Sheet Items

* * * * *

(a) * * *

(4) * * *

(xi) Subject to the requirements below, a bank may assign an asset not included in the categories above to the risk weight category applicable under the capital guidelines for bank holding companies (see 12 CFR part 225, appendix A), provided that all of the following conditions apply:

(A) The bank is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(B) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category less than 100 percent under this appendix.

* * * * *

■ 3. In Appendix C to part 3:

■ a. Revise Part I, section 3 to read as set forth below.

■ b. Remove section 21(e).

## Appendix C to Part 3—Capital Adequacy Guidelines for Banks: Internal Ratings-Based and Advanced Measurement Approaches

### Part I. General Provisions

* * * * *

#### Section 3. Minimum Risk-Based Capital Requirements

(a) (1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets; and

(ii) Its total risk-based capital ratio as calculated under Appendix A of this part.

(3) A bank's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets; and

(ii) Its tier 1 risk-based capital ratio as calculated under Appendix A of this part.

(b) Each bank must hold capital commensurate with the level and nature of all risks to which the bank is exposed.

(c) When a bank subject to 12 CFR part 3, Appendix B, calculates its risk-based capital requirements under this appendix, the bank must also refer to 12 CFR part 3, Appendix B, for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

## Federal Reserve System

*12 CFR Chapter II*

Authority and Issuance

For the reasons set forth in the common preamble, parts 208 and 225 of chapter II of title 12 of the Code of Federal Regulations are amended as follows:

## PART 208—MINIMUM CAPITAL RATIOS; ISSUANCE OF DIRECTIVES

■ 4. The authority citation for part 208 continues to read as follows:

**Authority:** Subpart A of Regulation H (12 CFR part 208, Subpart A) is issued by the Board of Governors of the Federal Reserve System (Board) under 12 U.S.C. 24, 36; sections 9, 11, 21, 25 and 25A of the Federal Reserve Act (12 U.S.C. 321–338a, 248(a), 248(c), 481–486, 601 and 611); sections 1814, 1816, 1818, 1831o, 1831p–l, 1831r–l and 1835a of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1814, 1816, 1818, 1831o, 1831p–l, 1831r–l and 1835); and 12 U.S.C. 3906–3909.

■ 5. In Appendix A to part 208, revise section III.C. 4.a and add section III.C. 4.e to read as follows:

## Appendix A to Part 208—Capital Adequacy Guidelines for State Member Banks: Risk-Based Measure

* * * * *

III. * * *

C. * * *

4. *Category 4: 100 percent.* a. Except as provided in section III.C. 4.e of this appendix, all assets not included in the categories above are assigned to this category, which comprises standard risk assets. The bulk of the assets typically found in a loan portfolio would be assigned to the 100 percent category.

* * * * *

e. Subject to the requirements below, a bank may assign an asset not included in the categories above to the risk weight category applicable under the capital guidelines for bank holding companies (*See* 12 CFR part 225, appendix A), provided that all of the following conditions apply:

*i.* The bank is not authorized to hold the asset under applicable law other than under debt previously contracted or other similar authority; and

*ii.* The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category of less than 100 percent under this appendix.

* * * * *

■ 6. In Appendix F to part 208:

■ a. Revise section 3 to read as set forth below; and

■ b. Remove section 21(e).

## Appendix F to Part 208—Capital Adequacy Guidelines for Banks: Internal Ratings-Based and Advanced Measurement Approaches

### Part I. General Provisions

* * * * *

#### Section 3. Minimum Risk-Based Capital Requirements

(a)(1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets, and

(ii) Its total risk-based capital ratio as calculated under Appendix A of this part.

(3) A bank's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets, and

(ii) Its tier 1 risk-based capital ratio as calculated under Appendix A of this part.

(b) Each bank must hold capital commensurate with the level and nature of all risks to which the bank is exposed.

(c) When a bank subject to 12 CFR part 208, appendix E calculates its risk-based capital requirements under this appendix, the bank must also refer to 12 CFR part 208 for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

## PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 7. The authority citation for part 225 continues to read as follows:

**Authority:** 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; 15 U.S.C. 6801 and 6805.

■ 8. In Appendix G to part 225:

■ a. Revise section 3 to read as set forth below; and

■ b. Remove section 21(e).

## Appendix G to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Internal Ratings-Based and Advanced Measurement Approaches

### Part I. General Provisions

* * * * *

#### Section 3. Minimum Risk-Based Capital Requirements

(a)(1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank holding company must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank holding company's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets, and

(ii) Its total risk-based capital ratio as calculated under 12 CFR part 208, appendix A, as adjusted to include certain debt or equity instruments issued before May 19, 2010 as described in section 171(b)(4)(B) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

(3) A bank holding company's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets, and

(ii) Its tier 1 risk-based capital ratio as calculated under 12 CFR part 208, appendix A, as adjusted to include certain debt or equity instruments issued before May 19, 2010 as described in section 171(b)(4)(B) of the Dodd-Frank Act.

(b) Each bank holding company must hold capital commensurate with the level and nature of all risks to which the bank holding company is exposed.

(c) When a bank holding company subject to 12 CFR part 225, appendix E calculates its risk-based capital requirements under this appendix, the bank holding company must also refer to 12 CFR part 225, appendix E for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

**Federal Deposit Insurance Corporation**

*12 CFR Chapter III*

Authority for Issuance

For the reasons stated in the common preamble, the Federal Deposit Insurance Corporation amends Part 325 of Chapter III of Title 12, Code of the Federal Regulations as follows:

## PART 325—CAPITAL MAINTENANCE

■ 9. The authority citation for part 325 continues to read as follows:

**Authority:** 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 1835, 3907, 3909, 4808; Pub. L. 102–233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102–242, 105 Stat. 2236, as amended by Pub. L. 103–325, 108 Stat. 2160, 2233 (12 U.S.C. 1828 note); Pub. L. 102–242, 105 Stat. 2236, 2386, as amended by Pub. L. 102–550, 106 Stat. 3672, 4089 (12 U.S.C. 1828 note).

■ 10. Amend Appendix A to part 325 as follows:

■ a. In section II.C, revise the first sentence of the introductory text;

■ b. In sections II.D, and II.E, redesignate footnotes 45 through 50 as footnotes 46 through 51.

■ c. In section II.C, Category 4, add new paragraph (d) and a new footnote 45.

### Appendix A to Part 325—Statement of Policy on Risk-Based Capital

* * * * *

II. * * *

*C. Risk Weights for Balance Sheet Assets (see Table II)*

The risk based capital framework contains five risk weight categories—0 percent, 20 percent, 50 percent, 100 percent, and 200 percent. * * *

* * * * *

*Category 4—100 Percent Risk Weight.* * * *

(d) Subject to the requirements below, a bank may assign an asset not included in the categories above to the risk weight category applicable under the capital guidelines for bank holding companies (12 CFR part 225, appendix A), provided that all of the following conditions apply:

(1) The bank is not authorized to hold the asset under applicable law other than debt previously contracted or similar authority; and

(2) The risks associated with the asset are substantially similar to the risks of assets that are otherwise assigned to a risk weight category less than 100 percent under this appendix.

* * * * *

■ 11. In Appendix D to part 325:

■ a. Revise section 3 to read as set forth below; and

■ b. Remove section 21(e).

### Appendix D to Part 325—Capital Adequacy Guidelines for Banks: Internal Ratings-Based and Advanced Measurement Approaches

### Part I. General Provisions

* * * * *

#### Section 3. Minimum Risk-Based Capital Requirements

(a)(1) Except as modified by paragraph (c) of this section or by section 23 of this appendix, each bank must meet a minimum:

(i) Total risk-based capital ratio of 8.0 percent; and

(ii) Tier 1 risk-based capital ratio of 4.0 percent.

(2) A bank's total risk-based capital ratio is the lower of:

(i) Its total qualifying capital to total risk-weighted assets, and

(ii) Its total risk-based capital ratio as calculated under appendix A of this part.

(3) A bank's tier 1 risk-based capital ratio is the lower of:

(i) Its tier 1 capital to total risk-weighted assets, and

(ii) Its tier 1 risk-based capital ratio as calculated under appendix A of this part.

(b) Each bank must hold capital commensurate with the level and nature of all risks to which the bank is exposed.

(c) When a bank subject to appendix C of this part calculates its risk-based capital requirements under this appendix, the bank must also refer to appendix C of this part for supplemental rules to calculate risk-based capital requirements adjusted for market risk.

* * * * *

Dated: June 14, 2011.

**John Walsh,**

*Comptroller of the Currency.*

By order of the Board of Governors of the Federal Reserve System, June 14, 2011.

**Jennifer J. Johnson,**

*Secretary of the Board.*

Dated at Washington, DC, this 14th day of June 2011.

By order of the Board of Directors. Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–15669 Filed 6–27–11; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0126; Directorate Identifier 2011–NE–03–AD; Amendment 39–16726; AD 2011–13–03]**

**RIN 2120–AA64**

## Airworthiness Directives: Lycoming Engines (Type Certificate Previously Held by Textron Lycoming) and Teledyne Continental Motors (TCM) Turbocharged Reciprocating Engines

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

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires inspecting certain Lycoming and TCM reciprocating engines with certain Hartzell Engine Technologies, LLC (HET) turbochargers installed, and disassembly and cleaning of the turbocharger center housing and rotating assembly (CHRA) cavities of affected turbochargers. This AD was prompted by a turbocharger failure due to machining debris left in the cavities of the CHRA during manufacture. We are issuing this AD to prevent seizure of the turbocharger turbine, which could result in damage to the engine, and smoke in the airplane cabin.

**DATES:** This AD is effective July 13, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 13, 2011.

We must receive comments on this AD by August 12, 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 W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Hartzell Engine Technologies, LLC, 2900 Selma Highway, Montgomery, AL 36108, phone: 334–386–5400; fax: 334–386–5450. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Gary Wechsler, Aerospace Engineer, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5575; fax: 404–474–5606; e-mail: *gary.wechsler@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Discussion**

HET recently informed us of a failure of one of their turbochargers installed on a TCM TSIO–550–K model reciprocating engine. HET identified the cause of the failure as machining debris left in the CHRA. HET also informed us that the debris was a by-product of manufacture that had not been removed. This debris, if present, could result in seizure of the turbocharger turbine, which could result in damage to the engine, and smoke in the airplane cabin.

**Relevant Service Information**

We reviewed Hartzell Engine Technologies, LLC Service Bulletin (SB) No. 040, Revision A, dated December 22, 2010. The SB describes procedures for identifying affected turbochargers, and performing a one-time disassembly, CHRA cleaning, and reassembly.

**FAA's Determination**

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

**AD Requirements**

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

**FAA's Justification and Determination of the Effective Date**

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because airplanes with no more than 50 hours time-in-service on new or overhauled affected turbochargers are at risk of the unsafe condition described in this AD. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–0126 and Directorate Identifier 2011–NE–03–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

**Costs of Compliance**

We estimate that about 2,761 turbochargers are installed on Lycoming and TCM engines, installed on airplanes of U.S. registry. We also estimate it will take about 1 work-hour to inspect each turbocharger and that 264 turbochargers will fail inspection and require corrective action. Each corrective action will require 3 work-hours. The average labor rate is $85 per work-hour. No additional parts are required. Based on these figures, we estimate the cost of the AD on U.S. operators to be $391,765. Our cost estimate is exclusive of possible warranty coverage.

**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 turbochargers identified in this rulemaking action.

**Regulatory Findings**

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

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2011–13–03 Lycoming Engines (Type certificate previously held by Textron Lycoming) and Teledyne Continental Motors (TCM) Turbocharged Reciprocating Engines:** Amendment 39–16726; Docket No. FAA–2011–0126; Directorate Identifier 2011–NE–03–AD.

**Effective Date**

(a) This AD is effective July 13, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the Lycoming Engines and TCM turbocharged reciprocating engines listed in, but not limited to, Table 1 of this AD, with the following Hartzell Engine Technologies, LLC (HET) turbocharger models TA3601, TAO401, TAO402, TAO411, TAO413, T1879, T18A21, T18A44, THO867, and TEO659, installed:

(1) Newly manufactured turbochargers (otherwise known as the –0000 series) before serial number H–NJL00003, or rebuilt (otherwise known as the –9000 series) before serial number H–NJR00002; and

(2) With less than 50 hours time-in-service (TIS) on the effective date of this AD; and

(3) With a part number listed in Table 2 or Table 3 of this AD; and

(4) With a ''slanted A'' foundry mark located on the center housing and rotating assembly (CHRA).

TABLE 1—ENGINES AFFECTED

| |
|---|
| TSIO–520–BE. |
| TSIO–360–MB, SB. |
| TIO–540–AK1A. |
| L/TSIO–360–RB. |
| TIO–540–AE2A. |
| TSIO–360–H. |
| O–540–L3C5D. |
| TSIO–520–T. |
| L/TO–360–E1A6D. |
| TIO–540–AG1A. |
| TIO–540–AF1A. |
| TIO–540–AF1B. |
| TIO–540–AH1A. |
| TIO–541–E1D4. |
| TIO–541–E1C4. |
| TIGO–541–E. |
| GTSIO–520–F. |
| GTSIO–520–K. |
| GTSIO–520–D. |
| GTSIO–520–H. |

TABLE 2—KAES TURBOCHARGER PART NUMBERS AFFECTED

| | | | | | |
|---|---|---|---|---|---|
| 406990–9004 | 407540–0003 | 407540–9003 | 407800–9003 | 408590–9012 | 048610–0001 |
| 465292–0001 | 465292–9001 | 465292–0002 | 465292–9002 | 465292–0004 | 465292–9004 |
| 465398–9002 | 466011–0002 | 466011–9002 | 466304–0003 | 466304–9003 | 466642–0001 |
| 466642–0002 | 466642–9002 | 466642–0005 | 466642–9005 | 466642–0006 | 466642–0007 |
| 408610–9001 | 465398–0002 | 466642–9001 | N/A | N/A | N/A |

TABLE 3—ORIGINAL EQUIPMENT TURBOCHARGER PART NUMBERS AFFECTED

| | | | | | |
|---|---|---|---|---|---|
| 637374–1 | 633274–4 | 635034–2 | 642518–4 | 646677 | 649151–1 |
| 649151–2 | 46C19836 | 46C19839 | 46C22924 | C295001–0301 | C295001–0304 |
| LW–10191 | LW–13310 | LW–16254 | N/A | N/A | N/A |

(d) This AD does not require action for:

(1) Turbochargers with more than 50 hours TIS on the effective date of this AD.

(2) Turbochargers with a circled ''JT'' foundry mark on the CHRA.

(e) This AD does not apply to engines with new or overhauled turbochargers installed on or before September 2001.

**Unsafe Condition**

(f) This AD was prompted by a turbocharger failure due to machining debris that was not cleaned from the cavities of the center housing and rotating assembly (CHRA), during manufacture. We are issuing this AD to prevent seizure of the turbocharger turbine, which could result in damage to the engine, and smoke in the airplane cabin.

**Compliance**

(g) Unless already done, disassemble, clean, and reassemble the turbochargers affected by this AD as follows:

**Turbochargers With Between 0 and 10 Hours TIS**

(1) For affected turbochargers including overhauls, with between 0 and 10 hours TIS on the effective date of this AD, before further flight, disassemble the turbocharger, clean the CHRA center housing cavity, and reassemble the turbocharger.

**Turbochargers With More Than 10 Hours TIS But Less Than 50 Hours TIS**

(2) For affected turbochargers including overhauls, with more than 10 hours TIS but less than 50 hours TIS on the effective date of this AD, within the next 10 hours TIS, disassemble the turbocharger, clean the CHRA center housing cavity, and reassemble the turbocharger.

(3) Use paragraphs 1 through 10 of the CLEANING CHRA CENTER HOUSING section of Hartzell Engine Technologies, LLC SB No. 040, Revision A, dated December 22, 2010, to do the cleaning.

(4) The reference to Step 16 in paragraph 10 of the CLEANING CHRA CENTER HOUSING section of Hartzell Engine Technologies, LLC SB No. 040, Revision A, dated December 22, 2010, is incorrect. The correct reference is Step 9.

**Turbochargers With More Than 50 Hours TIS**

(h) For turbochargers with more than 50 hours TIS on the effective date of this AD, no further action is required.

**Special Flight Permits**

(i) Special flight permits are restricted to day Visual Meteorological Conditions flight only.

**Alternative Methods of Compliance (AMOCs)**

(j) The Manager, Atlanta Aircraft Certification Office, has the authority to approve AMOCs for this AD if requested using the procedures found in 14 CFR 39.19.

**Related Information**

(k) For more information about this AD, contact Gary Wechsler, Aerospace Engineer, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5575; fax: 404–474–5606; e-mail: *gary.wechsler@faa.gov.*

**Material Incorporated by Reference**

(l) You must use Hartzell Engine Technologies, LLC Service Bulletin No. 040, Revision A, dated December 22, 2010, to clean the turbocharger.

(m) The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(n) For service information identified in this AD, contact Hartzell Engine Technologies, LLC, 2900 Selma Highway, Montgomery, AL 36108, phone: 334–386–5400; fax: 334–386–5450.

(o) You may review copies of the service information that is incorporated by at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on

the availability of this material at the FAA, call 781–238–7125. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on June 14, 2011.

**Peter A. White,**

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

[FR Doc. 2011–16087 Filed 6–27–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Part 744

**[Docket No. 110128065–1135–01]**

**RIN 0694–AF12**

## Addition of Certain Persons on the Entity List: Addition of Persons Acting Contrary to the National Security or Foreign Policy Interests of the United States

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by adding eight persons to the Entity List (Supplement No. 4 to part 744) on the basis of section 744.11 of the EAR. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These eight persons will be listed under the following three destinations on the Entity List: France, Iran and the United Arab Emirates (U.A.E.).

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from the Bureau of Industry and Security (BIS) and that availability of license exceptions in such transactions is limited.

**DATES:** This rule is effective June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, E-mail: *ERC@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The Entity List provides notice to the public that certain exports, reexports, and transfers (in-country) to parties identified on the Entity List require a license from BIS, and that availability of license exceptions in such transactions is limited. Persons are placed on the Entity List on the basis of criteria set forth in certain sections of part 744 (Control Policy: End-User and End-Use Based) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, Treasury, makes all decisions regarding additions to, removals from, or changes to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote, and all decisions to remove or modify an entry by unanimous vote.

*ERC Entity List Decisions*

The ERC made a determination to add eight persons to the Entity List on the basis of section 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States) of the EAR. The eight entries added to the Entity List consist of three new entries in France, three new entries in Iran, and two new entries in the U.A.E.

The ERC reviewed the criteria for revising the Entity List (section 744.11(b) of the EAR) in making the determination to add these persons to the Entity List. These criteria establish how to add to the Entity List those entities that, based on specific and articulable facts, there is reasonable cause to believe have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities (section 744.11 of the EAR). The persons being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States. An illustrative list of such activities can be found in paragraphs (b)(1)–(b)(5) of section 744.11 of the EAR.

Pursuant to section 744.11, these eight persons are being added based on evidence that they have engaged in actions that could enhance the military capability of Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism. These persons are also being added because their overall conduct poses a risk of ongoing EAR violations.

*Additions to the Entity List*

This rule implements the decision of the ERC to add eight persons to the Entity List on the basis of section 744.11 of the EAR. For all eight persons added to the Entity List, the ERC specified a license requirement for all items subject to the EAR and established a license application review policy of a presumption of denial. A BIS license is required to export, reexport or transfer (in-country) any item subject to the EAR to any of the persons described below, including any transaction in which any of the listed persons will act as purchaser, intermediate consignee, ultimate consignee, or end-user of the items. This listing of these persons also prohibits the use of license exceptions (see part 740 of the EAR) for exports, reexports and transfers (in-country) of items subject to the EAR involving such persons.

Specifically, this rule adds the following eight persons to the Entity List:

France

(1) *Aerotechnic France SAS,* 8 Rue de la Bruyere, 31120 Pinsaguel, France;

(2) *Luc Teuly,* 8 Rue de la Bruyere, 31120 Pinsaguel, France; and

(3) *Philippe Sanchez,* 8 Rue de la Bruyere, 31120 Pinsaguel, France.

Iran

(1) *Hassan Seifi,* Unit #23, Eighth Floor, No. 193 West Sarve Boulevard Kaj Square, Saadat Abad, 19987–14434, Tehran, Iran;

(2) *Reza Seifi,* Unit #23, Eighth Floor, No. 193 West Sarve Boulevard Kaj Square, Saadat Abad, 19987–14434, Tehran, Iran; and

(3) *Sabanican Company, (a.k.a., Sabanican Pad Co.),* Unit #23, Eighth Floor, No. 193 West Sarve Boulevard Kaj Square, Saadat Abad, 19987–14434, Tehran, Iran.

United Arab Emirates

(1) *Aletra General Trading, (a.k.a., Erman & Sultan Trading Co.),* Sabkha Street, Shop No. 8, Dubai, U.A.E.; and

(2) *Syed Amir Ahmed Najfi,* Sabkha Street, Shop No. 8, Dubai, U.A.E.

*Savings Clause*

Shipments of items removed from eligibility for a license exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a

carrier to a port of export or reexport, on June 28, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a license exception or export or reexport without a license (NLR) so long as they are exported or reexported before July 13, 2011. Any such items not actually exported or reexported before midnight, on July 13, 2011, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2010, 75 FR 50681 (August 16, 2010), has continued the EAR in effect under the International Emergency Economic Powers Act, 50 U.S.C. 1701, *et seq.*

**Rulemaking Requirements**

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be 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 involves a collection of information previously approved by the OMB under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Miscellaneous and recordkeeping activities account for 12 minutes per submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are expected to increase slightly as a result of this rule. However, this increase is not significant enough to require an amendment to the previously approved information collection. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). BIS implements this rule to prevent items from being exported, reexported or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. In addition, because these parties may receive notice of the U.S. Government's intention to place these entities on the Entity List once a final rule was published it would create an incentive for these persons to either accelerate receiving items subject to the EAR to conduct activities that are contrary to the national security or foreign policy interests of the United States and/or to take steps to set up additional aliases, change addresses and take other steps to try to limit the impact of the listing on the Entity List once a final rule was published. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

**List of Subjects in 15 CFR Part 744**

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

## PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010); Notice of January 13, 2011, 76 FR 3009 (January 18, 2011).

■ 2. Supplement No. 4 to part 744 is amended:

■ (a) By adding, in alphabetical order, the destination of France under the Country column and three French entities;

■ (b) By adding under Iran, in alphabetical order, three Iranian entities; and

■ (c) By adding under the United Arab Emirates, in alphabetical order, two U.A.E. entities.

The additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

| Country | Entity | License requirement | License review policy | Federal Register citation |
|---|---|---|---|---|
| * | * * | * | * * | * |
| France | Aerotechnic France SAS, 8 Rue de la Bruyere, 31120 Pinsaguel, France. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |
| | Luc Teuly, 8 Rue de la Bruyere, 31120 Pinsaguel, France. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |
| | Philippe Sanchez, 8 Rue de la Bruyere, 31120 Pinsaguel, France. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

| Country | Entity | License requirement | License review policy | Federal Register citation |
|---|---|---|---|---|
| * | * * | * | * * | * |
| Iran | | | | |
| * | * * | * | * * | * |
| | Hassan Seifi, Unit #23, Eighth Floor, No. 193 West Sarve Boulevard Kaj Square, Saadat Abad, 19987–14434, Tehran, Iran. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial ..... | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |
| * | * * | * | * * | * |
| | Reza Seifi, Unit #23, Eighth Floor, No. 193 West Sarve Boulevard Kaj Square, Saadat Abad, 19987–14434, Tehran, Iran. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial ..... | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |
| * | * * | * | * * | * |
| | Sabanican Company (a.k.a., Sabanican Pad Co.), Unit #23, Eighth Floor, No. 193 West Sarve Boulevard Kaj Square, Saadat Abad, 19987–14434, Tehran, Iran. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial ..... | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |
| * | * * | * | * * | * |
| United Arab Emirates | | | | |
| * | * * | * | * * | * |
| | Aletra General Trading (a.k.a., Erman & Sultan Trading Co.), Sabkha Street, Shop No. 8, Dubai, U.A.E. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial ..... | 76 FR [INSERT FR PAGE NUMBER] June 28 2011, |
| * | * * | * | * * | * |
| | Syed Amir Ahmed Najfi, Sabkha Street, Shop No. 8, Dubai, U.A.E. | For all items subject to the EAR. (See § 744.11 of the EAR). | Presumption of denial ..... | 76 FR [INSERT FR PAGE NUMBER] June 28, 2011. |
| * | * * | * | * * | * |

Dated: June 21, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2011–16165 Filed 6–27–11; 8:45 am]

**BILLING CODE 3510–33–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Part 748

**[Docket No. 110519290–1298–01]**

**RIN 0694–AF25**

## Revision to the Validated End-User Authorization for CSMC Technologies Corporation in the People's Republic of China

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the validated end-user authorization for CSMC Technologies Corporation (CSMC) in the People's Republic of China (PRC) by adding an item to the list of items that may be exported, reexported, or transferred (in-country) to CSMC's eligible destinations under Authorization Validated End-User (VEU).

**DATES:** This rule is effective June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Karen Nies-Vogel, Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, *E-mail: ERC@bis.doc.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

*Authorization Validated End-User (VEU): The List of Approved End-Users, Eligible Items and Destinations in the PRC*

BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646), creating a new authorization for ''validated end-users'' (VEUs) located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license, in conformance with section 748.15 of the EAR. On January 18, 2011, BIS identified CSMC as a Validated End-User (76 FR 2802).

VEUs may obtain eligible items that are on the Commerce Control List, set forth in Supplement No. 1 to Part 774 of the EAR, without having to wait for their suppliers to obtain export licenses from BIS. Eligible items may include commodities, software, and technology, except those controlled for missile technology or crime control reasons.

The VEUs listed in Supplement No. 7 to Part 748 of the EAR were reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. A unanimous vote by the ERC is required to authorize VEU status for a candidate or to add any eligible items to an existing authorization. Majority vote of the ERC is required to remove VEU authorization or to remove eligible items from an existing authorization.

In addition to U.S. exporters, Authorization VEU may be used in accordance with the provisions of the EAR by foreign reexporters and by persons transferring in-country, and it does not have an expiration date. VEUs are subject to regular reviews, based on information available to the United States government, to ensure that items shipped under Authorization VEU are used for civilian purposes. In addition, VEUs are subject to on-site reviews as warranted.

As of the date of this rule, pursuant to section 748.15(b) of the EAR, VEUs are only located in the PRC and India.

*Revisions to CSMC Technologies Corporation's ''Eligible Items (By ECCN)''*

This final rule amends Supplement No. 7 to Part 748 of the EAR to add most items classified under Export Control Classification Number (ECCN) 3B001.h (''Multi-layer masks with a phase shift layer'') to the list of items that may be exported, reexported, or transferred (in-country) to CSMC's ''Eligible Destinations'' under Authorization VEU. Multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices are excluded from those items eligible for shipment under Authorization VEU to CSMC. The ERC reviewed CSMC's request to add these items to its VEU Authorization and concluded the proposed addition is appropriate.

The complete list of items by ECCN, as revised, that may be exported, reexported, or transferred (in-country) to CSMC's eligible destinations under Authorization VEU is as follows:

*Eligible Items that may be exported, reexported, or transferred (in-country) to the three ''Eligible Destinations'' under CSMC Technologies Corporation's Validated End-User Authorization*

Items classified under Export Control Classification Numbers 1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g, 2B350.h, 3B001.c.1.a, 3B001.c.2.a, 3B001.e, 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004.

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended most recently by the Notice of August 12, 2010 (75 FR 50681 (August 16, 2010)), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

## Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS because this rule expands the list of items that do not require an individually validated license for exports, reexports, or transfers (in-country) to eligible CSMC destinations. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because such notice and comment here are unnecessary. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313, July 2, 2006, and 72 FR 33646, June 19, 2007). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy; in publishing this final rule, BIS simply amends an authorization by adding an eligible ECCN to the list of items approved for export, reexport, or transfer (in-country)

to the VEU's approved facilities. This has been done within the established regulatory framework of the VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of a proposed rule is unnecessary because the authorization granted in the rule is consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. Just as license applicants do, VEU authorization applicants provide the U.S. Government with confidential business information. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the thorough nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments; allowing additional public comment on this amendment to an individual VEU authorization, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. However, section 553(d)(1) of the APA provides that a substantive rule which grants or recognizes an exemption or relieves a restriction, may take effect earlier. Today's final rule grants an exemption from licensing procedures and thus is effective immediately.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable and no regulatory flexibility analysis has been prepared.

**List of Subjects in 15 CFR Part 748**

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

Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

## PART 748—[AMENDED]

■ 1. The authority citation for 15 CFR 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. Supplement No. 7 to Part 748 is amended by revising the ''Eligible Items (by ECCN)'' for ''CSMC Technologies Corporation'', for ''China (People's Republic of)'' to read as follows:

SUPPLEMENT NO. 7 TO PART 748—AUTHORIZATION VALIDATED END–USER (VEU); LIST OF VALIDATED END–USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

| Country | Validated end-user | Eligible items (by ECCN) | Eligible destination |
|---|---|---|---|
| China (People's Republic of). | | | |
| * | * | * * * | * * |
| | CSMC Technologies Corporation. | 1C350.c.3, 1C350.c.11, 2B230.a, 2B230.b, 2B350.f, 2B350.g 2B350.h, 3B001.c.1.a, 3B001.c.2.a, 3B001.e 3B001.h (except for multilayer masks with a phase shift layer designed to produce ''space qualified'' semiconductor devices), 3C002.a, and 3C004. | CSMC Technologies Fab 1 Co., Ltd, 14 Liangxi Road, Wuxi, Jiangsu 214061, China.<br>CSMC Technologies Fab 2 Co., Ltd., Block 86, 87, Wuxi National Hi-New Tech Industrial Development Zone, Wuxi, Jiangsu 214061, China.<br>Wuxi CR Semiconductor, Wafers and Chips Co., Ltd., 14 Liangxi Road, Wuxi, Jiangsu 214061, China. |
| * | * | * * * | * * |

Dated: June 22, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2011–16156 Filed 6–27–11; 8:45 am]

**BILLING CODE 3510–33–P**

## CONSUMER PRODUCT SAFETY COMMISSION

## 16 CFR Part 1120

## Substantial Product Hazard List: Hand-Supported Hair Dryers

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') authorizes the U.S. Consumer Product Safety Commission (''Commission,'' ''CPSC,'' or ''we'') to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under certain circumstances. We are issuing a final rule to determine that any hand-supported hair dryer without integral immersion protection presents a substantial product hazard.

**DATES:** The rule takes effect July 28, 2011. The incorporation by reference of the publications listed in this rule is approved by the Director of the Federal Register as of July 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sheela Kadambi, Office of Compliance and Field Operations, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7561, *skadambi@cpsc.gov.*

**SUPPLEMENTARY INFORMATION:**

## A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008 (''CPSIA'') was enacted on August 14, 2008. Public Law 110–314, 122 Stat. 3016 (August 14, 2008). The CPSIA amends statutes that the Commission administers, and adds certain new requirements.

Section 223 of the CPSIA expands section 15 of the Consumer Product Safety Act (''CPSA'') to add a new subsection (j). That subsection delegates authority to the Commission to specify by rule, for a consumer product or class of consumer products, characteristics whose presence or absence the Commission considers a substantial product hazard. To issue such a rule, the Commission must determine that those characteristics are readily observable and have been addressed by an applicable voluntary standard. The Commission must also find that the standard has been effective in reducing the risk of injury and that there has been substantial compliance with it. 15 U.S.C. 2064(j).

Underwriters Laboratories' (''UL'') *Standard for Safety for Household Electric Personal Grooming Appliances,* UL 859, is a voluntary standard that specifies immersion protection requirements for certain household appliances, including hand-supported hair dryers. The current immersion protection provisions have been in effect since 1991. UL's *Standard for Safety for Commercial Electric Personal Grooming Appliances,* UL 1727, specifies immersion protection requirements for grooming appliances, including hand-supported hair dryers, which are ''intended for use by qualified personnel in commercial establishments such as beauty parlors, barber shops, or cosmetic studios.'' Since 1994, UL 1727 has required the same integral immersion protection as UL 859. Such ''commercial,'' hand-supported hair dryers may be consumer products if they are available for sale to, or use by, consumers.

Hand-supported hair dryers, most often used in bathrooms and near water, are subject to accidental immersion during their use. Section 15(a) of the CPSA defines ''substantial product hazard'' to include: A product defect that (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. 15 U.S.C. 1064(a)(2).

On November 25, 2002, the CPSC's Director of the Office of Compliance sent a letter to manufacturers and importers of hand-supported hair dryers, stating that CPSC staff considers hair dryers available for sale to, or use by, consumers to present a substantial product hazard if they do not have immersion protection as required by UL 859. The letter urged manufacturers and importers to ensure that their hand-supported hair dryers provide immersion protection. The letter noted: ''[s]ome firms market hand held hair dryers that they contend are intended for professional use only, that is, for use by professionals in hair salons. However, CPSC staff also considers 'professional' hair dryers that are available for sale to consumers and that fail to provide immersion protection to be defective and to present a substantial product hazard.''

On May 17, 2010, we published a proposed rule (75 FR 27504) that would deem any hand-supported hair dryer without integral immersion protection, as specified in UL 859 or UL 1727, to be a substantial product hazard. (The proposal referred to ''hand-held'' hair dryers; however, as explained in section G.2 of this preamble, the final rule uses the term ''hand-supported,'' which is more consistent with the UL standards.)

We received six comments in response to the proposed rule. We describe and respond to the comments in section G of this preamble.

## B. The Product

A hand-supported hair dryer is a portable electrical appliance with a cord-and-plug connection. Typically, such hair dryers have a big, barrel-like body with a pistol grip handle. Frequently, they have two control switches or knobs: One turns the unit on and off and may allow the user to adjust the blower speed; the second adjusts the heat setting, often labeled ''cool/low/high.'' Hand-supported hair dryers routinely contain open-coil heating elements that are, in essence, uninsulated, electrically energized wires, across which a fan blows air. These dryers are typically used in bathrooms near water sources, such as sinks, bathtubs, and lavatories. If the uninsulated heating element were to contact water, an alternative current flow path could easily be created, posing the risk of shock or electrocution to the user holding the dryer (or retrieving it after dropping it into a sink, bathtub, or lavatory).

The power cords of hand-supported hair dryers with integral immersion protection on the market today have a large, block-shaped plug that incorporates a type of circuit interrupter— a Ground Fault Circuit Interrupter (''GFCI''), an Appliance Leakage Circuit Interrupter (''ALCI''), or an Immersion Detection Circuit Interrupter (''IDCI''). Usually, the plug also has buttons labeled ''Test'' and ''Reset.'' If the hair dryer should become wet or immersed in water, enough to cause electrical current to flow beyond the normal circuitry, the circuit interrupter will sense the flow and, in a fraction of a second, disconnect the hair dryer from its power source, preventing serious injury or death to a consumer.

An estimated 23 million units of hand-supported hair dryers are sold annually. CPSC staff does not know exactly how many companies supply hand-supported hair dryers. The preamble to the proposed rule stated the number of companies listed as complying with the UL standards as follows. Sixteen suppliers of hand-supported hair dryers are listed in the UL Online Certifications Directory as being in compliance with UL 859. An additional 42 companies are listed in the Intertek ETL Listed Mark Product Directory as complying with the UL 859 standard. Ten firms are listed to the UL 1727 standard on UL's Online Certifications Directory, and another four firms are listed in the Intertek ETL Listed Mark Product Directory as being in compliance with UL 1727. In 2007, the three largest suppliers listed accounted for approximately 92 percent of domestic sales of hand-supported hair dryers.

## C. The Risk of Injury

The proposed rule summarized relevant incident data reported during the period from 1980 to 2007, involving hand-supported hair dryers. We repeat and update that information here.

### *1. Incident Data in the Proposed Rule*

The preamble to the proposed rule reviewed the incident data available at that time. As noted in that preamble, a total of 43 electric shock injuries due to hair dryer immersion/water contact, were reported to CPSC staff from 1984 through 2004. Of these electric shock injuries, the most incidents (33) occurred before 1990, compared to 7 from 1991 through 1997, and 3 from 1998 through 2004. Although these are small numbers of reports, they indicate that the number of reported injuries due

to electric shock from hair dryer immersion/water contact decreased after 1990.

During 1980 through 1986, before the introduction of the initial UL requirements for hair dryers, a total of 110 electrocutions (15.7 annual average) were reported due to hair dryer immersion/water contact. In 1987, UL implemented a change to voluntary standard UL 859 to require immersion protection for hand-supported hair dryers if the dryer switch was in the ''off'' position. During the period 1987 through 1990, a total of 39 such electrocutions (9.75 annual average) were reported. In 1991, a revision to the UL standard requiring immersion protection in the ''off'' as well as the ''on'' position took effect. From 1991 through 1997, immediately following the time when the enhanced standard took effect, a total of 12 electrocutions (1.71 annual average) were reported. From 1998 through 2007, a period when most hair dryers made before 1991 were likely to be out of use, three electrocutions (0.3 annual average) were reported.

*2. Incident Data Update*

In preparation for the final rule, we reviewed data for the timeframe between 2006 and 2010. No new electrocutions associated with a hair dryer immersed in, or contacting water, have been reported since we published the proposed rule. There were reports of deaths associated with hair dryers, but these were not related to immersion in, or contact with, water. (Two reported deaths in 2008 were attributed to a fire started by a hairdryer igniting a couch; two reported deaths in 2010 were attributed to a fire started by a hairdryer igniting a mattress; and one reported death in 2010 was attributed to thermal injuries resulting from a running hairdryer). Data collection is ongoing for the years 2008 through 2010.

**D. Voluntary Standards**

Hand-supported hair dryers are included in UL 859, *Standard for Safety for Household Electric Personal Grooming Appliances.* In 1985, UL revised this standard to require protection against electrocution when a hair dryer is plugged into an electrical outlet, with its switch in the ''off'' position, and is immersed in water. The requirement took effect in October 1987. Between 1987 and 1990, the average number of reported deaths from hair dryer immersion/water contact dropped to approximately 10 deaths per year.

In 1990, the National Electrical Code (''NEC'') (Article 422–24, 1990 edition) instituted requirements for protection against electrocutions from immersion of hair dryers when the switch is in either the ''on'' or the ''off'' position.

In 1987, UL, in keeping with the NEC, revised its immersion protection standard to require that ''a hand-supported hair-drying appliance (such as a hair dryer, blower-styler, heated air comb, heated air hair curler, curling iron-hair dryer combination, wall-hung hair dryer or hand unit of a wall-mounted hair dryer, or similar appliance) shall be constructed to reduce the risk of electric shock when the appliance is energized, with its power switch in either the ''on'' or ''off'' position, and immersed in water having an electrically conductive path to ground.'' This revision, which took effect on January 1, 1991, expanded immersion protection to cover the appliance whether the switch was in the ''on'' or ''off'' position.

As discussed in section C of this preamble, the reported incidents of death from immersion-related electrocutions involving hand-supported hair dryers decreased significantly with implementation of immersion protection requirements in UL 859. The average number of reported hand-supported hair dryer electrocutions resulting in death is now less than one per year.

UL 1727, *Standard for Safety for Commercial Electric Personal Grooming Appliances,* originally issued in 1986, was revised to include the same integral immersion protection as UL 859 after the full immersion protection requirements in UL 859 proved to be effective. The revised requirements in UL 1727 became effective on March 31, 1994.

**E. Recalls**

As noted in section A of this preamble, in November 2002, the Director of the Office of Compliance sent a letter to importers and manufacturers of hand-supported hair dryers indicating CPSC staff's expectation that such hair dryers should have immersion protection and that staff would consider hand-supported hair dryers to present a substantial product hazard if they did not include such protection. The preamble to the proposed rule noted that, between January 1, 1991, and the time when we developed the proposed rule, there had been 30 recalls of hand-supported hair dryers due to lack of an immersion protection device (75 FR at 27506).

Since April 1, 2010, there have not been any recalls of hand-supported hair dryers without immersion protection. Shipments of hand-supported hair dryers without immersion protection have been seized at ports of entry and destroyed.

**F. Substantial Compliance**

There is no statutory definition of ''substantial compliance'' in either the CPSIA or the CPSA. Legislative history of the CPSA provision that is related to issuance of consumer product safety standards indicates that substantial compliance should be measured by reference to the number of complying products, rather than the number of manufacturers of products complying with the standard. H.R. Rep. No. 208, 97th Cong., 1st Sess. 871 (1981). Legislative history of this CPSA rulemaking provision also indicates that there is substantial compliance when the unreasonable risk of injury associated with a product will be eliminated or adequately reduced ''in a timely fashion.'' *Id.* The Commission has not taken the position that there is any particular percentage that constitutes substantial compliance. Rather than any bright line, the Commission has indicated in the rulemaking context that the determination needs to be made on a case-by-case basis.

As noted in section B of this preamble, CPSC staff estimates that sales of hand-supported hair dryers are about 23 million units annually. As of the date of the publication of the proposed rule, there are 16 suppliers of hand-supported hair dryers listed in the UL Online Certifications Directory, and an additional 42 suppliers are listed in the Intertek ETL Listed Mark Product Directory as supplying hand-supported hair dryers that are compliant with UL 859. Ten firms are listed to the UL 1727 standard on UL's Online Certifications Directory, and another four firms are listed in the Intertek ETL Listed Mark Product Directory as being in compliance with UL 1727.

In 2007, the three largest suppliers listed accounted for approximately 92 percent of the domestic sales of hand-supported hair dryers. Additional retailers are also listed as supplying hand-supported hair dryers that are in compliance with the UL standards. Since the three largest suppliers (which are listed as producing hair dryers that comply with the UL standards) account for 92 percent of the domestic sales of hand-supported hair dryers, and additional companies are also listed as producing complying hand-supported hair dryers, we estimate that more than 95 percent of hand-supported hair dryers for sale in this country comply with the UL standards. Therefore, the Commission determines that there is

substantial compliance with UL 859 and UL 1727.

**G. Comments on the Proposed Rule and CPSC's Responses**

In the **Federal Register** of May 17, 2010 (75 FR 27504), we published a proposed rule that would specify that any hand-supported hair dryer without integral immersion protection presents a substantial product hazard. We received six comments that raised three particular issues. In general, all six commenters supported the proposed rule, although some commenters asked a question or sought clarification. We summarize and respond to the issues raised by those comments here.

*1. Level of Compliance*

*Comment:* One commenter noted that, in the preamble to the proposed rule, we estimated that more than 95 percent of the hand-supported hair dryers sold in the United States comply with the applicable UL standards and that this constitutes substantial compliance. The commenter suggested that we consider 100 percent compliance to the standards to be substantial compliance.

*Response:* Our goal is for all hand-supported hair dryers to have integral immersion protection. The statutory provision requires us to determine that there is substantial compliance with an applicable voluntary standard as one criterion for placing a product on the substantial product hazard list pursuant to section 15(j) of the CPSA. *The Random House Dictionary of the English Language* defines ''substantial'' as ''of ample or considerable amount, quantity, size, etc.'' Thus ''substantial'' refers to an amount less than ''all'' or ''total.'' We believe that, in this context, substantial compliance can be something less than 100 percent compliance.

*2. Hand-Supported Instead of Hand-Held*

*Comment:* Two commenters suggested changing the term ''hand-held'' to ''hand-supported'' to be more consistent with the wording of UL 859 and UL 1727. The commenters noted that the UL standards have a definition for ''hand-held'' that is used in a different context than that intended by the Commission.

*Response:* We agree with the commenters. UL 859 and UL 1727 use the terms ''hand-held'' and ''hand-supported.'' Underwriters' Laboratories uses the phrase ''hand-held'' to refer to appliances that are not fully supported by the hand, even though they are in contact with the hand. An upright vacuum cleaner is an example of this meaning of ''hand-held.'' The user's hand is in contact with the appliance and guides the appliance during use; but the weight of the vacuum cleaner is supported by the floor. UL defines a ''hand-supported'' device as ''an appliance that is physically supported by the hand of the user during the performance of its intended functions.'' Thus, the term ''hand-supported'' describes more accurately the situation with hair dryers. Using the term ''hand-supported'' in the same context as the UL standards will promote consistency and avoid confusion. We have modified the definition in § 1120.2(b), as well as in related text and preamble discussion, to refer to ''hand-supported hair dryers.''

*3. Not a Consumer Product Safety Rule*

*Comment:* One commenter suggested that we clarify the rule to state explicitly that it does not establish a consumer product safety rule and that no general conformity certificates are required under section 14(a) of the CPSA.

*Response:* The commenter is correct that this rule does not establish a consumer product safety rule, so manufacturers of hand-supported hair dryers do not have to test and certify their products for compliance with this rule. This point is clarified in section J of this preamble.

**H. Description of the Final Rule**

The final rule creates a new part 1120 titled, ''Substantial Product Hazard List,'' and names as the first product group on the list any hand-supported hair dryer without integral immersion protection.

*1. Authority (§ 1120.1)*

Section 1120.1 restates the statutory criteria required for the Commission to determine that a consumer product, or class of consumer products, have characteristics whose existence or absence present a substantial product hazard under section 15(a)(2) of the CPSA.

*2. Definitions (§ 1120.2)*

Section 1120.2 defines the terms ''substantial product hazard'' and ''hand-supported hair dryer.'' The definition of ''substantial product hazard'' comes from section 15(a)(2) of the CPSA and means ''a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.'' This definition is unchanged from the proposed rule.

As explained in section G.2 of this preamble, the final rule refers to ''hand-supported hair dryer'' instead of ''hand-held hair dryer.'' The definition remains the same as in the proposed rule and states that a ''hand-supported dryer'' is ''an electrical appliance, intended to be held with one hand during use, which creates a flow of air over or through a self-contained heating element for the purpose of drying hair.''

*3. Products Deemed To Be Substantial Product Hazards (§ 1120.3)*

Section 1120.3 establishes a list of products, or class of products, that the Commission deems to be substantial product hazards under section 15(a)(2) of the CPSA. It states that hand-supported hair dryers lacking integral immersion protection in compliance with the requirements of section 5 of the UL *Standard for Safety for Household Electric Personal Grooming Appliances,* UL 859 (10th Edition, approved August 30, 2002, and revised through June 3, 2010) or section 6 of the UL *Standard for Safety for Commercial Electric Personal Grooming Appliances,* UL 1727 (4th Edition, approved March 25, 1999, and revised through June 25, 2010) are deemed substantial product hazards. The final rule incorporates by reference those sections of UL 859 and UL 1727 and states where one may obtain a copy of the UL standards.

**I. Commission Determination That Hand-Supported Hair Dryers Without Integral Immersion Protection Present a Substantial Product Hazard**

To place a product (or class of products) on the list of substantial product hazards pursuant to section 15(j) of the CPSA, we must determine that: (1) The characteristics whose existence or absence present a substantial product hazard are readily observable; (2) those characteristics have been addressed by voluntary standards; (3) the relevant voluntary standards have been effective in reducing the risk of injury from the consumer product; and (4) there is substantial compliance with the voluntary standards. We find that hand-supported hair dryers without integral immersion protection meet these criteria.

- The characteristics of a hand-supported hair dryer with integral immersion protection are readily observable. A hair dryer that has such protection will have a large block-shaped plug that contains some type of circuit interrupter.
- Integral immersion protection has been addressed by UL 589 and UL 1727. Both of those standards require that

hand-supported hair dryers have integral immersion protection.

• These standards have been very effective in reducing deaths and electric shock injuries due to hair dryer immersion or contact with water. From 1980 to 1986 (before the initial UL requirements took effect), a total of 110 electrocutions (15.7 annual average) were reportedly due to hair dryer immersion/water contact. Only three electrocutions were reported between 1998 and 2007, and we have no reports of electrocutions associated with a hair dryer immersed in, or contacting water, for the period from 2006 through 2010.

• There is substantial compliance with the voluntary standards' requirements. We estimate that more than 95 percent of hand-supported hair dryers for sale in the United States comply with the immersion protection provisions of the UL standards.

**J. Effect of Section 15(j) Rule**

Section 15(j) of the CPSA authorizes us to issue a rule specifying that a consumer product (or class of consumer products) has characteristics whose presence or absence creates a substantial product hazard. This rule, which falls under section 15 of the CPSA, is not a consumer product safety rule and does not create a consumer product safety standard. Thus, the rule does not trigger any testing or certification requirements under section 14(a) of the CPSA.

Although the final rule does not establish a consumer product safety standard, placing a consumer product on this substantial product hazard list has certain consequences. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA. 15 U.S.C. 2064(b). A manufacturer who fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA and possibly is subject to criminal penalties under section 21 of the CPSA. 15 U.S.C. 2069, 2070.

A product that is or contains a substantial product hazard is subject to corrective action under section 15(c) and (d) of the CPSA. 15 U.S.C. 2064(c), (d). Thus, the Commission can order the manufacturer, distributor, or retailer of the product to offer to repair or replace the product, or to refund the purchase price to the consumer.

Finally, a product that is offered for import into the United States, and is or contains a substantial product hazard, must be refused admission into the United States under section 17(a) of the CPSA. 15 U.S.C. 2066(a).

**K. Regulatory Flexibility Certification**

The Regulatory Flexibility Act (''RFA'') generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses. 5 U.S.C. 601–612. In the preamble to the proposed rule (75 FR at 27506 through 27507), we noted that the majority of hair dryers sold in the United States are already UL-listed, and because the majority of businesses (both large and small) are already in compliance with the voluntary standard, the rule is not expected to pose a significant burden to small business. Therefore, we certified that, in accordance with section 605 of the RFA, the rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. We received no comments concerning the rule's impact on small business, and we are not aware of any information that would change our certification.

**L. Environmental Considerations**

In the preamble to the proposed rule (75 FR at 27507), we stated that a rule that determines that hand-supported hair dryers without immersion protection in accordance with UL 859 or UL 1727 present a substantial product hazard is not expected to have an adverse impact on the environment and is considered to be a ''categorical exclusion'' for the purposes of the National Environmental Policy Act (''NEPA''), according to the CPSC regulations that cover its ''environmental review'' procedures (16 CFR 1021.5(c)(1)). We did not receive any comments on the environmental impact of the rule. We affirm that this rule falls within a categorical exclusion for purposes of NEPA.

**M. Paperwork Reduction Act**

The final rule does not impose any information collection requirements. Accordingly, the final rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

**N. Effective Date**

The preamble to the proposed rule indicated that a final rule establishing that any hand-supported hair dryer without immersion protection, as specified in UL 859 or UL 1727, is a substantial product hazard, would take effect 30 days from its date of publication in the **Federal Register**. We received no comments regarding the effective date. Accordingly, the final rule will apply to hand-supported hair dryers imported or introduced into commerce on July 28, 2011.

**O. Preemption**

The final rule places hand-supported hair dryers without integral immersion protection on a list of products that present a substantial product hazard. The rule does not establish a consumer product safety standard. The preemption provisions in section 26(a) of the CPSA, 15 U.S.C. 2075(a), apply when a consumer product safety standard is in effect. Therefore, section 26(a) of the CPSA does not apply to this rule.

**List of Subjects in 16 CFR 1120**

Administrative practice and procedure, Consumer protection, Household appliances, Imports, Incorporation by reference.

Therefore, the Commission amends Title 16 of the Code of Federal Regulations by adding part 1120 to read as follows:

## PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

Sec.
1120.1 Authority.
1120.2 Definitions.
1120.3 Products deemed to be substantial product hazards.

**Authority:** 15 U.S.C. 2064(j).

### § 1120.1 Authority.

Under the authority of section 15(j) of the Consumer Product Safety Act (CPSA), the Commission determines that consumer products or classes of consumer products listed in § 1120.3 of this part have characteristics whose existence or absence present a substantial product hazard under section 15(a)(2) of the CPSA. The Commission has determined that the listed products have characteristics that are readily observable and have been addressed by a voluntary standard, that the voluntary standard has been effective, and that there is substantial compliance with the voluntary standard. The listed products are subject to the reporting requirements of section 15(b) of the CPSA and to the recall provisions of section 15(c) and (d) of the CPSA, and shall be refused entry into the United States under section 17(a)(4) of the CPSA.

### § 1120.2 Definitions.

The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1120.

(a) *Substantial product hazard* means a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or

otherwise) creates a substantial risk of injury to the public.

(b) *Hand-supported hair dryer* means an electrical appliance, intended to be held with one hand during use, which creates a flow of air over or through a self-contained heating element for the purpose of drying hair.

**§ 1120.3 Products deemed to be substantial product hazards.**

The following products or class of products shall be deemed to be substantial product hazards under section 15(a)(2) of the CPSA:

(a) Hand-supported hair dryers that do not provide integral immersion protection in compliance with the requirements of section 5 of Underwriters Laboratories (UL) *Standard for Safety for Household Electric Personal Grooming Appliances,* UL 859, 10th Edition, approved August 30, 2002, and revised through June 3, 2010, or section 6 of *UL Standard for Safety for Commercial Electric Personal Grooming Appliances,* UL 1727, 4th Edition, approved March 25, 1999, and revised through June 25, 2010. The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from UL, Inc., 333 Pfingsten Road, Northbrook, IL 60062; telephone 888–853–3503; *http://* www.comm-2000.com . You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) [Reserved]

Dated: June 22, 2011.

**Todd A. Stevenson,**

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2011–15981 Filed 6–27–11; 8:45 am]

BILLING CODE 6355–01–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0396]**

**RIN 1625–AA00**

## Safety Zone; Independence Day Fireworks Celebration for the City of Half Moon Bay, Half Moon Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of Half Moon Bay, off of Pillar Point Harbor beach, Half Moon Bay, CA in support of the Independence Day Fireworks Celebration for the City of Half Moon Bay. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or a designated representative.

**DATES:** This rule is effective from 11 a.m. through 9:50 p.m. on July 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0396 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0396 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Lieutenant Junior Grade Liezl Nicholas at (415) 399–7442, or e-mail *D11-PF-MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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

### Background and Purpose

American Legion Post 474 will sponsor the Independence Day Fireworks Celebration for the City of Half Moon Bay on July 4, 2011, on the navigable waters of Half Moon Bay, off of Pillar Point Harbor beach, Half Moon Bay, CA. The fireworks display is meant for entertainment purposes. This safety zone establishes a temporary restricted area on the waters surrounding the fireworks launch site during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics over the water. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

### Discussion of Rule

From 11 a.m. until 9:30 p.m. on July 4, 2011, the temporary safety zone will extend 100 feet while pyrotechnics are loaded and maintained at the Pillar Point Harbor beach at position 37°30′03.02″ N, 122°28′24.86″ W (NAD 83). The fireworks display will occur from 9:30 p.m. to 9:50 p.m., during which the safety zone will extend 600 feet from position 37°30′03.02″ N, 122°28′24.86″ W (NAD 83). At 9:50 p.m., the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized

by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the launch site to ensure the safety of participants, spectators, and transiting vessels.

**Regulatory Analyses**

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

**Executive Order 12866 and Executive Order 13563**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant. The entities most likely to be affected are pleasure craft engaged in recreational activities. In addition, the rule will only restrict access for a limited time. Finally, the Public Broadcast Notice to Mariners will notify the users of local waterway to ensure that the safety zone will result in minimum impact.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Although this rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing, it will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time; (ii) vessel traffic can pass safely around the area; (iii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected areas of Half Moon Bay, CA to engage in these activities; and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraphs (34)(g) and (35)(b), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–418 to read as follows:

### § 165.T11–418 Safety Zone; Independence Day Fireworks Celebration for the City of Half Moon Bay, Half Moon Bay, CA

(a) *Location.* This temporary safety zone is established for the navigable waters of Half Moon Bay, off of Pillar Point Harbor beach, Half Moon Bay, CA. The fireworks launch site will be located in position: 37°30′03.02″ N, 122°28′24.86″ W (NAD 83). From 11 a.m. until 9:30 p.m. on July 4, 2011, the temporary safety zone will extend 100 feet while pyrotechnics are loaded and maintained at Pillar Point Harbor beach at position 37°30′03.02″ N, 122°28′24.86″ W (NAD 83). The fireworks display will occur from 9:30 p.m. to 9:50 p.m. during which the safety zone will extend 600 feet from position 37°30′03.02″ N, 122°28′24.86″ W (NAD 83). At 9:50 p.m., the safety zone shall terminate.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 11 a.m. through 9:50 p.m. on July 4, 2011.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–16092 Filed 6–27–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**Docket No. USCG–2011–0395]**

**RIN 1625–AA00**

## Safety Zone; Delta Independence Day Foundation Celebration, Mandeville Island, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters off the North Eastern shoreline of Mandeville Island, Mandeville Island, California in support of the Delta Independence Day Fireworks Foundation Celebration. This temporary safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or their designated representative.

**DATES:** This rule is effective from 10 a.m. on July 3, 2011 through 10 p.m. on July 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0395 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0395 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Liezl Nicholas, U.S. Coast Guard Sector San Francisco; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a)

of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in this fireworks display, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action the restriction of vessel traffic and spectator craft is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be impracticable as immediate action is needed to protect the public from the dangers associated with the fireworks display.

**Basis and Purpose**

The Delta Independence Day Foundation will sponsor the Delta Independence Day Foundation Celebration on July 4, 2011, 300 feet off of Mandeville Island, California. This temporary safety zone establishes a temporary restricted area on the waters 100 feet surrounding the fireworks loading, transit and launches sites, and extends the safety zone to 1,000 feet of the launch site during the fireworks display. The fireworks display is meant for entertainment purposes. This safety zone is issued to establish a temporary restricted area on the waters surrounding the fireworks launch site during loading of the pyrotechnics, and during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barges. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

**Discussion of Rule**

From 10 a.m. until 3 p.m. on July 3, 2011, pyrotechnics will be loaded onto a barge at Dutra Corporation Yard, Rio Vista, CA. From 3 p.m. until 6 p.m. on July 3, 2011 the loaded barge will be transiting from the Dutra Corporation Yard to the launch site 300 feet off of Mandeville Island, CA at position 38°03′19.37″ N, 121°31′54.34″ W (NAD 83). The temporary safety zone will extend 100 feet from the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from the Dutra Corporation Yard to position 38°03′19.37″ N, 121°31′54.34″ W (NAD 83). The fireworks display will occur from 9:30 p.m. until 10 p.m. on July 4, 2011, during which the safety zone will extend 1,000 feet from the nearest point of the barge at position 38°03′19.37″ N, 121°31′54.34″ W (NAD 83). At 10 p.m. on July 4, 2011 the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant because the temporary safety zone is only in effect for a limited time and local waterway users will be notified via public Broadcast Notice to Mariners to ensure the safety zone will result in minimum impact. The entities most likely to be affected are pleasure craft engaged in recreational activities.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: Owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the effected portion of the areas off Mandeville Island, California to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

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

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–420 to read as follows:

**§ 165.T11–420 Safety zone; Delta Independence Day Foundation Celebration, Mandeville Island, CA.**

(a) *Location.* This temporary safety zone is established for the waters 300 feet off of the North Eastern shoreline of Mandeville Island, CA. The fireworks launch site will be located at position 38°03′19.37″ N, 121°31′54.34″ W (NAD 83). During the loading of the fireworks, and until the start of the fireworks display, the temporary safety zone applies to the nearest point of the barge during the loading, transit, and arrival of the pyrotechnics from Dutra Corporation Yard, Rio Vista, CA. From 9:30 p.m. until 10 p.m. on July 4, 2011, the area to which the temporary safety zone applies will increase in size to encompass the navigable waters around the fireworks site within a radius of 1,000 feet.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer on a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23 of this title, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or their designated representative. Persons and vessels may request permission to enter the safety

zone on VHF–16 or through the 24-hour Command Center at telephone 415–399–3547.

(d) *Effective period.* This section is effective from 10 a.m. on July 3, 2011 through 10 p.m. on July 4, 2011.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–16099 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG 2011–0405]**

## Safety Zone; Northern California Annual Fireworks Events, Fourth of July Fireworks, City of Sausalito, Sausalito, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the Fourth of July Fireworks, City of Sausalito annual safety zone. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced from 11 a.m. through 9:30 p.m. on July 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Lieutenant Junior Grade Liezl Nicholas, Sector San Francisco Waterways Safety Division, U.S. Coast Guard; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

The Coast Guard will enforce the safety zone for the annual Fourth of July Fireworks, City of Sausalito, safety zone in 33 CFR 165.1191 on July 4, 2011 from 11 a.m. through 9:30 p.m. During the fireworks display, scheduled to start at approximately 9:15 p.m., the fireworks barge will be located approximately 1,000 feet off-shore from Sausalito waterfront, North of Spinnaker Restaurant in the Richardson Bay in position 37°51′30.72″ N, 122°28′27.92″ W (NAD83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector San Francisco.*

[FR Doc. 2011–16105 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG 2011–0208]**

## Safety Zone; Northern California Annual Fireworks Events, Fourth of July Fireworks, Lake Tahoe, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the annual safety zone for the Fourth of July Fireworks, Lake Tahoe, California, located off Incline Village in Crystal Bay. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced from 9 p.m. to 9:30 p.m. on July 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Lieutenant Junior Grade Liezl Nicholas, U.S. Coast Guard, Waterways Safety Division; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the 1,000 foot safety zone for the annual Fourth of July Fireworks Display in 33 CFR 165.1191 on July 4, 2011. The fireworks launch site is approximately 800 feet off the shore line of Incline Village Nevada in Crystal Bay in position 39°14′16.50″ N, 119°53′59.43″ W (NAD83).

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–16107 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket No. USCG–2011–0511]**

**RIN 1625–AA00**

## Safety Zone; Missouri River From the Border Between Montana and North Dakota

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the specified waters of the Missouri River from the Montana and North Dakota border to the confluence with the Mississippi River, extending the entire width of the river. During enforcement periods, vessels must obtain Captain of the Port authorization to enter the safety zone. This temporary safety zone is needed to protect the general public, vessels and tows from destruction, and the levee system from destruction, loss or injury due to hazards associated with rising flood water. Operation in this zone is restricted unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

**DATES:** Effective Date: this rule is effective in the CFR from June 28, 2011 until 11:59 p.m. CDT August 30, 2011, unless terminated earlier. This rule is effective with actual notice for purposes of enforcement beginning 12:01 a.m. CDT June 2, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0511 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0511 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Documents will also be available for inspection or copying at Coast Guard Sector Upper Mississippi River, 1222 Spruce Street Suite 7.103, St. Louis, MO 63103 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Lieutenant Commander (LCDR) Scott Stoermer, Sector Upper Mississippi River, Coast Guard at (314) 269–2540 or *Scott.A.Stoermer@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be contrary to public interest to publish an NPRM as immediate action is necessary to protect the public and property from the dangers associated with flooding emergencies.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the safety hazards associated with flooding emergencies.

### Basis and Purpose

On June 1, 2011, the Captain of the Port Upper Mississippi River deemed navigation on the Missouri River unsafe due to severe flooding and has restricted navigation on the Missouri River, from the border between Montana and North Dakota at 104.05 degrees west longitude to the confluence with the Mississippi River at 90.11 degrees West longitude and extending the entire width of the river. Entry into this zone is prohibited during enforcement periods unless specifically authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative. Emergency response boats or vessels may enter these waters when responding to emergent situations on or near the river.

### Discussion of Rule

The Coast Guard is establishing a temporary safety zone for the Missouri River from the border between Montana and North Dakota at 104.05 degrees west longitude to the confluence with the Mississippi River at 90.11 degrees West longitude and extending the entire width of the river. During enforcement periods, vessels and tows may not enter this zone unless authorized by the Captain of the Port Sector Upper Mississippi River. Emergency response boats or vessels may enter these waters when responding to emergent situations on or near the river. This rule is effective from 12:01 a.m. CDT June 2, 2011 until 11:59 p.m. CDT August 30, 2011, unless terminated earlier. This safety zone will be enforced when high water conditions pose a danger to navigation, the levee system, and the general public. The Captain of the Port Sector Upper Mississippi River will inform the public through broadcast notices to mariners and/or marine safety information bulletins when enforcement periods are in place and of all safety zone changes. When enforcement is implemented, vessels currently in the safety zone will be provided opportunity to safely exit the restricted area.

### Regulatory Evaluation

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

Notifications to the marine community will be made through broadcast notices to mariners and/or marine safety information bulletins. Vessels requiring entry into or passage through the Safety Zone may request permission from the Captain of the Port Sector Upper Mississippi, or a designated representative and entry will be evaluated on a case-by-case basis to minimize impact and protect the general public, levee system, and vessels from destruction, loss or injury due to the hazards associated with rising flood water. The impacts on routine navigation are expected to be minimal.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit waters of the Missouri River from the border between Montana and North Dakota at 104.05 degrees west longitude to the confluence with the Mississippi River at 90.11 degrees West longitude extending the entire width of the river on and after 12:01 a.m. CDT June 2, 2011, unless terminated earlier. This temporary safety zone is not expected to have a significant economic impact on a substantial number of small entities because vessels may request permission to transit the area from the Captain of the Port Sector Upper Mississippi, or a designated representative, for passage through the safety zone. Passage through the safety zone will be evaluated on a case-by-case basis to minimize impact and protect the general public, levee system, and vessels from destruction, loss or injury due to the hazards associated with rising flood water. If you are a small business entity and are significantly affected by this regulation, please contact LCDR Scott Stoermer, Sector Upper Mississippi River, Coast Guard at (314) 269–2540.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small businesses. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

This rule involves establishing a temporary safety zone in an emergency situation and will be in effect for over one week. An environmental analysis checklist and a categorical exclusion determination will be provided and made available at the docket as indicated in the **ADDRESSES** section.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T11–0511 is added to read as follows:

### § 165.T11–0511 Safety Zone; Missouri River from the border between Montana and North Dakota

(a) *Location.* The following area is a temporary safety zone: Waters of the Missouri River from the border between Montana and North Dakota at 104.05 degrees west longitude to the confluence with the Mississippi River at 90.11 degrees West longitude and extending the entire width of the river.

(b) *Effective date.* From June 2, 2011 through August 30, 2011, unless terminated earlier.

(c) *Periods of Enforcement.* This rule will be enforced during dangerous flooding conditions occurring between 12:01 a.m. CDT June 2, 2011 and 11:59 p.m. CDT August 30, 2011. The Captain of the Port Sector Upper Mississippi River will inform the public through broadcast notice to mariners and/or marine safety information bulletins when enforcement is implemented and of any changes to safety zone. Vessels within the safety zone will be allowed to safely exit the area upon enforcement of this safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, operation in this zone is restricted unless authorized by the Captain of the Port Sector Upper Mississippi River or a designated representative.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Sector Upper Mississippi River, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at 314–269–2332.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Sector Upper Mississippi River or their designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: June 2, 2011.

**S. C. Teschendorf,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Sector Upper Mississippi River.*

[FR Doc. 2011–16096 Filed 6–27–11; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG 2011–0404]**

## Safety Zone; Northern California Annual Fireworks Events, Independence Day Fireworks

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the annual Independence Day Fireworks (Kings Beach 4th of July Fireworks) safety zone. This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced from 7 a.m. through 10 p.m. on July 3, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Lieutenant Junior Grade Liezl Nicholas, U.S. Coast Guard, Waterways Safety Division; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone for the annual Kings Beach 4th of July Fireworks in 33 CFR 165.1191 on July 3, 2011, from 7 a.m. through 10 p.m. The fireworks launch site is approximately 800 feet off the shore line of Kings Beach in position 39°13′55.37″ N, 120°01′42.26″ W (NAD83). The safety zone encompasses the navigable waters within a 1,000 ft radius of the launch site.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid entry into and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–16106 Filed 6–27–11; 8:45 am]

BILLING CODE 9110–04–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG 2011–0406]**

## Safety Zone; Northern California Annual Fireworks Events, July 4th Fireworks Display

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce safety zone for the annual July 4th Fireworks Display (Tahoe City 4th of July Fireworks Display). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced from 7 a.m. through 10 p.m. on July 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Lieutenant Junior Grade Liezl Nicholas U.S. Coast Guard; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone for the annual Tahoe City 4th of July Fireworks in 33 CFR 165.1191 on July 4, 2011, from 7 a.m. through 10 p.m. The fireworks launch site is approximately 900 feet offshore of Common Beach, Tahoe City in position 39°10′09.09″ N, 120°08′16.33″ W (NAD83) and the safety zone is approximately 1,000 ft radius surrounding the launch site.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners will be used to grant general permission to enter the regulated area.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Francisco.*

[FR Doc. 2011–16104 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG 2011–0403]**

## Safety Zone; Northern California Annual Fireworks Events, Fourth of July Fireworks, South Lake Tahoe Gaming Alliance

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the annual Fourth of July Fireworks, South Lake Tahoe Gaming Alliance (Lights on the Lake Fireworks Display). This action is necessary to control vessel traffic and to ensure the safety of event participants and spectators. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone, unless authorized by the Patrol Commander (PATCOM).

**DATES:** The regulations in 33 CFR 165.1191 will be enforced from 9 a.m. on July 1, 2011 through 10 p.m. on July 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, call or e-mail Lieutenant Junior Grade Liezl Nicholas U.S. Coast Guard; telephone 415–399–7443, e-mail *D11–PF–MarineEvents@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone for the annual Lights on the Lake Fireworks in 33 CFR 165.1191 on July 1, 2011, from 9 a.m. through 10 p.m. on July 4, 2011. The fireworks launch site is approximately 600 feet offshore of Stateline Beach, South Lake Tahoe, CA in position 38°57′56″ N, 119°57′21″ W (NAD83), and extends approximately 1,000 ft radius surrounding the launch site.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM. Additionally, each person who receives notice of a lawful order or direction issued by an official patrol vessel shall obey the order of direction. The PATCOM is empowered to forbid and control the regulated area. The PATCOM shall be designated by the Commander, Coast Guard Sector San Francisco. The PATCOM may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

This notice is issued under authority of 33 CFR 165.1191 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port Sector San Francisco.*

[FR Doc. 2011–16097 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0370]**

**RIN 1625–AA00**

## Safety Zone; 4th of July Festival Berkeley Marina Fireworks Display Berkeley, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of San Francisco Bay, off of the Berkeley Pier, Berkeley, CA in support of the 4th of July Festival Berkeley Marina Fireworks Display. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or a designated representative.

**DATES:** This rule is effective from 12 p.m. through 9:55 p.m. on July 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0370 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0370 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Lieutenant Junior Grade Liezl Nicholas at (415) 399–7442, or *e-mail D11–PF–MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a)

of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zones are necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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

**Background and Purpose**

The City of Berkeley Marina will sponsor the 4th of July Festival Berkeley Marina Fireworks Display on July 4, 2011, on the navigable waters of San Francisco Bay, off of the Berkeley Pier, Berkeley, CA. The fireworks display is meant for entertainment purposes. This safety zone establishes a temporary restricted area on the waters surrounding the fireworks launch site during the fireworks display. This restricted area around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics over the water. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

**Discussion of Rule**

From 12 p.m. until 9:30 p.m. on July 4, 2011, the temporary safety zone will extend 100 feet while pyrotechnics are loaded and maintained on the Berkeley Pier at position 37°51′40.34″ N, 122°19′19.59″ W (NAD 83). The fireworks display will occur from 9:30 p.m. until 9:55 p.m., during which the safety zone will extend 1,000 feet from the Berkeley Pier at position 37°51′40.34″ N, 122°19′19.59″ W (NAD 83). At 9:55 p.m., the safety zone shall terminate.

The effect of the temporary safety zones will be to restrict navigation in the vicinity of the fireworks sites while the fireworks are set up, and until the conclusion of the scheduled displays. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the launch site to ensure the safety of participants, spectators, and transiting vessels.

**Regulatory Analyses**

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

**Executive Order 12866 and Executive Order 13563**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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.

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant. The entities most likely to be affected are pleasure craft engaged in recreational activities. In addition, the rule will only restrict access for a limited time. Finally, the Public Broadcast Notice to Mariners will notify the users of local waterway to ensure that the safety zone will result in minimum impact.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Although this rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing, it will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time; (ii) vessel traffic can pass safely around the area; (iii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected areas of San Francisco Bay, CA to engage in these activities; and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraphs (34)(g) and (35)(b), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–421 to read as follows:

**§ 165.T11–421 Safety Zone; 4th of July Festival Berkeley Marina Fireworks Display Berkeley, CA**

(a) *Location.* This temporary safety zone is established for the navigable waters of San Francisco Bay, off of the Berkeley Pier, Berkeley, CA. The fireworks launch site will be located in position: 37°51′40.34″ N, 122°19′19.59″ W (NAD 83). From 12 p.m. until 9:30 p.m., the temporary safety zone will extend 100 feet while pyrotechnics are loaded onto the Berkeley Pier. From 9:30 p.m. until 9:55 p.m. the area to which the temporary safety zone applies will encompass the navigable waters around the fireworks launch site off of the Berkeley Pier within a radius of 1,000 feet. At 9:55 p.m., the safety zone shall terminate.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zones on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 12 p.m. through 9:55 p.m. on July 4, 2011.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–16093 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**Docket No. USCG–2011–0400]**

**RIN 1625–AA00**

## Safety Zone; Independence Day Fireworks Celebration for the City of Martinez, Martinez, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the navigable waters of the Carquinez Strait, off of Waterfront Park, Martinez, Califonia in support of the Independence Day Fireworks Celebration for the City of Martinez. This safety zone is established to ensure the safety of participants and spectators from the dangers associated with the pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port or a designated representative.

**DATES:** This rule is effective from 9 a.m. through 9:50 p.m. on July 4, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0400 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0400 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call Lieutenant Junior Grade Liezl Nicholas at (415) 399–7443, or e-mail *D11–PF–MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the event would occur before the rulemaking process would be completed. Because of the dangers posed by the pyrotechnics used in these fireworks displays, the safety zone is necessary to provide for the safety of event participants, spectators, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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

### Basis and Purpose

The City of Martinez will sponsor the Independence Day Fireworks Celebration for the City of Martinez on July 4, 2011, on the navigable waters of the Carquinez Strait, off of Waterfront Park, Martinez, California. The fireworks display is meant for entertainment purposes. This safety zone establishes a temporary restricted area on the waters surrounding the fireworks launch site during the fireworks display. This safety zone around the launch site is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics over the water. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

### Discussion of Rule

From 9 a.m. until 9:30 p.m. on July 4, 2011, the temporary safety zone will extend 100 feet while pyrotechnics are loaded and maintained at Waterfront Park, Martinez, CA at position 38°01′31.77″N, 121°08′23.75″W (NAD 83). The fireworks display will occur from 9:30 p.m. to 9:50 p.m. during which the safety zone will extend 600 feet from position 38°01′31.77″N, 121°08′23.75″W (NAD 83). At 9:50 p.m., the safety zone shall terminate.

The effect of the temporary safety zone will be to restrict navigation in the vicinity of the fireworks site while the fireworks are set up, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the restricted area. These regulations are needed to keep spectators and vessels a safe distance away from the launch site to ensure the safety of participants, spectators, and transiting vessels.

### Regulatory Analyses

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

*Regulatory Planning and Review*

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

Although this rule restricts access to the waters encompassed by the safety zone, the effect of this rule will not be significant. The entities most likely to be affected are pleasure craft engaged in recreational activities. In addition, the rule will only restrict access for a limited time. Finally, the Public Broadcast Notice to Mariners will notify the users of local waterway to ensure that the safety zone will result in minimum impact.

### Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Although this rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing, it will not have a significant economic impact on a substantial number of small entities for several reasons: (i) This rule will encompass only a small portion of the waterway for a limited period of time; (ii) vessel traffic can pass safely around the area;

(iii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected areas of Martinez, CA to engage in these activities; and (iv) the maritime public will be advised in advance of this safety zone via Broadcast Notice to Mariners.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 0023.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing, disestablishing, or changing Regulated Navigation Areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–419 to read as follows:

**§ 165.T11–419 Safety Zone; Independence Day Fireworks Celebration for the City of Martinez, Martinez, CA.**

(a) *Location.* This temporary safety zone is established for the navigable waters of Carquinez Strait, off of Waterfront Park, in Martinez, CA. The fireworks launch site will be located at position: 38°01′31.77″ N, 121°08′23.75″ W (NAD 83). From 9 a.m. until 9:30 p.m. on July 4, 2011, the temporary safety zone will extend 100 feet while

pyrotechnics are loaded and maintained at the Waterfront Park, Martinez, California. From 9:30 p.m. until 9:50 p.m. the area to which the temporary safety zone applies will encompass the navigable waters around the fireworks launch site off of Waterfront Park within a radius of 600 feet. At 9:50 p.m., the safety zone shall terminate.

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general regulations in § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or a designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or the designated representative. Persons and vessels may request permission to enter the safety zone on VHF–16 or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Effective period.* This section is effective from 9 a.m. through 9:50 p.m. on July 4, 2011.

Dated: June 16, 2011.

**Cynthia L. Stowe,**

*Captain, U.S. Coast Guard, Captain of the Port San Francisco.*

[FR Doc. 2011–16095 Filed 6–27–11; 8:45 am]

BILLING CODE 9110–04–P

## POSTAL SERVICE

### 39 CFR Parts 111 and 121

### Combined Mailings of Standard Mail and Periodicals Flats

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) 705.15 and 708.1.1 to provide a new option for mailers to combine Standard Mail® flats and Periodicals flats within the same bundle, when placed on pallets, and to combine bundles of Standard Mail flats and bundles of Periodicals flats on the same pallet. The Postal Service is also amending title 39, Code of Federal Regulations to reflect that the Standard Mail service standards apply to all Periodicals flats pieces entered in such combined mailings.

**DATES:** *Effective Date:* January 22, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Leon at 202–268–7443, or Kevin Gunther at 202–268–7208.

**SUPPLEMENTARY INFORMATION:** The Postal Service is providing a new option for mailers to combine Standard Mail flats and Periodicals flats, when bundled and placed on pallets. Mailers using this option may combine different-class mailpieces within the same bundle (comail), or combine separate same-class bundles (of different classes) on the same pallet (copalletize) to maximize presorting or to qualify for deeper destination entry discounts. All mailpieces prepared under this option are required to be bundled and placed on pallets. Combined mailings enhance operational efficiencies within postal processing by allowing mailers to place mailpieces in bundles on pallets that might have been placed in sacks if prepared separately.

**Background**

In 2007, the Postal Service introduced a pilot program for mailers to combine Standard Mail flats and Periodicals flats. The program was restricted to a limited number of participants, and to date, most of the original participants continue to mail under pilot standards. The pilot program generally allowed for entry, transport and processing of the combined mailings similar to that currently provided for Periodicals flats.

On March 24, 2011, the Postal Service published a proposed rule **Federal Register** notice, *Combined Mailings of Standard Mail and Periodicals Flats,* (75 FR 16588–16592). The Postal Service received several comments in response to this proposed rule, which are summarized later in this notice.

**Program Description**

This final rule will not change current DMM content and eligibility standards applicable to Periodicals and Standard Mail. Mailers using this option will continue to be required to meet the minimum volume standards for Standard Mail of 200 pieces or 50 pounds. Periodicals publications must be authorized or have a pending authorization to mail at Periodicals prices. The current processes that identify and isolate Periodicals origin mixed area distribution center (OMX) mailpieces, for integration into the First-Class Mail® mailstream, will not be available when combining Standard Mail flats and Periodicals flats on pallets. All mailpieces included in a combined mailing of Standard Mail and Periodicals flats on pallets must be machinable in accordance with DMM 301.3.0.

Mailers wishing to combine Standard Mail and Periodicals flats under this option will be required to submit a request for authorization, in writing, to the Manager, Business Mailer Support.

Participating mailers will be required to present standardized electronic mailing documentation for each combined mailing, and at the time of mailing, the following additional documentation:

- An edition or version summary for all pieces in the mailing.
- A consolidated postage statement register and postage statement for each Periodicals publication in the combined mailing.
- A consolidated postage statement register and postage statement for each Standard Mail mailing in the combined mailing. Mailers may provide a single consolidated postage statement and postage statement register of all Standard Mail mailings if the individual mailings are itemized.
- A register of Forms 8125, *Plant Verified Drop Shipment (PVDS) Verification and Clearance* (PS 8125C) that consolidates all of the mailings to the destinations where the mail is entered.

When using this option, postage on all Standard Mail pieces must be paid through a permit imprint using a special postage payment system at the Post Office™ serving the mailer.

Postage for Periodicals may be paid through an advance deposit account or through a Centralized Account Payment System (CAPS) account. Participating mailers will be required to apportion the Periodicals bundle charge based on the number of Periodicals copies in the bundles and container charge based on the weight of the Periodicals portion of the container.

Mailers combining Standard Mail flats and Periodicals flats will not have the option to form area distribution center (ADC) pallets or to dropship to ADCs. As a result, Periodicals publications included in combined mailings will not have access to DADC prices. Other specific prices for Periodicals flats in a combined mailing will be assessed as follows:

- The bundle prices applicable to the ADC container level will be applied to

the auxiliary service facility (ASF)/ network distribution center (NDC) container level.

- The container prices applicable to the ADC pallet level will apply to the ASF/NDC pallet level.
- The bundle price applicable to the ADC bundle placed on the ADC container level will apply to mixed ADC bundles placed on mixed NDC pallets.
- The container price applicable to the ADC pallet level will also apply to the mixed NDC pallet level.

Standard Mail flats and Periodicals flats combined on pallets will be processed as Standard Mail; and the Periodicals mailpieces included within these combined mailings may receive deferred handling. Periodicals mailpieces included within mailings of combined Standard Mail flats and Periodicals flats will be subject to the USPS® service standards applicable to Standard Mail. These mailings must also be identified as Standard Mail when scheduling dropship appointments in the Facility Access and Shipment Tracking (FAST®) system.

Mailers combining Standard Mail flats and Periodicals flats on pallets must populate field 10, ''Product or Publication Title or Names,'' of PS Form 8125 and/or field 11b, ''Product Name/ ID,'' of PS Form 8125C with ''MIX COMAIL'' when preparing dropship documentation for these mailings.

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats will be required to be identified as containing mixed classes through the use of an optional endorsement line (OEL) in accordance with the proposed standards.

On March 14, 2011, the Postal Service published a proposed rule, **Federal Register** notice, *New Origin Entry and Containerization Standards* (75 FR 13704–13767). If that proposal is adopted, standards for combined mailings of Standard Mail and Periodicals flats will be modified to reflect these new preparation standards, including one significant change that will require the separation of mixed ADC pallets into an origin NDC pallet (required over 150 pounds), if not already prepared, and a Tier 2 Network pallet.

**Comments Received**

The Postal Service received eight comments in response to the proposed rule, some addressing multiple issues. Although one comment was received well after the published deadline, the Postal Service will also address that comment as well. These comments are summarized as follows:

Five commenters referenced the provision in the proposed rule that required all pieces included in a combined mailing of Standard Mail and Periodicals to meet the standards for the full-service Intelligent Mail® barcode (IMb™) option. These commenters stated that many of the smaller mailers who contribute pieces to mixed class combined mailings are unable to meet all of the requirements for full-service, that mail service providers cannot always make these pieces full-service compliant, and that it is not practical to exclude full-service noncompliant pieces from a combined mailing while it is in production. In response to these concerns, the Postal Service has modified its standards to remove this provision and will strongly recommend, but not require, that all pieces included in a combined mailing of Standard Mail and Periodicals flats bear an accurate delivery point Intelligent Mail or POSTNET™ barcode that includes a fully populated routing code field (11 digits).

One commenter also raised questions regarding the format of the electronic documentation required by the USPS under this program. In April of 2011, the Postal Service added new DMM standards requiring mailers of copalletized and combined mailings to transmit postage statements and mailing documentation to the USPS by an approved electronic method (eDoc). Mail.dat® will be available for use with combined mailings of Standard Mail and Periodicals flats in January 2012. Mail.XML® may be available for use with mixed class combined mailings in the future.

Four commenters were opposed to the provision that would require mailers to transport all but mixed ADC pallets to the appropriate NDC or sectional center facility (SCF) and would require mixed ADC pallets to be entered only at the mailer's origin NDC. These commenters were specifically concerned that pallets destinating to offshore SCFs were required to be entered at the NDC responsible for distribution for that offshore area, and that these pallets would not be eligible for DNDC pricing. Mailers were similarly concerned that mixed ADC pallets entered at the origin NDC would have to be transported at the mailer's expense. In response to these concerns, the Postal Service is revising the program standards to allow optional origin-entry of all pallet levels.

Two commenters were opposed to the elimination of the option to enter combined mailings of Standard Mail and Periodicals flats at ADCs. These commenters argue that loss of the ADC entry option could result in a longer processing and delivery window than that experienced under the pilot program, and that loss of the DADC entry price could dissuade Periodicals mailers from entering into combined mixed class pools. It has always been a basic premise for the combining of mailings of Standard Mail and Periodicals flats that the Periodicals pieces including in these combined mailings are to be processed as Standard Mail. As a result, the Postal Service developed standards for mailpieces entered under this option that mirror those for the entry, transport and processing of Standard Mail flats. There is no option for mailers of Standard Mail flats to make ADC pallets, enter pallets at an ADC, or to claim DADC pricing. To maintain this consistency the Postal Service intends to retain the standards regarding ADC entry and DADC pricing as provided in the proposed rule. Additionally, postal systems lack the capability to track service standards for Standard Mail pieces if those pieces were entered at an ADC.

Three commenters requested a change in the standards to allow all bundles in a combined mailing of Standard Mail flats and Periodicals flats to be made using a minimum of six (6) pieces, as is currently permitted for Periodicals, instead of ten (10) pieces. The Postal Service will not incorporate this change into the standards in this final rule, as bundles with fewer than ten (10) pieces would have a negative impact on the Postal Service's costs for Standard Mail flats.

Two commenters were opposed to the requirement for mailers preparing combined mailings of Standard Mail flats and Periodicals flats to retain written notifications, signed and dated by each participating Periodicals publisher, disclosing the potential for pieces to receive deferred USPS handling. Standards provided in the proposed rule require that these signed notifications be retained by the mailer and be available for review by the USPS upon request. To document that each participant of each mailing is fully aware of the potential change to the service standards resulting from the addition of their mailpieces to a combined mixed class pool, the Postal Service intends to retain the standards described in the proposed rule.

Three commenters requested that, to allow mailers to test their software and systems, the Postal Service provide a lead time of several months between the publication date of the final standards and the program implementation date. One commenter asked that the Postal Service allow the current participants of

the pilot program to continue to mail under pilot standards until the implementation date of these standards. Another commenter stated that implementation any later than November 2011 will only continue to extend the unfair competitive advantage granted to the pilot participants. The Postal Service intends to implement this option effective January 22, 2012, concurrent with the update to the *PostalOne!®* system. USPS systems will not be ready prior to this date. The Postal Service intends to allow the current participants to mail under pilot standards until the January 22, 2012 implementation date of these new standards.

The Postal Service adopts the following changes to the *Mailing Standards for the United States Postal Service,* Domestic Mail Manual (DMM), which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

The Postal Service also amends 39 CFR Part 121.2 by adding a new item ''c'' to describe the USPS processing of Periodicals mailpieces included in combined mailings of Standard Mail flats and Periodicals flats, and specifying that Periodicals mailpieces included in these mailings will be assigned the service standards applicable to Standard Mail pieces.

**List of Subjects in 39 CFR Parts 111 and 121**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR parts 111 and 121 are amended as follows:

## PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633 and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) as follows:

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

* * * * *

**700 Special Standards**

* * * * *

**705 Advanced Preparation and Special Postage Payment Systems**

* * * * *

**8.0 Preparing Pallets**

* * * * *

**8.5 General Preparation**

**8.5.1 Presort**

*[Revise the fifth sentence of 8.5.1 as follows:]*

* * * Except as described in 15.1g, bundles must not be placed on mixed ADC or mixed NDC pallets. * * *

* * * * *

*[Renumber current 15.0 through 23.0 as new 16.0 through 24.0 and add new 15.0 as follows:]*

**15.0 Combining Standard Mail Flats and Periodicals Flats**

**15.1 Basic Standards**

Authorized mailers may combine Standard Mail flats and Periodicals flats in a single mailing as follows:

a. Each mailpiece must meet the standards in 340 for Standard Mail and 707 for Periodicals. Periodicals publications must be authorized or pending original or additional entry at the office of mailing.

b. Mailers must prepare pieces in bundles on pallets.

c. All mailpieces must be machinable in accordance with 301.3.0.

d. Mailers must pay all annual mailing fees at the office of mailing.

e. Each mailing must include at least 200 pieces or 50 pounds of Standard Mail.

f. All mailpieces combined within bundles, in accordance with 14.0, must be similar in size so as to create stable bundles. Bundles placed on pallets under this provision must be prepared to create stable pallets.

g. When residual pieces are included in a combined mailing of Standard Mail flats and Periodicals flats on pallets, these pieces must be bundled and placed directly on mixed NDC pallets.

**15.1.1 Service Objectives**

The Postal Service handles combined mailings of Standard Mail flats and Periodicals flats as Standard Mail. Periodicals flats included within mailings of combined Standard Mail flats and Periodicals flats are subject to the USPS service standards applicable to Standard Mail.

**15.1.2 Postage Payment**

Postage for all Standard Mail pieces must be paid with permit imprint using a special postage payment system in 2.0 through 4.0 at the Post Office location serving the mailer's plant. Postage for Periodicals may be paid through an advance deposit account or through a Centralized Account Payment System (CAPS) account.

**15.1.3 Documentation**

Mailers must present standardized electronic documentation according to 708.1.0. This documentation must accurately reflect the final piece count in the combined mailing. In addition, mailers must provide:

a. An edition or version summary for all pieces in the mailing. The summary may be part of the USPS qualification report and must include version ID, product or edition code, class of mail, piece weight of each version, and number of pieces by version; and for Periodicals, USPS or permit number (or pending permit number), issue date, and advertising percentage.

b. A consolidated postage statement register and postage statement for each Periodicals publication in the combined mailing.

c. A consolidated postage statement register and postage statement for each Standard Mail mailing in the combined mailing. Mailers may provide a single consolidated postage statement and a consolidated postage statement register of all Standard Mail mailings if they are itemized.

d. When pallets are dropshipped, a register of Forms 8125 (or PS 8125C) that consolidates all of the mailings into the destinations where the mail is dropshipped.

e. Documentation to support zones and bundle totals, if requested.

f. When requested, a copy of a notification document signed and dated by the Periodicals publisher, acknowledging their participation in a combined mailing of Standard Mail and Periodicals and the potential for their mailpieces to receive deferred USPS handling.

g. Any additional documentation to support postage payment system records, if requested.

**15.1.4 Authorization**

A mailer must submit a written request to the Manager, Business Mailer Support (see 608.8.1 for address) to combine mailings of Standard Mail flats and Periodicals flats. The request must show the mailer's name and address, the mailing office, evidence of authorization to mail using a special postage payment system under 2.0 through 4.0, procedures for combining the mailing, the expected date of first mailing, quality control procedures, and a sample of all supporting mailing documentation, including postage statements and the USPS Qualification Report. Business Mailer Support will review the documentation and provide written authorization. A mailer may terminate an authorization at any time

by written notice to the postmaster of the office serving the mailer's location. Business Mailer Support may terminate an authorization by written notice if the mailer does not meet the standards.

**15.1.5 Price Eligibility**

Apply prices based on the standards in 340 for Standard Mail. Prices are based on the standards in 707 for Periodicals and as modified under the standards for this program.

**15.1.6 Piece Prices**

Apply piece prices based on the bundle level. Pieces contained within mixed class bundles may claim prices based on the presort level of the bundle.

**15.1.7 Applying the Periodicals Bundle Charge**

Apply bundle charges as follows:

a. Calculate the percentage of Periodicals copies in a bundle.

b. Convert the percentage to four decimal places, rounding off if necessary (for example, convert 20.221% to 0.2022, or 20.226% to 0.2023). Multiply by the applicable bundle charge.

c. Allocate the resulting charge across the Periodicals titles and editions based on the number of copies of each in the bundle.

**15.1.8 Applying the Periodicals Container Charge**

Apply container charges to pallets as follows:

a. Calculate the percentage of the weight of Periodicals copies on each pallet.

b. Convert the percentage to four decimal places, rounding off if necessary (for example, convert 20.221% to 0.2022, or 20.226% to 0.2023). Multiply by the applicable container charge.

c. Allocate the resulting charge across the Periodicals titles and editions based on the number of copies of each on the pallet.

**15.1.9 Other Periodicals Pricing**

Other prices for Periodicals flats in a combined mailing of Standard Mail and Periodicals flats on pallets will be assessed as follows:

a. The bundle prices applicable to the ADC container level will be applied to the ASF/NDC container levels.

b. The container prices applicable to the ADC pallet level will apply to the ASF/NDC pallet levels.

**15.1.10 Bundle Reallocation To Protect the SCF or NDC Pallet**

Mailers may reallocate bundles under 8.11 or 8.13 to protect the SCF or NDC pallet.

**15.2 Combining Standard Mail Flats and Periodicals Flats in the Same Bundle**

**15.2.1 Bundling and Labeling**

Standard Mail flats and Periodicals flats may be combined in carrier route, 5-digit (scheme), 3-digit, ADC, and Mixed ADC bundles when prepared according to 707.19.0 and these additional standards:

a. Each bundle containing combined Standard Mail flats and Periodicals flats must contain a minimum of 10 pieces. Bundles of only Standard Mail flats must contain a minimum of 10 pieces. Bundles of only Periodicals flats must contain a minimum of 6 pieces.

b. Firm bundles must contain only Periodicals flats.

**15.2.2 Mailpiece and Bundle Identification**

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with the standards in 708.7.1.8.

**15.2.3 Pallet Presort and Labeling**

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC pallets must contain at least 250 pounds of combined Standard Mail and Periodicals mailpieces, except as allowed under 8.5.3. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Pallet placards must be white and measure at least 8 inches by 11 inches, unless prepared under 708.6.6.6. Prepare pallets according to the preparation, sequence and labeling instructions in 15.4.1.

**15.3 Combining Bundles of Standard Mail Flats and Periodicals Flats on the Same Pallet**

**15.3.1 Bundling and Labeling**

Mailers must prepare bundles according to the standards for the class of mail and the prices claimed.

**15.3.2 Mailpiece and Bundle Identification**

Each Standard Mail and Periodicals mailpiece prepared under a combined mailing of Standard Mail flats and Periodicals flats must be identified as being part of a mixed class mailing through the use of an optional endorsement line (OEL) in accordance with standards in 708.7.1.8.

**15.3.3 Pallet Presort and Labeling**

Mailers must prepare pallets according to the standards in 8.0 and in the sequence listed below. Merged 5-digit scheme through NDC pallets must contain at least 250 pounds of combined Standard Mail and Periodicals, except as allowed under 8.5.3. When reallocating bundles under 8.11 or 8.12, mailers do not have to achieve the finest pallet presort level possible. Pallets must be labeled according to the Line 1 and Line 2 information listed below and under 8.6. Pallet placards must be white and measure at least 8 inches by 11 inches, unless prepared under 708.6.6.6. Prepare pallets according to the preparation, sequence and labeling instructions in 15.4.1.

**15.4 Pallet Preparation**

**15.4.1 Pallet Preparation, Sequence and Labeling**

When combining Standard Mail and Periodicals flats within the same bundle or combining bundles of Standard Mail flats and bundles of Periodicals flats on pallets, bundles must be placed on pallets. Preparation, sequence and labeling:

a. *Merged 5-digit scheme, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 301.3.0. Required for all other bundles. Pallet must contain barcoded carrier route bundles and barcoded noncarrier route 5-digit bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, merged 5-digit pallet preparation begins with 15.4.1d. Labeling:

1. Line 1: L001.

2. Line 2: ''STD/PER FLTS CR/5D;'' followed by ''SCHEME'' (or ''SCH''); followed by ''MIX COMAIL.''

b. *5-digit scheme carrier routes, required.* Pallet must contain only carrier route bundles for the same 5-digit scheme under L001. For 5-digit destinations not part of L001, 5-digit carrier routes pallet preparation begins with 15.4.1c. Labeling:

1. Line 1: L001.

2. Line 2: ''STD/PER FLTS''; followed by ''CARRIER ROUTES'' (or ''CR–RTS''); followed by ''SCHEME'' (or ''SCH''); followed by ''MIX COMAIL.''

c. *5-digit carrier routes, required.* Pallet must contain only carrier route mail for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).

2. Line 2: ''STD/PER FLTS''; followed by ''CR/5D''; followed by ''MIX COMAIL.''

d. *Merged 5-digit, optional.* Not permitted for bundles containing noncarrier route automation-compatible flats under 301.3.0. Required for all other bundles. Pallet must contain barcoded carrier route bundles and barcoded noncarrier route 5-digit bundles for the same 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).
2. Line 2: ''STD/PER FLTS''; followed by ''CR/5D''; followed by ''MIX COMAIL.''

e. *5-digit, required.* Pallet must contain only mail for the same 5-digit ZIP Code or same 5-digit scheme under L007 (for automation flats only under 301.3.0). 5-digit scheme bundles are assigned to 5-digit pallets according to the OEL ''label to'' 5-digit ZIP Code. Labeling:

1. Line 1: city, state, and 5-digit ZIP Code destination (see 8.6.4c for overseas military mail).
2. Line 2: ''STD/PER FLTS 5D''; followed by ''BARCODED'' (or ''BC''); followed by ''MIX COMAIL.''

f. *3-digit, optional,* but not available for bundles for 3-digit ZIP Code prefixes marked ''N'' in L002. Pallet may contain mail for the same 3-digit ZIP Code or the same 3-digit scheme under L008 (for automation-compatible flats only under 301.3.0). Three-digit scheme bundles are assigned to pallets according to the OEL ''label to'' 3-digit ZIP Code in L008. Labeling:

1. Line 1: L002, Column A.
2. Line 2: ''STD/PER FLTS 3D''; followed by ''BARCODED'' (or ''BC''); followed by ''MIX COMAIL.''

g. *SCF, required.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L005. Labeling:

1. Line 1: L002, Column C.
2. Line 2: ''STD/PER FLTS SCF''; followed by ''BARCODED'' (or ''BC''); followed by ''MIX COMAIL.''

h. *ASF, required unless bundle reallocation used under 15.1.10.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L602. ADC bundles are assigned to pallets according to the ''label to'' ZIP Code in L004 as appropriate. Labeling:

1. Line 1: L602.
2. Line 2: ''STD/PER FLTS NDC''; followed by ''BARCODED'' (or ''BC''); followed by ''MIX COMAIL.''

i. *NDC, required.* Pallet may contain carrier route or automation mail for the 3-digit ZIP Code groups in L601. ADC bundles are assigned to pallets according to the ''label to'' ZIP Code in L004 as appropriate. Labeling:

1. Line 1: L601.
2. Line 2: ''STD/PER FLTS NDC''; followed by ''BARCODED'' (or ''BC''); followed by ''MIX COMAIL.''

j. *Mixed NDC, required, no minimum.* Pallet may contain carrier route or automation mail. Pallet includes MXD ADC bundles, prepared according to the ''label to'' ZIP in L009, as appropriate. Unless authorized by the processing and distribution manager, pallet must be entered at the NDC serving the 3-digit ZIP Code of the entry Post Office. Labeling:

1. Line 1: ''MXD'' followed by the information in L601, for the NDC serving the 3-digit ZIP Code prefix of the entry Post Office.
2. Line 2: ''STD/PER FLTS;'' followed by ''BARCODED'' (or ''BC''); followed by ''WKG;'' followed by ''MIX COMAIL.''

* * * * *

**708 Technical Specifications**

**1.0 Standardized Documentation for First-Class Mail, Periodicals, Standard Mail, and Flat-Size Bound Printed Matter**

* * * * *

**1.5 Combined, Copalletized, and Merged Mailings**

*[Revise the introductory sentence of 1.5 as follows:]*

For combined or copalletized mailings of Periodicals and Standard Mail, documentation must show this additional information:

* * * * *

**7.0 Optional Endorsement Lines (OEL's)**

**7.1 OEL Use**

**7.1.1 Basic Standards**

* * * * *

**Exhibit 7.1.1 OEL Formats**

| Sortation Level | OEL Example |
|---|---|
| 5–Digit Scheme (and other sortation levels as appropriate) ..... | * * * * * * * * SCH 5–DIGIT 12345 MIX COMAIL |

* * * * *

*[Add a new 7.1.8 to described new OEL requirements for mailers combining Standard Mail and Periodicals flats as follows:]*

**7.1.8 Required OEL Use in Combined Mailings of Standard Mail and Periodicals Flats**

Mailers authorized to combine Standard Mail flats and Periodicals flats, under 705.15, must apply an OEL identifying the presort level of the bundle and other applicable information as specified in 7.1 to each mailpiece. The following additional standards also apply:

a. Each OEL must contain the format elements described in 7.2 and must include a ''MIX COMAIL'' human-readable text, as its most right-justified element.

b. Mailpieces may include LOT information, in accordance with 7.1.7, only when there is sufficient space for the human-readable text in item a and all other required information.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

## PART 121—[AMENDED]

■ 3. The authority citation for 39 CFR Part 121 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

■ 4. Amend § 121.2 by revising paragraph (c) to read as follows:

**§ 121.2 Periodicals.**

* * * * *

(c) *Combined Periodicals/Standard Mail mailing.* The Postal Service handles combined mailings of Periodicals flats and Standard Mail flats as Standard Mail. Periodicals flats included within mailings of combined Standard Mail flats and Periodicals flats are subject to the service standards applicable to Standard Mail in § 121.3.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2011–16081 Filed 6–27–11; 8:45 am]

BILLING CODE 7710–12–P

## POSTAL SERVICE

### 39 CFR Part 955

### Rules of Practice Before the Postal Service Board of Contract Appeals

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising portions of the rules of practice before the Postal Service Board of Contract Appeals to clarify existing procedures, and to modify certain citations to reflect a change in statutory codification.

**DATES:** *Effective date:* July 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Administrative Judge Gary E. Shapiro, (703) 812–1910.

**SUPPLEMENTARY INFORMATION:**

**A. Executive Summary**

The rules of practice in proceedings before the Postal Service Board of Contract Appeals are contained in 39 CFR part 955, which was substantially revised on May 5, 2009 (74 FR 20592). Subsequently, it became apparent that certain aspects of the rules required further clarification to conform to existing practice. In addition, citations to the Contract Disputes Act required revision to conform to the new codification of title 41, United States Code, under Public Law 111–350, 124 Stat. 3677 (Jan. 4, 2011).

**B. Summary of Changes**

Changes to § 955.1 conform the rules to the new codification of the Contract Disputes Act.

Formerly, § 955.6 provided that either party may apply for a hearing on a motion addressed to the jurisdiction of the Board. The revised rule clarifies existing practice that the Board determines whether to conduct oral argument related to such a motion and that it may do so on its own initiative. The term ''oral argument'' is substituted for ''hearing'' as a more accurate descriptor of current practice.

Section 955.7 is revised to reflect that the Board, on its own initiative and in the absence of a request by the appellant, may designate a document to constitute the appellant's complaint, and may do so prior to the time required for the appellant to file its complaint. The revised rule is intended to clarify that the complaint designation determination is to be made by the Board although it may be requested by the appellant.

Section 955.9 is revised to reflect that while the parties may request a hearing, the Board determines whether a hearing will be conducted. Accordingly, references to the ''election'' of a party or parties are changed to the ''request'' of a party or parties. Corresponding changes are made to §§ 955.10 and 955.18.

**List of Subjects in 39 CFR Part 955**

Administrative practice and procedure, Contract Disputes Act of 1978, Postal Service.

For the reasons set forth in the preamble, the Postal Service hereby amends 39 CFR part 955 as set forth below:

## PART 955—RULES OF PRACTICE BEFORE THE POSTAL SERVICE BOARD OF CONTRACT APPEALS

■ 1. The authority citation for 39 CFR part 955 is revised to read as follows:

**Authority:** 39 U.S.C. 204, 401; 41 U.S.C. 7101–7109.

**§ 955.1 [Amended]**

■ 2. In § 955.1, the first sentence of paragraph (a) and the first sentence of paragraph (b)(2) are amended by removing ''41 U.S.C. 601–613'', and adding ''41 U.S.C. 7101–7109'' in its place.

■ 3. In § 955.6, paragraph (a) is revised to read as follows:

**§ 955.6 Motions.**

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Oral argument on the motion may be afforded on application of either party, in the Board's discretion, or on the Board's initiative. The Board may at any time and on its own initiative raise the issue of its jurisdiction to proceed with a particular case.

* * * * *

■ 4. In § 955.7, paragraph (a) is revised to read as follows:

**§ 955.7 Pleadings.**

(a) *Appellant.* Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed, and shall serve the respondent with a copy. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon the appellant's request or on the Board's own initiative, the appellant's claim, notice of appeal or other document may be deemed to constitute the complaint if in the opinion of the Board the issues before the Board are sufficiently defined.

* * * * *

■ 5. Section 955.9 is revised to read as follows:

**§ 955.9 Hearing request.**

As directed by Board order, each party shall inform the Board, in writing, whether it requests a hearing as prescribed in §§ 955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in § 955.12. If a hearing is requested, the request should state where and when the requesting party desires the hearing to be conducted and should explain the reasons for its choices. After considering the parties' requests, the Board will determine whether a hearing will be held.

■ 6. In § 955.10, the first sentence is revised to read as follows:

**§ 955.10 Prehearing briefs.**

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been ordered pursuant to § 955.9. * * *

■ 7. In § 955.18, the first sentence is revised to read as follows:

**§ 955.18 Hearings—where and when held.**

If there is to be a hearing, it will be held at a time and place prescribed by the Board after consultation with the parties. * * *

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 2011–15961 Filed 6–27–11; 8:45 am]

BILLING CODE 7710–12–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[GEN Docket No. 86–285; FCC 11–98]**

### Amendment of the Schedule of Application Fees Set Forth In Sections 1.1102 Through 1.1109 of the Commission's Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission amends its rules to clarify that winning bidders in auctions of commercial broadcast spectrum are

required to submit an application filing fee with their post-auction long-form applications. This clarification is intended to rectify a possible inconsistency throughout the Commission's rules, and in an earlier Commission Order.

**DATES:** Effective June 28, 2011.

**ADDRESSES:** Roland Helvajian, Federal Communications Commission, Office of the Managing Director, Revenue and Receivables Operations Group, 445 12th Street, SW., Washington, DC 20445.

**FOR FURTHER INFORMATION CONTACT:** Roland Helvajian, Office of the Managing Director, Revenue and Receivables Operations Group, (202) 418–0444 or *Roland.Helvajian@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Second Order, FCC 11–98, adopted June 17, 2011, and released June 20, 2011.

### Synopsis of Order

1. In the *Notice of Proposed Rulemaking* (NPRM) in this proceeding, the Commission proposed to clarify the rules on payment of post-auction long-form filing fees by winning bidders in auctions of construction permits in the broadcast services. It noted an inconsistency between *Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses,* First Report and Order (13 FCC Rcd 15920, 15984–85 para. 164 (1998)), in which the Commission required that winning broadcast auction bidders pay filing fees with their post-auction long-form applications, and 47 CFR 1.1104, the Schedule of Charges for Media Bureau Service filings, which requires payment of a fee when the long-form application is filed, on the one hand, and 47 CFR 1.2107(c), which suggests that a filing fee need not accompany a high bidder's long-form application, on the other. To rectify this inconsistency and conform the rules to the Commission's stated intent in the Broadcast Competitive Bidding First Report and Order, the Commission proposed in the *NPRM* to amend 47 CFR 1.2107(c) to read, ''Except as otherwise provided in § 1.1104 of the rules, high bidders need not submit an additional application fee with their long-form applications.'' By amending 47 CFR 1.2107(c), the Commission clarifies that high bidders filing long-form applications for media services must still pay any fees required by 47 CFR 1.1104 when filing their post-auction long-form application.

2. The Commission received no comments or reply comments regarding the proposed rule change. Therefore, the Commission adopts the change to 47 CFR 1.2107(c) as set forth herein.

### Ordering Clauses

3. The rule adopted in this *Second Order* is a rule of agency procedure that does not substantially affect the rights or obligations of non-agency parties, and is exempt from the requirements of the Congressional Review Act pursuant to 5 U.S.C. 804(3)(C).

4. *It is ordered* that the Commission's rules *are hereby amended* as set forth herein.

5. *It is further ordered* that the rule change in this Second Order *will become effective* June 28, 2011.

### List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 to read as follows:

## PART 1—PRACTICE AND PROCEDURE

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

**Authority:** 15 U.S.C. 79 *et seq;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

■ 2. Section 1.2107 is amended by revising paragraph (c) to read as follows:

**§ 1.2107 Submission of down payment and filing of long-form applications.**

* * * * *

(c) A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the ''long-form application'') pursuant to the rules governing the service in which the applicant is the high bidder. Except as otherwise provided in § 1.1104, high bidders need not submit an additional application filing fee with their long-form applications. Specific procedures for filing applications will be set out by Public Notice. Ownership disclosure requirements are set forth in § 1.2112. Beginning January 1, 1999, all long-form applications must be filed electronically. An applicant that fails to submit the required long-form application under this paragraph and fails to establish good cause for any late-filed submission, shall be deemed to have defaulted and will be subject to the payments set forth in § 1.2104.

* * * * *

[FR Doc. 2011–16152 Filed 6–27–11; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### 49 CFR Parts 105, 107, 109, 171, 172, 173, 174, 175, 176, 178, and 180

**[Docket No. PHMSA–2011–0132; Notice No. 11–5]**

### Notification of Anticipated Delay in Administrative Appeal Decisions

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice advises the public that PHMSA is currently reviewing numerous administrative appeals (*i.e.,* petitions for reconsideration) on recently issued final rules. In accordance with applicable regulatory requirements, this notice provides notification to parties having brought certain administrative appeals of the anticipated delay in processing these administrative appeals.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Betts, Director, Standards and Rulemaking Division, Office of Hazardous Materials Safety, (202) 366–4512, PHMSA, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

### I. Appeals

The Pipeline and Hazardous Materials Safety Administration's (PHMSA) Office of Hazardous Materials Standards recently received a number of petitions for reconsideration of several recent PMHSA final rules, which are known as ''administrative appeals'' under PHMSA's applicable regulations, 49 CFR 106.110 *et seq.* The administrative appeals that are the subject of this **Federal Register** notice focus on four recently published final rules. Key information on the administrative appeals, including the rulemaking docket number, are provided below. Interested persons may go to *http://www.regulations.gov* and search by the rulemaking docket number to view rulemakings, administrative appeals, comments, and other rulemaking related documentation. The administrative appeals now being considered by PHMSA, organized by final rule, are as follows:

*HM–231 (Docket No. PHMSA–2006–25736)*

HAZARDOUS MATERIALS; MISCELLANEOUS PACKAGING AMENDMENTS (SEPTEMBER 30, 2010; 75 FR 60333)

| Appeal from | Issue |
|---|---|
| Dangerous Goods Advisory Council (DGAC) | Appeal focuses on the miscellaneous packaging requirements final rule pertaining to PHMSA's responsiveness to the request to extend the effective date of the final rule and revisions to the final rule in a manner not previously proposed or requested. |

*HM–233B (Docket No. PHMSA–2009–0410)*

HAZARDOUS MATERIALS; REVISIONS OF SPECIAL PERMITS PROCEDURES (JANUARY 5, 2011; 76 FR 454)

| Appeals from | Issue |
|---|---|
| Council on Safe Transportation of Hazardous Articles, Inc. (COSTHA). | Appeal focuses on the special permit procedures final rule provisions addressing:<br>• Estimating operations to be conducted under a special permit.<br>• Listing the CEO or president of the company.<br>• Providing a Dun and Bradstreet Data Universal Numbering System (DUNS) identifier. |
| Institute of Makers of Explosives (IME) | Appeal focuses on the special permit procedures final rule provisions addressing:<br>• Listing all known locations where a special permit will be used.<br>• Providing a description of operational controls.<br>• Providing a statement outlining the reason(s) the hazardous material is being transported by air. |
| Association of Hazmat Shippers, Inc. (AHS) | Appeal focuses on the special permit procedures final rule provisions addressing:<br>• Listing all known locations where a special permit will be used.<br>• Providing estimates of the number of operations expected to be conducted under a special permit.<br>• Providing a hazardous materials registration number.<br>• Providing a statement justifying shipments by air.<br>• Listing the CEO or president of the company.<br>• Providing a DUNS identifier.<br>• Providing a quantity or number of packages to be shipped. |

*HM–215K (Docket No. PHMSA–2009–0126)*

HAZARDOUS MATERIALS; HARMONIZATION WITH THE UNITED NATIONS RECOMMENDATIONS ON THE TRANSPORT OF DANGEROUS GOODS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, INTERNATIONAL CIVIL AVIATION ORGANIZATION TECHNICAL INSTRUCTIONS FOR THE SAFE TRANSPORT OF DANGEROUS GOODS BY AIR (JANUARY 19, 2011; 76 FR 3308)

| Appeals from | Issue |
|---|---|
| American Coatings Association (ACA) | Appeal focuses on the international harmonization final rule pertaining to PHMSA's decision to eliminate the ORM–D system "without any [PHMSA] debate or consideration of [1] the type of materials that use this exception; [2] the costs incurred by the regulated community; and [3] the safety benefits." ACA also requests, based on a denial of their request to address the elimination of the ORM–D system in a separate rulemaking that PHMSA extend the transition period for use of the ORM–D system until January 1, 2016. |
| AHS | Appeal focuses on the international harmonization final rule pertaining to the limited quantity exception for the material "Self-reactive solid, Type F, UN3230." |
| Dangerous Goods Transport Consulting, Inc. (DGTC) on behalf of DGAC. | Appeal focuses on the international harmonization final rule provisions addressing:<br>• UN3334 (Aviation regulated liquid, n.o.s.) and UN3335 (Aviation regulated solid, n.o.s.) be added to the list of excepted Class 9 (miscellaneous hazard) material on the basis that the material is authorized for limited quantity exceptions under the HMR and is consistent with the ICAO TI.<br>• The one-year transition period does not allow sufficient time to deplete stock(s) of pre-printed packagings. |
| Fuel Cell and Hydrogen Energy Association (FHEA). | Appeal focuses on the international harmonization final rule pertaining to the prohibition on air transportation of fuel cell cartridges as ORM–D material and the deviation from the ICAO TI and the UN Model Regulations. |
| Lilliputian Systems, Inc., (LSI) | Appeal focuses on the international harmonization final rule pertaining to 49 CFR 175.10(a)(19) to align with the ICAO TI and allow spare fuel cell cartridges containing Division 2.1 flammable gas to be carried in checked baggage. |
| PPG Industries (PPG) | Appeal focuses on the international harmonization final rule pertaining to the one-year transition period for depletion of stock(s) of pre-printed packagings. |

HAZARDOUS MATERIALS; HARMONIZATION WITH THE UNITED NATIONS RECOMMENDATIONS ON THE TRANSPORT OF DANGEROUS GOODS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, INTERNATIONAL CIVIL AVIATION ORGANIZATION TECHNICAL INSTRUCTIONS FOR THE SAFE TRANSPORT OF DANGEROUS GOODS BY AIR (JANUARY 19, 2011; 76 FR 3308)—Continued

| Appeals from | Issue |
|---|---|
| Sporting Arms & Ammunition Manufacturer's Institute (SAAMI). | Appeal focuses on the international harmonization final rule provisions addressing:<br>• The list of prohibited hazardous material and articles.<br>• Exceptions from the air prohibition for Table 3 in 49 CFR 173.27(f) pertaining to limited quantities of Class 1 (explosive) material conforming to 49 CFR 173.63(b) and Class 7 (radioactive) material conforming to 49 CFR 173.421 through 173.425. |

*PHM–7 (Docket No. PHMSA–2005–22356)*

HAZARDOUS MATERIALS: ENHANCED ENFORCEMENT AUTHORITY PROCEDURES (MARCH 2, 2011; 76 FR 11570)

| Appeals from | Issue |
|---|---|
| COSTHA | Appeal focuses on the enhanced enforcement authority procedures final rule provisions addressing:<br>• Package opening and reclosing by carrier vs. enforcement personnel.<br>• Removing a package from transportation and ordering carrier personnel to transport the package for testing. |
| American Trucking Associations (ATA) | Appeal focuses on the enhanced enforcement authority procedures final rule provisions addressing:<br>• Implementation of the authority to direct carriers to transport materials suspected of being hazardous materials to a facility for further examination.<br>• Resumption of transportation for a package that violates the HMR, but does not present an imminent safety hazard. |
| United Parcel Service (UPS) | Appeal focuses on the enhanced enforcement authority procedures final rule provisions addressing:<br>• Package opening at facilities vs. road side.<br>• Department of Homeland Security's responsibility to open packages in pursuit of security related issues and possible treats. |

## II. Notification of Anticipated Delay in Appeal Decisions

49 CFR 106.130(a)(4) provides that if PHMSA does not issue a decision on whether to grant or deny an administrative appeal within 90 days after the date that the final rule is published in the **Federal Register** and that we anticipate a substantial delay in making a decision, PHMSA will notify parties having brought administrative appeals directly and provide an expected decision date. In addition, PHMSA will publish a notice of the delay in the **Federal Register**. Due to the volume of appeals received, as indicated above, we anticipate delays in making administrative appeal decisions. As a result, in accordance with 49 CFR 106.130(a)(4), we are publishing this notice in the **Federal Register** to notify the public, and we anticipate directly contacting parties having brought these administrative appeals shortly.

Issued in Washington, DC on June 21, 2011.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 2011–15956 Filed 6–27–11; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**Docket No. FWS–R3–ES–2010–0042; MO–92210–0–0009–B4]**

**RIN 1018–AW90**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Tumbling Creek Cavesnail

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Tumbling Creek cavesnail *(Antrobia culveri)* under the Endangered Species Act of 1973, as amended (Act). In total, approximately 25 acres (10.25 hectares) located in Taney County, Missouri, fall within the boundaries of the critical habitat designation.

**DATES:** This rule becomes effective on July 28, 2011.

**ADDRESSES:** This final rule, the associated final economic analysis, comments and materials received, as well as supporting documentation used in preparing this final rule are available on the Internet at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2010–0042. These documents are also available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Columbia Fish and Wildlife Office, 101 Park DeVille Dr., Suite A,, Columbia, MO 65203; telephone: 573–234–2132; facsimile: 573–234–2181.

**FOR FURTHER INFORMATION CONTACT:** Charles M. Scott, Field Supervisor, Columbia Fish and Wildlife Office, (see **ADDRESSES**). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

It is our intent to discuss only those topics directly relevant to the development and designation of critical habitat for the Tumbling Creek cavesnail in this final rule. For more information on the biology and ecology of the Tumbling Creek cavesnail, refer to the final listing rule published in the **Federal Register** on August 14, 2002 (67 FR 52879), and the Tumbling Creek Cavesnail Recovery Plan, which is available from the Columbia Missouri Ecological Services Field Office (see **ADDRESSES**) and on the Internet at *http://www.regulations.gov.*

The Tumbling Creek cavesnail is a critically imperiled aquatic snail, endemic to a single cave stream and associated springs in Taney County, southwestern Missouri. The species is known only from Tumbling Creek and a few of its small tributaries and associated underground springs within Tumbling Creek Cave, and areas immediately downstream of the cave between the cave's natural exit and the confluence of Tumbling Creek with Big Creek at Schoolhouse Spring. Suitable habitat includes the underside of rocks, small stones, and cobble, and occasionally the upper surface of solid rock bottom within sections of Tumbling Creek that have moderate current (U.S. Fish and Wildlife Service 2003, p. 10). The Tumbling Creek cavesnail is dependent on good water quality and reduced sediment loads in Tumbling Creek (Aley and Ashley 2003, p. 20).

The primary threats are related to the degradation of water quality in Tumbling Creek and include increased siltation from overgrazing, tree removal, and other activities. Nonpoint source pollution within the recharge area of Tumbling Creek cave is also a threat to the species (Aley and Ashley 2003, p. 19; U.S. Fish and Wildlife Service 2003, pp. 14–18). The deposition of silt into Tumbling Creek from aboveground activities within the recharge area of Tumbling Creek Cave has likely contributed to the decline of the species by eliminating the species' habitat, covering egg masses, or adversely impacting the snail in other ways (Tom and Cathy Aley, 2001, pers. comm.; U.S. Fish and Wildlife Service 2001, p. 66806; Aley and Ashley 2003, p. 19; U.S. Fish and Wildlife Service 2003, pp. 14–18).

### *Previous Federal Actions*

The Tumbling Creek cavesnail was emergency listed on December 27, 2001 (66 FR 66803) and subsequently listed as endangered on August 14, 2002 (67 FR 52879). At the time of listing, we determined that a delay in designating critical habitat would enable us to concentrate our limited resources on other actions that must be addressed and allow us to invoke immediate protections needed for the conservation of the species. We concluded that, if prudent and determinable, we would prepare a critical habitat proposal in the future at such time as our available resources and other listing priorities under the Act would allow. We approved a final recovery plan for the Tumbling Creek cavesnail on September 15, 2003, and announced its availability to the public through a notice published in the **Federal Register** on September 22, 2003 (68 FR 55060).

On August 11, 2008, the Institute for Wildlife Protection and Crystal Grace Rutherford filed a lawsuit against the Secretary of the Interior for our failure to timely designate critical habitat for the Tumbling Creek cavesnail (*Institute for Wildlife Protection et al.* v. *Kempthorne* (07–CV–01202–CMP)). In a court-approved settlement agreement, we agreed to submit to the **Federal Register** a new prudency determination, and if the designation was found to be prudent, a proposed designation of critical habitat, by June 30, 2010, and a final designation by June 30, 2011. We published the proposed critical habitat designation for the Tumbling Creek cavesnail on June 23, 2010 (75 FR 35751). Publication of the proposed rule opened a 60-day public comment period that closed on August 23, 2010. We reopened the public comment period for an additional 30 days (ending February 11, 2011), in order to announce the availability of and receive comments on a draft economic analysis (DEA) (76 FR 2076).

## Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Tumbling Creek cavesnail during two comment periods. The first comment period associated with the publication of the proposed rule (75 FR 35751) opened on June 23, 2010, and closed on August 23, 2010. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened January 12, 2011, and closed on February 11, 2011 (76 FR 2076). We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and the associated DEA during these comment periods.

During the first comment period, we received four comment letters directly addressing the proposed critical habitat designation. During the second comment period, we received one comment letter addressing the proposed critical habitat designation and the DEA. We did not receive any requests for a public hearing, so no public hearing was held. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below. Comments received, including comments from peer reviewers (see below) were grouped into three general issues specifically relating to the proposed critical habitat designation for the Tumbling Creek cavesnail and are addressed in the following summary and incorporated into the final rule as appropriate.

### *Peer Review*

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, the hydrology and geology associated with karst systems, and conservation biology principles. We received responses from all three of the peer reviewers.

We reviewed all comments received from the peer reviewers for substantive issues and new information regarding critical habitat for the Tumbling Creek cavesnail. All peer reviewers strongly supported the proposed rule and believed that our analysis was based on solid science. Peer reviewers provided additional information and editorial suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

### *Peer Reviewer Comments*

*Comment 1:* All three peer reviewers noted that there was a typographical error relative to dissolved oxygen concentrations on page 35755 (first column, second paragraph) of the proposed rule (75 FR 35751; June 23, 2010). They identified that we mistakenly stated that ''dissolved oxygen levels should not exceed 4.5 milligrams per liter.'' The corrected statement should be that dissolved oxygen levels should always equal or exceed 4.5 milligrams per liter.

*Our Response:* We agree that we had inadvertently reversed the required limit and have corrected it in this final rule.

*Comment 2:* Critical habitat should include the entire 23.57 square kilometers (9.1 square miles) within the recharge area of Tumbling Creek cave, not just the cave stream.

*Our Response:* While important to the species, the defined recharge area for Tumbling Creek cave does not meet the Act's definition for critical habitat. For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological features essential to the conservation of the species, and may be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (areas on which are found the physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Because the Tumbling Creek cavesnail is an obligate stream snail, nonaquatic habitats within the recharge area of Tumbling Creek would not meet the Act's definition of critical habitat in that they do not contain the physical and biological features essential to the conservation of the species as described in this rule. Therefore, those areas are not included in the critical habitat designation. Nonetheless, the Service acknowledges that the proper management and maintenance of these areas are important to the long-term recovery of the Tumbling Creek cavesnail, and applicable conservation measures are outlined in the final Recovery Plan for the species.

*Comment 3:* One peer reviewer stated that there was no evidence that the Tumbling Creek cavesnail currently occupies underground areas between the natural exit of Tumbling Creek cave and the confluence of Tumbling Creek with Bear Cave Hollow upstream of Big Creek.

*Our Response:* These areas have not been surveyed due to their inaccessibility to humans. Snails could occur in phreatic (cracks and crevices) in the underground karst that provide sufficient aquatic habitat. Therefore, because we believe these areas could reasonably be occupied by the cavesnail, and they contain the physical and biological features essential to the conservation of the species, it is appropriate to include these areas in the critical habitat designation.

*Comment 4:* Two peer reviewers thought that the discussion on the importance of energy input from gray bat (*Myotis grisescens*) guano should be expanded to highlight the potential catastrophic impact that White-nose Syndrome (WNS) and the causative fungus, *Geomyces destructans* could have on the Tumbling Creek cavesnail if WNS decimates gray bat populations in Tumbling Creek cave.

*Our Response:* The Service agrees that such an expanded discussion is warranted and we have incorporated additional information on the potential impact of WNS in this final rule.

*Public Comments*

*Comment 5:* One commenter noted that the surface stream upstream of the cave on the map (75 FR 35763; June 23, 2010) was incorrectly labeled and is identified as Bear Cave Hollow. This commenter stated that Tumbling Creek merges with Bear Cave Hollow upstream of Big Creek and that the mistake was due to an error on the U.S. Geological Survey Protem 7.5 minute topographic map that incorrectly lists Tumbling Creek as an alternate name for Bear Cave Hollow.

*Our Response:* We have made this correction on the map (Figure 1) and have incorporated the change in this final rule. Additionally, we have incorporated changes to note that the area designated as critical habitat is from the emergence of Tumbling Creek within Tumbling Creek cave to its confluence with Bear Cave Hollow upstream of Big Creek. These changes, however, will not affect the area outlined in the critical habitat designation or its total acreage.

*Comment 6:* While not presenting a position on the Service's proposed critical habitat designation, the Little Rock District of the Army Corps of Engineers (COE) commented that they do not believe that the designation of critical habitat for the Tumbling Creek cavesnail would necessitate further consultation under Section 7(a)(2) of the Act related to the operation of Bull Shoals Reservoir.

*Our Response:* During discussions with the Corps on February 8, 2011, the Service reiterated its intention to reinitiate formal consultation on the project for the cavesnail because of new information regarding the status of the species, its presumed occupied range, the potential threat of white nose syndrome (as it may affect the energy input from the guano of bats that roost in Tumbling Creek Cave), and the designation of critical habitat. That consultation would also assess whether any actions associated with the operations of Bull Shoals Reservoir would likely jeopardize the continued existence of the cavesnail or adversely modify designated critical habitat.

*Comment 7:* One commenter also noted that there was a typographical error relative to dissolved oxygen concentrations on page 35755 (first column, second paragraph) of the proposed rule (75 FR 35751; June 23, 2010). They identified that we mistakenly stated that ''dissolved oxygen levels should not exceed 4.5 milligrams per liter.'' The corrected statement should be that dissolved oxygen levels should always equal or exceed 4.5 milligrams per liter.

*Our Response:* Refer to our response to *Comment 1.*

*Comment 8:* One commenter also thought that the discussion on the importance of energy input from gray bat (*Myotis grisescens*) guano should be expanded to highlight the potential catastrophic impact that White-nose Syndrome (WNS) and the causative fungus, *Geomyces destructans* could have on the Tumbling Creek cavesnail if WNS decimates gray bat populations in Tumbling Creek cave.

*Our Response:* Refer to our response to *Comment 4.*

**Summary of Changes From Proposed Rule**

We thoroughly evaluated all comments received on the proposed designation of critical habitat. As a result of the comments we received on the proposed rule, as well as errors we found, we have made the following changes to our proposed designation.

- Changed a typographical error related to a misstatement regarding the correct dissolved oxygen levels identified as one of the physical and biological features essential to the conservation of the Tumbling Creek cavesnail.
- Relabeled the map to depict the difference between Tumbling Creek and Bear Cave Hollow that was incorrectly labeled on the U.S. Geological Survey Protem 7.5 minute topographic map.
- Changed the relevant portions of the text in this rule to note that the area designated as critical habitat is from the emergence of Tumbling Creek within Tumbling Creek cave to its confluence with Bear Cave Hollow upstream of Big Creek. These changes, however, do not affect the area outlined in the critical habitat designation, or its total acreage.
- In preparing the final rule, the Service noted a typographical error related to the area of the above-ground recharge listed for Tumbling Creek cave.

The area should be listed as 23.57 square kilometers (9 square miles), not 14.5 kilometers (9 miles) as stated in the proposed rule. The appropriate change has been made in this final rule and does not change the total acreage included in the designation.

In preparing the final rule and relabeling the map outlining critical habitat for the Tumbling Creek cavesnail, the Service noticed that the designation does not include Schoolhouse Spring as stated in the proposed rule. The only spring within the designation is Owens Spring. The landowner confirmed that the area depicted in our map only includes Owens Spring and not Schoolhouse Spring. The removal of references to Schoolhouse Spring in the description of the area designated as critical habitat does not change the map or the total acreage included in the designation.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7(a)(2) of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner seeks or requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time it was listed must contain the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical and biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat), focusing on the principal biological or physical constituent elements (primary constituent elements) within an area that are essential to the conservation of the species (such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type). Primary constituent elements are the elements of physical and biological features that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species. When the best available scientific data do not demonstrate that the conservation needs of the species require such additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species. An area currently occupied by the species but that was not occupied at the time of listing may, however, be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas we should designate as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. In particular, we recognize that climate change may cause changes in the arrangement of occupied habitat stream reaches. Climate change may lead to increased frequency and duration of droughts (Rind *et al.* 1990, p. 9983; Seager *et al.* 2007, pp. 1181–1184; Rahel and Olden 2008, p. 526). Climate warming may increase the virulence of nonnative parasites and pathogens to native species (Rahel and Olden 2008, p. 525), decrease groundwater levels (Schindler 2001, p. 22), or significantly reduce annual stream flows (Moore *et al.* 1997, p. 925). Increased drought conditions and prolonged low flows associated with climate change may favor the establishment and spread of nonnative

species (Rahel and Olden 2008, pp. 526, 529–530). In the Missouri Ozarks, it is projected that stream basin discharges may be significantly impacted by synergistic effects of changes in land cover and climate change (Hu *et al.* 2005, p. 9).

The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of the Tumbling Creek cavesnail that would indicate what areas may become important to the species in the future. Nonetheless, because the Tumbling Creek cavesnail is an aquatic snail that is totally dependent upon an adequate water supply, adverse effects associated with climate change that could significantly alter the quantity and quality of Tumbling Creek could impact the species in the future. Other than Tumbling Creek, we are currently unaware of any other cave stream inhabited by the Tumbling Creek cavesnail. Therefore, as explained in the proposed rule (75 FR 35751), we are unable to determine which additional areas, if any, may be appropriate to include in the final critical habitat for this species to address the effects of climate change.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species, especially if future surveys are successful in documenting the species' presence in another cave stream. For these reasons, a critical habitat designation does not signal that habitat outside the designated critical habitat area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined based on the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), section 7 consultations, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

*Physical and Biological Features*

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features that are essential to the conservation of the species, which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific essential physical and biological features for the Tumbling Creek cavesnail from studies on this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on June 23, 2010 (75 FR 35751), and in the information presented below. Additional information can be found in the Background and Status and Distribution sections of the final listing rule published in the **Federal Register** on August 14, 2002 (67 FR 52879), and the final recovery plan for the species available on the Internet at *http://ecos.fws.gov/docs/recovery_plans/2003/030922a.pdf.* Unfortunately, little is known of the specific habitat requirements for this species other than that the species requires adequate water quality, water quantity, water flow, a stable stream channel, minimal sedimentation, and energy input from the guano of bats, particularly gray bats (*Myotis grisescens*) that roost in Tumbling Creek Cave. To identify the physical and biological features essential to the Tumbling Creek cavesnail, we have relied on current conditions at locations where the species survives, and the limited information available on this species and its close relatives.

Space for Individual and Population Growth and for Normal Behavior

The specific space requirements for the Tumbling Creek cavesnail are unknown, but given that 15,118 snails were estimated in a 1,016-square-meter (3,333-square-foot) area of Tumbling Creek in 1973 (Greenlee 1974, p. 10), space is not likely a limiting factor for the species. The loss of interstitial habitats for the species, however, likely contributed to the species decline (U.S. Fish and Wildlife Service 2003, p. 14).

Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

It is believed that the species feeds on biofilm, the organic coating and bacterial layer associated with the underside of rocks or a bare rock stream bottom (Aley and Ashley 2003, p. 19). This biofilm is directly connected to energy input from the guano of a large colony of roosting bats in Tumbling Creek Cave, particularly the Federally listed gray bat (*Myotis grisescens*) (Aley and Ashley 2003, p.18; U.S. Fish and Wildlife Service 2003, p. 11). The cavesnail is often found on rocks coated with manganese oxide (Aley and Ashley 2003, p. 18), but it is unlikely, however, that manganese minerals play any role in the growth and survival of the cavesnail (Ashley 2010, pers. comm.).

Cover or Shelter

The Tumbling Creek cavesnail has been found on both the upper and lower surfaces of rocks and gravel (Greenlee 1974, p. 10; Aley and Ashley 2003, p. 18; U.S. Fish and Wildlife Service 2003, p. 12). Flow rates in Tumbling Creek can reach 150 cubic feet per second (cfs) during flash flood events (Aley 2010, pers. comm.), and such events may dislodge cavesnails from the upper surface of substrates. Consequently, it is likely that the underside of larger rocks provides some cover for cavesnails. Rocks and gravel are used by cavesnails for attachment (Greenlee 1974, p. 10; U.S. Fish and Wildlife Service, p. 12). Additionally, it is likely that a stable stream bottom and cave stream banks and riffle, run, and pool habitats are important components of the species' habitat.

In summary, the Tumbling Creek cavesnail depends on stable stream bottoms and banks (stable horizontal dimension and vertical profile) that maintain bottom features (riffles, runs, and pools) and transition zones between bottom features. Furthermore, the species requires bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand

and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

Sites for Breeding, Reproduction, or Rearing

Like other members of the snail family Hydrobiidae, the Tumbling Creek cavesnail has separate male and female individuals (Aley and Ashley 2003, p. 19), but there is no information on the mating behavior of the species or what role the unknown sex ratio of the species may have on successful reproduction. Eggs are likely deposited in gelatinous egg masses, but to date, the occurrence of such egg masses has yet to be documented (Aley and Ashley 2003, p. 19). Although little is known about the reproductive behavior and development of offspring of the Tumbling Creek cavesnail, it is likely that rock and gravel substrates that are free from silt are important elements necessary for successful propagation, especially for attachment of gelatinous egg masses. Aley and Ashley (2003, p. 19) postulated that silt deposited in Tumbling Creek could smother egg masses, and Ashley (2000, p. 8) suggested that silt could suffocate early developmental stages of the cavesnail. The lifespan of the Tumbling Creek cavesnail is unknown, but, if similar to other surface-dwelling hydrobid snails that have been studied, it is probably between 1 and 5 years (Aley and Ashley 2003, p. 19).

The cavesnail is dependent on good water quality (Aley and Ashley 2003, pp. 19–20; U.S. Fish and Wildlife Service 2003, pp. 13–22). Aley (2001, pers. comm.; U.S. Fish and Wildlife Service 2003, p. 22) noted that oxygen depletion could occur in Tumbling Creek during low flows; therefore, permanent flow of the stream is apparently important to the survival of the cavesnail. Aley (2010, pers. comm.) calculated that an average daily discharge of 0.07–150 cubic feet per second (cfs) was necessary to maintain good water quality for the cavesnail. Aley (2010, pers. comm.) also postulated that, to ensure good water quality for the Tumbling Creek cavesnail, water temperature of the cave stream should be 55–62 °F (12.78–16.67 °C), dissolved oxygen levels should equal or exceed 4.5 milligrams per liter, and turbidity of an average monthly reading should not exceed 200 Neophelometric Units (NTU; units used to measure sediment discharge) and should not persist for a period greater than 4 hours.

In summary, the Tumbling Creek cavesnail depends on an instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of both surface runoff and groundwater sources (springs and seepages), and water quality with temperature 55–62 °F (12.78–16.67 °C), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 NTUs for a duration not to exceed 4 hours.

Primary Constituent Elements for the Tumbling Creek Cavesnail

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of the Tumbling Creek cavesnail in areas occupied at the time of listing and focus on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical and biological features, that, when laid out in the appropriate quantity and spatial arrangement to provide for a species' life-history processes, are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Tumbling Creek cavesnail are:

(1) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to maintain bottom features (riffles, runs, and pools) and transition zones between bottom features; to continue appropriate habitat to maintain essential riffles, runs, and pools; and to promote connectivity between Tumbling Creek and its tributaries and associated springs to maintain gene flow throughout the population.

(2) Instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of both surface runoff and groundwater sources (springs and seepages).

(3) Water quality with temperature 55–62 °F (12.78–16.67 °C), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) for a duration not to exceed 4 hours.

(4) Bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

(5) Energy input from guano that originates mainly from gray bats that roost in the cave; guano is essential in the development of biofilm (the organic coating and bacterial layer that covers rocks in the cave stream) that cavesnails use for food.

With this designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the identification of the appropriate quantity and spatial arrangement of the primary constituent elements sufficient to support the life-history processes of the species. The unit designated as critical habitat is currently occupied by the Tumbling Creek cavesnail and contains the primary constituent elements in the appropriate quantity and spatial arrangement sufficient to support the life-history needs of the species.

*Special Management Considerations or Protections*

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection.

The one unit we are designating as critical habitat will require some level of management to address the current and future threats to the physical and biological features essential to the conservation of the species. Although no portion of the designated critical habitat unit is presently under special management or protection provided by a legally operative plan or agreement for the conservation of the Tumbling Creek cavesnail, the cave owners Tom and Cathy Aley have been actively involved in implementing numerous conservation measures that continue to contribute to the recovery of the species. Various activities in or adjacent to the critical habitat unit described in this final rule may affect one or more of the primary constituent elements. For example, features in the critical habitat designation may require special management due to threats associated with management of water levels on Bull Shoals Reservoir (such as increased sedimentation or bank erosion from backwater flooding); by significant changes in the existing flow regime of Tumbling Creek, its tributaries, or associated springs; by significant alteration of water quality; by significant alteration in the quantity of groundwater and alteration of spring discharge sites; by alterations to septic

systems that could adversely affect the water quality of Tumbling Creek; and by other watershed and floodplain disturbances that release sediments or nutrients into the water.

Energy input in the form of bat guano is identified above as an important primary constituent element for the Tumbling Creek cavesnail. Most of the bat guano in Tumbling Creek cave originates from a large population of gray bats that roost in the cave (Aley and Ashley 2003, p. 18; U.S. Fish and Wildlife Service 2003, p. 11). White-nose Syndrome (WNS) and the causative fungus, *Geomyces destructans* is estimated to be responsible for as much as a 75 percent decline in some bat populations in the eastern United States since WNS was first documented in 2006 (Blehert *et al.* 2009, p. 227; Frick *et al.* 2010, p. 679; Puechmaille *et al.* 2010, p. 290). *Geomyces destructans* has been recently documented on gray bats in Missouri (LeAnn White 2010, pers. comm.; Swezey and Garrity 2011, p. 16). The likely continued spread of WNS to gray bats in Missouri could be catastrophic for the species (U.S. Fish and Wildlife Service 2009, pp. 12–13). The spread of WNS on gray bats in Tumbling Creek cave could eliminate the species from the site and impact all cave-dwelling species, including the cavesnail, due to the loss of energy input from the lack of bat guano.

Other activities that may affect the primary constituent elements in the designated critical habitat unit include those listed in the ''Effects of Critical Habitat Designation'' section below. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the Tumbling Creek cavesnail. Activities with a Federal nexus that may affect areas outside of critical habitat, such as development; road construction and maintenance; oil, gas, and utility easements; forest and pasture management; maintenance of Bull Shoals Reservoir; and effluent discharges, are still subject to review under section 7 of the Act if they may affect the Tumbling Creek cavesnail, because Federal agencies must consider both effects to the species and effects to critical habitat independently. The Service should be consulted regarding disturbances to areas both within the designated critical habitat unit as well as areas within the recharge area of Tumbling Creek cave, including springs and seeps that contribute to the instream flow in the tributaries, especially during times when stream flows are abnormally low (during droughts), because these activities may impact the essential features of the designated critical habitat. The prohibitions of section 9 of the Act against the take of listed species also continue to apply both inside and outside of designated critical habitat.

*Criteria Used To Identify Critical Habitat*

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of this species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are not designating any areas outside the geographical area occupied by the species because occupied areas are sufficient for the conservation of the species, adjacent caves surveyed for the cavesnail failed to document the species (U.S. Fish and Wildlife Service 2003, p. 4), and there is no known habitat within a certain radius of Tumbling Creek cave which provides a combination of aquatic substrate and a large source of energy input that is necessary for the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 2002.

In order to determine which sites were occupied at the time of listing, we used information from surveys conducted by Greenlee (1974, pp. 9–11) and Ashley (2010, pers. comm.), data summarized in the final listing rule (67 FR 52879), the Tumbling Creek Cavesnail Recovery Plan (U.S. Fish and Wildlife Service 2003, pp. 1–13), and personal observations by cave owners Tom and Cathy Aley. Currently, occupied habitat for the species is limited and isolated to Tumbling Creek, from its emergence in Tumbling Creek Cave to its confluence with Bear Cave Hollow and Owens Spring upstream of Big Creek.

Following the identification of the specific locations occupied by the Tumbling Creek cavesnail, we determined the appropriate length of occupied segments of Tumbling Creek by identifying the upstream and downstream limits of these occupied sections necessary for the conservation of the species. Because Tumbling Creek is intricately linked with fractures in chert rock and associated springs and underground portions that are inaccessible to humans, we determined that currently occupied habitat includes the area from the emergence of Tumbling Creek within Tumbling Creek Cave to its confluence with Bear Cave Hollow and Owens Spring upstream of Big Creek. This determination was made to ensure incorporation of all potential sites of occurrence. These portions of Tumbling Creek and Owens Spring were then digitized using 7.5′ topographic maps and ArcGIS to produce the critical habitat map.

We are designating as critical habitat all portions of Tumbling Creek and the underground portions of Owens Spring as occupied habitat. We have defined ''occupied habitat'' as those stream reaches documented at the time of listing and all portions of Tumbling Creek between its emergence in Tumbling Creek Cave and its confluence with Bear Cave Hollow and Owens Spring upstream of Big Creek. Although there are underground portions of Tumbling Creek that are inaccessible to humans, the entire stream length is believed to be occupied by the Tumbling Creek cavesnail; thus, the entire stream is believed to comprise the entire known range of the Tumbling Creek cavesnail. We are not designating any areas outside of those mentioned above, because the species is believed to be a site endemic, and surveys in other nearby cave streams and springs have failed to find additional populations (U.S. Fish and Wildlife Service 2003, p. 4).

The one unit contains all of the physical and biological features in the appropriate quantity and spatial arrangement essential to the conservation of this species and supports all life processes for the Tumbling Creek cavesnail.

Although the above-ground recharge area of Tumbling Creek Cave (estimated to be 9 square miles (23.57 square kilometers) (U.S. Fish and Wildlife Service 2003, p. 14)) is important to maintain the condition of cavesnail habitat, such areas do not themselves contain the physical and biological features essential to the conservation of the species, and are, therefore, not designated as critical habitat.

To the best of our knowledge, there are no unoccupied areas that are essential to the conservation of the Tumbling Creek cavesnail. All of the areas designated as critical habitat for the Tumbling Creek cavesnail are currently occupied by the species and contain the essential physical and biological features. All of the areas designated as critical habitat are also within the known historical range of the species. Therefore, we are not designating any areas outside the

geographical area occupied by the species at the time of listing. We believe that the occupied areas are sufficient for the conservation of the species.

**Final Critical Habitat Designation**

We are designating one unit, totaling approximately 25 ac (10.12 ha), as critical habitat for the Tumbling Creek cavesnail. The critical habitat unit described below constitutes our best assessment of areas that currently meet the definition of critical habitat for the Tumbling Creek cavesnail.

We present a brief description for the unit and reasons why it meets the definition of critical habitat below. The designated critical habitat unit includes the stream channel of Tumbling Creek to the confluence with Bear Cave Hollow and Owens Spring upstream of Big Creek. For the one stream reach designated as critical habitat, the upstream and downstream boundaries are described generally below; more precise descriptions are provided in the Regulation Promulgation at the end of this final rule.

*Tumbling Creek, Taney County, Missouri*

The unit includes the entire length of Tumbling Creek, from its emergence in Tumbling Creek Cave (southeast of the intersection of Routes 160 and 125) downstream to its confluence with Bear Cave Hollow and Owens Spring upstream of Big Creek, encompassing 25 ac (10.12 ha). This section of Tumbling Creek and the associated spring are under private ownership by Tom and Cathy Aley of the Ozark Underground Laboratory and contain all of the essential physical and biological features necessary for the Tumbling Creek cavesnail.

Threats to the essential physical and biological features necessary for the Tumbling Creek cavesnail that may require special management and protection include:

- Actions associated with the management of water levels of Bull Shoals Reservoir (such as increased sedimentation or bank erosion on the terminal portions of Tumbling Creek from backwater flooding);
- Significant changes in the existing flow regime of Tumbling Creek, its tributaries. or associated springs;
- Significant alteration of water quality;
- Significant alteration in the quantity of groundwater and spring discharge sites;
- Alterations to septic systems that could adversely affect the quality of Tumbling Creek;
- Other watershed and floodplain disturbances that release sediments or nutrients into the water;
- The accidental introduction of nonnative aquatic species into the stream due to backwater flooding of Bull Shoals Reservoir into Tumbling Creek; or
- The potential effects of WNS on bats occupying the cave.

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuits Courts of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service,* 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service,* 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, or are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action;

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction;

(3) Are economically and technologically feasible; and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Tumbling Cave snail or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not

Federally funded or authorized, do not require section 7 consultations.

*Application of the ''Adverse Modification'' Standard*

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for the Tumbling Creek cavesnail.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Tumbling Creek cavesnail. These activities include, but are not limited to:

(1) Actions that would cause an increase in sedimentation to areas of Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail. Such activities could include, but are not limited to, alteration or maintenance of pool levels on Bull Shoals Reservoir that causes backwater flooding of occupied habitat, or any discharge of fill materials. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the designated critical habitat. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the species by causing excessive sedimentation and burial of the species or their habitats or eliminate interstitial spaces needed by cavesnails.

(2) Actions that would significantly alter the existing flow regime of Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail. Such activities could include, but are not limited to, alteration or maintenance of pool levels on Bull Shoals Reservoir that significantly reduces the movement of water through occupied cavesnail habitat. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the designated critical habitat.

(3) Actions that would significantly alter water chemistry or water quality (for example, changes to temperature or pH, introduced contaminants, excess nutrients) in Tumbling Creek, its tributaries, and associated springs. Such activities could include, but are not limited to, the release of chemicals, biological pollutants, or heated effluents that are then introduced into Tumbling Creek, its tributaries, and associated spring occupied by the cavesnail through backwater flooding. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the designated critical habitat. These activities could alter water conditions that are beyond the tolerances of the species and result in direct or cumulative adverse effects on the species and its life cycle. These activities could eliminate or reduce habitats necessary for the growth and reproduction of the species by causing eutrophication, leading to excessive filamentous algal growth. Excessive filamentous algal growth can cause extreme decreases in nighttime dissolved oxygen levels through vegetation respiration, and cover the bottom substrates and the interstitial spaces needed by cavesnails.

(4) Actions that could accidentally introduce nonnative species into Tumbling Creek, its tributaries, and associated springs occupied by the cavesnail via backwater flooding from Bull Shoals Reservoir. Such activities occurring within the recharge area of Tumbling Creek Cave may also impact the designated critical habitat. These activities could introduce a potential predator or outcompeting aquatic invertebrate (for example, another species of cavesnail or troglobitic invertebrate) or aquatic parasite.

(5) Actions that could significantly alter the prey base of bats. Energy input from bat guano is essential to the Tumbling Creek cavesnail, such that adverse impacts to gray bat populations in Tumbling Creek Cave could indirectly impact the cavesnail. Such activities could include, but are not limited to, alteration or maintenance of pool levels on Bull Shoals Reservoir that significantly reduces the life cycles of the aquatic insects that are needed by gray bats for food and the potential use of insecticides for mosquito control.

## Exemptions

*Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands within the critical habitat designation for the Tumbling Creek cavesnail. Therefore, we are not exempting any lands owned or managed by the Department of Defense from this designation of critical habitat for the Tumbling Creek cavesnail pursuant to section 4(a)(3)(B)(i) of the Act.

## Exclusions

*Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary shall designate or make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impacts of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific

and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis of the proposed critical habitat designation and related factors (Industrial Economics Incorporated 2010). The draft analysis, dated December 6, 2010, was made available for public review from January 12, 2011, through February 11, 2011 (76 FR 2076). Following the close of the comment period, a final analysis, dated March 11, 2011, of the potential economic effects of the designation was developed, taking into consideration the public comments and any new information (Industrial Economics Incorporated 2011).

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the Tumbling Creek cavesnail; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.,* under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 2002 (67 FR 52879), and considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. The FEA quantifies economic impacts of the Tumbling Creek cavesnail conservation efforts associated with the following categories of activity: water management and any activities that may affect water quality.

Because any baseline impacts would be those associated with already existing regulations absent critical habitat designation, and such actions will not be affected by the regulation, no new baseline costs were identified. The primary focus on the FEA was on monetizing the projected incremental impacts forecast from the designation. Incremental impacts are estimated to be $50,100 between 2011 and 2030, assuming a 7 percent discount rate. Estimated incremental costs are forecast to be entirely administrative costs of section 7 consultations involving projects that could potentially adversely modify the water management and water quality of Tumbling Creek.

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting his discretion to exclude any areas from this designation of critical habitat for the Tumbling Creek cavesnail based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Columbia Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for the Tumbling Creek cavesnail are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exerting his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusion Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether landowners have developed any conservation plans or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of lands for, or exclusion of lands from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no conservation plans or other management plans for the Tumbling Creek cavesnail, and the designation does not include any Tribal lands or trust resources. We anticipate no impact to Tribal lands, partnerships, or management plans from this critical habitat designation. There are no areas proposed for exclusion

from this designation based on other relevant impacts.

**Required Determinations**

*Regulatory Planning and Review—Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this rule is not significant under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(1) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(2) Whether the rule will create inconsistencies with other Federal agencies' actions.

(3) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) Whether the rule raises novel legal or policy issues.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Tumbling Creek cavesnail will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts on these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* water management and any activities that may affect the water quality of Tumbling Creek). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Tumbling Creek cavesnail. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see *Application of the ''Adverse Modification Standard''* section).

In our FEA of the critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Tumbling Creek cavesnail and the designation of critical habitat. The analysis is based on the estimated impacts associated with the rulemaking as described in Chapters 1 through 3 and Appendix A of the analysis and evaluates the potential for economic impacts related to water management and any activities that may affect water quality. As outlined in the distributional analyses in chapter 3 of the FEA and Appendix A, it is not anticipated that there will be any economic impact to any small entities including any city, county, or privately owned businesses.

In summary, we considered whether this designation would result in a significant economic effect on a substantial number of small entities. Based on the above reasoning and currently available information, we concluded that this rule would not result in a significant economic impact on a substantial number of small entities. Therefore, we are certifying that the designation of critical habitat for the Tumbling Creek cavesnail will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Tumbling Creek cavesnail conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant

energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The FEA concludes incremental impacts may occur due to administrative costs of section 7 consultations for actions that impact the water management or water quality of Tumbling Creek; however, these are not expected to significantly affect small governments. Thus, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities, and as such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with Executive Order 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the Tumbling Creek cavesnail in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of critical habitat for the Tumbling Creek cavesnail does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Missouri. The designation of critical habitat in areas currently occupied by the Tumbling Creek cavesnail imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to this government in that the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the habitat features necessary for the conservation of the species are specifically identified. This information does not alter where and what Federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur). Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of the physical and biological features essential to the conservation of the Tumbling Creek cavesnail within the designated areas to assist the public in understanding the habitat needs of the species.

*Paperwork Reduction Act of 1995*

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

*National Environmental Policy Act (NEPA)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes.

We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation of the Tumbling Creek cavesnail, and no Tribal lands unoccupied by the Tumbling Creek cavesnail that are essential for the conservation of the species. Therefore, we are not designating critical habitat for the Tumbling Creek cavesnail on Tribal lands.

*Data Quality Act*

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

**References Cited**

A complete list of all references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Columbia Fish and Wildlife Office (see **ADDRESSES**).

**Authors**

The primary authors of this document are the staff members of the Columbia Fish and Wildlife Office.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h), by revising the entry for ''Cavesnail, Tumbling Creek'' under ''SNAILS'' in the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| * | * | * | * | * | * | | * |
| SNAILS | | | | | | | |
| * | * | * | * | * | * | | * |
| Cavesnail, Tumbling Creek. | *Antrobia culveri* ..... | U.S.A. (MO) ..... | NA ..... | E ..... | 731 | 17.95(f) | NA |
| * | * | * | * | * | * | | * |

■ 3. In § 17.95(f), add an entry for ''Tumbling Creek Cavesnail *(Antrobia culveri)''* in the same alphabetical order as the species appears in the table at § 17.11(h), to read as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

* * * * *

(f) *Clams and Snails.*

* * * * *

Tumbling Creek Cavesnail *(Antrobia culveri)*

(1) The critical habitat unit is depicted for Taney County, Missouri, on the map at paragraph (f)(5)(ii) of this section.

(2) Within this area, the primary constituent elements of the physical and biological features essential to the conservation of the Tumbling Creek cavesnail consist of five components:

(i) Geomorphically stable stream bottoms and banks (stable horizontal dimension and vertical profile) in order to:

(A) Maintain bottom features (riffles, runs, and pools) and transition zones between bottom features;

(B) Continue appropriate habitat to maintain essential riffles, runs, and pools; and

(C) Promote connectivity between Tumbling Creek and its tributaries and associated springs to maintain gene flow throughout the population.

(ii) Instream flow regime with an average daily discharge between 0.07 and 150 cubic feet per second (cfs), inclusive of both surface runoff and groundwater sources (springs and seepages).

(iii) Water quality with temperature 55–62 °F (12.78–16.67 °C), dissolved oxygen 4.5 milligrams or greater per liter, and turbidity of an average monthly reading of no more than 200 Nephelometric Turbidity Units (NTU; units used to measure sediment discharge) for a duration not to exceed 4 hours.

(iv) Bottom substrates consisting of fine gravel with coarse gravel or cobble, or bedrock with sand and gravel, with low amounts of fine sand and sediments within the interstitial spaces of the substrates.

(v) Energy input from guano that originates mainly from gray bats *(Myotis grisescens)* that roost in the cave; guano is essential in the development of biofilm (the organic coating and bacterial layer that covers rocks in the cave stream) that cavesnails use for food.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map unit.* Data layers defining the map unit were created using 7.5′ topographic quadrangle maps and ArcGIS (version 9.3.1) mapping software.

(5) Tumbling Creek Cavesnail Critical Habitat Unit.

(i) U.S. Geological Survey 7.5′ Topographic Protem Quad. Land bounded by the following UTM Zone 15N, North American Datum of 1983 (NAD83) coordinates (W, N): from the emergence of Tumbling Creek within Tumbling Creek Cave at Lat. 36°33′37.41″ N, Long. 92°48′27.23″ W to its confluence with Bear Cave Hollow and Owens Spring upstream of Big Creek at at Lat. 36°33′15.2″ N, Long. 92°47′51.74″ W.

(ii) *Note:* Map of Tumbling Creek Cavesnail Critical Habitat Unit follows:

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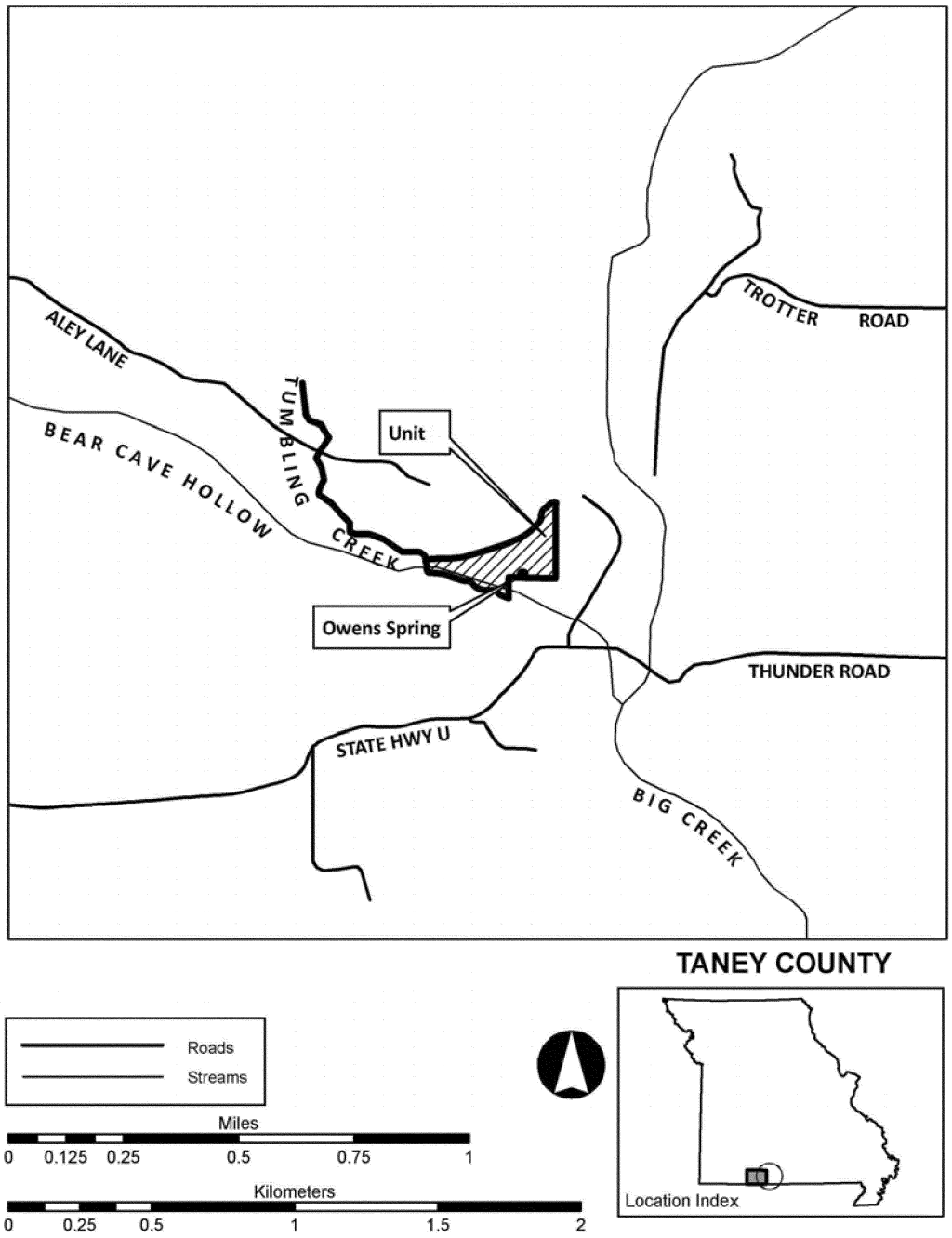
Critical Habitat for
Tumbling Creek Cavesnail




* * * * *

Dated: June 17, 2011.

**Rachel Jacobson,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–16016 Filed 6–27–11; 8:45 am]

**BILLING CODE 4310–55–C**

# Proposed Rules

Federal Register
Vol. 76, No. 124
Tuesday, June 28, 2011

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

## DEPARTMENT OF ENERGY

### 10 CFR Part 431

**[Docket No. EERE–2011–BT–DET–0045]**

**RIN 1904–AC55**

## Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Proposed Determination of Commercial and Industrial Fans, Blowers, and Fume Hoods as Covered Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of proposed determination of coverage.

**SUMMARY:** The U.S. Department of Energy (DOE) proposes to determine that commercial and industrial fans, blowers, and fume hoods meet the criteria for covered equipment under Part A–1 of Title III of the Energy Policy and Conservation Act (EPCA), as amended. DOE proposes that classifying equipment of such type as covered equipment is necessary to carry out the purpose of Part A–1 of EPCA, which is to improve the efficiency of electric motors and pumps and certain other industrial equipment to conserve the energy resources of the nation.

**DATES:** DOE will accept written comments, data, and information on this notice, but no later than July 28, 2011.

**ADDRESSES:** Interested persons may submit comments, identified by docket number EERE–2011–BT–DET–0045 or RIN 1904–AC55), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: FansBlowersHoods-2011-DET–0045@ee.doe.gov.* Include EERE–2011–BT–DET–0045 and/or RIN 1904–AC55) in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Notice of Proposed Determination for Fans, Blowers, and Fume Hoods, EERE–2011–BT–DET–0045 and/or RIN 1904–AC55, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Phone:* (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. *Phone:* (202) 586–2945. Please submit one signed paper original.

*Instructions:* All submissions received must include the agency name and docket number or RIN for this rulemaking.

*Docket:* For access to the docket to read background documents, a copy of the transcript of the public meeting, or comments received, go to the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586–2945 for additional information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Llenza, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, *Telephone:* (202) 586–2192. *E-mail: Charles.Llenza@ee.doe.gov.*

In the Office of General Counsel, contact Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

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### I. Statutory Authority

Title III of the Energy Policy and Conservation Act of 1975 (EPCA), as amended (42 U.S.C. 6291 *et seq.*), sets forth various provisions designed to improve energy efficiency. Part C of Title III of EPCA (42 U.S.C. 6311–6317), which was redesignated for editorial reasons as Part A–1 upon codification in the U.S. Code, establishes the ''Energy Conservation Program for Certain Industrial Equipment,'' which covers certain commercial and industrial equipment (hereafter referred to as ''covered equipment'').

EPCA specifies a list of equipment that constitutes covered commercial and industrial equipment. (42 U.S.C. 6311(1)(A)–(L). The list includes 11 types of equipment and a catch-all provision for certain other types of industrial equipment classified as covered the Secretary of Energy (Secretary). EPCA also specifies the types of equipment that can be classified as covered in addition to the equipment enumerated in 42 U.S.C. 6311(1). This equipment includes fans and blowers. (42 U.S.C. 6311(2)(B)). Industrial equipment must also:

(1) Consume, or be designed to consume, energy in operation;

(2) To any significant extent, be distributed in commerce for industrial or commercial use;

(3) Not be a covered product as defined in 42 U.S.C. 6291(a)(2) of EPCA, other than a component of a covered product with respect to which there is in effect a determination under 42 U.S.C. 6312(c).
(42 U.S.C. 6311(2)(A)).

To classify equipment as covered commercial or industrial equipment, the

Secretary must determine that classifying the equipment as covered equipment is necessary for the purposes of Part A–1 of EPCA. The purpose of Part A–1 is to improve the efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. (42 U.S.C. 6312(b))

## II. Current Rulemaking Process

DOE has not previously conducted an energy conservation standard rulemaking for fans, blowers, and fume hoods. If after public comment, DOE issues a final determination of coverage for this equipment, DOE would consider both test procedures and energy conservation standards for this equipment.

With respect to test procedures, DOE would consider proposed test procedures for measuring the energy efficiency, energy use, or estimated annual operating cost of fans, blowers, and fume hoods during a representative average use cycle or period of use that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2)) In a test procedure rulemaking, DOE initially prepares a test procedure notice of proposed rulemaking (NOPR) and allows interested parties to present oral and written data, views, and arguments with respect to such procedures. In prescribing new test procedures, DOE takes into account relevant information including technological developments relating to energy use or energy efficiency of fans, blowers, and fume hoods.

With respect to energy conservation standards, DOE typically prepares initially an energy conservation standards rulemaking framework document (the framework document). The framework document explains the issues, analyses, and process that it is considering for the development of energy conservation standards for fans, blowers, and fume hoods. After DOE receives comments on the framework document, DOE typically prepares an energy conservation standards rulemaking preliminary analysis and technical support document (the preliminary analysis). The preliminary analysis typically provides initial draft analyses of potential energy conservation standards on consumers, manufacturers, and the nation. Neither of these steps is legally required.

DOE is required to publish an energy conservation standards NOPR setting forth DOE's proposed energy conservations standards and a summary of the results of DOE's supporting technical analysis. The details of DOE's energy conservation standards analysis are provided in a technical support document (TSD) that describes the details of DOE's analysis of both the burdens and benefits of potential standards, pursuant to 42 U.S.C. 6295(o). DOE affords interested persons an opportunity during a period of not less than 60 days after the publication of the NOPR to provide oral and written comment. After receiving and considering the comments on the NOPR and not less than 90 days after the publication of the NOPR, DOE would issue the final rule prescribing any new energy conservation standards for fans, blowers, and fume hoods.

## III. Definition(s)

DOE is considering a definition for ''Commercial and Industrial Fans, Blowers, and Fume Hoods'' to clarify coverage of any potential test procedure or energy conservation standard that may arise from today's proposed determination. Fans typically have a specific ratio, the ratio of discharge pressure to suction pressure, less than 1.11. Blowers typically have a specific ratio ranging from 1.11 to 1.20. Fume hoods are cabinets connected to a ventilation system, where the fan is either separated from the enclosed workspace or is part of the enclosure. There is currently no statutory definition of fans, blowers, or fume hoods, and DOE is considering the following definition of fans, blowers, and fume hoods to provide clarity for interested parties as it continues its analyses:

*Fan*

A fan is an electrically powered device used in commercial or industrial systems to provide a continuous flow of a gas, typically air, for ventilation, circulation, or other industrial process requirements. Fans are classified as axial or centrifugal. Axial fans move an airstream along the axis of the fan. Centrifugal fans generate airflow by accelerating the airstream radially. A fan may include some or all of the following components: motor and motor controls, rotor or fan blades, and transmission and housing.

*Blower*

A blower is a type of centrifugal fan.

*Fume Hood*

A fume hood is an enclosed workspace that uses an exhaust fan. Fume hoods are used in commercial or industrial laboratories or facilities to capture, contain, or exhaust hazardous fumes, vapors, or particulate matter generated inside the enclosed workspace. The fan energy use is primarily determined by the design and operating characteristics of the enclosed workspace.

DOE seeks feedback from interested parties on these definition(s) of fans, blowers, and fume hoods.

## IV. Evaluation of Fans, Blowers, and Fume Hoods as a Covered Equipment

The following sections describe DOE's evaluation of whether fans, blowers, and fume hoods fulfill the criteria for being added as covered equipment pursuant to 42 U.S.C. 6311(2) and 42 U.S.C. 6312.

Fans and blowers are listed as types of industrial equipment under 42 U.S.C. 6311(2)(B), and fans are an integral part of a fume hood. The following discussion addresses DOE's consideration of the three requirements of 42 U.S.C. 6311(2)(A) and the requirement of 42 U.S.C. 6312.

### *A. Energy Consumption in Operation*

DOE proposes to define fans, blowers, and fume hoods as 'electrically powered'; fans, blowers, and fume hoods that meet DOE's definition consume energy in operation.

DOE estimates that commercial fans and blowers consume 139,533 million kWh of electricity per year, industrial fans and blowers consume 90,057 million kWh of electricity per year, and laboratory fume hoods consume 26,153 million kWh of electricity per year. The total amounts to 255,743 million kWh per year.

For commercial fans and blowers, DOE used the 2009 Annual Energy Outlook to find the 2006 value for the total energy consumption of commercial ventilation equipment [1] and converted that value from quads of primary energy to millions of kWh. For industrial fans and blowers, DOE used the 2009 Manufacturing Energy Consumption Survey to find the breakdown of electricity use by industrial sector. Then, using the percentage of fans and blowers from an American Council for an Energy-Efficient Economy study to calculate fan and blower electricity use by industrial sector [2], DOE calculated the total industrial fans and blower electricity usage.

For fume hoods, DOE used a Lawrence Berkeley National Laboratory study, which determined the energy use based on conservative estimates on number of fume hood units and their

[1] Based on *2009 Annual Energy Outlook, Table 5A, pg. 120,* U.S. Energy Information Administration.

[2] Based on Energy Efficiency and Electric Motors, Report PB–259 129, A.D. Little, Inc. 1976., U.S. Federal Energy Administration, Office of Industrial Programs. Springfield, VA: National Technical Information Service.

power draw in 2003.[3] Because DOE could not find any data on the growth of the fume hood market, it conservatively assumed that fume hoods consumed the same amount of power in 2006.

*B. Distribution in Commerce*

Fans, blowers and fume hoods are distributed in commerce for both the industrial and commercial sectors. Based on 2002 U.S. Census Data, DOE estimated that 650,000 motors are shipped annually to drive fans and blowers in the commercial and industrial sectors.[4] Based on additional 2004 U.S. Census data, DOE assumes that only small fraction [5] of these motors are used as a motor only replacement in fan systems.

Shipments of fume hoods were estimated by an industry source to be approximately 25,000 to 30,000 units/yr.[6]

*C. Prior Inclusion as a Covered Product*

Fans, blowers and fume hoods are not currently included as covered products under 10 CFR Part 430.

*D. Coverage Necessary To Carry Out Purposes of Part A–1 of EPCA*

The purpose of Part A–1 of EPCA is to improve the energy efficiency of electric motors, pumps and certain other industrial equipment to conserve the energy resources of the nation. Coverage of fans, blowers, and fume hoods is necessary to carry out the purposes of Part A–1 of EPCA because coverage will promote the conservation of energy supplies. DOE estimates that technologies exist which can reduce the electricity consumption of fans and blowers by as much as 20%.[7] DOE also believes that there are technologies and design strategies for fume hoods that could reduce energy by 50%.[8]

Based on the information in section IV of this notice, DOE proposes to determine that commercial and industrial fans, blowers, and fume hoods qualify as covered equipment under Part A–1 of Title III of EPCA, as amended (42 U.S.C. 6311 *et seq.*).

## V. Procedural Issues and Regulatory Review

*A. Review Under Executive Order 12866*

The Office of Management and Budget has determined that coverage determination rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impact of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990 (February 19, 2003). DOE makes its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.*

DOE reviewed today's proposed determination under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. If adopted, today's proposed determination would set no standards and would only positively determine that future standards may be warranted and should be explored in an energy conservation standards rulemaking. The proposed determination also does not establish any test procedures. If a positive determination is made, DOE would consider test procedures in a subsequent rulemaking. Economic impacts on small entities would be considered in the context of such rulemakings. On the basis of the foregoing, DOE certifies that the proposed determination, if adopted, would have no significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this proposed determination. DOE will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

*C. Review Under the Paperwork Reduction Act of 1995*

This proposed determination, which proposes to determine that fans, blowers, and fume hoods meet the criteria for classification as covered equipment, will impose no new information or recordkeeping requirements. Accordingly, the Office of Management and Budget (OMB) clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

*D. Review Under the National Environmental Policy Act of 1969*

In this notice, DOE proposes to positively determine that fans, blowers and fume hoods meet the criteria for classification as covered equipment. Environmental impacts would be explored in any future energy conservation standards rulemaking for fans, blowers and fume hoods. DOE has determined that review under the National Environmental Policy Act of 1969 (NEPA), Public Law 91–190, codified at 42 U.S.C. 4321 *et seq.* is not required at this time. NEPA review can only be initiated ''as soon as environmental impacts can be meaningfully evaluated'' (10 CFR 1021.213(b)). This proposed determination would only determine that fans, blowers and fume hoods meet the criteria for classification as covered equipment, but would not itself propose to set any specific standard. DOE has, therefore, determined that there are no environmental impacts to be evaluated at this time. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

*E. Review Under Executive Order 13132*

Executive Order (E.O.) 13132, ''Federalism'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the

[3] Based on *Energy Use and Savings Potential for Laboratory Fume Hoods,* Evan Mills and Dale Sartor, Lawrence Berkeley National Laboratory, Energy Analysis Department, April 2006. LBNL–55400.

[4] U.S. Census Bureau. Economic Census 2002, Industry Statistics Sampler: NAICS 333412, Industrial and Commercial Fan and Blower Manufacturing.

[5] U.S. Census Bureau, MA335H(03)–1, issued Nov 2004.

[6] Thomas Smith, President, Exposure Control Technologies, Inc., personal communication, 5/2011.

[7] Martin, N., Worrel, E., *et al.* Emerging Energy Efficient Industrial Technologies, LBNL–46990, 10/2000.

[8] Evan Mills and Dale Sartor, Lawrence Berkeley National Laboratory, Energy Analysis Department, July 2003.

constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to assess carefully the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in developing regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735 (March 14, 2000). DOE has examined today's proposed determination and concludes that it would not preempt State law or have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the equipment that is the subject of today's proposed determination. States can petition DOE for exemption from such preemption to the extent permitted, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by E.O. 13132.

*F. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform'' 61 FR 4729 (February 7, 1996), imposes on Federal agencies the duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) The preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether these standards are met, or whether it is unreasonable to meet one or more of them. DOE completed the required review and determined that, to the extent permitted by law, this proposed determination meets the relevant standards of E.O. 12988.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any 1 year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) UMRA requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820 (March 18, 1997). (This policy also is available at *http://www.gc.doe.gov*). DOE reviewed today's proposed determination pursuant to these existing authorities and its policy statement and determined that the proposed determination contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year, so the UMRA requirements do not apply.

*H. Review Under the Treasury and General Government Appropriations Act of 1999*

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed determination would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

*I. Review Under Executive Order 12630*

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 15, 1988), DOE determined that this proposed determination would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

*J. Review Under the Treasury and General Government Appropriations Act of 2001*

The Treasury and General Government Appropriation Act of 2001 (44 U.S.C. 3516, note) requires agencies to review most disseminations of information they make to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget (OMB). The OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed determination under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*K. Review Under Executive Order 13211*

E.O. 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates a final rule or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of the Office of Information and Regulatory Affairs (OIRA) as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the proposed action and their expected benefits on energy supply, distribution, and use.

DOE has concluded that today's regulatory action proposing to determine that fans, blowers, and fume hoods meet the criteria for classification as covered equipment would not have a significant adverse effect on the supply, distribution, or use of energy. This action is also not a significant regulatory

action for purposes of E.O. 12866, and the OIRA Administrator has not designated this proposed determination as a significant energy action under E.O. 12866 or any successor order. Therefore, this proposed determination is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this proposed determination.

*L. Review Under the Information Quality Bulletin for Peer Review*

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (January 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal government, including influential scientific information related to agency regulatory actions. The purpose of the Bulletin is to enhance the quality and credibility of the Government's scientific information. DOE has determined that the analyses conducted for this rulemaking do not constitute ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions.'' 70 FR 2667 (January 14, 2005). The analyses were subject to pre-dissemination review prior to issuance of this rulemaking.

DOE will determine the appropriate level of review that would be applicable to any future rulemaking to establish energy conservation standards for fans, blowers and fume hoods.

**VI. Public Participation**

*A. Submission of Comments*

DOE will accept comments, data, and information regarding this notice of proposed determination no later than the date provided at the beginning of this notice. After the close of the comment period, DOE will review the comments received and determine whether fans, blowers, fume hoods is covered equipment under EPCA.

Comments, data, and information submitted to DOE's e-mail address for this proposed determination should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Submissions should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. No telefacsimiles (faxes) will be accepted.

According to 10 CFR Part 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: One copy of the document should have all the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known or available from public sources; (4) whether the information has previously been made available to others without obligations concerning its confidentiality; (5) an explanation of the competitive injury to the submitting persons which would result from public disclosure; (6) a date after which such information might no longer be considered confidential; and (7) why disclosure of the information would be contrary to the public interest.

*B. Issues on Which DOE Seeks Comments*

DOE welcomes comments on all aspects of this proposed determination. DOE is particularly interested in receiving comments from interested parties on the following issues related to the proposed determination for fans, blowers, and fume hoods:

- Definition of fans;
- Definition of blowers;
- Definitions of fume hoods;
- Whether classifying fans, blowers, and fume hoods as covered equipment is necessary to carry out the purposes of Part A–1 of EPCA; and
- Availability or lack of availability of technologies for improving the energy efficiency of fans, blowers, and fume hoods.

DOE invites all interested parties to submit, in writing and by July 28, 2011, comments and information on matters addressed in this notice and on other matters relevant to a determination for fans, blowers, and fume hoods. DOE is also interested in receiving views concerning other issues relevant to establishing test procedures and energy conservation standards for fans, blowers, and fume hoods.

After the expiration of the period for submitting written statements, DOE will consider all comments and additional information that is obtained from interested parties or through further analyses, and it will prepare a final determination. If DOE determines that fans, blowers, and fume hoods qualify as covered equipment, DOE will consider a test procedure and energy conservation standards for fans, blowers, and fume hoods. Members of the public will be given an opportunity to submit written and oral comments on any proposed test procedure and standards.

Issued in Washington, DC, on June 21, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2011–16134 Filed 6–27–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0085; Directorate Identifier 2000–NE–19–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Teledyne Continental Motors (TCM) and Rolls-Royce Motors Ltd. (R–RM) Series Reciprocating Engines

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

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

**SUMMARY:** We propose to supersede an existing airworthiness directive (AD) that applies to certain TCM and R–RM series reciprocating engines. The existing AD currently requires replacement of certain magnetos if they fall within the specified serial number (S/N) range, inspection of the removed magneto to verify that the stop pin is still in place, and, if the stop pin is not in place, inspection of the engine gear train, crankcase, and accessory case. Since we issued that AD, we became aware of an error in the previous AD applicability in the range of magneto S/Ns affected, and of the need to include certain engines made by R–RM, under license of TCM. This proposed AD would correct the range of S/Ns affected, require the same replacement and inspections, and would add R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines to the applicability. We are proposing this AD to correct the unsafe condition on these products.

**DATES:** We must receive comments on this proposed AD by August 12, 2011.

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

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

For service information identified in this AD, contact Teledyne Continental Motors, Inc., PO Box 90, Mobile, AL 36601; phone (251) 438–3411, or go to: *http://tcmlink.com/servicebulletins.cfm.* You may review copies of the referenced service information at the FAA, New England Region, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

## 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 proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Neil Duggan, Aerospace Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate; 1701 Columbia Avenue, College Park, Georgia, 30337; phone: (404) 474–5576; fax: (404) 474–5606; e-mail: *neil.duggan@faa.gov.*

**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–2011–0085; Directorate Identifier 2000–NE–19–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 because of those comments.

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

## Discussion

On June 17, 2002, we issued AD 2002–13–04, Amendment 39–12792 (FR 67 43230, June 27, 2002), for TCM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines. That AD requires, within 10 flight hours after the effective date of that AD, replacement of certain magnetos if they fall within the specified S/N range, inspection of the removed magneto to verify that the stop pin is still in place, and, if the stop pin is not in place, inspection of the engine gear train, crankcase, and accessory case. That AD resulted from reports of engine failures on certain TCM reciprocating engines. We issued that AD to prevent engine failure and loss of control of the airplane due to migration of the magneto impulse coupling stop pin out of the magneto frame and into the gear train of the engine.

## Actions Since Existing AD Was Issued

Since we issued AD 2002–13–04, we became aware of an error in the applicability paragraph of that AD, in the range of S/Ns affected. That AD applicability listed magneto S/Ns of 99110001 through 9912999 inclusive. This proposed AD supersedure would correct the applicability to state magneto S/Ns of 99110001 through 99129999 inclusive, and add R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines built under license of TCM, to the applicability.

## FAA's Determination

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

## Proposed AD Requirements

This proposed AD would retain all requirements of AD 2002–13–04. This proposed AD would also correct the range of S/Ns affected, and would add R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines to the applicability. Since AD 2002–13–04 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

| Requirement in AD 2002–13–04 | Corresponding requirement in this proposed AD |
|---|---|
| paragraph (a) | paragraph (f) |
| paragraph (b) | paragraph (g) |
| paragraph (c) | paragraph (h) |

## Costs of Compliance

We estimate that this proposed AD would affect 100 R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the inspections, and that the average labor rate is $85 per work-hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $17,000. Our cost estimate is exclusive of possible warranty coverage.

## 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 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),

(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.

**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 removing airworthiness directive (AD) 2002–13–04, Amendment 39–12792 (67 FR 43230, June 27, 2002), and adding the following new AD:

**Teledyne Continental Motors (TCM) and Rolls-Royce Motors Ltd. (R–RM) Series Reciprocating Engines:** Docket No. FAA–2011–0085; Directorate Identifier 2000–NE–19–AD.

**(a) Comments Due Date**

The FAA must receive comments on this AD action by August 12, 2011.

**(b) Affected ADs**

This AD supersedes AD 2002–13–04, Amendment 39–12792.

**(c) Applicability**

This AD applies to TCM and R–RM C–125, C–145, O–300, IO–360, TSIO–360, and LTSIO–520–AE series reciprocating engines with Champion Aerospace (formerly Unison Industries) Slick Magnetos, models 6314, 6324, and 6364, with magneto serial numbers (S/Ns) of 99110001 through 99129999 inclusive.

**(d) Unsafe Condition**

This AD was prompted by an error in the previous AD applicability in the range of magneto S/Ns affected, and by the need to include certain engines made by R–RM, under license of TCM. We are issuing this AD to prevent engine failure and loss of control of the airplane due to migration of the magneto impulse coupling stop pin out of the magneto frame and into the gear train of the engine.

**(e) Compliance**

Comply with this AD within 10 flight hours after the effective date of this AD, unless already done.

**(f) Replacement of Magneto**

Replace any magneto that has a S/N of 99110001 through 99129999, inclusive, with a magneto that does not have a serial number in that range. If magneto is not in this S/N range, no further action is required by this AD.

**(g) Inspections**

Inspect each removed magneto to verify that the impulse coupling stop pin is present. If the pin is missing, do the following:

(1) For C–125, C–145, O–300, IO–360, and TSIO–360 series engines, do the following:

(i) Remove magnetos, alternator or generator, and starter adapter from the accessory case.

(ii) Remove the accessory case from the crankcase and oil sump.

(iii) Visually inspect the entire engine gear train for damaged or broken gears and gear teeth.

(iv) Inspect visible portions of the engine crankcase and accessory case for damage due to the stop pin becoming lodged between the engine gear train and the crankcase or accessory case.

(v) If the accessory case is damaged, repair or replace the accessory case.

(vi) If the engine crankcase is damaged, disassemble the engine, and repair or replace the crankcase.

(vii) Inspect the oil pump drive gear teeth and inner cam gear teeth for damage. Replace any engine drive train component that has been damaged.

(viii) Replace any damaged gear, and magnaflux the mating gears using the applicable engine overhaul manual.

(2) For LTSIO–520–AE series engines, do the following:

(i) Remove the starter adapter, fuel pump, vacuum pumps, accessory drive pads, and both magnetos.

(ii) Visually inspect the entire engine gear train for damaged or broken gears and gear teeth.

(iii) If any damage has occurred, remove the engine from the airplane, disassemble the engine, and inspect it for damage. If any damage is found, repair as necessary.

(iv) Replace any damaged gear, and magnaflux the mating gears using the applicable engine overhaul manual.

(v) Inspect the interior portions of the engine crankcase for damage due to the stop pin becoming lodged between the gear train and the crankcase. If the crankcase is damaged, repair or replace the crankcase.

**(h) Installation Prohibition**

After the effective date of this AD, do not install any Champion Aerospace (formerly Unison Industries) Slick magnetos, model 6314, 6324, or 6364 that have a S/N of 99110001 through 99129999 inclusive, on any engine.

**(i) Alternative Methods of Compliance**

The Manager, Atlanta Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

**(j) Related Information**

(1) A cross-reference for part numbers (P/Ns) for Champion Aerospace (formerly Unison Industries) Slick magneto model 6314 (TCM P/N 653271), model 6324 (TCM P/N 653292), and model 6364 (TCM P/N 649696) can be found in TCM Mandatory Service Bulletin MSB00–6D, dated November 19, 2010.

(2) For more information about this AD, contact Neil Duggan, Aerospace Engineer, Propulsion, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate; 1701 Columbia Avenue, College Park, Georgia, 30337; phone: (404) 474–5576; fax: (404) 474–5606; e-mail: *neil.duggan@faa.gov.*

Issued in Burlington, Massachusetts, on June 20, 2011.

**Peter A. White,**

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

[FR Doc. 2011–16088 Filed 6–27–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0687; Directorate Identifier 2011–CE–017–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Diamond Aircraft Industries GmbH Model (Diamond) DA 40 Airplanes Equipped With Certain Cabin Air Conditioning Systems

**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 would require deactivation and removal of the vapor cycle system (VCS) installed per STC SA03674AT held by Premier Aircraft Services (originally held by DER Services) following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010. This proposed AD would also require revision to the airplane weight and balance. This proposed AD was prompted by reports of damage around the VCS compressor mounting areas found during maintenance inspections. We are proposing this AD to remove the VCS mount, which could result in the air conditioner compressor

disconnecting in the engine compartment. This condition could result in engine stoppage or additional damage to the engine.

**DATES:** We must receive comments on this proposed AD by August 12, 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:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Premier Aircraft Service, 5540 NW. 23 Avenue Hangar 14, Ft. Lauderdale, FL 33309, *telephone:* (954) 771–0411; *fax:* (954) 334–1489; *Internet: http://www.flypas.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust St., Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

## Examining the AD Docket

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

**FOR FURTHER INFORMATION CONTACT:** Hal Horsburgh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5553; *fax:* (404) 474–5606; *e-mail: hal.horsburgh@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0687, Directorate Identifier 2011–CE–017–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 because of those comments.

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

## Discussion

We received reports of damage found during maintenance inspections of the Diamond Model DA 40 airplanes equipped with a VCS installed per Premier Aircraft Service STC SA03674AT held by Premier Aircraft Services (originally held by DER Services) following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010. The damage included excessive wear in the VCS compressor mounting holes, mounting brackets, and the mounting bolt, and denting was found around the mounting bracket and compressor due to unintended relative motion. We are proposing this AD to remove the VCS mount, which could result in the air conditioner compressor disconnecting in the engine compartment. This condition could result in engine stoppage or additional damage to the engine.

## Relevant Service Information

We reviewed Premier Aircraft Service Work Instruction PAS–WI–MSB–40–2011–001, dated March 4, 2011; and Premier Aircraft Service Mandatory Service Bulletin No. PAS–MSB–40–2011–001, dated March 4, 2011. The service information describes procedures for deactivation of the VCS Compressor and associated mounting hardware and the removal of the VCS installed per Premier Aircraft Service STC SA03674AT.

## FAA's Determination

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

## Proposed AD Requirements

This proposed AD would require deactivation of the VCS Compressor and removal of the VCS and the associated mounting hardware, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

## Differences Between the Proposed AD and the Service Information

The service information requires compliance prior to flight after effectivity of the service information. The service information also includes a reporting requirement.

This proposed AD requires a compliance time of within the next 100 hours time-in-service after installation of the STC or 30 days after the effective date of this proposed AD, whichever occurs later. We are not including the reporting requirement.

## Costs of Compliance

We estimate that this proposed AD affects 11 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Remove the VCS compressor, deactivate system, and revise weight and balance. | 3 work-hours × $85 per hour = $255 | Not applicable ..... | $255 | $2,805 |

## 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),

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

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

## List of Subjects in 14 CFR Part 39

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

## 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):

**Diamond Aircraft Industries GmbH Model (Diamond) DA 40 Airplanes Equipped With Certain Cabin Air Conditioning Systems:** Docket No. FAA–2011–0687; Directorate Identifier 2011–CE–017–AD.

**Comments Due Date**

(a) We must receive comments by August 12, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Diamond Aircraft Industries GmbH Model DA 40 airplanes, all serial numbers that:

(1) Are equipped with vapor cycle system (VCS) cabin air conditioning systems installed per Premier Aircraft Services Supplemental Type Certificate (STC) SA03674AT following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010; and

(2) Are certificated in any category.

**Subject**

(d) Joint Aircraft System Component (JASC) Code 2150, Cabin Cooling System.

**Unsafe Condition**

(e) This AD was prompted by reports of damage around the VCS compressor mounting area found during maintenance inspections. We are proposing this AD to remove the VCS compressor and mount, as a result of excessive wear, which could result in the air conditioner compressor disconnecting in the engine compartment. This condition could result in engine stoppage or additional damage to the engine.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Required Actions**

(g) Within the next 100 hours time-in-service after installation of the VCS installed per STC SA03674AT held by Premier Aircraft Services (originally held by DER Services) following DER Services Master Document List MDL–2006–020–1, Revision C, dated February 3, 2009; Revision D, dated April 22, 2009; Revision E, dated May 12, 2010; or Revision F, dated July 6, 2010, or within 30 days after the effective date of this AD, whichever occurs later, do the following actions following Premier Aircraft Service Work Instruction PAS–WI–MSB–40–2011–001, dated March 4, 2011; and Premier Aircraft Service Mandatory Service Bulletin No. PAS–MSB–40–2011–001, dated March 4, 2011:

(1) Deactivate the VCS system.

(2) Pull and collar the compressor breaker and place a placard above the breaker stating ''INOP.''

(3) Remove the VCS compressor and associated mounting hardware.

(4) Revise the airplane weight and balance.

**Special Flight Permit**

(h) The compressor drive belt must be cut and removed before the airplane may be moved for one ferry flight to an approved repair facility to comply with the remainder of this proposed AD.

**Alternative Methods of Compliance (AMOCs)**

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

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

**Related Information**

(j) For more information about this AD, contact Hal Horsburgh, Aerospace Engineer, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; *telephone:* (404) 474–5553; *fax:* (404) 474–5606; *e-mail: hal.horsburgh@faa.gov.*

(k) For service information identified in this AD, contact Premier Aircraft Service, 5540 NW. 23 Avenue Hangar 14, Ft. Lauderdale, FL 33309, *telephone:* (954) 771–0411; *fax:* (954) 334–1489; *Internet: http://www.flypas.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 22, 2011.

**John Colomy,**

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

[FR Doc. 2011–16137 Filed 6–27–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF LABOR

## Employment and Training Administration

## 20 CFR Part 655

**RIN 1205–AB61**

## Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Amendment of Effective Date

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of Labor (the Department or DOL) proposes to amend the effective date of Wage Methodology for the Temporary Non-agricultural Employment H–2B Program; Final Rule, 76 FR 3452, January 19, 2011, (the Wage Rule). The Wage Rule revised the methodology by which the Department calculates the prevailing wages to be

paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The effective date of the Wage Rule was set at January 1, 2012.

**DATES:** Interested persons are invited to submit written comments on the proposed rule on or before July 8, 2011.

**ADDRESSES:** You may submit comments, identified by Regulatory Information Number (RIN) 1205–AB61, by any one of the following methods:

- *Federal e-Rulemaking Portal http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Please submit all written comments (including disk and CD–ROM submissions) to Michael S. Jones, Acting Administrator, Office of Policy Development and Research, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5641, Washington, DC 20210.

Please submit your comments by only one method. Because of the short timeframe for this rulemaking, as discussed in further detail below, the Department will not review comments received by means other than those listed above or that are received after the comment period has closed. While the Department is soliciting comments on the proposed effective date of the Wage Rule, we are not seeking comments relating to the merits of the provisions contained in the Wage Rule which already has been subjected fully to the notice and comment process. We will deem any such comments out of scope and will not consider them. Additionally, as the U.S. District Court for the Eastern District of Pennsylvania ruled in *Comité de Apoyo a los Trabajadores Agricolas (CATA)* v. *Solis,* Civil No. 2:09–cv–240–LP (E.D. Pa.), the Immigration and Nationality Act, as amended (INA) does not permit the Department to consider issues relating to employer hardship as a reason to delay the effective date of a new wage rule. See *CATA v. Solis,* Dkt. No. 119, Memorandum Opinion at 9 (June 15, 2011).

The Department will post all comments received on *http://www.regulations.gov* without making any change to the comments, including any personal information provided. 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. The Department cautions commenters not to include their personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses in their comments as such submitted information will become viewable by the public on the *http://www.regulations.gov* Web site. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *http://www.regulations.gov* will not include the commenter's e-mail address unless the commenter chooses to include that information as part of his or her comment.

Postal delivery in Washington, DC may be delayed due to security concerns. Therefore, the Department encourages the public to submit comments through the *http://www.regulations.gov* Web site.

*Docket:* For access to the docket to read background documents or comments received, go the Federal eRulemaking portal at *http://www.regulations.gov* and enter RIN 1205–AB61 in the search field. The Department will also make all the comments it receives available for public inspection during normal business hours at the Employment and Training Administration (ETA) Office of Policy Development and Research 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 as an electronic file on computer disk. The Department will consider providing the proposed rule in other formats upon request. To schedule an appointment to review the comments and/or obtain the rule in an alternate format, contact the Office of Policy Development and Research at (202) 693–3700 (VOICE) (this is not a toll-free number) or 1–877–889–5627 (TTY/TDD).

**FOR FURTHER INFORMATION CONTACT:** William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:**

## I. Amendment of Effective Date of the Wage Rule

### *A. The Prevailing Wage Final Rule*

On January 19, 2011, the Department published the Wage Rule. Under the Wage Rule, the prevailing wage for the H–2B program is based on the highest of the following: wages established under an agreed-upon collective bargaining agreement; a wage rate established under the Davis-Bacon Act (DBA) or the McNamara O'Hara Service Contract Act (SCA) for that occupation in the area of intended employment; or the arithmetic mean wage rate established by the Occupational Employment Statistics (OES) wage survey for that occupation in the area of intended employment. The Wage Rule also permits the use of private wage surveys in very limited circumstances. Lastly, the Wage Rule requires the new wage methodology to apply to all work performed on or after January 1, 2012. The Department selected the January 1, 2012 effective date because ''many employers already may have planned for their labor needs and operations for this year in reliance on the existing prevailing wage methodology. In order to provide employers with sufficient time to plan for their labor needs for the next year and to minimize the disruption to their operations, the Department is delaying implementation of this Final Rule so that the prevailing wage methodology set forth in this Rule applies only to wages paid for work performed on or after January 1, 2012.'' 76 FR 3462, Jan. 19, 2011.

### *B. The Need for New Rulemaking*

On January 24, 2011, the plaintiffs in *CATA* v. *Solis,* Civil No. 2:09-cv-240–LP (E.D. Pa.) filed a motion for an order to require the Department to comply with the Court's August 30, 2010 order,[1] arguing that the Wage Rule violated the Administrative Procedure Act (APA) because ''it did not provide notice to Plaintiffs and the public that DOL was considering delaying implementation of

[1] On August 30, 2010, the U.S. District Court for the Eastern District of Pennsylvania in *CATA* v. *Solis,* Civil No. 2:09–cv–240–LP, 2010 WL 3431761 (E.D. Pa.) ruled that the Department had violated the Administrative Procedure Act in failing to adequately explain its reasoning for using skill levels as part of the H–2B prevailing wage determinations, and failing to consider comments relating to the choice of appropriate data sets in deciding to rely on OES data rather than SCA and DBA in setting the prevailing wage rates. The court ordered the Department to ''promulgate new rules concerning the calculation of the prevailing wage rate in the H–2B program that are in compliance with the Administrative Procedure Act no later than 120 days from the date of this order.'' The order was later amended to provide the Department with additional time, until January 18, 2011, to promulgate a final rule.

the new regulation and because DOL's reason for delaying implementation of the new regulation is arbitrary.'' *CATA* v. *Solis,* Dkt. No. 103–1, Plaintiff's Motion for an Order Enforcing the Judgment at 2 (Jan. 24, 2011). On June 15, 2011, the court issued a ruling that invalidated the January 1, 2012 effective date of the Wage Rule and ordered the Department to announce a new effective date for the rule within 45 days from June 15. The basis for the court's ruling was twofold: (1) That the almost one-year delay in the effective date was not a ''logical outgrowth'' of the proposed rule, and therefore violated the APA; and (2) that the Department violated the INA in considering hardship to employers when deciding to delay the effective date. The court held that ''it is apparent that in this case the notice of proposed rulemaking was deficient.'' *CATA* v. *Solis,* Dkt. No. 119, Memorandum Opinion at 8 (June 15, 2011). The court noted that the NPRM said nothing about a delayed effective date, and accordingly ''the public would . . . be justified in assuming that any delay in the effective date would mirror the minimal delays associated with the issuance of similar wage regulations over the past several decades.'' *Id.* In finding a violation of the INA, the court relied extensively on the 1983 district court decision in *NAACP* v. *Donovan,* 566 F. Supp. 1202 (D.D.C. 1983), which held that the Department could not phase in a wage regime based upon a desire to alleviate hardship on small businesses, because '''[in] administering the labor certification program, DOL is charged with protection of workers.''' *CATA* v. *Solis,* Dkt. No. 119, Memorandum Opinion at 10 (June 15, 2011) (citing *NAACP* v. *Donovan,* 566 F. Supp. at 1206).

*C. The Effective Date*

The Department proposes that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from this rulemaking. The Department anticipates the date of publication of the final rule to be on or about August 1, 2011; thus, the effective date of the Wage Rule would be on or about October 1, 2011. Because the Wage Rule, which was published on January 19, 2011, would have required at least a 60-day delayed effective date from the date of publication since it is considered to be a major rule under the Congressional Review Act (CRA), 5 U.S.C. 801, *et seq.,*[2] the Department believes that it would be appropriate to apply a 60-day delayed effective date to the final rule that sets the effective date of the Wage Rule. The Wage Rule will be effective for wages paid to H–2B workers and U.S. workers recruited in connection with an H–2B labor certification for all work performed on or after the new effective date. A 60-day delayed effective date also would provide the Office of Foreign Labor Certification (OFLC) within the Department with the time it needs to implement the wage rule, as OFLC must issue new prevailing wages for approved work performed on or after the new effective date. In order to accomplish this, OFLC must identify all certified H–2B applications which contain dates of work to be performed on and after the new effective date of the wage rule. This universe of certifications must then be issued new prevailing wage determinations in accordance with the wage rule's methodology. This is a labor intensive activity, as OFLC will have to determine and issue the new determinations before the new effective date proposed in this rulemaking for each of these employers. OFLC has determined the universe of applications to be large, and therefore will require the 60-day delayed effective date in order to complete this task.

As mentioned above, the purpose of this rulemaking is to solicit comments on the proposed effective date of the Wage Rule; therefore, any comments relating to the merits of the provisions contained in the Wage Rule will be deemed out of scope and will not be considered. Furthermore, pursuant to the district court's order, the Department cannot consider specific examples of employer hardship to delay the effective date of a new wage rule. See *CATA* v. *Solis,* Dkt. No. 119, Memorandum Opinion at 9 (June 15, 2011).

## II. Administrative Information

*A. Executive Orders 12866 and 13563*

Under Executive Order (E.O.) 12866 and E.O. 13563, the Department must determine whether a regulatory action is significant and therefore, subject to the requirements of the E.O. and subject to review by the Office of Management and Budget (OMB). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. The Department has determined that this NPRM is not an economically significant regulatory action under sec. 3(f)(1) of E.O. 12866. The Department, however, has determined that this NPRM is a significant regulatory action under sec. 3(f)(4) of the E.O. and, accordingly, OMB has reviewed this NPRM.

*B. Regulatory Flexibility 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 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. Further, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce a compliance guidance for small entities if the rule has a significant economic impact. In the Wage Rule, the Department stated that it believed that the Wage Rule was not likely to impact a substantial number of small entities; however, in the interest of transparency, the Department prepared a Final Regulatory Flexibility Analysis (FRFA) to assess the impact of this regulation on small entities, as defined by the applicable Small Business Administration (SBA) size standards. See 76 FR 3473, Jan. 19, 2011. While the change in the effective date of the Wage Rule that is being proposed in this NPRM may change the

[2] Under the CRA, a major rule is defined as ''any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in —(A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.'' 5 U.S.C. 804(2). As part of the Department's Executive Order 12866 analysis, OMB determined that the Wage Rule would likely result in transfers in excess of $100 million annually. See 76 FR 3468, Jan. 19, 2011.

period in which the total cost burdens for small entities would occur, the Department believes that the amount of the total cost burdens themselves would not change. Accordingly, the Assistant Secretary of ETA has notified the Chief Counsel for Advocacy, Small Business Administration (SBA), under the RFA at 5 U.S.C. 605(b), and certified that this rule will not have a significant economic impact on a substantial number of small entities.

*C. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. The proposed rule has no Federal mandate, which is defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector which is not voluntary.

*D. Small Business Regulatory Enforcement Fairness Act of 1996*

The Department has determined that this rulemaking does not impose a significant impact on a substantial number of small entities under the RFA; therefore, the Department is not required to produce any compliance guides for small entities as mandated by the SBREFA. The Department has similarly concluded that this proposed rule is not a major rule requiring review by the Congress under the SBREFA because it will not likely result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

*E. Executive Order 13132—Federalism*

The Department has reviewed this proposed rule in accordance with E.O. 13132 regarding federalism and has determined that it does not have federalism implications. The proposed rule does not have substantial direct effects on States, on the relationship between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Department has determined that this proposed rule will not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

*F. Executive Order 13175—Indian Tribal Governments*

This proposed rule was reviewed under the terms of E.O. 13175 and determined not to have Tribal implications. The proposed rule does not 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. As a result, no Tribal summary impact statement has been prepared.

*G. 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 proposed rule on family well-being. A rule that is determined to have a negative effect on families must be supported with an adequate rationale.

The Department has assessed this proposed rule and determines that it will not have a negative effect on families.

*H. Executive Order 12630—Government Actions and Interference with Constitutionally Protected Property Rights*

The proposed rule is not subject to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

*I. Executive Order 12988—Civil Justice*

The proposed rule has been drafted and reviewed in accordance with E.O. 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The Department has developed the proposed rule to minimize litigation and provide a clear legal standard for affected conduct, and has reviewed the proposed rule carefully to eliminate drafting errors and ambiguities.

*J. Plain Language*

The Department drafted this NPRM in plain language.

*K. Paperwork Reduction Act*

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This process helps to ensure that the public understands the Department's collection instructions; respondents provide requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department properly assesses the impact of collection requirements on respondents.

The PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions within the proposed regulations that require the submission of information. These information collection (IC) requirements must be submitted to the OMB for approval. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number as required in 5 CFR 1320.11(l) or it is exempt from the PRA.

The majority of the IC requirements for the current H–2B program are approved under OMB control number 1205–0466 (which includes ETA Form 9141 and ETA Form 9142). There are no burden adjustments that need to be made to the analysis. For an additional explanation of how the Department calculated the burden hours and related costs, the PRA package for information collection OMB control number 1205–0466 may be obtained at *http://www.RegInfo.gov.*

## III. Change of Effective Date of Wage Rule

The Department therefore proposes to amend the ''**DATES**'' section of the Wage Rule to read ''This Final Rule is effective [60 DAYS FROM THE DATE OF PUBLICATION OF THE FINAL RULE RESULTING FROM THIS RULEMAKING].''

Signed in Washington this 24th day of June, 2011.

**Jane Oates,**

*Assistant Secretary, Employment and Training Administration.*

[FR Doc. 2011–16310 Filed 6–24–11; 4:15 pm]

BILLING CODE 4510–FP–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket Nos. FDA–2011–C–0344 and FDA–2011–C–0463]**

### CooperVision, Inc.; Filing of Color Additive Petitions

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of petitions.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that CooperVision, Inc., has filed two petitions proposing that the color additive regulations be amended to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenlyamino] anthraquinone (C.I. Reactive Blue 246) and 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-methyl-2-propenoic)ester (C.I. Reactive Blue 247). The color additives are intended to be copolymerized with various monomers for use as colored contact lens materials.

**FOR FURTHER INFORMATION CONTACT:** *Regarding CAP 1C0291:* Judith Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1071.

*Regarding CAP 1C0292:* Teresa Croce, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 240–402–1281.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (section 721(d)(1) (21 U.S.C. 379e(d)(1))), notice is given that two color additive petitions (CAP 1C0291, Docket No. FDA–2011–C–0344 and CAP 1C0292, Docket No. FDA–2011–C–0463) have been filed by CooperVision, Inc., 6150 Stoneridge Mall Rd., Suite 370, Pleasanton, CA 94588. The petitions propose to amend the color additive regulations in 21 CFR part 73, subpart D, *Medical Devices,* to provide for the safe use of 1,4-bis[4-(2-methacryloxyethyl)phenstylamino] anthraquinone (C.I. Reactive Blue 246; CAS Reg. No. 121888–69–5) (CAP 1C0291) and 1,4-bis[(2-hydroxyethyl)amino]-9,10-anthracenedione bis(2-methyl-2-propenoic)ester (C.I. Reactive Blue 247; CAS Reg. No. 109561–07–1) (CAP 1C0292). The color additives are intended to be copolymerized with various monomers for use as colored contact lens materials.

The Agency has determined under 21 CFR 25.32(l) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 20, 2011.

**Mitchell A. Cheeseman,**

*Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.*

[FR Doc. 2011–16089 Filed 6–27–11; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Parts 100 and 165

**[Docket No. USCG–2011–0109]**

**RIN 1625–AA08; AA00**

### Special Local Regulations and Safety Zones; Recurring Events in Captain of the Port Boston Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend special local regulations (SLR) and to establish permanent safety zones in the Coast Guard Sector Boston Captain of the Port (COTP) Zone for annual recurring marine events. When these SLRs or safety zones are activated, and thus subject to enforcement, this rule would restrict persons and vessels from portions of waterway during annual events listed in TABLES 1 and 2 that pose a hazard to public safety. The revised SLRs and safety zones are proposed to reduce administrative overhead, expedite public notification of events, and to ensure the protection of the maritime public and event participants from the hazards associated with firework displays, boat races, and other marine events.

**DATES:** Comments and related material must be received by the Coast Guard on or before July 28, 2011.

Requests for public meetings must be received by the Coast Guard on or before July 5, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–0109 using any one of the following methods:

(1) *Federal e-Rulemaking 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 Petty Officer (PO) David Labadie of the Waterways Management Division, U.S. Coast Guard Sector Boston; telephone 617–223–3010, e-mail *David.J.Labadie@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

#### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

#### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0109), 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–2011–0109'' 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–2011–0109'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why 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**.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact PO David Labadie at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**Basis and Purpose**

The legal basis for the proposed rule is 33 U.S.C. 1226, 1231, 1233; 46 U.S.C. Chapter 454, 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones and SLRs.

Marine events are annually held on a recurring basis on the navigable waters within the Coast Guard COTP Boston Zone. These events include fireworks displays, swim events, and other marine events. In the past, the Coast Guard has established SLRs, regulated navigation areas, and safety zones for these events on a case by case basis to ensure the protection of the maritime public and event participants from the hazards associated with these marine events. Issuing individual regulations annually has proved to be administratively cumbersome.

This proposed rule will significantly relieve administrative overhead and consistently apprise the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. The TABLES in this proposed regulation list each recurring marine event requiring a regulated area as administered by the Coast Guard.

By establishing a permanent regulation containing these events, the Coast Guard will eliminate the need to establish temporary rules for events that occur on an annual basis. This provides opportunity for the public to comment while limiting the unnecessary burden of continually establishing temporary rules every year.

This rulemaking will amend, remove, and add regulations that better meet the Coast Guard's intended purpose of ensuring safety during these events.

The Coast Guard has also identified a number of events in 33 CFR 100 which would be more appropriately located in 33 CFR 165. This rule will amend local regulations contained in 33 CFR Part 100 to move firework displays to Part 165, a citation that better meets the Coast Guard's intended purpose of ensuring safety during these events.

The Coast Guard has promulgated safety zones or SLRs for these areas in the past, and has not received public comments or concerns regarding the impact to waterway traffic from these annually recurring events.

**Discussion of Proposed Rule**

The Coast Guard proposes to revise section 33 CFR 100.114, and to add sections 33 CFR 100.130, and 33 CFR 165.118. The proposed changes will remove nine outdated regulated areas and establish 43 new permanent regulated areas. The proposed rule will apply to each recurring marine event listed in the attached TABLES in the Coast Guard COTP Boston Zone. The TABLES provide the event name, sponsor, and type, as well as approximate dates and locations of the events. Additionally, the specific times, dates, regulated areas, and enforcement period for each event will be provided in a Notice of Enforcement published in the **Federal Register** and through Local Notice to Mariners (LNM) and Broadcast Notice to Mariners (BNTM) prior to each event. The particular size of the safety zones established for each event will be reevaluated on an annual basis in accordance with Navigational and Vessel Inspection Circular (NVIC) 07–02, Marine Safety at Firework Displays, the National Fire Protection Association Standard 1123, Code for Fireworks Displays (70-foot distance per inch of diameter of the fireworks mortars), and other pertinent regulations and publications.

This proposed regulation would prevent persons and vessels from transiting areas specifically designated as SLRs or safety zones during the periods of enforcement to ensure the protection of the maritime public and event participants from the hazards associated with listed marine events. Only event sponsors, designated participants, and official patrol vessels will be allowed to enter safety zones and SLR areas. Spectators and other vessels not registered as event participants may not enter the regulated areas without the permission of the COTP or the designated representatives.

**Regulatory Analyses**

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

**Regulatory Planning and Review**

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be minimal. Although this regulation may have some impact on the public, the potential impact will be minimized for the following reasons: Vessels will only be restricted from safety zones and SLR areas for a short duration of time unless otherwise noted; vessels may transit in portions of the affected waterway except for those areas covered by the proposed safety zones; the Coast Guard has promulgated safety zones or SLRs in accordance with 33 CFR Parts 100 and 165 for all event areas in the past and has not received notice of any negative impact caused by any of the safety zones or SLRs; notifications will also be made to the local maritime community by LNM and BNTM well in advance of the events.

The effect of this proposed action simply establishes locations or the approximate dates on which the existing regulations would be enforced and consolidates them within one regulation. No new or additional restrictions would be imposed on vessel traffic.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule will affect the following entities, some of which may be small entities: owners or operators of vessels intending to transit, fish, or anchor in the areas where marine events are being held. For the reasons outlined in the Regulatory Planning and Review section above, this rule would not have a significant impact on a substantial number of small entities.

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 PO David Labadie at the telephone number or e-mail address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice. 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 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 water activities including fireworks displays, swim events, and other marine events. This rule appears to be categorically excluded, under figure 2–1, paragraph (34)(h) of the Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects**

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and record-keeping requirements, Waterways.

*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 Parts 100 and 165 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

**Authority:** 33 U.S.C. 1233.

2. In § 100.114, remove the following entries in the ''Fireworks Display Table'' (along with the associated ''Massachusetts'' titles) as follows: 100.114(5.1) including the Table heading for ''MAY'', 100.114(7.6), 100.114(7.7), 100.114(7.9), 100.114(7.178), 100.114(7.23), 100.114(8.7), 100.114(9.1), 100.114(12.1).

3. Add a new § 100.130 to read as follows:

### § 100.130 Special Local Regulations; Recurring Annual Marine Events in Sector Boston Captain of the Port Zone

The following regulations apply to the marine events listed in TABLE 1. These regulations will be enforced for the duration of each event, on or about the dates indicated in TABLE 1. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be provided in a Notice of Enforcement published in the **Federal Register** and through Local Notice Mariners (LNM) and/or Broadcast Notice to Mariners prior to each event. Mariners should consult the **Federal Register** or their LNM to remain apprised of minor schedule or event changes. First Coast Guard District LNM can be found at: *http://www.navcen.uscg.gov/.* The Sector Boston Marine Events schedule can also be viewed electronically at *http://www.homeport.uscg.mil.* Although listed in the Code of Federal Regulations, sponsors of events listed in TABLE 1 are still required to submit a marine event permit application in accordance with 33 CFR 100.15.

(a) The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander (PATCOM). PATCOM may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Boston.

(b) Vessels may not transit the regulated areas without PATCOM approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(c) Spectators or other vessels shall not anchor, block, loiter, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through LNM, unless authorized by an official patrol vessel.

(d) PATCOM may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(e) PATCOM may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

(f) For all power boat races listed, vessels operating within the regulated area must be at anchor within a designated spectator area or moored to a waterfront facility in a way that will not interfere with the progress of the event.

(g) For all regattas, boat parades, and rowing and paddling boat races, vessels not associated with the event shall maintain a separation of at least 50 yards from the participants.

TABLE 1

| 3.0 | MARCH |
|---|---|
| 3.1 Hull Snow Row | • Event Type: Rowing Regatta.<br>• Sponsor: Hull Lifesaving Museum.<br>• Date: A one-day event on Saturday during the second weekend of March, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 12 p.m. to 13 p.m.<br>• Location: All waters of Hingham Bay, between Windmill Point and Sheep's Island within the following points (NAD 83):<br>42°18.3′ N, 070°55.8′ W.<br>42°18.3′ N, 070°55.3′ W.<br>42°16.6′ N, 070°54.9′ W. |

TABLE 1—Continued

| | |
|---|---|
| | 42°16.6′ N, 070°56.0′ W. |
| 6.0 | JUNE |
| 6.1 Sea-Doo Regional Championships | • Event Type: PWC Race.<br>• Sponsor: Toyota.<br>• Date: A two-day event on Saturday and Sunday during the first weekend of June, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 6:30 a.m. to 5 p.m. daily.<br>• Location: All waters of the Atlantic Ocean near Salisbury Beach, Salisbury, MA, within a 100-yard radius of the race course site located at position 42°51.5′ N, 070°48.5′ W (NAD 83). |
| 8.0 | AUGUST |
| 8.1 Haverhill River Run | • Event Type: Power Boat Race.<br>• Sponsor: Crescent Yacht Club and South Shore Outboard Association.<br>• Date: A two-day event on Saturday and Sunday during the last weekend of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 12 p.m. to 5 p.m.<br>• Location: All waters of the Merrimack River, between the Interstate 495 Highway Bridge, located at position 42°46.1′ N, 071°07.2′ W (NAD 83), and the Haverhill-Groveland SR97/113 Bridge, located at position 42°45.8′ N, 071°02.1′ W (NAD 83). |

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

5. Add a new § 165.118 to read as follows:

### § 165.118 Safety Zones; Recurring Annual Events held in Coast Guard Sector Boston Captain of the Port Zone.

The Coast Guard is establishing safety zones for the events listed in TABLE 2 below. These regulations will be enforced for the duration of each event, on or about the dates indicated in TABLE 2. Annual notice of the exact dates and times of the effective period of the regulations with respect to each event, the geographical description of each regulated area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will be provided in a Notice of Enforcement published in the **Federal Register** and through Local Notice Mariners (LNM) and/or Broadcast Notice to Mariners prior to each event. Mariners should consult the **Federal Register** or their LNM to remain apprised of minor schedule or event changes. First Coast Guard District LNM can be found at: *http://www.navcen.uscg.gov/*. The Sector Boston Marine Events schedule can also be viewed electronically at: *http://www.homeport.uscg.mil.* Although listed in the Code of Federal Regulations, sponsors of events listed in TABLE 2 are still required to submit a marine event permit application each year in accordance with 33 CFR 100.15.

(a) The Coast Guard may patrol each event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 VHF–FM (156.8 MHz) by the call sign ''PATCOM.'' Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the Captain of the Port, Sector Boston.

(b) Vessels may not transit the regulated areas without Patrol Commander approval. Vessels permitted to transit must operate at a no wake speed, in a manner which will not endanger participants or other crafts in the event.

(c) Spectators or other vessels shall not anchor, block, loiter, or impede the movement of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the LNM, unless authorized by an official patrol vessel.

(d) The Patrol Commander may control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the lawful directions issued. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(e) The Patrol Commander may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property. Such action may be justified as a result of weather, traffic density, spectator operation or participant behavior.

(f) For all fireworks displays listed below, the regulated area is that area of navigable waters within a 350-yard radius of the launch platform or launch site for each fireworks display, unless modified in the LNM at: *http://www.navcen.uscg.gov/.*

(g) For all swimming events listed, vessels not associated with the event shall maintain a distance of at least 100 yards from the participants.

TABLE 2

| | |
|---|---|
| 6.0 | JUNE |
| 6.1 Sand and Sea Festival Fireworks | • Event Type: Fireworks Display |

TABLE 2—Continued

| | |
|---|---|
| | • Sponsor: Salisbury Beach Partnership, Inc.<br>• Date: A one-night event on Saturday during the last weekend of June, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 10 p.m. to 10:30 p.m.<br>• Location: All waters of the Atlantic Ocean near Salisbury Beach within a 350-yard radius of the fireworks launch site located at position 42°50.6′ N, 70°48.4′ W (NAD 83). |
| 6.2 St. Peter's Fiesta Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: St. Peters Fiesta.<br>• Date: A one-night event on Saturday during the last weekend of June, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8 p.m. to 10 p.m.<br>• Location: All waters of Gloucester Harbor, Stage Fort Park, within a 350-yard radius of the fireworks launch site on the beach located at position 42°36.3′ N, 070°40.5′ W (NAD 83). |
| 6.3 Surfside Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Salisbury Beach Partnership and Chamber of Commerce.<br>• Date: Every Saturday from June through September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9:30 p.m. to 10:30 p.m.<br>• Location: All waters of the Atlantic Ocean near Salisbury Beach, MA, within a 350-yard radius of the fireworks barge located at position 42°50.6′ N, 070°48.4′ W (NAD 83). |
| 6.4 Cohasset Triathlon | • Event Type: Swim.<br>• Sponsor: Bill Burnett.<br>• Date: A one-day event on Sunday during the last weekend of June, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 08:30 a.m. to 10 a.m.<br>• Location: All waters in the vicinity of Cohasset Harbor around Sandy Beach, within the following points (NAD 83):<br>42°15.6′ N, 070°48.1′ W.<br>42°15.5′ N, 070°48.1′ W.<br>42°15.4′ N, 070°47.9′ W.<br>42°15.4′ N, 070°47.8′ W. |
| 7.0 | JULY |
| 7.1 City of Lynn 4th of July Celebration Fireworks | • Event Type: Firework Display.<br>• Sponsor: City of Lynn.<br>• Date: July 3rd, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 6 p.m. to 11 p.m.<br>• Location: All waters of Nahant Bay, within a 350-yard radius of the fireworks barge located at position 42°27.62′ N, 070°55.58′ W (NAD 83). |
| 7.2 Gloucester July 4th Celebration Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: The Gloucester Fund.<br>• Date: July 3rd, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 10:30 p.m. to 11 p.m.<br>• Location: All waters of Gloucester Harbor, Stage Fort Park, within a 350-yard radius of the fireworks launch site on the beach located at position 42°36.3′ N, 070°40.5′ W (NAD 83). |
| 7.3 Manchester by the Sea Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Manchester Parks and Recreation Department.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8:30 p.m. to 10 p.m.<br>• Location: All waters of Manchester Bay within a 350-yard radius of the fireworks launch site barge located at position 42°35.03′ N, 070°45.52′ W (NAD 83). |
| 7.4 Weymouth 4th of July Celebration Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Weymouth 4th of July Committee.<br>• Date: Friday or Saturday during the first weekend before July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8 p.m. to 10:30 p.m. |

TABLE 2—Continued

| | |
|---|---|
| | • Location: All waters of Weymouth Fore River, within a 350-yard radius of the fireworks launch site located at position 42°15.5′ N, 070°56.1′ W (NAD 83) |
| 7.5 Beverly 4th of July Celebration Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Beverly Harbormaster.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 11 p.m.<br>• Location: All waters of Beverly Harbor within a 350-yard radius of the fireworks launch barge located at position 42°32.62′ N, 070°52.15′ W (NAD 83). |
| 7.6 Beverly Farms 4th of July Celebration Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Farms-Pride 4th of July Committee.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 9:30 p.m.<br>• Location: All waters of Manchester Bay within a 350-yard radius of the fireworks launch site near West Beach located at position 42°33.84′ N, 070°48.5′ W (NAD 83). |
| 7.7 Boston Pops Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Boston 4 Celebrations.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8:30 p.m. to 11 p.m.<br>• Location: All waters of the Charles River within a 350-yard radius of the fireworks barges located in the vicinity of position 42°21.47′ N, 071°05.03′ W (NAD 83). |
| 7.8 City of Salem Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: City of Salem.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 10 p.m.<br>• Location: All waters of Salem Harbor, within a 350-yard radius of the fireworks launch site located on Derby Wharf at position 42°31.15′ N, 070°53.13′ W (NAD 83). |
| 7.9 Marblehead 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Marblehead.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8:30 p.m. to 9:30 p.m.<br>• Location: All waters of Marblehead Harbor within a 350-yard radius of the fireworks launch site located at position 42°30.34′ N, 070°50.13′ W (NAD 83). |
| 7.10 Plymouth 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: July 4 Plymouth, Inc.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 10 p.m.<br>• Location: All waters of Plymouth Harbor within a 350-yard radius of the fireworks launch site located at position 42°57.3′ N, 070°38.3′ W (NAD 83). |
| 7.11 Town of Nahant Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Nahant.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 11 p.m.<br>• Location: All waters of Nahant Harbor within a 350-yard radius of the fireworks launch site on Bailey′ s Hill Park located at position 42°25.1′ N, 070°55.8′ W (NAD 83). |
| 7.12 Town of Revere Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Revere.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 11 p.m. |

TABLE 2—Continued

| | |
|---|---|
| | • Location: All waters of Broad Sound, within a 350-yard radius of the fireworks launch site located at Revere Beach at position 42°24.5′ N, 070°59.47′ W (NAD 83). |
| 7.13 Yankee Homecoming Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Yankee Homecoming.<br>• Date: A one-day event on Saturday during the last weekend of July or first weekend of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 10 p.m.<br>• Location: All waters of the Merrimack River, within a 350-yard radius of the fireworks launch site located at position 42°48.97′ N, 070°52.68′ W (NAD 83). |
| 7.14 Hingham 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Hingham Lions Club.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8 p.m. to 10 p.m.<br>• Location: All waters within a 350-yard radius of the beach on Button Island located at position 42°15.07′ N, 070°53.03′ W (NAD 83). |
| 7.15 Ipswich Independence Day Celebration Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Trustees of the Foundation.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 10 p.m.<br>• Location: All waters of Ipswich Bay within a 350-yard radius of the beach located at position 42°41.43′ N, 070°46.49′ W (NAD 83). |
| 7.16 Salisbury Maritime Festival Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Salisbury Beach Partnership, Inc.<br>• Date: A one-day event on Saturday during the third weekend of July, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 10 p.m. to 10:30 p.m.<br>• Location: All waters of the Atlantic Ocean near Salisbury Beach within a 350-yard radius of the fireworks launch site located at position 42°50.6′ N, 070°48.4′ W (NAD 83). |
| 7.17 Salisbury 4th of July Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Salisbury Chamber of Commerce.<br>• Date: July 4th, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9:30 p.m. to 11 p.m.<br>• Location: All waters of the Atlantic Ocean near Salisbury Beach within a 350-yard radius of the fireworks launch site located at position 42°50.6′ N, 070°48.4′ W (NAD 83). |
| 7.18 Charles River 1-Mile Swim | • Event Type: Swim.<br>• Sponsor: Charles River Swimming Club, Inc.<br>• Date: A one-day event held on the second Sunday in July, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8 a.m. to 9 a.m.<br>Location: All waters of Charles River between the Longfellow Bridge and the Harvard Bridge within the following points (NAD 83):<br>42°21.7′ N, 071°04.8′ W.<br>42°21.7′ N, 071°04.3′ W.<br>42°22.2′ N, 071°07.3′ W.<br>42°22.1′ N, 070°07.4′ W. |
| 7.19 Swim Across America Boston | • Event Type: Swim.<br>• Sponsor: Swim Across America.<br>• Date: A one-day event on Friday during the third week of July, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7 a.m. to 3 p.m.<br>• Location: All waters of Boston Harbor between Rowes Warf and Little Brewster Island within the following points (NAD 83):<br>42°21.4′ N, 071°03.0′ W.<br>42°21.5′ N, 071°02.9′ W.<br>42°19.8′ N, 070°53.6′ W.<br>42°19.6′ N, 070°53.4′ W. |
| 7.20 Joppa Flats Open Water Mile | • Event Type: Swim.<br>• Sponsor: Newburyport YMCA. |

TABLE 2—Continued

| | |
|---|---|
| | • Date: A one-day event on Saturday during the last week of July, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 3 p.m. to 5 p.m.<br>• Location: All waters of the Merrimack River located in the Joppa Flats within the following points (NAD 83):<br>42°48.6′ N, 070°50.9′ W.<br>42°48.6′ N, 070°49.4′ W.<br>42°48.0′ N, 070°49.4′ W.<br>42°48.0′ N, 070°57.0′ W. |
| 7.21 Swim Across America Nantasket Beach | • Event Type: Swim.<br>• Sponsor: Swim Across America.<br>• Date: A one-day event on Sunday during the third week of July, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7 a.m. to 9:30 a.m.<br>• Location: All waters of Massachusetts Bay near Nantasket Beach within the following points (NAD 83):<br>42°16.7′ N, 070°51.9′ W.<br>42°16.9′ N, 070°51.3′ W.<br>42°16.3′ N, 070°50.5′ W.<br>42°16.1′ N, 070°51.0′ W. |
| 8.0 | AUGUST |
| 8.1 Beverly Homecoming Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Beverly Harbormaster.<br>• Date: A one-day event on Sunday during the first weekend of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 11 p.m.<br>• Location: All waters of Beverly Harbor within a 350-yard radius of the fireworks barge located at position 42°32.62′ N, 070°52.15′ W (NAD 83). |
| 8.2 Celebrate Revere Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Town of Revere.<br>• Date: A one-day event on Saturday during the first weekend of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 11 p.m.<br>• Location: All waters within a 350-yard radius of the fireworks launch site located at Revere Beach at position 42°24.5′ N, 070°59.47′ W (NAD 83). |
| 8.3 Gloucester Fisherman Triathlon | • Event Type: Swim.<br>• Sponsor: Gloucester Fisherman Athletic Association.<br>• Date: A one-day event on Sunday during the Second week of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7:30 a.m. to 8:30 a.m.<br>• Location: All waters of Western Harbor, within the following points (NAD 83):<br>42°36.6′ N, 070°40.3′ W.<br>42°36.5′ N, 070°40.2′ W.<br>42°36.4′ N, 070°40.7′ W.<br>42°36.5′ N, 070°40.7′ W. |
| 8.4 Urban Epic Triathlon | • Event Type: Swim.<br>• Sponsor: Tri-Maine/Urban Epic Events.<br>• Date: A one-day event on Sunday during the second week of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7 a.m. to 10 a.m.<br>• Location: All waters of Dorchester Bay within the following points (NAD 83):<br>42°18.9′ N, 071°02.0′ W.<br>42°18.9′ N, 071°01.8′ W.<br>42°19.5′ N, 071°01.8′ W.<br>42°19.8′ N, 071°02.2′ W. |
| 8.5 Celebrate the Clean Harbor Swim | • Event Type: Swim.<br>• Sponsor: New England Marathon Swimming Association.<br>• Date: A one-day event on Saturday during the third week of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 a.m. to 12 p.m.<br>• Location: All waters of Gloucester Harbor within the following points (NAD 83):<br>42°35.3′ N, 070°39.8′ W.<br>42°35.9′ N, 070°39.2′ W. |

TABLE 2—Continued

| | |
|---|---|
| | 42°35.9′ N, 070°39.8′ W.<br>42°35.3′ N, 070°40.2′ W. |
| 8.6 Boston Light Swim | • Event Type: Swim.<br>• Sponsor: Boston Light Swim.<br>• Date: A one-day event on Sunday during the second week of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8 a.m. to 1 p.m.<br>• Location: All waters of Boston Harbor between the L Street Bath House and Little Brewster Island within the following points (NAD 83):<br>42°19.7′ N, 071°02.2′ W.<br>42°19.9′ N, 071°10.7′ W.<br>42°19.8′ N, 070°53.6′ W.<br>42°19.6′ N, 070°53.4′ W. |
| 8.7 Sharkfest Swim | • Event Type: Swim.<br>• Sponsor: Enviro-Sports Productions, Inc.<br>• Date: A one-day event on Sunday during the last week of August, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 10 a.m. to 12 p.m.<br>• Location: All waters of Old Harbor from near Columbia Point to Carson Beach within the following points (NAD 83):<br>42°19.1′ N, 071°02.2′ W.<br>42°19.2′ N, 071°01.9′ W.<br>42°19.7′ N, 071°02.8′ W.<br>42°19.4′ N, 071°02.9′ W. |
| 9.0 | SEPTEMBER |
| 9.1 Gloucester Schooner Festival Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Stage Fort Park Gloucester.<br>• Date: A one-day event on Saturday during the first weekend of September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7 p.m. to 11 p.m.<br>• Location: All waters of Gloucester Harbor within a 350-yard radius of the launch site on the beach located at position 42°36.3′ N, 070°40.5′ W (NAD 83). |
| 9.2 Plymouth Yacht Club Celebration Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Plymouth Yacht Club.<br>• Date: A one-day event on Saturday during the first weekend of September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 9 p.m. to 11 p.m.<br>• Location: All waters of Plymouth Harbor within a 350-yard radius of the fireworks barge located at position 41°22.3′ N, 070°39.4′ W (NAD 83). |
| 9.3 Somerville Riverfest Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Federal Realty Investment Trust.<br>• Date: A one-day event on Saturday during the last weekend of September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7:30 p.m. to 10 p.m.<br>• Location: All waters of the Mystic River within a 350-yard radius of the fireworks barge located at position 42°23.9′ N, 071°04.8′ W (NAD 83). |
| 9.4 Mayflower Triathlon | • Event Type: Swim.<br>• Sponsor: Fast Forward Race Management.<br>• Date: A one-day event on Saturday during the first weekend of September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 10 a.m. to 11 a.m.<br>• Location: All waters of Plymouth Inner Harbor within the following points (NAD 83):<br>41°58.3′ N, 070°40.6′ W.<br>41°58.7′ N, 070°39.1′ W.<br>41°56.8′ N, 070°37.8′ W.<br>41°57.1′ N, 070°39.2′ W. |
| 9.5 Plymouth Rock Triathlon | • Event Type: Swim.<br>• Sponsor: Fast Forward Race Management.<br>• Date: A one-day event on Sunday during the first weekend of September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 7 a.m. to 9:30 a.m. |

TABLE 2—Continued

| | |
|---|---|
| | • Location: All waters of Plymouth Inner Harbor within the following points (NAD 83):<br>41°58.3′ N, 070°40.6′ W.<br>41°58.7′ N, 070°39.1′ W.<br>41°56.8′ N, 070°37.8′ W.<br>41°57.1′ N, 070°39.2′ W. |
| 9.6 Duxbury Beach Triathlon | • Event Type: Swim.<br>• Sponsor: Duxbury Beach Triathlon.<br>• Date: A one-day event on Saturday during the third weekend of September, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 08:30 a.m. to 09:30 a.m.<br>• Location: All waters of Duxbury Bay on the south side of the Powder Point Bridge within the following points (NAD 83):<br>42°02.8′ N, 070°39.1′ W.<br>42°03.0′ N, 070°38.7′ W.<br>42°02.8′ N, 070°38.6′ W.<br>42°02.7′ N, 070°39.0′ W. |
| 10.0 | OCTOBER |
| 10.1 Intercontinental Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: Intercontinental Hotel.<br>• Date: A one-day event on Sunday during the last weekend of October, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 8:30 p.m. to 10:30 p.m.<br>• Location: All waters of Boston Inner Harbor within a 350-yard radius of the fireworks barge located at position 42°21.2′ N, 071°03′ W (NAD 83). |
| 12.0 | DECEMBER |
| 12.1 First Night Boston Fireworks | • Event Type: Fireworks Display.<br>• Sponsor: First Night, Inc.<br>• Date: A one-day event on New Year′ s Eve, as specified in the USCG District 1 Local Notice to Mariners.<br>• Time: 11:30 p.m. to 12:30 a.m.<br>• Location: All waters of Boston Inner Harbor within a 350-yard radius of the fireworks barge located at position 42°21.7′ N, 071°02.6′ W (NAD 83). |

Dated: 21 April 2011.

**John N. Healey,**

*Captain, U.S. Coast Guard, Captain of the Port Boston.*

[FR Doc. 2011–15784 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0001]**

**RIN 1625–AA00**

## Safety Zone; Myrtle Beach Triathlon, Atlantic Intracoastal Waterway, Myrtle Beach, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina during the Myrtle Beach Triathlon. The Myrtle Beach Triathlon, which is comprised of a series of triathlon races, is scheduled to take place on Saturday, October 8, 2011 and Sunday, October 9, 2011. The temporary safety zone is necessary for the safety of race participants, participant vessels, spectators, and the general public during the swim portions of the triathlon races. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Charleston or a designated representative.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 5, 2011. Requests for public meetings must be received by the Coast Guard on or before July 14, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–0001 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 Chief Warrant Officer Robert B. Wilson, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843–740–3180, e-mail *Robert.B.Wilson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V.

Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

## Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

## Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0001), 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–2011–0001'' 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–2011–0001'' 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 July 14, 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 legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to ensure the safety of race participants, participant vessels, spectators, and the general public during the swim portion of the triathlon races.

## Discussion of Proposed Rule

On October 8 and 9, 2011, the Myrtle Beach Triathlon will be held in Myrtle Beach, South Carolina. This event will be comprised of a series of triathlon races. Approximately 2,500 individuals are scheduled to compete in the event.

The proposed rule would establish a temporary safety zone around the swim area of the Myrtle Beach Triathlon on the Atlantic Intracoastal Waterway in Myrtle Beach, South Carolina. The temporary safety zone would be enforced daily from 6 a.m. until 11:59 a.m. on October 8, 2011 through October 9, 2011. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Charleston via telephone at 843–740–7050, or a designated representative via VHF radio on channel 16.

## 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.

## Executive Order 12866 and Executive Order 13563

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, 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 economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would only be enforced for a total of 12 hours; (2) the safety zone would encompass only a small portion of the navigable waterway; (3) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Charleston or a designated representative; and (5) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

## Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered

whether this 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 intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Intracoastal Waterway encompassed within the safety zone from 6 a.m. on October 8, 2011 through 11:59 a.m. on October 9, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Chief Warrant Officer Robert B. Wilson, Sector Charleston Office of Waterways Management, Coast Guard; telephone 843–740–3180, e-mail *Robert.B.Wilson@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 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 effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This 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 establishing a temporary safety zone as described in figure 2–1, paragraph (34)(g), of the Instruction. 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. Add a temporary § 165.T07–0001 to read as follows:

**§ 165.T07–0001 Safety Zone; Myrtle Beach Triathlon, Atlantic Intracoastal Waterway, Myrtle Beach, SC.**

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Atlantic Intracoastal Waterway encompassed within an imaginary line connecting the following points: starting at Point 1 in position 33°45′35″ N, 78°49′42″ W; thence southeast to Point 2 in position 33°45′31″ N, 78°49′39″ W; thence northeast to Point 3 in position 33°45′57″ N, 78°48′57″ W; thence northeast to Point 4 in position 33°46′00″ N, 78°48′57″ W; thence southwest back to origin. All coordinates are North American Datum 1983.

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

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

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Charleston by telephone at 843–740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date and Enforcement Periods.* This rule is effective from 6 a.m. on October 8 through 11:59 a.m. on October 9, 2011. This rule will be enforced daily from 6 a.m. until 11:59 a.m. on October 8, 2011 through October 9, 2011.

Dated: June 16, 2011.

**M. F. White,**

*Captain, U.S. Coast Guard, Captain of the Port Charleston.*

[FR Doc. 2011–16098 Filed 6–27–11; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

**[EPA–HQ–OAR–2010–0133; FRL–9425–6]**

**RIN 2060–AQ76**

## Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards; Public Hearing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Announcement of public hearing.

**SUMMARY:** The EPA is announcing a public hearing to be held for the proposed rule ''Regulation of Fuels and Fuel Additives: 2012 Renewable Fuel Standards,'' which EPA intends to publish separately in the **Federal Register** at a future date. The hearing will be held in Washington, DC on July 12, 2011.

In a separate notice of proposed rulemaking EPA will be proposing amendments to the renewable fuel standard program regulations to establish annual standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced in the U.S. or imported in the ear 2012. In addition, the separate proposal includes a proposed cellulosic biofuel applicable volume for 2012 and an applicable volume of biomass-based diesel that would apply in 2013.

**DATES:** The public hearing will be held on July 12, 2011 at the location noted below under **ADDRESSES.** The hearing will begin at 9 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed under **FOR FURTHER INFORMATION CONTACT** by July 1, 2011. Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The hearing will be held at the following location: Washington Marriott at Metro Center, 775 12th Street NW., Washington, DC 20005–3901.

When the proposed rule is published in the **Federal Register,** a complete set of documents related to the proposal will be available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room 3334, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents will also be available through the electronic docket system at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4131; Fax number: (734) 214–4816; E-mail address: *macallister.julia@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The proposal for which EPA is holding the public hearing will be published separately in the **Federal Register.**

*Public Hearing:* The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposal (which can be found at *http://www.epa.gov/otaq/fuels/renewablefuels/index.htm).* The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be received by the last day of the comment period, as specified in the proposal.

The public hearing will be held on July 12, 2011 at the location noted under **ADDRESSES,** and will begin at 9 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Those wishing to testify at the public hearing should register in advance by notifying the contact person listed under **FOR FURTHER INFORMATION CONTACT** by July 1, 2011.

A verbatim transcript of the hearing and copies of written statements will be included in the rulemaking docket.

**How can I get copies of this document, the proposed rule, and other related information?**

The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0133. The EPA has also developed a Web site for the RFS program, including the notice of proposed rulemaking, at the address given above. Please refer to the notice of proposed rulemaking for detailed information on accessing information related to the proposal.

Dated: June 16, 2011.

**Margo Tsirigotis Oge,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2011–16144 Filed 6–27–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 8, 12, 15, 42, and 49

**[FAR Case 2009–042; Docket 2011–0087; Sequence 1]**

**RIN 9000–AM09**

## Federal Acquisition Regulation; Documenting Contractor Performance

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to provide Governmentwide standardized past performance evaluation factors and performance ratings, and to require all past performance information be entered into the Contractor Performance Assessment Reporting System (CPARS), the Governmentwide past performance feeder system.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before August 29, 2011 to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments in response to FAR Case 2009–042 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–042'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2009–042.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2009–042'' on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

*Instructions:* Please submit comments only and cite FAR Case 2009–042, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis E. Glover, Sr., Procurement Analyst, at (202) 501–1448 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2009–042.

**SUPPLEMENTARY INFORMATION:**

### I. Background

DoD, GSA, and NASA are proposing to amend the FAR because the Office of Federal Procurement Policy (OFPP) requested that FAR parts 8, 12, 15, 42, and 49 be revised to include recommendations from the Government Accountability Office Report GAO–09–374, *Better Performance Information Needed to Support Agency Contract Award Decisions* and OFPP's memorandum dated July 29, 2009, Improving the Use of Contractor Performance Information. These changes provide Governmentwide standardized evaluation factors and rating scales for the evaluation of contractor performance in the FAR. The FAR change also incorporates policy guidance outlined in OFPP's memorandum dated January 21, 2011, Improving Contractor Past Performance Assessement: Summary of the Office Of Federal Procurement Policy Review, and Strategies for Improvement. Up until September 30, 2010, agencies had the option of using various past performance reporting feeder systems such as the Department of Health and Human Services (DHHS), National Institutes of Health's (NIH) Contractor Performance System (CPS), the Department of Defense's Contractor Performance Assessment Reporting System (CPARS), and other agency systems to report their evaluations into the Governmentwide Past Performance Information Retrieval System (PPIRS), each of which included different evaluation factors and rating scales. With the need to standardize past performance reporting practices and to enhance reporting metrics, the Government transitioned to one past performance feeder system, CPARs. DHHS/NIH, OFPP, and the DoD CPARS program office reached a decision not to revamp the CPS and to officially end service to all customers on September 30, 2010. See NIH's complete message on their Web site at *https://cps.nih.gov.* Agencies using CPS transitioned to CPARS. Agencies currently using other systems must prepare to transition to CPARS in the near future. Agencies' migration to CPARS, one feeder system into PPIRS, presented an opportune time to standardize the evaluation factors and rating scales for the evaluation of contractor performance.

The proposed FAR revisions include the following:

(1) Addition of language in FAR 42.1501 to provide for the use of CPARS as the Governmentwide past performance information feeder system into PPIRS.

(2) Revision of FAR 42.1502 to move the language in paragraph (a) ''The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements'', to FAR 42.1503(b).

(3) Addition of language in FAR 42.1503 to provide for Governmentwide standard evaluation factors and a five scale rating system, which reflects the rating definitions contained in the CPARS Policy Guide. Also, incentive-fee and award-fee contract performance ratings will be entered into CPARS.

(4) References to FAR part 42 changes in FAR part 8, 12, and 15.

This proposed rule is a follow on to two previous FAR rules FAR Case 2006–022, Contractor Performance Information (74 FR 31557) published July 1, 2009, and FAR Case 2008–016, Termination for Default Reporting (75 FR 60258) published September 29, 2010. FAR Case 2006–022 established thresholds for contractor performance assessments. FAR Case 2008–016 required the submission of contractor performance assessments for defective cost or pricing data and terminations for default or cause.

## II. Executive Orders 12866 and 13563

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

## III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed rule codifies in the FAR existing guidelines and practices. The evaluation factors and rating system language proposed are currently that which are used by Federal agencies. There are no new requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009–042), in correspondence.

## IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## List of Subjects in 48 CFR Parts 8, 12, 15, 42, and 49

Government procurement.

Dated: June 22, 2011.

**Millisa Gary,**

*Acting Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8, 12, 15, 42, and 49 as set forth below:

1. The authority citation for 48 CFR parts 8, 12, 15, 42, and 49 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

### 8.406–4 [Amended]

2. Amend section 8.406 by removing from the last sentence of paragraph (e) ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

### 8.406–7 [Amended]

3. Amend section 8.406–7 by removing ''evaluation'' and adding ''annual evaluation'' in its place.

## PART 12—ACQUISITION OF COMMERCIAL ITEMS

### 12.403 [Amended]

4. Amend section 12.403 by removing from the last sentence of paragraph (c)(4) ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

## PART 15—CONTRACTING BY NEGOTIATION

### 15.407–1 [Amended]

5. Amend section 15.407–1 by removing from the fifth sentence of paragraph (d) ''42.1503(f)'' and adding ''42.1503(h) in its place.

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### 42.1500 [Amended]

6. Amend section 42.1500 by removing from the last sentence ''However,'' and adding ''See subpart 16.4. However,'' in its place.

7. Revise section 42.1501 to read as follows:

### 42.1501 General.

(a) Past performance information (including the ratings and supporting narratives) is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of—

(1) Conforming to contract requirements and to standards of good workmanship;

(2) Forecasting and controlling costs;

(3) Adherence to contract schedules, including the administrative aspects of performance;

(4) History of reasonable and cooperative behavior and commitment to customer satisfaction;

(5) Reporting into databases (see subparts 4.14 and 4.15, and reporting requirements of 9.104–7);

(6) Integrity and business ethics; and

(7) Business-like concern for the interest of the customer.

(b) All past performance information shall be entered into the Contractor Performance Assessment Reporting System (CPARS), the Governmentwide assessment reporting tool for all past performance reports. Instructions for submitting assessments into CPARS are available at *http://www.cpars.gov/.*

(c) Agencies shall monitor their compliance with the past performance reporting requirements in 42.1502.

8. Amend section 42.1502 by—

a. Removing the last sentence from paragraph (a);

b. Revising paragraph (b);

c. Revising the first sentence of paragraph (c);

d. Removing from paragraph (d) the words ''task order and delivery order'' and adding ''task-order and delivery-order'' in its place; and

e. Removing from paragraph (i) ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

The revised text reads as follows:

### 42.1502 Policy.

* * * * *

(b) Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare, at a minimum, an annual evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold.

(c) Agencies shall prepare an annual evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task-order contract or a delivery-order contract awarded by another agency (*i.e.* Governmentwide acquisition contract or multi-agency contract). * * *

* * * * *

9. Revise section 42.1503 to read as follows:

### 42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Agency procedures shall identify and assign past performance

evaluation roles and responsibilities to those individuals responsible for preparing interim and final performance evaluations (*e.g.,* contracting officer representatives and program managers). If agency procedures do not specify the individuals responsible for past performance evaluation duties, the contracting officer will remain responsible for this function. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, audit office, end users of the product or service, and any other technical or business advisor, as appropriate. Interim evaluations shall be prepared on an annual basis, in accordance with agency procedures.

(b)(1) The evaluation report should reflect how the contractor performed. The report should include clear relevant information that accurately depicts the contractor's performance, and be based on objective facts supported by program and contract performance data. The evaluations should be tailored to the contract type, size, content, and complexity of the contractual requirements.

(2) Evaluation factors for each assessment shall include, at a minimum, the following:

(i) Technical or Quality.

(ii) Cost Control (as applicable).

(iii) Schedule/Timeliness.

(iv) Management or Business Relations.

(v) Small Business Subcontracting (as applicable).

(3) These evaluation factors, including subfactors, may be tailored, however, each factor and subfactor shall be evaluated and supporting narrative provided.

(4) Each evaluation factor, as listed in paragraph (b)(2) of this section, shall be rated in accordance with a five scale rating system (*e.g.,* exceptional, very good, satisfactory, marginal, and unsatisfactory). Rating definitions shall reflect those contained in the CPARS Policy Guide available at *http://www.cpars.gov/.*

(c)(1) When the contract provides for incentive fees, the incentive-fee contract performance evaluation shall be entered into CPARS. (See 16.401(f).)

(2) When the contract provides for award fee, the award fee-contract performance adjectival rating as described in 16.401(e)(3) shall be entered into CPARS.

(d) Agency evaluations of contractor performance, including both negative and positive evaluations, prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation.

(e) Agencies shall require—

(1) Performance issues be documented promptly during contract performance to ensure critical details are included in the evaluation;

(2) The award fee determination, if required, align with the contractor's performance and be reflected in the evaluation;

(3) Timely assessments and quality data (see the quality standards in the CPARS Policy Guide at *http://www.cpars.gov/*) in the contractors past performance evaluation; and

(4) Frequent assessment (*e.g.,* monthly or quarterly) of agency compliance with the reporting requirements in 42.1502, so agencies can readily identify delinquent past performance reports and monitor their reports for quality control.

(f) Agencies shall prepare and submit all past performance reports electronically into the CPARS at *http://www.cpars.gov/.* These reports are transmitted to the Past Performance Information Retrieval System (PPIRS) at *http://www.ppirs.gov.* Past performance reports for classified contracts and special access programs shall not be reported in CPARS, but will be reported as stated in this subpart and in accordance with agency procedures. Agencies shall ensure that appropriate management and technical controls are in place to ensure that only authorized personnel have access to the data and the information safeguarded in accordance with 42.1503(b).

(g) Agencies shall use the past performance information in PPIRS that is within the last three years (six for construction and architect-engineer contracts) and information contained in the Federal Awardee Performance and Integrity Information System (FAPIIS), *e.g.,* termination for default or cause.

(h) *Other contractor performance information.* (1) Agencies shall ensure information is reported in the FAPIIS module of CPARS within 3 working days after a contracting officer—

(2) Agencies shall establish CPARS focal points who will register users to report data into the FAPIIS module of CPARS (available at *http://www.cpars.gov/,* then select FAPIIS).

(3) The primary duties of the CPARS focal point is to administer CPARS and FAPIIS access. Agencies must also establish PPIRS group managers. The primary duties of the PPIRS group managers are to grant or deny access to PPIRS. The CPARS Reference Material, on the Web site, includes reporting instructions.

## PART 49—TERMINATION OF CONTRACTS

### 49.402–8 [Amended]

10. Amend section 49.402–8 by removing ''42.1503(f)'' and adding ''42.1503(h)'' in its place.

[FR Doc. 2011–16169 Filed 6–27–11; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R4–ES–2009–0020; MO 92210–0–0008–B]**

## Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List *Castanea pumila* var. *ozarkensis* as Threatened or Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 12-month finding on a petition to list *Castanea pumila* var. *ozarkensis* (Ozark chinquapin), a tree, as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). After review of all available scientific and commercial information, we find that listing Ozark chinquapin is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to Ozark chinquapin or its habitat at any time.

**DATES:** The finding announced in this document was made on June 28, 2011.

**ADDRESSES:** This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R4–ES–2009–0020]. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Boggs, Field Supervisor, Arkansas Ecological Services Field Office, 110 South Amity Road, Suite 300, Conway, AR 72032 (see **ADDRESSES**); by telephone (501–513–4470) or by facsimile (501–

513–4480). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In this finding, we will determine that the petitioned action is: (1) Not warranted, (2) warranted, or (3) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

### *Previous Federal Actions*

On July 1, 1975 (40 FR 27823), *Castanea pumila* var. *ozarkensis* (Ozark chinquapin; see Taxonomy and Species Description section) was included as one of the 3,000 plant species under status review. It was proposed or reviewed by the Service for listing as an endangered species under the Act in 1976 (June 16, 1976, 41 FR 24524). However, we did not finalize that proposed rule because of subsequent amendments to the Act (U.S. Fish and Wildlife Service 1988). Ozark chinquapin became a category 2 candidate on December 15, 1980 (45 FR 82480). It was again advertised as a category 2 candidate on September 27, 1985 (50 FR 39526). The status changed on February 21, 1990 (55 FR 6184), to a category 1 candidate species. On September 30, 1993 (58 FR 51144), the status changed back to a category 2 candidate species for listing until the category 2 list was eliminated in 1996 (61 FR 7596). A category 2 species was a species for which we had information indicating that a proposal to list as threatened or endangered under the Act may be appropriate but for which additional information on biological viability and threat was needed to support the preparation of a proposed rule.

On January 6, 2004, we received a petition, dated December 28, 2003, from Mr. Joe Glenn of Hodgen, OK, requesting that the Ozark chinquapin be listed under the Act as a candidate species. We interpreted the request to mean threatened or endangered. The petition clearly identified itself as such and included the requisite identification information for the petitioner, as required by the Code of Federal Regulations (CFR) at 50 CFR 424.14(a). The petition contained supporting information regarding the species' ecology, threats to the species, and survey and occurrence data for a portion of the Ouachita Highlands in southeastern Oklahoma. We acknowledged receipt of the petition in a February 2, 2004, letter to Mr. Glenn. In that letter, we advised the petitioner that, due to a significant number of court orders and settlement agreements in Fiscal Year 2004, we would not be able to address the petitioned request at that time.

On June 1, 2010, we published a 90-day finding that the petition presented substantial information that listing the Ozark chinquapin may be warranted and initiated a status review of the species (75 FR 30313). This notice constitutes the 12-month finding on the December 28, 2003, petition to list Ozark chinquapin as threatened or endangered.

### *Species Information*

#### Taxonomy and Species Description

*Castanea pumila* var. *ozarkensis* (Ozark chinquapin) was first identified as a separate species (*Castanea ozarkensis*) by Ashe (1923, p. 60). Ashe described the range of the species as ''north of the Arkansas River and westward from Center Ridge, Arkansas, northward to southwestern Missouri and westward to the Valley of the White River'' (Tucker 1983, p. 2). Ashe (1923, p. 361) also described a second species, *Castanea arkansana,* in Arkansas. Ashe (1924, p. 45, in Tucker 1983) reduced *Castanea arkansana* to varietal status as *Castanea ozarkensis* var. *arkansana.* Little (1953, p. 2, in Tucker 1983) reduced *Castanea arkansana* to synonymy with *Castanea ozarkensis.* Tucker (1975, p. 2, in Tucker 1983) reduced *Castanea ozarkensis* to a variety of the more common *Castanea pumila* (*Castanea pumila* var. *ozarkensis* (Ashe) Tucker) and concurred with Little's (1953) treatment of *Castanea arkansana.* Johnson (1988, p. 43) published a revision of the *Castanea* section (sect.) with *Balanocastanion* concurring as Tucker's reduction of *Castanea ozarkensis* to a variety of *Castanea pumila.* Tucker's reduction is further supported in Smith's *Keys to the Flora of Arkansas* (1994, p. 54), as well as in current scientific literature that references the tree.

Ozark chinquapin is a tree in the beech family (Fagaceae). Ozark chinquapin has leaves 10 to 25 centimeters (cm) (4 to 10 inches (in)) long, broadly lanceolate (tapering to a point at the apex and sometimes at the base) to elliptical, with coarse teeth that are 2.5 to 9 millimeters (mm) (0.1 to 0.35 in) long with whitish or yellowish-cream stellate (star-shaped) hairs on the lower surfaces. The bark is light brown to reddish brown or grayish, with broad flat ridges that break into loose plate-like scales. The fruits are subglobose (round but not perfectly spherical) to ovoid nuts up to approximately 20 mm (0.8 in) long, enclosed in a spiny burr. Burrs are solitary or in groups of two or three. The subspecies is distinguished from *Castanea pumila* var. *pumila* (Allegheny chinquapin) by the larger leaf size, larger teeth, and larger fruit, which also have hairs (Steyermark 1963, p. 531; Smith 1994, p. 54).

Ozark chinquapin was historically a medium-sized tree species that once grew to 20 meters (m) (65 feet (ft)), although usually much shorter, but now, as a result of chestnut blight, it rarely reaches heights of more than 9 m (30 ft). Trunks develop from stump sprouts as well as from seeds, but in recent years, new growth is generally from sprouts. Trees reaching the age to produce fruit (4 to 5 years; Paillet 1993, p. 262) are still common (Arkansas Natural Heritage Commission (ANHC) 2010, personal communication (pers. comm.)). Ecologically the tree has taken on the character of an understory shrub similar to *Castanea dentata* (American chestnut) (Paillet 2010, pers. comm.) due to the fungus parasite (*Cryphonectria parasitica*) that is responsible for the chestnut blight disease, which has adversely affected many *Castanea* spp. populations in the United States (Tucker 1983, pp. 8–9; Steyermark 1963, p. 531). However, Paillet (1991, p. 10; 1993, pp. 261–262) noted an area on the Ozark National Forest that was cut 4 to 5 years previously that was full of broad chinquapin crowns, and the ground littered with burrs from the summer's nut crop. Ozark chinquapin differs in its growth and ability to put out an earlier seed (nut) crop compared to *Castanea dentata,* and appears to allow for an

abundant but short-lived pulse of seed germination in the decade following opening of the forest canopy due to disturbance (Paillet 2010, pers. comm.).

Habitat

Ozark chinquapin has been described as historically common in thin woods, edges of woods, and mid-successional woods (Tucker 1983, pp. 8–9). Turner (1935, p. 419) describes Ozark chinquapin as ''fairly common'' on north, east, and west facing slopes, ravines, gullies, or narrow valleys, and less frequently in the deep, narrow south-facing gullies or ravines in the white oak, red oak, red maple, hard maple hickory association of northwest Arkansas. It historically occupied canopy and subcanopy positions on a variety of habitats, including dry upland (the higher ground of a region or district; an elevated region) deciduous or mixed hardwood-pine communities on acid soils of ridge-tops, upper slopes adjacent to ravines and gorges, and the tops of sandstone bluffs (C. McDonald 1987, pers. comm.). It is well documented that fire frequency had a major role in shaping landscape and regional vegetation patterns in the Interior Highlands (Batek *et al.* 1999, pp. 407–409; Spetich 2004, pp. 21–28, 49–50, 65–69; Guyette and Spetich 2002, pp. 466–473; Guyette and Spetich 2003, pp. 463–474; Bidwell *et al.* undated, pp. 2877–2–2877–12; Elliot and Vose 2010, pp. 49–66). Ozark chinquapin is fire tolerant, but sprouts may be damaged by fire (Kral 1983, p. 287).

Ozark chinquapin occupy sandstone areas in Alabama, but occupy limestone, sandstone, chert rock, and possibly a combination in the Interior Highlands of Arkansas, Missouri, and Oklahoma (Johnson 1988, p. 43). Associated trees in these habitats include *Quercus alba* (white oak), *Quercus stellata* (post oak), *Quercus rubra* (northern red oak), *Nyssa sylvatica* (black gum), *Pinus echinata* (short-leaf pine), *Morus rubra* (mulberry), *Carya* spp. (hickories), *Ulmus americana* (American elm), and *Ostrya virginiana* (ironwood) (Steyermark 1963, p. 531; G. Tucker 1976, pers. comm.). Soil conditions typically are acid and sandstone-derived, and soil moisture conditions vary from mesic (drains well but retains water) to dry; shade is variable (G. Tucker 1976, pers. comm.; C. McDonald 1987, pers. comm.).

Faber-Langendoen (2001, pp. 444, 446, and 449) describe three forest types that Ozark chinquapin is associated with in the Interior Highlands. These include: (1) Short-leaf pine, white oak, *Schizachyrium scoparium* (little bluestem) woodland, (2) *Pinus echinata* (shortleaf pine), *Quercus velutina* (black oak), post oak, *Vaccinium* spp. (blueberry species) forest, (3) white oak, northern red oak, *Acer saccharum* (sugar maple), *Carya cordiformis* (bitternut hickory), and *Lindera benzoin* (northern spicebush) forest.

The first of these forest types is reported from Missouri and Arkansas, where it is known from the Ozark and Ouachita Mountains, and may extend into Oklahoma (this forest type is synonymous (the same or similar) with acid bedrock savanna in Missouri and dry mesic slope Woodland (Smith *et al.* 2000 in Faber-Langendoen 2001, p. 444)). It contains an open canopy (woodland), and Ozark chinquapin is reported as comprising a portion of the shrub and sapling strata.

The second of these forest types white oak ranges from eastern Oklahoma to the southwestern corner of Illinois, but may have been widespread prior to excessive harvest of shortleaf pine. It is synonymous with the dry acid bedrock forest in Missouri (Faber-Langendoen 2001, p. 446) and (in part) dry shortleaf pine–oak–hickory forest (Allard 1990 in Faber-Langendoen 2001, p. 446) and dry south slope woodland (Smith *et al.* 2000 in Faber-Langendoen 2001, p. 446). The tree canopy is short, spreading, open, and contains numerous branches; a shortleaf-pine emergent canopy often forms over a shorter canopy of oaks. Ozark chinquapin comprises a portion of the shrub layer in Arkansas, Missouri, and Oklahoma.

The third forest type (little bluestem woodland) is known from the South-Central United States, particularly the Ozark and Ouachita Mountain regions in Arkansas, Missouri, and Oklahoma. It is synonymous with the mesic forest, mesic limestone–dolomite forest, acid bedrock forest (mesic sandstone forest and mesic igneous forest) in Missouri, and mesic oak–hickory forest (Tucker 1989 in Faber-Langendoen 2001, p. 469). The canopy is dominated by oaks, sugar maple, and hickories, while the understory closure varies with moisture status at the site, being more closed under greater moisture conditions. Ozark chinquapin comprises a portion of the shrub layer in moderately well-drained soils.

Distribution

Ozark chinquapin is located throughout the Interior Highlands in Arkansas, Missouri, and Oklahoma (Kartesz 1994; ANHC 2010, pers. comm.; USDA Forest Service (USFS) 2010, pers. comm.; Missouri Department of Conservation 2010, pers. comm.). In Arkansas, it is in 39 counties, represented by thousands of elements of occurrence (known locations of individual(s) based on field observation). In Missouri, it is found in 9 counties, including but not limited to 48 elements of occurrence representing multiple individuals on the Mark Twain National Forest, Big Sugar Creek State Park, and Roaring River State Park. In Oklahoma, the species is in 8 counties.

Ozark chinquapin currently is widespread and abundant within the Interior Highlands of Arkansas, but is less common and widespread within the uplands of southwestern Missouri and eastern Oklahoma. For example, Waterfall and Wallis (1963, p. 14) report Ozark chinquapin occurrence in only three of seven Oklahoma counties (Adair, Cherokee, and Delaware) in the Ozark uplift portion of the Interior Highlands.

Localities with seed-producing trees are common on public and private lands in the Interior Highlands. Based on a detailed reconstruction of Ozark chinquapin in the pre-blight forests of northwest Arkansas, almost none of the original trees survived the arrival of blight circa 1957. Most Ozark chinquapin sprouts form after the blight infestation and represent old seedlings, which may represent an extreme case of a reproductive strategy based on advanced regeneration (Paillet 2010, pers. comm.). Ozark chinquapin populations still occur throughout the tree's historical core distribution in the Interior Highlands.

Herbarium specimens are all that remains to support the existence of Ozark chinquapin in Alabama (in Bibb, Lawrence, Tuscaloosa, Walker, and Winston Counties in the Appalachian Mountains). Data to support the abundance and distribution of Ozark chinquapin in the Appalachian Mountains is lacking, and researchers have been unable to find extant populations in this region. While it is the opinion of tree experts that Ozark chinquapin is the best taxonomic classification (see Taxonomy and Species Description), the Ozark Chinquapin Foundation reports Ozark chinquapin co-occurrence with *Castanea pumila* var. *pumila* in the coastal plain of Louisiana and Mississippi (S. Bost, Ozark Chinquapin Foundation, pers. comm. 2010). The Service, however, has no documentation available to substantiate these records. For the present, according to the best available scientific literature, Ozark chinquapin is best treated as a separate species. The Interior Highlands in Arkansas, Missouri, and Oklahoma contain the only known extant

populations of Ozark chinquapin at this time (Johnson 1988, pp. 43–45).

At present, there are thousands of element occurrences in the Interior Highlands. Individual site records commonly report multiple Ozark chinquapin sprout clumps and trees producing fruit. These vary from tens to hundreds of individual sprout clumps at an element occurrence record site (Kartesz 1994; ANHC 2010, pers. comm.; USFS 2010, pers. comm.; Missouri Department of Conservation 2010, pers. comm.).

**Summary of Information Pertaining to the Five Factors**

Section 4 of the Act (U.S.C. 1533 *et seq.*) and implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

In making this finding, information pertaining to Ozark chinquapin in relation to the five factors provided in section 4(a)(1) of the Act is discussed below.

In considering what factors might constitute threats to the species, we must look beyond the exposure of the species to a factor to evaluate whether the species may respond to the factor in a way that causes actual effects to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat and, during the status review, we attempt to determine how significant a threat it is. The threat is significant if it drives, or contributes to, the risk of extinction of the species such that the species may warrant listing as endangered or threatened as those terms are defined in the Act.

*Factor A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range*

Under Factor A, we evaluated the following threats: Habitat loss and/or fragmentation; and forest composition, structure conversions, and forest and fire management (fire use, fire suppression, and forest silvicultural practices; timber harvest, salvage logging, forest thinning, and forest restoration projects).

Habitat Loss and Fragmentation

Johnson (1988, pp. 41–45) recognized Ozark chinquapin records from the Interior Highlands and Appalachian Mountains. Herbarium specimens are all that remain to support the existence of Ozark chinquapin in Alabama (in five counties in the Appalachian Mountains; Johnson 1988, p. 43). Data to support the abundance and distribution of the Ozark chinquapin in the southern Appalachian Mountains are lacking, and researchers have been unable to find extant populations in this region. While there is support for an Appalachian-Ozarkian floristic (relating to flowers) relationship by other taxa such as *Neviusia alabamensis* (Moore 1956 in Johnson 1988, p. 44), floristic relationships to the lower Mississippi Valley and Gulf Coastal Plain (Ozark Chinquapin Foundation 2010, pers. comm.) can only be considered speculative at this time (Johnson 1988, p. 47; ANHC 2010, pers. comm.). Steyermark (1963, p. 531) states that Louisiana and Mississippi are sometimes included as part of the Ozark chinquapin range, but specimens examined from those States have been proven not to be Ozark chinquapin. Ozark chinquapin is sympatric over virtually its entire range with *Castanea pumila* var. *pumila* and with *Castanea dentata* in Alabama. Further compounding questions regarding taxonomy of the species, herbarium, laboratory, and field studies indicate that in areas of sympatry the two varieties of *Castanea pumila* may be intermediate and identification of the two species may not always be possible (Johnson 1988, p. 43).

Ashe (1923) described the range of the species as ''north of the Arkansas River and westward from Center Ridge, Arkansas, northward to southwestern Missouri and westward to the Valley of the White River.'' Tucker (1983, p. 16) reported a large number of populations of Ozark chinquapin in the Interior Highlands of Arkansas, Missouri, and Oklahoma. Nearly 20 years later, the distribution and abundance of populations remain similar. The largest populations occur on public lands (such as the Ouachita National Forest (AR and OK), Ozark National Forest (AR), Mark Twain National Forest (MO), State Wildlife Management Areas and Parks (AR, MO, and OK), Buffalo National River (AR), Hot Springs National Park (AR), and Pea Ridge National Military Park (AR). Thousands of elements of occurrences represented by numerous individuals occur in the Interior Highlands (ANHC 2010, pers. comm.; USFS 2010, pers. comm.; Missouri Department of Conservation 2010, pers. comm.; and Oklahoma Natural Heritage 2010; National Park Service (NPS) 2010 and 2011).

The Ozark–Ouachita Highlands Assessment (OOHA) 1999 Terrestrial Vegetation and Wildlife Report, prepared by a collaborative team of natural resource specialists and research scientists, examined historical and existing forest conditions throughout the Interior Highlands of Arkansas, Missouri, and Oklahoma (USFS 1999, section 5). The area of analysis overlaps much of the range of Ozark chinquapin. The upland oak–hickory forest type provided the dominant cover within the region at the time of the OOHA. It covered 15 million acres (6.1 million hectares) or about 36 percent of the area. The oak–pine forest type provided the second most extensive cover. It covered 4.4 million acres (1.8 million hectares) or 11 percent of the area. In 1999, clear-cutting had declined by 97.5 percent over a 10-year period in National Forests within the planning area. Additionally, herbicide application in the National Forests experienced an 83 percent decline over the same period (USFS 1999, p. 73; UUSFS 2005a, pp. 2–5, 2–6 and 2–27; USFS 2005b, pp. 176–178). Oak–hickory and oak–pine forest types continue to be common forest types in the Interior Highlands. OOHA descriptions of vegetation cover or silvicultural practices do not indicate significant reductions in suitable habitat for *Castanea pumila* var. *ozarkensis.*

Moreover, the majority of Ozark chinquapin habitat is located on State and Federally managed lands. Ozark chinquapin is designated as a USFS sensitive species. Land and resource management plans have recently been revised for National Forests within the range of the species. Revisions of these plans include development of standards to protect the species while allowing normal forest management activities, including the use of prescribed fire, thinning, and natural gas development. These standards further demonstrate that management activities (for example, prescribed fire and thinning) on public lands enhance sprouting, flowering, and fruit production of this species, thus enhancing stewardship for the species. The general direction within these plans is for the National Forests to manage habitat to move species toward recovery and delisting and to prevent the listing of proposed or sensitive species (USFS 2005a, p. 2–13; USFS 2005b, p. 76).

Private property development and land use activities may threaten Ozark

chinquapin due to habitat conversion or loss. On the other hand, private landowners interested in the conservation of Ozark chinquapin have been able to sustain isolated, moderately sized individuals capable of seed production on small tracts of private land. In short, as the human population continues to increase in the Interior Highlands, we believe loss or conversion of forested habitat on private lands and its effect on Ozark chinquapin will be minimal, due to the wide distribution and vast amount of contiguous habitats afforded the species on State and Federal lands. While we expect some element occurrences to be lost on private land, we conclude that habitat loss and fragmentation are not current threats to Ozark chinquapin, nor do we believe they will be in the foreseeable future.

Forest Composition, Structure Conversions, Forest and Fire Management

It is generally accepted that climate, topography, and substrate place fundamental constraints on vegetation at many different spatial and temporal scales, but at the landscape scale, vegetation patterns also may be controlled by disturbance histories (Zedler *et al.* 1983; McCune and Allen 1985; Myers 1985 in Batek *et al.* 1999, p. 398). Much of our knowledge of fire effects on trees comes from a relatively small collection of studies throughout the eastern United States during the period 1957 to 1998 (Dey and Hartman 2005, p. 38). Fire suppression is one of the major determinants of contemporary vegetation patterns in the Interior Highlands. Batek *et al.* (1999, pp. 407–410) concluded that where fire regimes are primarily anthropogenic, as in the Interior Highlands (specifically in the Ozarks), they exert strong constraints on vegetation composition and patterns. Based on their reconstruction analysis, the Interior Highlands vegetative community was replaced during the 19th century by a more homogenous landscape dominated by several oak species. Most of the shortleaf pine was felled from 1888 to 1909 (Steven 1991 in Batek *et al.* 1999, p. 410), and fire suppression since 1940 has favored invasion of fire-sensitive species that were more restricted in distribution 150 years ago (Batek *et al.* 1999, p. 410; Arthur *et al.* 1998, p. 225).

Historically, the Interior Highlands landscape consisted of a mosaic of prairies, savannas, woodlands, and forests maintained by fires and adapted to disturbance. Based on Government Land Office (GLO) survey records interpreted by the ANHC, only 33 percent of the Ozark Mountains was described as closed forest (much in steep slopes). The remaining 67 percent at the time of the GLO surveys had average tree densities ranging from 38 to 76 trees per acre.

European settlement brought changes to the ecosystem that led to extensive timber harvest and fire suppression. As a result, the average tree density per acre (ha) increased from 52 to 148 (21 to 60) trees. Even more staggering was the increase from 300 to 1,000 stems per acre (121 to 405 stems per ha) in the sapling and shrub layers. Increased trees per acre competing for the same amount of nutrients and water put the ecosystem under stress. There is nothing in the post-glacial record that suggests that the Interior Highlands have been previously affected by changes of this magnitude or rapidity (Spetich 2004, pp. 28 and 304). Despite this forest conversion after European settlement, Ozark chinquapin remained a prized source of edible nuts, fence posts, and railroad ties in the Interior Highlands until its rapid ecological and socioeconomic demise in the mid-1940s from chestnut blight (Tucker 1983, p. 7). Canopy closure in undisturbed woods did not seem to have a major effect on Ozark chinquapin populations (Paillet 2010, pers. comm.).

Hyatt (1993, pp. 116–118) recounts the floristic history of Baxter County in north central Arkansas from the earliest floristic survey in 1818 to present day. Ecologically and floristically, Baxter County was very different during Hyatt's 1987–1988 surveys, as compared with the county's surveys from the early 19th century, when many upland areas were once prairie. Much of this prairie had disappeared by 1880 and was replaced with ''upland hardwood'' and ''pine-hardwood'' forest. By the late 19th century, nearly all of the existing forest land was logged for railroad ties and lumber (Hyatt and Moren 1990 in Hyatt 1993, p. 117). Hyatt (1993, pp. 119 and 127) describes Ozark chinquapin as ''common, diseased, [and] rarely reproductive,'' and from only ''Deciduous Forest.''

Chapman *et al.* (2006) describe long-term dynamics from 1934 to 2002 in oak stands within the Sylamore Experimental Forest (SEF), located in the Ozark National Forest in north central Arkansas. When SEF was established in 1934, it was representative of typical unharvested forests of the region that had a long history (100 plus years) of frequent fire. Some cutting (harvest) was conducted after establishment (start of growth) and a fire prevention program was implemented, but little management occurred after 1960. Total tree density increased from 899 to 2,550 trees per ac (364 to 1,032 trees per ha) and basal area (an area of a given section of land that is occupied by the cross-section of tree trunks and stems at their base) from 25 to 57 $m^2$/ac (10 to 23 $m^2$/ha). Increases occurred among understory, midstory, and overstory trees for most species, except Ozark chinquapin, which decreased markedly in all three categories, and *Quercus velutina* (Black oak). Chestnut blight is the probable cause of the Ozark chinquapin decline, but fire suppression also may have exacerbated the decline.

Spetich (2004, p. 49) evaluated fire-scarred trees and stumps at the Big Piney Ranger District (formerly Bayou and Pleasant Hill Ranger Districts), Ozark National Forest, north central Arkansas, for the three time periods 1747 to 1764, 1804 to 1906, and 1916 to 1954. From 1747 to 1764, the fire return interval ranged from 1 to 3 years, with a mean return interval of 2.4 years. From 1804 to 1906, the fire interval ranged from 1 to 9 years, with a mean return interval of 4.4 years. From 1916 to 1954, the fire return interval ranged from 1 to 12 years, with a mean return interval of 5.3 years. This validates what other researchers have found to be a positive correlation between fire frequency and low levels of human population and a negative correlation between fire frequency and high levels of human population density. Thus, increasing human settlement and fragmentation of the landscape resulted in a decrease of fire return interval (Spetich 2004, pp. 49, 463, 469–473).

In 2003, an administrative study designed to monitor the immediate and short-term effects of prescribed fire on individual Ozark chinquapin stems was implemented north of the Crystal Mountain Recreation Area on the Caddo-Womble Ranger District, Ouachita National Forest, AR. Three areas were studied: An area thinned in previous years, an area with no harvest, and an area that served as a reference site. The monitoring was designed to capture the current stand conditions and health and abundance of individual Ozark chinquapin stems. The harvest/burn area showed the widest range of variability and the greatest increase in number of Ozark chinquapin sprouts; there was also an increase in the number of Ozark chinquapin sprouts in the burned area, which had no previous harvest treatments and little to no change in the reference area (USFS 2003, pp. 4–5).

Historical descriptions of vegetation and flora of the Ouachita Mountains (a portion of the Interior Highlands) in

eastern Oklahoma are very similar to those previously discussed for this region. Nuttall (1780 to 1820) and Rice and Penfound (1953 to 1957) accounts of an area dominated by pines and hardwoods intermixed with open prairies contained a mosaic of vegetation types established by frequent anthropogenic fire and lightning-caused fires (Thwaites 1905, Curtis 1956, Pyne 1982, and Masters 1991 in Crandall and Tyrl 2006, p. 65; Rice and Penfound 1959, pp. 595–596). They reported Ozark chinquapin from stands in eastern and central Oklahoma, but provide no discussion on its status, distribution, or abundance. With the implementation of fire suppression in the 1920s, the region changed to a landscape of predominately forest (Crandall and Tyrl 2006, p. 65; Rice and Penfound, pp. 606–607).

Crandall and Tyrl (2006, p. 65) and Smith *et al.* (1997 in Hoagland and Buthod 2009, pp. 78–81) documented 447 and 359 species at the Pushmataha Wildlife Management Area and McCurtain County Wilderness Area, McCurtain County, Oklahoma, respectively, but no Ozark chinquapin were reported within these areas (collectively comprising 33,090 ac (13,391 ha)). Hoagland and Buthod (2008, pp. 18 and 24; 2009, pp. 61 and 85) reported Ozark chinquapin presence at The Nature Conservancy's T. Nickel Family Nature and Wildlife Preserve and Cucumber Creek Nature Preserve, Cherokee and LeFlore Counties, Oklahoma. They reported Ozark chinquapin in xeric forests, predominately on south facing and exposed slopes at the preserve.

In summary, the OOHA recognized Ozark chinquapin as a species of viability concern, the habitat description being ''woodland, fire maintained'' (USFS 1999, p. 137). Loss of natural fire regimes is recognized as a threat to the health and sustainability of oak–hickory and oak–pine ecosystems in which Ozark chinquapin occurs (Spetich 2004, pp. 49–50 and 65–66). Given the current understanding of fire as it relates to ecosystem health and sustainability within most of the habitats where Ozark chinquapin is known to occur, we cannot conclude that fire, whether natural or prescribed, is negatively influencing the species. Fire plays a vital role in the management of Ozark chinquapin by maintaining open habitat, encouraging both seed germination and vegetative regeneration. While fire may injure or kill individuals, long-term effects on sustaining viable populations are beneficial. It is well documented that fire suppression adversely effects reproduction of Ozark chinquapin. In contrast, prescribed fire reduces fuel availability in the forest, which reduces the threat of catastrophic wildfires that are likely a greater threat to Ozark chinquapin than prescribed fire.

Scientific literature supports widespread forest composition and structure changes throughout the Interior Highlands beginning in the late 1800s and extending over one century. Tucker (1983, p. 15) stated that Ozark chinquapin formerly was a member of the climax (the highest or most intense point in the development) community, but presently is one of the first species to regenerate following a disturbance (for example, clear-cut and prescribed fire). Paillet (1991, p. 10; 1993, pp. 261–262) noted an area on the Ozark National Forest that was cut 4 to 5 years previously that was full of broad chinquapin crowns, with the ground littered with burrs from the summer's nut crop. Despite these changes, Ozark chinquapin remains common throughout its historical distribution in the Interior Highlands. Current land management efforts, particularly on State and Federal lands, favor Ozark chinquapin persistence in this region.

Summary of Factor A

We evaluated habitat loss, fragmentation, forest composition, structure conversions, forest management, and fire management as threats to the Ozark chinquapin. We found that habitat loss and fragmentation may be happening on private lands, but that its effect on Ozark chinquapin is minimal due to widespread distribution and vast amounts of contiguous habitats afforded the species on State and Federal lands. Forest composition and structure conversions have occurred throughout the species' range, but despite these changes, Ozark chinquapin remains common throughout its historical distribution in the Interior Highlands. Additionally, current forest management efforts, particularly on State and Federal lands, favor Ozark chinquapin persistence in this region. Fire management was the last threat we evaluated. Fire plays a vital role in the management of Ozark chinquapin by maintaining open habitat, encouraging both seed germination and vegetative regeneration. While fire may injure or kill individuals, long-term effects on sustaining viable populations is beneficial.

Based on our review of the best available scientific and commercial information, we conclude that the Ozark chinquapin is not threatened by the present or threatened destruction, modification, or curtailment of its habitat or range now or in the foreseeable future. Additionally, for these reasons, we conclude that alterations to forest composition and structure and forest and fire management do not pose an imminent threat to Ozark chinquapin now or in the foreseeable future.

*Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

We do not have any evidence of risks to the Ozark chinquapin from overutilization for commercial, recreational, scientific, or educational purposes, and we have no reason to believe this factor will become a threat to the species in the future. Therefore, based on a review of the best available scientific and commercial information, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to Ozark chinquapin now or in the foreseeable future.

*Factor C. Disease or Predation*

Under Factor C, we evaluated the following diseases: ink disease (*Phytopthera cinnamomi*) and chestnut blight (*Cryphonectria parasitica*). We do not have any information to indicate that any other disease or that predation poses a threat to Ozark chinquapin at this time.

*Ink Disease*

Ink disease, caused by the fungus *Phytopthora cinnamomi,* is known to attack the root systems of all North American *Castanea* species. It has been present in the southeast United States for over a century. The pathogen is slow spreading. *Phytopthora cinnamomi* spores spread through groundwater, and thus are most prevalent in low-lying areas. The pathogen also appears to be restricted to relatively warm temperatures (generally south of Philadelphia, PA) and heavier soils (Paillet 2010, pers. comm.). The relatively coarse sandstone and chert loam upland soils where Ozark chinquapin thrives may be too well drained for the pathogen (Paillet 2010, pers. comm.). For these reasons, we conclude that ink disease does not pose an imminent threat to Ozark chinquapin now or in the foreseeable future.

Chestnut Blight

Chestnut blight, caused by the fungal parasite *Cryphonectria* (formerly *Endothia*) *parasitica,* attacks the stems of all North American *Castanea* species, but is not directly pathogenic to the root system. *Castanea* species evolved in

North America with little or no resistance to chestnut blight, due to isolation from the Asiatic *Castanea* species, which evolved with this parasitic fungus and developed some resistance (Anagnostakis 1982 p. 466). The chestnut blight was first found in *Castanea dentata* (American chestnut; 1904). Over a period of approximately 20 years, the blight spread throughout the range of the American chestnut, reducing this important forest tree to a shrub or small tree. The fungus enters wounds in the bark and grows under the bark, eventually killing the cambium (a layer of living cells, between the bark and hardwood, that each year produces additional wood and bark cells) encircling the infected area. This results in top-kill of the tree (above the ground). After top-kill, sprouts develop at the base of the tree from dormant buds. These sprouts grow, become infected, and die, and the process is repeated (Anagnostakis 2000, p. 1). Chestnut blight is widely recognized as the dominant threat to Ozark chinquapin. The blight's effect on Ozark chinquapin was first noted in the 1940s (Tucker 1983, p. 7). However, while there is an abundance of scientific literature addressing the effects of chestnut blight on the American chestnut, literature addressing its effects on Ozark chinquapin specifically is very limited. There are clearly a number of similarities in the current status of the two species (Paillet 2010, pers. comm.). The long-term threat posed to both species is that: (1) Trees survive by avoiding chestnut blight, so there is little selective pressure to generate blight resistance; and (2) chestnut blight severely restricts reproduction (cross pollination and seed production), which may serve as resistance genes through normal cross breeding species that are not self fertile.

The ability of Ozark chinquapin to produce a mast crop after 4 to 5 years of age increases the likelihood of cross pollination (fertile individuals) and subsequent seed production. This allows for a significant but short lived pulse of cross pollination and seed production in the decade following a release response (release of seeds and pollination) (Paillet 2010, pers. comm.). Although most Ozark chinquapin specimens now found are infertile multi-stemmed understory shrubs due to chestnut blight, it is not exceedingly rare to find fertile specimens in a variety of Arkansas habitats or to find young specimens with single trunks and no evidence of chestnut blight–killed older trunks, indicating recent seed production (ANHC 2010, pers. comm.). In one Arkansas locality, the sprouts produced seeds within a few years of release (Paillet, 1993, p. 267). This indicates there is some level of reproduction (cross pollination and subsequent seed production and germination) (ANHC 2010, pers. comm.), albeit degraded by chestnut blight (Tucker, 1983, pp. 9, 16).

Ozark chinquapin, like American chestnut, also has suppressed sprout clumps that reside on the forest floor. Almost all sprout clumps represent ''old seedlings'' that never grew to tree size. Many of these suppressed Ozark chinquapin sprouts are small and inconspicuous, escaping notice by the casual observer (Paillet 2010, pers. comm.). Nibbs (1983 in Paillet 2002, p. 1527) showed that suppressed seedlings of several New England tree species are capable of sprouting and that sprouts from seedlings established before tree harvest were more successful in regenerating forests in Massachusetts than were either stump sprouts or new seedlings. Much of the adaptive character of American chestnut as an understory shrub applies as well to Ozark chinquapin.

The Ozark-St. Francis National Forest, Wedington Unit, is involved in a detailed reconstruction of Ozark chinquapin in the pre-chestnut blight forests of northwest Arkansas. Although in modern forests we think of Ozark chinquapin growing in clumps of sprouts, most of the original trees had a single, upright dominant trunk. Most of these original trees did not survive by resprouting. Most surviving Ozark chinquapin sprouts, as in the case of the American chestnut, represent ''old seedlings.'' This may represent an extreme case of a reproductive strategy based on advanced regeneration (Paillet 2010, pers. comm.), but limited information is available to support or refute this hypothesis.

An understanding of adaptive genetic differentiation among populations is of primary importance in the conservation of *Castanea* species in North America (Dane and Hawkins 1999, p. 2). Stillwell *et al.* (2003, pp. 3–4) discuss several effects to the American chestnuts as a consequence of chestnut blight, including ecological changes and the diminished importance of cross pollination, seed production, and germination on the amount and distribution of genetic diversity in the species. First, the chestnut blight significantly alters the ecology of American chestnut, which may reduce the overall level of genetic diversity. Secondly, chestnut blight may affect the distribution of genetic variance within and among populations. This could occur by genetic drift from the reduced population size or from the vegetative expansion of root collars, both of which would tend to diminish genetic variance within patches.

Dane and Hawkins (1999) characterize the genetic diversity within and between populations of the Ozark chinquapin to provide an understanding of overall genetic composition and its relationship to the vulnerability of the species to chestnut blight. The proportion of genetic diversity found among the studied Ozark chinquapin populations was slightly greater than that observed for other *Castanea* species, other long-lived perennial species, wind-outcrossing (to cross-pollinate (reproduce) by wind dispersal) species, and late-successional species (Hamrick and Godt 1996 in Dane and Hawkins 1999, p. 8). ANHC (1996, p. 5) also found similar results in four Arkansas Ozark chinquapin populations, although the amount of genetic diversity found among the populations was very low. They reported a high level of heterozygosity within populations that may have been the result of tree recovery in clear-cut areas following the incidence of chestnut blight. Dane *et al.* (2003, p. 319) found high genetic diversity in the more narrowly distributed Ozark chinquapin, similar to that in regionally distributed *Castanea pumila* var. *pumila* (Allegheny chinquapin). While Fu and Dane (2003, pp. 228–229) found that genetic diversity in Allegheny chinquapin was much higher than that observed in the American chestnut, which is geographically sympatric (Johnson 1988, p. 42), and is similar to that of the closely related Ozark chinquapin. The greater level of genetic diversity in Ozark chinquapin may be related to its origin as it is less evolved than the more common Allegheny chinquapin as evidenced by its lack of stoloniferous (producing stolons; putting forth suckers) growth (an adaptation for survival in early successional stages and areas with low soil fertility), its arborescent (having the size, form, or characteristics of a tree) habit, and other habitat requirements (Dane and Hawkins 1999, p. 8).

There are high levels of outcrossing and gene flow among Ozark chinquapin populations. Indirect estimates of outcrossing rates suggest that most populations are highly outcrossed (Dane and Hawkins 1999, p. 9). Johnson (1988, pp. 37–40) found the *Castanea* species to be mainly wind-pollinated, and detected infrequent occurrences of self-compatibility and apomixis (reproduction without meiosis (the process of cell division in sexually reproducing organisms that reduces the

number of chromosomes) or formation of gametes (eggs)).

Knowles and Grant (1981, p. 4, in Stillwell *et al.* 2003) and Mitton and Grant (1980, p. 4, in Stillwell *et al.* 2003) present contrasting information on long-lived trees and the general perception that more heterozygous individuals are less variable and better adapted in fluctuating environments. Stillwell *et al.* (2003, pp. 9–11) suggest that the chestnut blight has had significant effects on the genetics of American chestnut populations. They found that a slight growth advantage for heterozygous genotypes has resulted in a profound excess of heterozygotes within populations. Studies of different age classes (seeds, seedlings, and stands of differing ages) show an increase in heterozygosity with increasing age within other tree species. The difference observed by Stillwell *et al.* (2003, pp. 9–11) is that all extant American chestnut genotypes are more than 70 years old and many that succumbed to the blight as mature canopy trees are much older. Therefore, as selection favors a population of heterozygous individuals, there are no new recruits to restore the population toward Hardy-Weinberg equilibrium (a constant state of genetic variation in a population from one generation to the next in the absence of disturbance). Prolonged absence of cross pollination and subsequent new recruitment from seed germination in the American chestnut has resulted in a change in population genetics, yet it is not well documented whether these same effects have resulted in similar changes to population genetics of the Ozark chinquapin due to its ability to produce mast crops before succumbing to chestnut blight.

The high mortality of American chestnut stems in conjunction with near total elimination of reproduction through cross pollination could have resulted in the loss of some (mostly rare) alleles (one of two or more alternative forms of a gene that arise by mutation and are found at the same place on a chromosome) (Loveless and Hamrick 1984; Leberg 1992 in Stillwell *et al.* 2003, pp. 207–213). It is not clear; however, whether this slightly lower genetic diversity is a result of the chestnut blight epidemic. Huang *et al.* (1998, pp. 1015–1019) suggested that the low genetic diversity of the American chestnut resulted in the high susceptibility to attack by blight, rather than that the low genetic diversity was a direct consequence of the blight pandemic, and that other *Castanea* species with more diverse allozyme variation are less susceptible to epidemics. In the absence of knowledge of pre-blight genetic population structure, it is difficult to make any definitive statement on changes in genetic diversity due to the chestnut blight pandemic (Stillwell *et al.* 2003, p. 10).

Grenate (1965 in Anagnostakis 1987 p. 27) isolated forms of the chestnut blight fungus that had a different appearance and reduced virulence in *Castanea* species infected by chestnut blight in Italy. Hypovirulence is a disease, or a group of diseases, that affect the chestnut blight, reducing the ability of the blight to kill susceptible *Castanea* tree hosts (Van Alfen *et al.* 1975 in Anagnostakis 1987 p. 28). Hypovirulence is controlled by genetic determinants in the cytoplasm of the fungus (Day *et al.* 1977 in Anagnostakis 1987 p. 28). These hypovirulent forms cured existing blight when they were inoculated into cankers of infected trees. Due to successes achieved with hypovirulent strains in Europe, research and conservation efforts began in the early 1970s with the American chestnut (Anagnostakis 1987 pp. 32–33) and continue at present with the Ozark chinquapin. Full restoration of the Ozark chinquapin may prove complicated and might require establishment of a backcross breeding program designed to transfer the blight resistance of *Castanea henryi* (Chinese chinquapin) (Dane and Hawkins 1999, p. 9). Similar efforts are ongoing to discover hypovirulent forms or founder (fall in or give way; collapse) trees with natural chestnut blight resistance in Ozark chinquapin, although there is preference towards the latter (Ozark Chinquapin Foundation 2010, pers. comm.).

Success at bringing chestnut blight into balance in Europe (Italy and France) demonstrates that the fungus might be controlled in North America (Anagnostakis 1987 p. 33). Brewer (1995, pp. 54–55) found that certain ecological factors may explain differential success of hypovirulence in different Michigan soil types: (1) American chestnut has a better competitive advantage on well-drained sandy soils, (2) hypovirulence originates from sandy textured hypovirulence originates soils, and (3) sandy textured soils provide more dispersing agents for hypovirulent strains. While it remains unclear how important each of these factors is in the hypovirulence phenomenon and how chestnut blight, double-stranded RNA, and American chestnut interact, it should enable researchers, foresters, and conservationists the opportunity to better assess hypovirulence as a biological control that also may favor restoration of Ozark chinquapin populations.

Despite the shift in reproductive strategy (seed production/germination versus vegetative regeneration) and a shorter life span for the stems, chestnut blight has not affected the distribution and abundance of Ozark chinquapin in the Interior Highlands of Arkansas, Missouri, and Oklahoma (see ''Distribution''). Tucker (1983, p. 25) states that chestnut blight is responsible for the mortality of extant reproductive populations (those capable of cross pollination and seed production), reducing populations to primarily reproduction via regeneration, and that populations capable of cross pollination and seed production are increasingly rare. However, there are numerous references in the scientific literature and from personal communications with agencies and conservation groups actively involved in the conservation of Ozark chinquapin that indicate that this species is adapted to and capable of producing mast crops annually in areas with active management (such as forest management and prescribed fire) (Paillet 1993, p. 267; Paillet 2002, p. 1528; Paillet 2010, pers. comm.; ANHC 2010, pers. comm.; USFS 2010, pers. comm.; Ozark Chinquapin Foundation 2010, pers. comm.; Missouri Department of Natural Resources 2010, pers. comm.). While not done as extensively as for American chestnut, genetic studies indicate that Ozark chinquapin has greater genetic diversity than American chestnut and similar genetic diversity to Allegheny chinquapin, both of which are more geographically widespread than Ozark chinquapin (Dane and Hawkins 1999, p. 2–9; Stillwell *et al.* 2003, pp. 3–11; ANHC 1996, p. 5; Dane *et al.* 2003, p. 319; Fu and Dane 2003, pp. 228–229; Huang *et al.* 1998, pp. 1015–1019). The greater level of genetic diversity in Ozark chinquapin may be related to evolutionary adaptations for survival in early successional stages and areas with low soil fertility, its arborescent habit, and other habitat requirements (Dane and Hawkins 1999, p. 8). Thus, information available does not indicate that chestnut blight has resulted in a loss of genetic diversity for Ozark chinquapin. While the ecological demise of *Castanea* species is well documented in scientific literature, the seemingly endless cycle of sprouting (regeneration) and reinfection has continued in American chestnut, as well as Ozark chinquapin, unabated to present day (over 100 years in the former species and 70 years in the latter) (Anagnostakis and Hillman undated, pp. 6–7). Success at bringing chestnut blight

into balance in Europe (Italy and France) with hypovirulence demonstrates that the fungus might be controlled in North America (Anagnostakis 1987 p. 33). Moreover, similar hypo virulent efforts as those taking place in Europe are ongoing with Ozark chinquapin (Ozark Chinquapin Foundation, 2010 pers. comm.).

Summary of Factor C

Ink disease does not pose an imminent threat now or in the foreseeable future to the continued existence of extant Ozark chinquapin populations; however, chestnut blight has posed a long-term, imminent threat to mature Ozark chinquapins for the past 70 years and will for the foreseeable future. However, chestnut blight does not threaten the continued existence of Ozark chinquapin at this time or in the foreseeable future. Our conclusion is based on the following: (1) The documented widespread distribution and abundance of Ozark chinquapin is more complex than the picture presented by chestnut blight alone and may represent combined effects of changes in disturbance regime, climate, and land use history that extend over a prolonged period (post-glacial history) in the region; (2) it is well documented that the Ozark chinquapin remains widespread and abundant within the Interior Highlands; and (3) due to the life history traits of Ozark Chinquapin, it appears that cross pollination and production of seeds, while rare, does occur, which may allow for a significant, albeit greatly diminished, short pulse of seed production and germination in the decade after a disturbance (release) response. Based on our review of the best available scientific and commercial information, we conclude that the Ozark chinquapin is not threatened by the disease or predation now or in the foreseeable future.

*D. Inadequacy of Existing Regulatory Mechanisms*

The majority of Ozark chinquapin populations occur on public land. Populations that occur on these lands are protected by State and Federal laws and regulations.

Federal Regulations and Management

The NPS, under its National Park Service Organic Act (16 U.S.C. 1 *et seq.*), is responsible for managing the National Parks to conserve the scenery and the natural and historic objects and the wildlife (see ''Distribution'' section and Factor A, for National Parks with extant Ozark chinquapin populations) found on the parks. The National Parks Omnibus Management Act of 1998 (16 U.S.C. 5934 *et seq.*) requires the NPS to inventory and monitor its natural resources. NPS has implemented its resource management responsibilities through its Management Policies, Section 4.4, which states that the NPS ''will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems.'' Section 207 of the Omnibus Management Act of 1998 allows NPS to withhold from the public any information related to the nature and specific location of endangered, threatened, or rare species unless disclosure would not create an unreasonable risk of harm to the species.

Hot Springs National Park (HSNP) does not specifically manage for Ozark chinquapin. HSNP's current General Management Plan (GMP) was approved in the 1980s and did not specifically address the Ozark chinquapin. However, HSNP does manage for the entire ecosystem that includes the Ozark chinquapin. For instance, in May 2005, HSNP abandoned its practice of total fire suppression regardless of ignition source and has since utilized fire as an ecosystem restoration tool on Sugarloaf Mountain (the only site in the park with an extant population of Ozark chinquapin). As a result of the new fire regime, young Ozark chinquapin sprouts have responded favorably at sites with suitable habitat. Furthermore, HSNP is currently in the process of developing a new GMP, which will incorporate ecosystem restoration that will prove valuable to Ozark chinquapin restoration at HSNP, with expertise from other agencies and researchers (for example, USFS Southeast Research Station; S. Rudd, NPS, pers. comm. 2011). Similarly, Pea Ridge National Military Park does not currently have a GMP that specifically addresses the conservation needs of Ozark chinquapin, but it actively utilizes fire as an ecosystem restoration tool (K. Eads, NPS, pers. comm. 2011).

Finally, Buffalo National River (BNR) is developing a predictive geographic information system (map) model based on soil types and aspects associated with Ozark chinquapin populations at BNR. This work also includes a better delineation (survey) of Ozark chinquapin populations to aid in a better understanding of its health and spatial distribution, important modeling parameters. This information will be available in summer 2011 and will further help guide Ozark chinquapin habitat restoration efforts at BNR. BNR also began work in 2009 with an arborist to gather seeds from trees at BNR seemingly unaffected by chestnut blight for propagation (B. Wilson, NPS, pers. comm. 2011).

Ozark chinquapin is currently designated as a USFS sensitive species (see Distribution section and Factor A for USFS lands with extant Ozark chinquapin populations). The National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) specifies guidelines for land management plans developed to achieve goals that include protection of sensitive species. USFS Manual 2670, Threatened, Endangered and Sensitive Plants and Animals, sections 22 and 32, requires the USFS to develop and implement management practices that ensure that sensitive species do not become threatened or endangered due to USFS actions. Factor A of this finding discusses some vegetative monitoring and management activities which include the Ozark chinquapin that are conducted and controlled by the USFS.

State Regulations and Management

Additionally, the Ozark chinquapin currently receives protection on State park and natural heritage owned lands (see Distribution section and Factor A) in Arkansas, Missouri, and Oklahoma. State parks in Missouri, similar to Arkansas and Oklahoma, are acquired and managed to protect a well-balanced system of areas with outstanding scenic, recreational, and historic significance (10 CSR 100–1.010). Missouri State parks currently track resiliency and recovery of Ozark chinquapin with implementation of prescribed fire to manage for ecosystem health (such as fire-mediated woodlands that support Ozark chinquapin) and monitor distribution with aid from the Natural Heritage Program (A. Vaughn, Missouri State Parks, pers. comm. 2010). Arkansas Game and Fish Commission (AGFC) has no specific management strategy for Ozark chinquapin on Wildlife Management Areas; similar to other State properties throughout the species range, they maintain a species list for inventory purposes and elements of occurrence and have prescribed fire management plans that benefit Ozark chinquapin (M. Blaney, AGFC, pers. comm. 2011).

The ANHC System of Natural Areas provides long-term protection to some of Arkansas' most ecologically significant lands. ANHC rules and regulations prohibit the collection and/or removal of plants (including fruits, nuts, or edible plant parts), animals, fungi, rocks, minerals, fossils, archaeological artifacts, soil, downed wood, or any other natural material, alive or dead. Natural areas are managed according to an established management

plan and a conservation vision aimed at protecting, enhancing, interpreting, and sometimes even restoring the significant ecological values present at the site (for example, natural ecosystem health). To do this, management plans for areas within the system are prepared and updated regularly to set the frameworks for future management activities. ANHC no longer tracks Ozark chinquapin as a State species of concern, due to its widespread distribution and local abundance in Arkansas (C. Colclasure, ANHC, pers. comm. 2010 and T. Witsell, ANHC, pers. comm. 2011).

Summary of Factor D

In summary, we do not consider the inadequacy of existing regulatory mechanisms to be a threat to the populations of Ozark Chinquapin in the national forests and parks and State parks and natural areas in Arkansas, Missouri, and Oklahoma. The regulatory mechanisms discussed above allow the Federal and State agencies to prevent collection or take of Ozark chinquapin and implement management practices to ensure long-term population viability and promote natural ecosystem restoration and health on public property. Furthermore, we do not consider development outside these Federal and State lands to be a threat to Ozark chinquapin populations within these Federal lands. Therefore, based on a review of the available information, we find that inadequacy of existing regulatory mechanisms is not a threat to Ozark chinquapin now or in the foreseeable future.

*E. Other Natural or Manmade Factors Affecting the Species' Continued Existence*

Climate Change

Habitat is dynamic, and species may move from one area to another over time. Climate change will be a particular challenge for biodiversity, because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic (combined or cooperative action or force) implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p. 4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al.* 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (Golladay *et al.* 2004, p. 504; McLaughlin *et al.* 2002, p. 6074; Cook *et al.* 2004, p. 1015). According to the Arkansas Statewide Forest Resource Assessment (2010, p. 68), the U.S. Department of Agriculture concluded that species will adjust to suitable conditions or go locally extinct if suitable conditions are no longer available. As climate models project continued warming in all seasons across the Southeast (Karl *et al.* 2009, p. 1), species shift is likely to be northward. The information currently available on the effects of global climate change and increasing temperatures does not make sufficiently precise estimates of the location and magnitude of the effects. Nor are we currently aware of any climate change information specific to the habitat of *Castanea pumila* var. *ozarkensis* that would indicate what areas may become important to the species in the future.

Summary of Factor E

Therefore, we do not have any information of risks to the Ozark chinquapin from other natural or manmade factors, and we have no reason to believe this factor will become a threat to the species in the foreseeable future. Based on a review of the available information, we find that other natural or manmade factors are not a threat to the Ozark chinquapin now or in the foreseeable future.

**Finding**

As required by the Act, we considered the five factors in assessing whether Ozark chinquapin is threatened or endangered throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by Ozark chinquapin. We reviewed the petition, information available in our files, and other available published and unpublished information, and we consulted with recognized Ozark chinquapin experts and other Federal, State, and Tribal agencies.

Based on our review of the best available scientific and commercial information pertaining to the five factors, we find that the threats are not of sufficient imminence, intensity, or magnitude to indicate that Ozark chinquapin is in danger of extinction (endangered), or likely to become endangered within the foreseeable future (threatened), throughout all of its range. Therefore, we find that listing Ozark chinquapin as a threatened or endangered species is not warranted throughout all of its range at this time.

*Significant Portion of the Range*

Having determined that Ozark chinquapin does not meet the definition of a threatened or endangered species throughout all of its range, we must next consider whether there are any significant portions of the range where Ozark chinquapin is in danger of extinction or is likely to become endangered in the foreseeable future.

In determining whether Ozark chinquapin is threatened or endangered in a significant portion of its range, we first addressed whether any portions of the range of Ozark chinquapin warrant further consideration. We evaluated the current range of Ozark chinquapin to determine if there is any apparent geographic concentration of the primary stressors potentially affecting the species including habitat management, development, climate change, regulation, disease, and genetics. This species' range suggests that stressors are not likely to affect it in a uniform manner throughout its range. As we explained in detail in our analysis of the status of the species, none of the stressors faced by the species are sufficient to place it in danger of extinction now (endangered) or in the foreseeable future (threatened). Therefore, no portion is likely to warrant further consideration, and a determination of significance is not necessary.

We do not find that Ozark chinquapin is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing Ozark chinquapin as threatened or endangered under the Act is not warranted at this time.

We request that you submit any new information concerning the status of, or threats to, Ozark chinquapin to our Arkansas Ecological Services Field Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor Ozark chinquapin and encourage its conservation. If an emergency situation develops for Ozark chinquapin, or any other species, we will act to provide immediate protection.

**References Cited**

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this notice are the staff members of the Arkansas Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 14, 2011.

**Gabriela Chavarria,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2011–16190 Filed 6–27–11; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 229

**[Docket No. 110207104–1112–02]**

**RIN 0648–BA76**

## List of Fisheries for 2012

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

**ACTION:** Proposed rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its proposed List of Fisheries (LOF) for 2012, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2012 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The classification of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

**DATES:** Comments must be received by July 28, 2011.

**ADDRESSES:** Send comments by any one of the following methods.

(1) Electronic Submissions: Submit all electronic comments through the Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

(2) Mail: Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to Nathan Frey, OMB, by fax to 202–395–7285 or by e-mail to *Nathan_Frey@omb.eop.gov.*

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (*e.g.,* name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, information on each Category I and II fishery, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/* or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Laura Engleby;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Charles Villafana;

NMFS, Northwest Region, 7600 Sand Point Way NE., Seattle, WA 98115, Attn: Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Bridget Mansfield; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1100, Honolulu, HI 96814–4700, Attn: Lisa Van Atta.

**FOR FURTHER INFORMATION CONTACT:** Melissa Andersen, Office of Protected Resources, 301–713–2322; David Gouveia, Northeast Region, 978–281–9280; Laura Engleby, Southeast Region, 727–551–5791; Elizabeth Petras, Southwest Region, 562–980–3238; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Lisa Van Atta, Pacific Islands Region, 808–944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SAR) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

### How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

*Fishery Classification Criteria*

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the

implementing regulations for section 118 of the MMPA (50 CFR 229.2).

*Tier 1:* If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

*Tier 2, Category I:* Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injuries of marine mammals).

*Tier 2, Category II:* Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injuries of marine mammals).

*Tier 2, Category III:* Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood or no known incidental mortality and serious injuries of marine mammals).

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

*Other Criteria That May Be Considered*

There are several fisheries on the LOF classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of a Category II fishery, ''In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality is ''frequent,'' ''occasional,'' or ''remote'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries'' (50 CFR 229.2). Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

**How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?**

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, and fisher self-reports.

In the absence of reliable information on the level of mortality or injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: changes in gear used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a TRP or a fishery management plan (FMP)). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or injured.

**How does NMFS determine the levels of observer coverage in a fishery on the LOF?**

Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including observer coverage in those fisheries. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices includes: Level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources' Web site at: *http://www.nmfs.noaa.gov/pr/sars/.* Information on observer coverage levels in Category I and II fisheries can also be found in the Category I and II fishery fact sheets on the NMFS Office of Protected Resources Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.gov/st4/nop/.*

**How do I find out if a specific fishery is in category I, II, or III?**

This proposed rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

**Are high seas fisheries included on the LOF?**

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, *etc.*) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008).

**Where can I find specific information on fisheries listed on the LOF?**

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: when the fishery was added to the LOF, the basis for the fishery's initial classification, classification changes to the fishery, changes to the list of species or stocks incidentally killed or injured in the fishery, fishery gear and methods used, observer coverage levels, fishery management and regulation, and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/,* linked to the ''List of Fisheries by Year'' table. NMFS plans to develop similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets will take significant time to complete. NMFS anticipates posting the Category III fishery fact sheets along with the final 2013 LOF, although this timeline may be revised as this exercise progresses.

**Am I required to register under the MMPA?**

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

**How do I register and receive my authorization certificate and injury/mortality reporting forms?**

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP. In the Pacific Islands, Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate and/or injury/mortality reporting forms via U.S. mail or with their state or Federal license at the time of renewal. In the Northeast region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year; but vessel or gear owners must request or print injury/mortality reporting forms by contacting the NMFS Northeast Regional Office at 978–281–9328 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/*). In the Southeast region, NMFS will issue vessel or gear owners notification of registry and vessel or gear owners may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at 727–209–5952 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) and following the instructions for printing the necessary documents.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

**How do I renew my registration under the MMPA?**

In Pacific Islands, Southwest, Alaska or Northeast regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. In Northwest regional fisheries, vessel or gear owners receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

In Southeast regional fisheries, vessel or gear owners may receive an authorization certificate by contacting the Southeast Regional Office or visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/*

*mmap.htm*) and following the instructions for printing the necessary documents.

**Am I required to submit reports when I injure or kill a marine mammal during the course of commercial fishing operations?**

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II or III) within 48 hours of the end of the fishing trip. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf* or by contacting the appropriate Regional office (see **ADDRESSES**). Reporting requirements and procedures can be found in 50 CFR 229.6.

**Am I required to take an observer aboard my vessel?**

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe; thereby, exempting vessels too small to accommodate an observer from this requirement. However, observer requirements will not be exempted, regardless of vessel size, for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)). Observer requirements can be found in 50 CFR 229.7.

**Am I required to comply with any marine mammal take reduction plan regulations?**

Table 4 in this proposed rule provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.36. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/.*

**Sources of Information Reviewed for the Proposed 2012 LOF**

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all fisheries to determine whether changes in fishery classification were warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The proposed LOF for 2012 was based, among other things, on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries; stranding data; fishermen self-reports through the MMAP; and the final SARs for 1996 (63 FR 60, January 2, 1998), 2001 (67 FR 10671, March 8, 2002), 2002 (68 FR 17920, April 14, 2003), 2003 (69 FR 54262, September 8, 2004), 2004 (70 FR 35397, June 20, 2005), 2005 (71 FR 26340, May 4, 2006), 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), 2008 (74 FR 19530, April 29, 2009), 2009 (75 FR 12498, March 16, 2010), and 2010 (76 FR 34054, June 10, 2011). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/.*

**Fishery Descriptions**

Beginning with the final 2008 LOF (72 FR 66048, November 27, 2007), NMFS describes each Category I and II fishery on the LOF. Below, NMFS describes the fisheries classified as Category I or II on the 2012 LOF that were not classified as such on a previous LOF (and therefore have not yet been defined on the LOF). Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, FMPs, and TRPs, through state agencies, or through the fishery summary documents available on the NMFS Office of Protected Resources Web site (*http://www.nmfs.noaa.gov/pr/interactions/lof/).* Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

*Hawaii Charter Vessel Fishery*

The ''HI charter vessel'' fishery is primarily a troll fishery targeting large pelagic species including billfish (*Xiphias galdius, Makaira* and *Tetrapterus* spp.), tunas (*Thunnas* spp.), mahi mahi (*Coryphaena* spp.) and ono (*Acanthocybium solandri*). Other species are also landed, including kawakawa and rainbow runner. Trolling gear usually consists of short, stout fiberglass rods and lever-drag hand-cranked reels. Up to six lines may be trolled when outrigger poles are used to keep the lines from tangling, using both artificial (lures) and natural baits. Some charter vessels also take patrons on deep sea bottomfishing trips. Charter vessels fish year-round throughout the Main Hawaiian Islands. The Island of Hawaii accounts for the largest share of the entire charter fleet in the state, primarily due to its reputation as the best location to catch blue marlin. According to a survey of charter vessel operators, the vessels typically operate about 7.5 miles from shore, with an average maximum distance from shore of 22.5 miles (Hamilton, 1998). Troll vessels often fish at anchored fish aggregation devices (FADs), drifting logs or flotsam, and areas of sharp changes in bottom topography that may aggregate fish. Additionally, charter vessels are also known to troll through groups of dolphins to target tuna associated with the dolphins (Baird unpublished data cited in Courbis *et al.,* 2010).

Hawaii state law allows sales of fish caught during sportfishing charter boat trips provided that the seller (usually, but not always, the captain) possesses a valid Commercial Marine License (CML) from the Hawaii Department of Land and Natural Resources (DLNR), Division of Aquatic Resources (DAR). Every licensee must provide DLNR/DAR with a monthly trip report. Based on survey results of charter boat operators (Hamilton, 1998), the majority of charter fishing operators in Hawaii sell at least some portion of their catch. There has not been observer coverage in this fishery.

*Hawaii Trolling, Rod and Reel Fishery*

The ''HI trolling, rod and reel'' fishery used troll gear to target yellowfin tuna, blue marlin, mahi mahi, ono, and skipjack tuna, and also lands bycatch of sailfish, spearfish, kawakawa, albacore, rainbow runner, and sharks. Bigeye tuna make up a very minor proportion of total reported troll catch. Compared to the ''HI charter vessel'' described above fishery, which also uses troll gear and methods, the ''HI trolling, rod and reel'' fishery targets and catches more yellowfin tuna (about 80 percent by weight), compared to charter vessels' catch of marlin (40–50 percent by weight). Troll fishing is conducted by towing lures or baited hooks from a moving vessel, using big game-type rods and reels as well as hydraulic haulers, outriggers and other gear. Up to six lines rigged with artificial lures or live bait may be trolled when outrigger poles are used to keep gear from tangling. When using live bait, trollers move at slower speeds to permit the bait to swim ''naturally.'' Small boat trolling is Hawaii's largest commercial fishery in terms of participation, although it catches a relatively modest volume of fish amounting to about 3,000 mt annually. The fishery operates year-round in the MHI, with vessels tending to fish within 25–50 miles of land and trips lasting only one day. Troll vessels fish in areas where water masses converge and where the underwater topography changes dramatically, such as near submarine cliffs or oceanic seamounts. Troll vessels also fish near anchored FADs, or search for drifting logs or flotsam that aggregate tuna, mahi mahi, and ono. Additionally, troll vessels are also known to troll through groups of dolphins to target tuna associated with the dolphins (Baird unpublished data cited in Courbis *et al.,* 2010).

The small-vessel troll fishery includes poorly differentiated commercial, recreational, and subsistence components. Many fishermen who are fishing primarily for recreation may sell their fish to cover their expenses. All fishery participants who fish, or land at least one fish with an intent to sell, within 3 miles of the shoreline (*i.e.,* within State waters) are required by the State of Hawaii to have a CML, and vessel operators are required to file state catch reports reporting the fishing effort, catch, discards, and landings during each fishing trip. A longline prohibited area of the Main Hawaiian Islands was established by the WPRFMC in 1992 in part to reduce gear conflicts between the Hawaii-based longline fleet and the troll fleet. There has not been observer coverage in this fishery.

*Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery*

The ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery operates primarily nearshore in the State of Florida. Stone crab fishing outside of this area is likely very minimal. In 2010, the State of Florida issued 1,282 commercial stone crab licenses and 1,190,285 stone crab trap tags. Florida state regulations limit recreational stone crab trap/pot numbers to five per person. The season for commercial and recreational stone crab harvest is from October 15 to May 15. Traps are the exclusive gear type used for the commercial and recreational stone crab fishery. Commercial traps must be designed to conform to the specifications established under U.S. 50 CFR 654.22, as well as State of Florida statutes. Baited traps are frequently set in waters of 65 ft (19.8 m) depth or less in a double line formation, generally 100–300 ft (30.5–91.4 m) apart, running parallel to a bottom contour. The margins of seagrass flats and bottoms with low rocky relief are also favored areas for trap placement. Buoys are attached to the trap/pot via float line. In Florida, commercial trap/pot buoys are required to be marked with the letter ''X,'' but there are no specific marking requirements for recreational crab traps.

**Summary of Changes to the LOF for 2012**

The following summarizes changes to the LOF for 2012 in fishery classification, fisheries listed in the LOF, the estimated number of vessels/participants in a particular fishery, and the species or stocks that are incidentally killed or injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2012 are identical to those provided in the LOF for 2011 with the proposed changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), CA (California), DE (Delaware), FL (Florida), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

*Commercial Fisheries in the Pacific Ocean*

Fishery Classification

*CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery*

NMFS proposes to elevate the ''CA thresher shark/swordfish drift gillnet'' fishery from Category III to Category II. NMFS observed this fishery from 2004 through 2009 at coverage levels ranging from 13.3 percent to 20.9 percent. NMFS reclassified this fishery from Category I to Category III on the 2011 LOF (75 FR 68468; November 8, 2010), because NMFS Southwest Observer Program reports indicated there were no serious injuries or mortalities of any marine mammal stock for which the average total fishery mortality and serious injury exceeded 10 percent of the stock's PBR (2010 SARs). However, NMFS received a mortality/injury self-report through the MMAP from a fisherman indicating a humpback whale was entangled in 2009 during operations of this fishery. Based on the information in this self-report and follow-up discussion with the reporting fisherman, NMFS Science Center staff determined this whale to be seriously injured because the animal was cut loose and released alive with entangling and trailing gear. The location of the entanglement off of Southern CA indicates the animal was most likely part of the CA/OR/WA stock of humpback whales. The total annual mortality and serious injury of humpback whales (CA/OR/WA stock) in all fisheries exceeds 10 percent of the stock's PBR (Tier 1 analysis). This single serious injury results in an average mortality and serious injury rate of 0.2 humpback whales per year (when averaged over the last 5 years of data) in this fishery (Tier 2 analysis), or 1.8 percent PBR of 11.3 (2010 SAR), warranting a Category II classification. This fishery is currently observed under the authority of the Highly Migratory Species FMP (50 CFR 660.719) and must comply with Pacific Offshore Cetacean TRP regulations (50 CFR 229.31).

*HI Charter Vessel and HI Trolling, Rod and Reel Fisheries*

NMFS proposes to elevate the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries from Category III to Category II based their fishing techniques and anecdotal reports of hookings of Pantropical spotted dolphins (HI stock) (Rizutto 2007, Courbis *et al.,* 2009). There is no observer coverage in either of these fisheries, and no quantitative data are available to conduct a tier analysis.

However, as described in the preamble of this proposed rule, in the absence of reliable information on the frequency of incidental serious injuries and mortalities, MMPA regulations specify that NMFS should determine whether the incidental serious injury or mortality is ''occasional'' *(i.e.,* Category II) by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the NMFS Assistant Administrator (50 CFR 229.2).

Charter and commercial trolling vessels in HI frequently troll multiple lines through groups of spotted dolphins to target schools of tunas that aggregate below the dolphins. Eighteen of 47 (38%) opportunistic sightings of Pantropical spotted dolphins near the Main Hawaiian Islands between November 2006 and July 2008 included one or more (with a maximum of six) troll fishing vessels actively ''fishing on'' groups of the dolphins (Baird unpublished data cited in Courbis *et al.,* 2010). Fishermen have reported that spotted dolphins occasionally take lures or bait and are hooked in the mouth, or are sometimes hooked in the body (Rizzuto, 2007; Baird unpublished data cited in Courbis *et al.,* 2010). In one anecdotal report, a fisherman released a hooked dolphin by cutting the fishing line as short as possible to the animal, but the hook remained in the animal's mouth (Rizzuto, 2007). While NMFS scientists have not made a determination on the severity of injuries in these anecdotal reports, a hook in the mouth of a small cetacean is considered a serious injury and a hook in the body could be considered an injury according the most current and best available information (Andersen *et al.,* 2008).

As stated above, quantitative information on the level of serious injury or mortality is not available for these fisheries. However, NMFS can project the likely level of serious injury and mortality in these fisheries based on the available information presented in the previous paragraph. The PBR for Pantropical spotted dolphins (HI stock) is 61; however, NMFS may split this stock into several smaller, island-associated stocks in the future (2010 SAR), which would result in lower PBRs for each new stock. Given the fishing techniques, evidence of takes from eyewitness reports, and the level of effort in these two fisheries (2,305 vessels combined), NMFS projects that each fishery will have at least one incidental serious injury or mortality of a Pantropical spotted dolphin (HI stock) per year. This level of take represents a minimum of 1.6 percent of PBR of 61 in each fishery; therefore, Category II classification is warranted for both the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries.

**Number of Vessels/Persons**

NMFS proposes to update the estimated number of persons/vessels in the following HI fisheries to reflect the number of licensees reporting landings in 2010.

Category I: ''HI deep-set (tuna target) longline/set line'' from 127 to 124.

Category II: ''American Samoa longline'' from 60 to 26; ''HI shortline'' from 21 to 13; and ''HI trolling, rod and reel'' from 2,210 to 2,191.

Category III: ''HI inshore gillnet'' from 39 to 44; ''HI crab net'' from 8 to 5; ''HI Kona crab loop net'' from 41 to 46; ''HI opelu/akule net'' from 20 to 16; ''HI hukilau net'' from 36 to 27; ''HI lobster tangle net'' from 2 to 1; ''HI inshore purse seine'' from 8 to 5; ''HI throw net, cast net'' from 28 to 22; ''HI crab trap'' from 9 to 5; ''HI fish trap'' from 11 to 13; ''HI lobster trap'' from 3 to 1; ''HI shrimp trap'' from 1 to 2; ''HI kaka line'' 28 to 24; ''HI vertical longline'' from 18 to 10; ''HI aku boat, pole, and line'' from 6 to 2; ''HI inshore handline'' from 460 to 416; ''HI tuna handline'' from 531 to 445; ''HI handpick'' from 53 to 61; ''HI lobster diving'' from 36 to 39; ''HI spearfishing'' from 163 to 144; ''HI fish pond'' from N/A to 16; and ''HI Main Hawaiian Islands deep-sea bottomfish handline from 580 to 569.

**List of Species or Stocks Incidentally Killed or Injured**

NMFS proposes to add humpback whale (CA/OR/WA stock) to the list of species or stocks incidentally killed or injured in the ''CA thresher shark/swordfish drift gillnet'' fishery (proposed to be elevated to Category II in this proposed rule). NMFS further proposes to include the notation ''[1]'' following humpback whale (CA/OR/WA stock) in Table 1, indicating that this stock is driving the classification of the fishery. NMFS received a mortality/injury self-report through the MMAP from a fisherman indicating a humpback whale was entangled while operating in this fishery in 2009. Based on the information in this self-report and follow-up discussion with the reporting fisherman, NMFS Science Center staff determined this whale to be seriously injured because the animal was cut loose and released alive with entangling and trailing gear. The single serious injury results in an average mortality and serious injury rate of 0.2 humpback whales per year (when averaged over the latest 5 year data period), or 1.8 percent of the stock's PBR of 11.3 (2010 SAR). Observer coverage in this fishery from 2004 through 2009 ranged from 13.3 percent to 20.9 percent.

NMFS proposes to add Pantropical spotted dolphin (HI stock) to the list of species or stocks incidentally killed or injured in the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries (both proposed to be elevated to Category II in this proposed rule). NMFS further proposes to include a superscript ''[1]'' following the Pantropical spotted dolphin (HI stock) in Table 1 for each fishery, indicating that this stock is driving the classification of these fisheries. As described above under ''Fishery Classification,'' charter and commercial trolling vessels in HI frequently troll multiple lines through groups of Pantropical spotted dolphins to target schools of tunas that aggregate below the dolphins. Fishermen have reported that Pantropical spotted dolphins occasionally take lures or bait, and are sometimes released with hooks in the mouth or the body. While NMFS scientists have not made a determination on the severity of injuries in these anecdotal reports, a hook in the mouth of a small cetacean is considered a serious injury and a hook in the body could be considered an injury according to the current and best available information (Andersen *et al.,* 2008). Further, the PBR for Pantropical spotted dolphins (HI stock) is 61 (2010 SAR). Given the fishing techniques, evidence of takes from eyewitness reports, and the level of effort in these two fisheries, NMFS projects that each fishery will have at least one incidental serious injury or mortality of a Pantropical spotted dolphin per year, or 1.6 percent of PBR. There has not been observer coverage in either of these fisheries.

*Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean*

Fishery Classification

*Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery*

NMFS proposes to elevate the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery from Category III to Category II based on analogy to the Category II ''Atlantic blue crab trap/pot'' fishery, and serious injury and mortality to bottlenose dolphins (multiple stocks) reported in stranding data. As stated in the preamble of this proposed rule, in the absence of reliable or quantitative information, NMFS must determine if a

fishery causes ''occasional'' serious injury or mortality to marine mammals (*i.e.,* Category II) by considering other factors (*e.g.,* fishing techniques, gear used) (50 CFR 229.2). A Category II classification for the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is warranted by analogy to the Category II ''Atlantic blue crab trap/pot'' fishery because the fisheries use similar fishing techniques, habitat and gear; therefore, posing a similar level of risk of interactions resulting in serious injury or mortality to bottlenose dolphins. Additionally, from 2002–2010, 3 bottlenose dolphin strandings (multiple stocks) resulting in serious injury or mortality were confirmed to result from interactions with stone crab trap/pot gear. Further, 7 bottlenose dolphin (multiple stocks) strandings resulting in serious injury or mortality were confirmed to result from interactions with a southeast trap/pot fishery, plausibly the stone crab fishery because of its spatial and temporal overlap with the strandings. The ten strandings from 2002–2010 strongly suggest the stone crab fishery has ''occasional incidental mortality and serious injury of marine mammals'' (50 CFR 229.2), further warranting a Category II classification. There has not been observer coverage in this fishery.

Marine mammal stranding data from 2002–2010 suggest the stone crab trap/pot fishery interacts with the following strategic marine mammal stocks, resulting in serious injury or mortality: (1) Bottlenose dolphin, Central FL coastal; (2) bottlenose dolphin, Jacksonville estuarine system; (3) bottlenose dolphin, Indian River Lagoon estuarine system; (4) bottlenose dolphin, Biscayne Bay ; (5) bottlenose dolphin, Lemon Bay estuarine system; and (6) bottlenose dolphin, Pine Sound [sic], Charlotte Harbor, Gasparilla Sound estuarine system. This fishery also interacts with the non-strategic bottlenose dolphin, Eastern GMX coastal stock. The PBR level is known for two of the seven bottlenose dolphin stocks interacting with this fishery: Central FL coastal stock (51) and Eastern GMX coastal stock (66) (2010 SARs). PBR is unknown or undetermined for the remaining five stocks. Therefore, a LOF classification based on serious injury and mortality as a percentage of PBR cannot be directly calculated for most of these stocks.

**Addition of Fisheries**

NMFS proposes to add the ''RI floating trap'' fishery as Category III. The ''RI floating trap'' fishery is described as a maze of vertical nets anchored to the bottom and stretched to the water's surface by attached buoys. The nets are anchored to the bottom and may be secured to the shore. These nets are set similar to weir/pound nets. At least four reflective buoys (high-flyers) mark the traps. One buoy is located at the shoreward end of the leader, one at the seaward end of the leader adjacent to the head of the trap, and two buoys at the seaward side of the head of the trap. Nets are set seasonally between May and October and primarily target scup, striped bass, and squid. Floating fish traps are executed only in RI state waters. There is currently no observer coverage for this fishery. No marine mammal interactions have been reported for this gear type and strandings data do not provide evidence for interactions. Given this fishery's close proximity to shore and the absence of evidence for marine mammal injury or mortality resulting from this gear, a Category III classification is warranted. There are currently nine companies that hold state permits for participating in this fishery. NMFS is soliciting public comment to obtain more information on this fishery and whether or not similar floating trap fisheries exist elsewhere.

**Fishery Name and Organizational Changes and Clarifications**

NMFS proposes to clarify the spatial boundary of the Category II ''Northeast bottom trawl'' fishery. In the 2011 LOF, NMFS modified the trawl fishery boundary definitions to more accurately depict the boundaries used for calculating marine mammal bycatch estimates. Currently the Northeast bottom trawl fishery boundary is defined as: ''from the Maine-Canada border through waters east of 70° W. long.'' NMFS proposes to clarify this boundary to read as follows: ''The Northeast bottom trawl fishery includes all U.S. waters south of Cape Cod, MA that are east of 70° W and extending south to the intersection of the Exclusive Economic Zone (EEZ) and 70° W (approximately 37° 54′ N), as well as all U.S. waters north of Cape Cod to the Maine-Canada border.''

NMFS proposes to clarify the spatial boundary of the Category II ''Mid-Atlantic bottom trawl'' fishery. In the 2011 LOF, NMFS modified the trawl fishery boundary definitions to more accurately depict the boundaries used for calculating marine mammal bycatch estimates. Currently the Mid-Atlantic bottom trawl fishery boundary is defined as: ''Cape Cod, MA, to Cape Hatteras, NC, in waters west of 70° W. long. and north of a line extending due east from the North Carolina/South Carolina border.'' NMFS proposes to clarify this boundary to read as follows: ''all waters due east from the NC/SC border to the EEZ and north to Cape Cod, MA in waters west of 70° W. long.''

NMFS proposes to update the spatial boundary of the Category II ''Northeast mid-water trawl'' fishery. Currently, this fishery's spatial boundary is defined as ''occurs primarily in ME State waters, Jeffrey's Ledge, southern New England, and Georges Bank during the winter months when the target species continues its southerly migration from the Gulf of ME/Georges Bank, into mid-Atlantic waters'' (72 FR 35393, June 28, 2007). As a result of reviewing trip locations from vessel trip report data, the NMFS Northeast Fisheries Science Center (NEFSC) separates the Northeast and Mid-Atlantic trawl fisheries at 70° W. long. in marine mammal bycatch analyses. Therefore, to maintain consistency with how the NEFSC defines these fisheries, NMFS proposes to further clarify the spatial boundary for this fishery. NMFS proposes to add the following to the spatial distribution: ''The Northeast mid-water trawl fishery includes all U.S. waters south of Cape Cod, MA that are east of 70° W and extending south to the intersection of the EEZ and 70° W (approximately 37° 54′N), as well as all U.S. waters north of Cape Cod to the Maine-Canada border.''

NMFS proposes to update the spatial boundary for the Category II ''Mid-Atlantic mid-water trawl'' fishery. Currently, this fishery's spatial boundary is defined as: ''The fishery for Atlantic mackerel occurs primarily from southern New England through the mid-Atlantic from January to March and in the Gulf of Maine during the summer and fall (May to December). This fishery is managed under the federal Atlantic Mackerel, Squid, and Butterfish FMP using an annual quota system.'' As noted in the paragraph above, the NEFSC separates the Northeast and Mid-Atlantic trawl fisheries at 70° W. long. Therefore, to further clarify the spatial distribution of this fishery, NMFS proposes to add the following to the spatial distribution: ''The Mid-Atlantic mid-water trawl fishery includes all waters due east from the NC/SC border to the EEZ and north to Cape Cod, MA in waters west of 70° W. long.''

**Number of Vessels/Persons**

NMFS proposes to update the estimated number of vessels/persons in the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery (proposed to be elevated to Category II in this proposed rule) from 4,453 to 1,282.

NMFS proposes to update the estimated number of vessels/persons in the Category III ''FL spiny lobster trap/pot'' fishery from 2,145 to 1,268.

NMFS proposes to update the estimated number of vessels/persons for several Mid-Atlantic and New England fisheries in order to reflect the potential state and Federal permit effort. NMFS acknowledges that these estimations are inflations of actual effort; however, they represent the potential effort for each fishery, given the multiple gear types state permits may allow for. These changes do not necessarily represent a change in industry effort. Federal permit information was collected through Federal Vessel Trip Report and by querying Federal permit databases. State permit information was collected through the MMAP registration process.

Category I: ''Mid-Atlantic gillnet'' from 5,495 to 6,402; ''Northeast sink gillnet'' from 7,712 to 3,828; and ''Northeast/Mid-Atlantic American lobster trap/pot'' from 12,489 to 11,767.

Category II: ''Chesapeake Bay inshore gillnet'' from 1,167 to 3,328; ''Northeast anchored float gillnet'' from 662 to 414; ''Northeast drift gillnet'' from 608 to 414; ''Mid-Atlantic mid-water trawl'' from 546 to 669; ''Mid-Atlantic bottom trawl'' from 1,182 to 1,388; ''Northeast mid-water trawl (including pair trawl)'' from 953 to 887; ''Northeast bottom trawl'' from 1,635 to 2,584; Atlantic blue crab trap/pot from 6,479 to 10,008; ''Atlantic mixed species trap/pot'' from 1,912 to 3,526; ''Mid-Atlantic menhaden purse seine'' from 54 to 56; ''Mid-Atlantic haul/beach seine'' from 666 to 874; and ''VA pound net'' from 52 to 231.

Category III: ''Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge'' from 258 to >230; ''Northeast, Mid-Atlantic bottom longline/hook & line'' from 1,183 to >1,281; ''DE River inshore gillnet'' from 60 to unknown; ''Long Island Sound inshore gillnet'' from 20 to unknown; ''RI, southern MA (to Monomy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet'' from 32 to unknown; ''Gulf of Maine Atlantic herring purse seine'' from >7 to >6; ''U.S. Mid-Atlantic eel trap/pot'' from >700 to unknown; and ''Atlantic shellfish bottom trawl'' from > 67 to >86.

**List of Species or Stocks Incidentally Killed or Injured**

NMFS proposes to add the following stocks to the list of species or stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline'' fishery: Killer whale (GMX oceanic stock), sperm whale (GMX oceanic stock), and Gervais beaked whale (GMX oceanic stock). A killer whale (GMX oceanic stock) and a sperm whale (GMX oceanic stock) were each injured in this fishery in 2008, and a Gervais beaked whale (GMX oceanic stock) was injured in this fishery in 2007. Further, NMFS proposes to update the name of the Atlantic spotted dolphin stock from ''Northern GMX'' to ''GMX continental and oceanic'' to reflect the stock name in the 2010 SAR. Observer coverage in this fishery from 2004–2007 ranged from 4–7 percent, with coverage exceeding 10 percent in some areas and regions (2010 SAR).

NMFS proposes to combine bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) listed as incidentally killed or injured in the Category II ''Southeast Atlantic gillnet'' fishery and rename the stock as ''bottlenose dolphin (SC/GA coastal stock)'' to reflect the stock name in the 2010 SAR.

NMFS proposes to add bottlenose dolphin (Northern FL coastal stock) to the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic shark gillnet'' fishery. There were 2 takes (level of injury undetermined) of bottlenose dolphins that occurred in drift gillnet gear in 2002 and 2003 just south of the range of the Northern FL coastal stock, and the dolphins were possibly from this stock (2010 SAR). There has been no observer coverage in this fishery in recent years.

NMFS proposes to add bottlenose dolphin (Northern GMX coastal stock) and bottlenose dolphin (GMX continental shelf stock) to the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery. A bottlenose dolphin was killed in this fishery in 2003 and could have belonged to the Northern GMX coastal stock or a GMX bay, sound and estuarine stock (which is already included on the list of species or stocks killed or injured in this fishery). Additionally, 1 or more of 6 unidentified dolphins taken in this fishery from 1992–2008 could be from this stock (2010 SAR). A bottlenose dolphin (GMX continental shelf stock) was killed in this fishery in 2008. However, the PBR for this stock is undetermined, so NMFS cannot determine the exact percentage of PBR this take would represent. Additionally, 3 or 4 unidentified dolphins injured or killed in this fishery from 1992–2008 could be from this stock (2010 SAR). Further, NMFS proposes to update the name of the Atlantic spotted dolphin stock from ''Northern GMX'' to ''GMX continental and oceanic,'' and combine the bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) and rename the stock as ''bottlenose dolphin (SC/GA coastal stock),'' to reflect the stock names in the 2010 SAR. Observer coverage currently averages about 1 percent of the total fishery effort (2010 SAR).

NMFS proposes to combine bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) on the list of species or stocks incidentally killed or injured in the Category II ''Atlantic blue crab trap/pot'' fishery and rename the stock as ''bottlenose dolphin (SC/GA coastal stock)'' to reflect the stock name in the 2010 SAR.

NMFS proposes to add bottlenose dolphin (Southern NC estuarine system stock) to the list of species or stocks incidentally killed or injured in the Category II ''NC long haul seine'' fishery. Three bottlenose dolphins were caught and released alive in this fishery; however, the level of injury for these three dolphins was undetermined. The 2010 SAR states that this fishery is known to interact with this stock. There has been no observer coverage in this fishery.

NMFS proposes to add bottlenose dolphin (Northern NC estuarine system stock) to the list of species or stocks incidentally killed or injured in the Category II ''VA pound net'' fishery. Stranding data for 2004–2008 indicate 17 bottlenose dolphins (Northern NC estuarine system stock) were killed in pound net gear and 3 were released alive. The level of injury for the 3 dolphins released alive was undetermined. These interactions occurred primarily inside estuarine waters near the mouth of the Chesapeake Bay in summer months. Nine of these mortalities occurred during the summer (July–September) and, therefore, could be from the Northern NC estuarine system stocks. The 2010 SAR states that this fishery is known to interact with this stock. There has not been formal observer coverage in this fishery; however, the Northeast Fishery Observer Program (NEFOP) has monitoring and characterization that occurs sporadically in this fishery.

NMFS proposes to add bottlenose dolphin (Central FL coastal stock) to the list of species or stocks incidentally killed or injured in the Category III ''FL spiny lobster trap/pot'' fishery. From 2002–2010, 4 bottlenose dolphin serious injuries or mortalities (multiple stocks) were confirmed to result from interactions with a southeast trap/pot fishery, plausibly the spiny lobster fishery because of its spatial and

temporal overlap with the strandings (2010 SAR). The 2010 SAR further indicates that at least one of these 4 takes was from the Central FL coastal stock. There has not been observer coverage in this fishery.

NMFS proposes to add the following stocks to the list of species or stocks incidentally killed or injured in the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery (proposed to be elevated to Category II in this proposed rule): Bottlenose dolphin (Central FL coastal stock), bottlenose dolphin (Eastern GMX coastal stock), bottlenose dolphin (FL Bay stock), bottlenose dolphin (GMX bay, sound, estuarine stock, FL west coast portion), bottlenose dolphin (Indian River Lagoon estuarine system stock), bottlenose dolphin (Jacksonville estuarine system stock), and bottlenose dolphin (Northern GMX coastal stock). From 2002–2010, 3 bottlenose dolphin serious injuries or mortalities were confirmed to result from interactions with the stone crab fishery, and 7 bottlenose dolphin serious injuries or mortalities were confirmed to result from interactions with a southeast trap/pot fishery, plausibly the stone crab fishery based on spatial and temporal overlap with these strandings (2010 SAR). The 2010 SARs indicate that the serious injuries or mortalities were confirmed and/or could have been from the stocks listed above. This fishery has not been observed.

NMFS proposes to add bottlenose dolphin (GMX continental shelf stock) to the list of species or stocks incidentally killed or injured in the Category III ''Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line'' fishery. One bottlenose dolphin was killed and one was seriously injured in this fishery in 2010, one reported in a 2010 NMFS Observer Program report and one observed and photo documented report from a local researcher and NMFS gear expert. In 2009, the observer coverage in the fishery was 1.7 percent (5.5 percent for the longline portion, nearly 0 percent for the modified buoy portion, and .07 percent for the vertical line portion). The PBR for this stock is undetermined; therefore, NMFS cannot determine what percentage of PBR these mortalities represent.

NMFS proposes to add bottlenose dolphin (GMX bay, sound, and estuarine stock) to the list of species or stocks incidentally killed or injured in the Category III ''Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel'' fishery. Stranding data from 2002–2009 indicate 6 bottlenose dolphins stranded with recreational hook and line gear (confirmed by gear analysis) and an additional 2 bottlenose dolphins were released after disentanglement from this gear. There was also one dead bottlenose dolphin entangled in what the NMFS gear analysis team thought was recreational gear or commercial longline gear. Further, from 2002–2009 there were 29 additional strandings of bottlenose dolphins that were entangled in gear consistent with recreational hook and line gear. This gear can be attributed to either vessels operating in the ''Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel'' fishery or individual recreational fishers. Given the large number of stranding events, it is highly likely that one or more of the strandings resulted from interactions with this commercial fishery. The GMX bay, sound, and estuarine stock includes 32 distinct stocks, and for 29 of those stocks the PBR is undetermined. Given that fact, and the uncertainties surrounding the number of animals taken in this specific fishery and their exact stock assignment, NMFS cannot determine the percentage of PBR these takes represent. There has not been observer coverage in this fishery.

NMFS proposes to add Risso's dolphin (WNA stock) to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery. In 2010, fifteen Risso's dolphins were observed killed in this fishery: One was killed during a bottom otter trawl trip targeting summer flounder in April 2010; one was killed during a bottom otter trawl trip targeting monkfish in April 2010; eight were killed in a bottom otter trawl trip targeting *Illex* squid in June 2010; and five were killed in bottom otter trawls again targeting *Illex* squid in October 2010. These recorded takes occurred west of 70° W. long., which serves as the boundary between the Northeast and Mid-Atlantic bottom trawl fisheries. These mortalities were observed and reported in the April 2010, June 2010, and October 2010 NEFOP Incidental Take Reports (*http://www.nefsc.noaa.gov/fsb/*). The total annual estimated average fishery-related mortality or serious injury to this stock during 2004–2008 was 20 Risso's dolphins (2010 SAR). However, no takes were attributed to the Mid-Atlantic bottom trawl fishery during this time. The fifteen takes that occurred during 2010 in this fishery represents more than 1 percent of the stock's PBR of 124. Therefore NMFS also proposes to include the notation ''[1] '' next to this stock in Table 2 to indicate that the stock is driving the Category II classification of the fishery. Observer coverage in this fishery from 1997–2008 ranged from 0 to 13.3 percent (2010 SAR).

NMFS proposes to add harbor seal (WNA stock) to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery. In March 2009, a harbor seal was killed in a bottom trawl targeting *Loligo* squid and operating west of 70° W. long., which serves as the boundary between the Northeast and Mid-Atlantic bottom trawl fisheries. The PBR for this stock is unknown (2010 SAR); therefore, it is unknown what percentage of PBR this mortality represents. However, given the most recent PBR reported for this stock was 2,746 (2009 SAR), it is unlikely that this one mortality equates to a rate of annual serious injury and mortality that exceeds 1 percent of PBR. Therefore, this stock is not driving the classification of this fishery. This mortality was observed and reported in the March 2009 NEFOP Incidental Take Reports (*http://www.nefsc.noaa.gov/fsb/*). Observer coverage in this fishery from 1997–2008 was 0 to 13.3 percent (2010 SAR).

NMFS proposes to add bottlenose dolphin (WNA offshore stock) to the list of species or stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery. From 2009–2010, five bottlenose dolphins (WNA offshore stock) were killed in this fishery: One bottlenose dolphin was killed during a trip targeting groundfish in April 2009; three were killed on during a trip targeting *Illex* squid in August 2009; and one was killed in a bottom otter trawl targeting *Loligo* squid in March 2010. The most recent total mean estimated annual fishery-related mortality for this stock is unknown (2010 SAR), but these 5 mortalities in one year represent less than 1 percent of the stock's PBR of 566. In the 2011 LOF, the three August 2009 takes were incorrectly attributed to the Category II ''Mid-Atlantic bottom trawl'' fishery. However, these three takes occurred east of 70° W. long., which serves as the boundary between the Northeast and Mid-Atlantic bottom trawl fisheries, and therefore should be attributed to the ''Northeast bottom trawl'' fishery. These mortalities were observed and reported in the April 2009, August 2009 and March 2010 Northeast Fisheries Observer Program Incidental Take Reports (*http://www.nefsc.noaa.gov/fsb/*). Observer coverage in this fishery from 1994–2008 was 0.1 to 8 percent (2010 SAR).

NMFS proposes to add gray seal (WNA stock) to the list of species or stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery. In November 2009, a gray seal was killed in a bottom trawl targeting *Loligo* squid and operating east of 70° W. long., which serves as the boundary between the Northeast and Mid-Atlantic bottom trawl fisheries. The PBR for this stock is currently undetermined because the minimum population size is unknown (2010 LOF); therefore, it is unknown what percentage of PBR this mortality represents and whether the take is driving the Category II classification of the fishery. However, the stock's abundance appears to be increasing in U.S. waters and the total U.S. fishery-related serious injury and mortality can be considered insignificant and approaching a zero mortality or serious injury rate (2010 SAR). This mortality was observed and reported in the November 2009 NEFOP Incidental Take Reports (*http://www.nefsc.noaa.gov/fsb/*). Observer coverage in this fishery from 1994–2008 was 0.1 to 8 percent (2010 SAR).

*Commercial Fisheries on the High Seas*

Fishery Classification

NMFS proposes to elevate the high seas ''Pacific highly migratory species drift gillnet'' fishery from Category III to Category II. This fishery is an extension of the ''CA thresher shark/swordfish drift gillnet'' fishery operating within the U.S. EEZ, and is not a separate fishery. NMFS proposes to elevate the component of the fishery operating in U.S. waters to Category II in this proposed rule (see above under ''Commercial Fisheries in the Pacific Ocean'' for details); therefore, NMFS also proposes to elevate the high seas component of the fishery because it remains the same fishery on either side of the EEZ boundary.

NMFS proposes to correct an error in the 2011 LOF by reclassifying the high seas ''Pacific highly migratory species longline'' fishery from Category II to Category III. This fishery is an extension of the Category III ''CA pelagic longline'' fishery operating within the U.S. EEZ, and is not a separate fishery. The component of the fishery operating in U.S. waters was reclassified as Category III in the final 2011 LOF. However, the high seas component of the fishery inadvertently remained listed as Category II on the 2011 LOF. Since the high seas component of the fishery is the same as the fishery operating within the U.S. EEZ, and is not a separate fishery, it should be classified in the same Category as the fishery operating within the U.S. EEZ.

**Removal of Fisheries**

NMFS proposes to remove the Category II high seas ''Pacific highly migratory species trawl'' fishery. There are no active HSFCA permits for this gear type in this fishery.

NMFS proposes to remove the Category II high seas ''South Pacific albacore troll trawl'' fishery. There are no active HSFCA permits for this gear type in this fishery.

**Fishery Name and Organizational Changes and Clarifications**

NMFS proposes to change the name of the Category I high seas ''Western Pacific pelagic (deep-set component) longline'' fishery to the ''Western Pacific pelagic (HI deep-set component) longline'' fishery to more clearly reflect that there is one HI-based deep-set longline fishery that operates both within the U.S. EEZ and on the high seas.

NMFS proposes to change the name of the Category II high seas ''Western Pacific pelagic (shallow-set component) longline'' fishery to the ''Western Pacific pelagic (HI shallow-set component) longline'' fishery to more clearly reflect that there is one HI-based shallow-set longline fishery that operates both within the U.S. EEZ and on the high seas.

**Number of Vessels/Persons**

NMFS proposes to update the estimated number of HSFCA permits in multiple high seas fisheries for multiple gear types. The proposed updated numbers of HSFCA permits reflect the current number of permits in the NMFS National Permit System database.

High seas Atlantic highly migratory species fishery for the following gear types: Longline from 77 to 81; and handline/pole and line from 2 to 3.

High seas Pacific highly migratory species fishery for the following gear types: Pot from 7 to 3; longline from 75 to 85; handline/pole and line from 25 to 30; multipurpose from 7 to 5; purse seine from 8 to 7; and troll from 271 to 258.

High seas South Pacific albacore troll fishery for the following gear types: Pot from 5 to 3; and troll from 59 to 51.

High seas South Pacific tuna fishery for the following gear types: Longline from 8 to 11; and purse seine from 35 to 33.

High seas Western Pacific pelagic fishery for the following gear types: Deep-set longline from 127 to 124; pot from 7 to 3; handline/pole and line from 10 to 8; multipurpose from 5 to 4; trawl from 3 to 1; and troll from 40 to 32.

**List of Species or Stocks Incidentally Killed or Injured**

NMFS proposes to add humpback whale (CA/OR/WA stock) to the list of marine mammal stocks incidentally injured or killed in the high seas ''Pacific highly migratory species gillnet'' fishery (proposed to be elevated to Category II in this proposed rule). This fishery is an extension of the ''CA thresher shark/swordfish drift gillnet'' fishery (proposed to be elevated to Category II in this proposed rule) operating within the U.S. EEZ, and is not a separate fishery. A humpback whale was reported as seriously injured in the component of the fishery operating in U.S. waters in 2009. Since this fishery remains the same and many marine mammals species are found on either side of the EEZ boundary, the list of species or stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species or stocks killed or injured in the component operating in U.S. waters, minus coastal stocks.

NMFS proposes to correct an error in the 2011 LOF by removing Risso's dolphin (CA/OR/WA stock) from the list of marine mammal stocks incidentally injured or killed in the high seas ''Pacific highly migratory species longline'' fishery (proposed to be reclassified to Category III in this proposed rule). This fishery is an extension of the Category III ''CA pelagic longline'' fishery operating within the U.S. EEZ, and is not a separate fishery. Risso's dolphin (CA/OR/WA stock) was removed from the list of species or stocks killed or injured in the component of the fishery operating in U.S. waters in the final 2011 LOF. However, the stock inadvertently remained listed as killed or injured in the high seas component of this fishery. Since this fishery remains the same and many marine mammals species are found on either side of the EEZ boundary, the list of species or stocks incidentally killed or injured in the high seas component of the fishery is identical to the list of species or stocks killed or injured in the component operating in U.S. waters, minus coastal stocks.

NMFS proposes to add Blainville's beaked whale (unknown stock), bottlenose dolphin (unknown stock), Pantropical spotted dolphin (unknown stock), Risso's dolphin (unknown stock), short-finned pilot whale (unknown stock), and striped dolphin (unknown stock), to the list of species or stocks injured or killed in the Category I high

seas ''Western Pacific pelagic (HI deep-set component)'' fishery. This fishery is an extension of the Category I ''HI deep-set (tuna target) longline/set line'' fishery operating within the U.S. EEZ, and is not a separate fishery. The proposed addition of these unknown stocks is not due to additional observed takes; it is however an acknowledgement of uncertainty in the stock identification for species of marine mammals taken by this fishery outside of the U.S. EEZ (*i.e.,* on the high seas). In the 2011 LOF, NMFS made several changes to the stocks listed as taken in this fishery because the 2010 SAR noted that the HI pelagic stocks include animals found both within the U.S. EEZ around the Hawaiian Islands and in adjacent high seas. However, the stock boundaries are unknown. Therefore, this fishery may be taking animals from the HI pelagic stocks, or from unknown, undefined stocks beyond the range of the HI pelagic stocks. Until further information is available to assign animals taken on the high seas to a specific stock, NMFS proposes adding ''unknown'' stocks for each of the species listed to acknowledge this uncertainty and to be consistent with the SARs.

NMFS proposes to add bottlenose dolphin (unknown stock), Byrde's whale (unknown stock), *Kogia* spp. whale (unknown stock), Risso's dolphin (unknown stock), and striped dolphin (unknown stock), to the list of species or stocks injured or killed in the Category II high seas ''Western Pacific pelagic (HI shallow-set component)'' fishery. This fishery is an extension of the Category II ''HI shallow-set (swordfish target) longline/set line'' fishery operating within the U.S. EEZ, and is not a separate fishery. The proposed addition of these unknown stocks is not due to additional observed takes; it is however an acknowledgement of uncertainty in the stock identification for species of marine mammals taken by this fishery outside of the U.S. EEZ (*i.e.,* on the high seas). In the 2011 LOF, NMFS made several changes to the stocks listed as taken in this fishery because the 2010 SAR noted that the HI pelagic stocks include animals found both within the U.S. EEZ around the Hawaiian Islands and in adjacent high seas. However, the stock boundaries are unknown. Therefore, this fishery may be taking animals from the HI pelagic stocks, or from unknown, undefined stocks beyond the range of the HI pelagic stocks. Until further information is available to assign animals taken on the high seas to a specific stock, NMFS proposes adding ''unknown'' stocks for each of the species listed to acknowledge this uncertainty and to be consistent with the SARs.

**List of Fisheries**

The following tables set forth the proposed list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the high seas; and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels/persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels/persons in the fishery. NMFS acknowledges that, in some cases, these estimations may be inflations of actual effort, such as for many of the Mid-Atlantic and New England fisheries. However, in these cases, the numbers represent the potential effort for each fishery, given the multiple gear types several state permits may allow for. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, NMFS refers the reader to contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time.

Tables 1, 2, and 3 also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, disentanglement network data, and MMAP reports. This list includes all species or stocks known to be injured or killed in a given fishery, but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those stocks driving a fishery's classification (*i.e.,* the fishery is classified based on serious injuries and mortalities of a marine mammal stock that are greater than 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''[1]''after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''[2]'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary, and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fishery on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

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Table 1 - List of Fisheries -- Commercial Fisheries in the Pacific Ocean

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| CATEGORY I | | |
| LONGLINE/SET LINE FISHERIES: | | |
| HI deep-set (tuna target) longline/set line *^ | 124 | Blainville's beaked whale, HI<br>Bottlenose dolphin, HI Pelagic<br>False killer whale, HI Insular[1]<br>False killer whale, HI Pelagic[1]<br>False killer whale, Palmyra Atoll<br>Humpback whale, Central North Pacific<br>Pantropical spotted dolphin, HI<br>Risso's dolphin, HI<br>Short-finned pilot whale, HI<br>Striped dolphin, HI |
| CATEGORY II | | |
| GILLNET FISHERIES: | | |
| CA halibut/white seabass and other species set gillnet (>3.5 in mesh) | 50 | California sea lion, U.S.<br>Harbor seal, CA<br>Humpback whale, CA/OR/WA[1]<br>Long-beaked common dolphin, CA<br>Northern elephant seal, CA breeding<br>Sea otter, CA<br>Short-beaked common dolphin, CA/OR/WA |
| CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in)[2] | 30 | California sea lion, U.S.<br>Long-beaked common dolphin, CA<br>Short-beaked common dolphin, CA/OR/WA |
| CA thresher shark/swordfish drift gillnet (≥14 in mesh) * | 45 | California sea lion, U.S.<br>Humpback whale, CA/OR/WA[1]<br>Long-beaked common dolphin, CA<br>Northern elephant seal, CA breeding<br>Northern right-whale dolphin, CA/OR/WA<br>Pacific white-sided dolphin, CA/OR/WA<br>Risso's dolphin, CA/OR/WA<br>Short-beaked common dolphin, CA/OR/WA |
| AK Bristol Bay salmon drift gillnet[2] | 1,862 | Beluga whale, Bristol Bay<br>Gray whale, Eastern North Pacific<br>Harbor seal, Bering Sea<br>Northern fur seal, Eastern Pacific<br>Pacific white-sided dolphin, North Pacific<br>Spotted seal, AK<br>Steller sea lion, Western U.S. |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| AK Bristol Bay salmon set gillnet[2] | 983 | Beluga whale, Bristol Bay<br>Gray whale, Eastern North Pacific<br>Harbor seal, Bering Sea<br>Northern fur seal, Eastern Pacific<br>Spotted seal, AK |
| AK Kodiak salmon set gillnet | 188 | Harbor porpoise, GOA[1]<br>Harbor seal, GOA<br>Sea otter, Southwest AK<br>Steller sea lion, Western U.S. |
| AK Cook Inlet salmon set gillnet | 738 | Beluga whale, Cook Inlet<br>Dall's porpoise, AK<br>Harbor porpoise, GOA<br>Harbor seal, GOA<br>Humpback whale, Central North Pacific[1]<br>Steller sea lion, Western U.S. |
| AK Cook Inlet salmon drift gillnet | 571 | Beluga whale, Cook Inlet<br>Dall's porpoise, AK<br>Harbor porpoise, GOA[1]<br>Harbor seal, GOA<br>Steller sea lion, Western U.S. |
| AK Peninsula/Aleutian Islands salmon drift gillnet[2] | 162 | Dall's porpoise, AK<br>Harbor porpoise, GOA<br>Harbor seal, GOA<br>Northern fur seal, Eastern Pacific |
| AK Peninsula/Aleutian Islands salmon set gillnet[2] | 115 | Harbor porpoise, Bering Sea<br>Steller sea lion, Western U.S. |
| AK Prince William Sound salmon drift gillnet | 537 | Dall's porpoise, AK<br>Harbor porpoise, GOA[1]<br>Harbor seal, GOA<br>Northern fur seal, Eastern Pacific<br>Pacific white-sided dolphin, North Pacific<br>Sea otter, South Central AK<br>Steller sea lion, Western U.S.[1] |
| AK Southeast salmon drift gillnet | 476 | Dall's porpoise, AK<br>Harbor porpoise, Southeast AK<br>Harbor seal, Southeast AK<br>Humpback whale, Central North Pacific[1]<br>Pacific white-sided dolphin, North Pacific<br>Steller sea lion, Eastern U.S. |
| AK Yakutat salmon set gillnet[2] | 166 | Gray whale, Eastern North Pacific<br>Harbor seal, Southeast AK<br>Humpback whale, Central North Pacific (Southeast AK) |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded) | 210 | Dall's porpoise, CA/OR/WA<br>Harbor porpoise, inland WA[1]<br>Harbor seal, WA inland |
| PURSE SEINE FISHERIES: | | |
| AK Cook Inlet salmon purse seine | 82 | Humpback whale, Central North Pacific[1] |
| AK Kodiak salmon purse seine | 370 | Humpback whale, Central North Pacific[1] |
| TRAWL FISHERIES: | | |
| AK Bering Sea, Aleutian Islands flatfish trawl | 34 | Bearded seal, AK<br>Harbor porpoise, Bering Sea<br>Harbor seal, Bering Sea<br>Killer whale, AK resident[1]<br>Northern fur seal, Eastern Pacific<br>Spotted seal, AK<br>Steller sea lion, Western U.S.[1]<br>Walrus, AK |
| AK Bering Sea, Aleutian Islands pollock trawl | 95 | Dall's porpoise, AK<br>Harbor seal, AK<br>Humpback whale, Central North Pacific<br>Humpback whale, Western North Pacific<br>Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1]<br>Minke whale, AK<br>Ribbon seal, AK<br>Spotted seal, AK<br>Steller sea lion, Western U.S.[1] |
| POT, RING NET, AND TRAP FISHERIES: | | |
| AK Bering Sea sablefish pot | 6 | Humpback whale, Central North Pacific[1]<br>Humpback whale, Western North Pacific[1] |
| CA spot prawn pot | 27 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA[1] |
| CA Dungeness crab pot | 534 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA[1] |
| OR Dungeness crab pot | 433 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA[1] |
| WA/OR/CA sablefish pot | 309 | Humpback whale, CA/OR/WA[1] |
| WA coastal Dungeness crab pot/trap | 228 | Gray whale, Eastern North Pacific<br>Humpback whale, CA/OR/WA[1] |
| TROLL FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| HI trolling, rod and reel | 2,191 | Pantropical spotted dolphin, HI[1] |
| LONGLINE/SET LINE FISHERIES: | | |
| HI shallow-set (swordfish target) longline/ set line *^ | 28 | Bottlenose dolphin, HI Pelagic[1]<br>Bryde's whale, HI<br>False killer whale, HI Pelagic<br>Humpback whale, Central North Pacific<br>Kogia sp. whale (Pygmy or dwarf sperm whale), HI<br>Risso's dolphin, HI<br>Striped dolphin, HI |
| American Samoa longline[2] | 26 | False killer whale, American Samoa<br>Rough-toothed dolphin, American Samoa |
| HI shortline[2] | 13 | None documented |
| AK Bering Sea, Aleutian Islands Pacific cod longline | 54 | Killer whale, AK resident[1]<br>Ribbon seal, AK<br>Steller sea lion, Western U.S. |
| COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES: | | |
| HI charter vessel | 114 | Pantropical spotted dolphin, HI[1] |
| CATEGORY III | | |
| GILLNET FISHERIES: | | |
| AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet | 824 | Harbor porpoise, Bering Sea |
| AK miscellaneous finfish set gillnet | 3 | Steller sea lion, Western U.S. |
| AK Prince William Sound salmon set gillnet | 30 | Harbor seal, GOA<br>Steller sea lion, Western U.S. |
| AK roe herring and food/bait herring gillnet | 986 | None documented |
| CA set gillnet (mesh size <3.5 in) | 304 | None documented |
| HI inshore gillnet | 44 | Bottlenose dolphin, HI<br>Spinner dolphin, HI |
| WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing) | 24 | Harbor seal, OR/WA coast |
| WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet | 913 | None documented |
| WA/OR lower Columbia River (includes tributaries) drift gillnet | 110 | California sea lion, U.S.<br>Harbor seal, OR/WA coast |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| WA Willapa Bay drift gillnet | 82 | Harbor seal, OR/WA coast<br>Northern elephant seal, CA breeding |
| PURSE SEINE, BEACH SEINE, ROUND HAUL, THROW NET AND TANGLE NET FISHERIES: | | |
| AK Southeast salmon purse seine | 415 | None documented in the most recent 5 years of data |
| AK Metlakatla salmon purse seine | 10 | None documented |
| AK miscellaneous finfish beach seine | 1 | None documented |
| AK miscellaneous finfish purse seine | 0 | None documented |
| AK octopus/squid purse seine | 0 | None documented |
| AK roe herring and food/bait herring beach seine | 4 | None documented |
| AK roe herring and food/bait herring purse seine | 361 | None documented |
| AK salmon beach seine | 31 | None documented |
| AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II) | 936 | Harbor seal, GOA |
| CA anchovy, mackerel, sardine purse seine | 65 | California sea lion, U.S.<br>Harbor seal, CA |
| CA squid purse seine | 80 | Long-beaked common dolphin, CA<br>Short-beaked common dolphin, CA/OR/WA |
| CA tuna purse seine * | 10 | None documented |
| WA/OR sardine purse seine | 42 | None documented |
| WA (all species) beach seine or drag seine | 235 | None documented |
| WA/OR herring, smelt, squid purse seine or lampara | 130 | None documented |
| WA salmon purse seine | 440 | None documented |
| WA salmon reef net | 53 | None documented |
| HI opelu/akule net | 16 | None documented |
| HI inshore purse seine | 5 | None documented |
| HI throw net, cast net | 22 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| HI hukilau net | 27 | None documented |
| HI lobster tangle net | 1 | None documented |
| DIP NET FISHERIES: | | |
| CA squid dip net | 115 | None documented |
| WA/OR smelt, herring dip net | 119 | None documented |
| MARINE AQUACULTURE FISHERIES: | | |
| CA marine shellfish aquaculture | unknown | None documented |
| CA salmon enhancement rearing pen | >1 | None documented |
| CA white seabass enhancement net pens | 13 | California sea lion, U.S. |
| HI offshore pen culture | 2 | None documented |
| OR salmon ranch | 1 | None documented |
| | | |
| WA/OR salmon net pens | 14 | California sea lion, U.S.<br>Harbor seal, WA inland waters |
| TROLL FISHERIES: | | |
| AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries * | 1,302 (102 AK) | None documented |
| AK salmon troll | 2,045 | Steller sea lion, Eastern U.S.<br>Steller sea lion, Western U.S. |
| American Samoa tuna troll | <50 | None documented |
| CA/OR/WA salmon troll | 4,300 | None documented |
| Commonwealth of the Northern Mariana Islands tuna troll | 88 | None documented |
| Guam tuna troll | 401 | None documented |
| LONGLINE/SET LINE FISHERIES: | | |
| AK Bering Sea, Aleutian Islands Greenland turbot longline | 29 | Killer whale, AK resident |
| AK Bering Sea, Aleutian Islands rockfish longline | 0 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| AK Bering Sea, Aleutian Islands sablefish longline | 28 | None documented |
| AK Gulf of Alaska halibut longline | 1,302 | None documented |
| AK Gulf of Alaska Pacific cod longline | 440 | None documented |
| AK Gulf of Alaska rockfish longline | 0 | None documented |
| AK Gulf of Alaska sablefish longline | 291 | Sperm whale, North Pacific<br>Steller sea lion, Eastern U.S. |
| AK halibut longline/set line (State and Federal waters) | 2,521 | Steller sea lion, Western U.S. |
| AK octopus/squid longline | 2 | None documented |
| AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish) | 1,448 | None documented |
| WA/OR/CA groundfish, bottomfish longline/set line | 367 | None documented |
| WA/OR North Pacific halibut longline/set line | 350 | None documented |
| CA pelagic longline | 6 | None documented in the most recent 5 years of data |
| HI kaka line | 24 | None documented |
| HI vertical longline | 10 | None documented |
| TRAWL FISHERIES: | | |
| AK Bering Sea, Aleutian Islands Atka mackerel trawl | 9 | Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands Pacific cod trawl | 93 | Harbor seal, Bering Sea<br>Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands rockfish trawl | 10 | None documented |
| AK Gulf of Alaska flatfish trawl | 41 | None documented |
| AK Gulf of Alaska Pacific cod trawl | 62 | Steller sea lion, Western U.S. |
| AK Gulf of Alaska pollock trawl | 62 | Fin whale, Northeast Pacific<br>Northern elephant seal, North Pacific<br>Steller sea lion, Western U.S. |
| AK Gulf of Alaska rockfish trawl | 34 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| AK food/bait herring trawl | 4 | None documented |
| AK miscellaneous finfish otter / beam trawl | 317 | None documented |
| AK shrimp otter trawl and beam trawl (statewide and Cook Inlet) | 32 | None documented |
| AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl | 2 | None documented |
| CA halibut bottom trawl | 53 | None documented |
| WA/OR/CA shrimp trawl | 300 | None documented |
| WA/OR/CA groundfish trawl | 160-180 | California sea lion, U.S.<br>Dall's porpoise, CA/OR/WA<br>Harbor seal, OR/WA coast<br>Northern fur seal, Eastern Pacific<br>Pacific white-sided dolphin, CA/OR/WA<br>Steller sea lion, Eastern U.S. |
| POT, RING NET, AND TRAP FISHERIES: | | |
| AK statewide miscellaneous finfish pot | 293 | None documented |
| AK Aleutian Islands sablefish pot | 8 | None documented |
| AK Bering Sea, Aleutian Islands Pacific cod pot | 68 | None documented |
| AK Bering Sea, Aleutian Islands crab pot | 297 | None documented |
| AK Gulf of Alaska crab pot | 300 | None documented |
| AK Gulf of Alaska Pacific cod pot | 154 | Harbor seal, GOA |
| AK Southeast Alaska crab pot | 433 | Humpback whale, Central North Pacific (Southeast AK) |
| AK Southeast Alaska shrimp pot | 283 | Humpback whale, Central North Pacific (Southeast AK) |
| AK shrimp pot, except Southeast | 15 | None documented |
| AK octopus/squid pot | 27 | None documented |
| AK snail pot | 1 | None documented |
| CA coonstripe shrimp, rock crab, tanner crab pot or trap | 305 | Gray whale, Eastern North Pacific<br>Harbor seal, CA |
| CA spiny lobster | 225 | Gray whale, Eastern North Pacific |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| OR/CA hagfish pot or trap | 54 | None documented |
| WA/OR shrimp pot/trap | 254 | None documented |
| WA Puget Sound Dungeness crab pot/trap | 249 | None documented |
| HI crab trap | 5 | None documented |
| HI fish trap | 13 | None documented |
| HI lobster trap | 1 | Hawaiian monk seal |
| HI shrimp trap | 2 | None documented |
| HI crab net | 5 | None documented |
| HI Kona crab loop net | 46 | None documented |
| HANDLINE AND JIG FISHERIES: | | |
| AK miscellaneous finfish handline/hand troll and mechanical jig | 445 | None documented |
| AK North Pacific halibut handline/hand troll and mechanical jig | 228 | None documented |
| AK octopus/squid handline | 0 | None documented |
| American Samoa bottomfish | <50 | None documented |
| Commonwealth of the Northern Mariana Islands bottomfish | <50 | None documented |
| Guam bottomfish | 200 | None documented |
| HI aku boat, pole, and line | 2 | None documented |
| HI Main Hawaiian Islands deep-sea bottomfish handline | 569 | Hawaiian monk seal |
| HI inshore handline | 416 | None documented |
| HI tuna handline | 445 | None documented |
| WA groundfish, bottomfish jig | 679 | None documented |
| Western Pacific squid jig | 6 | None documented |
| HARPOON FISHERIES: | | |
| CA swordfish harpoon | 30 | None documented |
| POUND NET/WEIR FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| AK herring spawn on kelp pound net | 415 | None documented |
| AK Southeast herring roe/food/bait pound net | 6 | None documented |
| WA herring brush weir | 1 | None documented |
| HI bullpen trap | 4 | None documented |
| BAIT PENS: | | |
| WA/OR/CA bait pens | 13 | California sea lion, U.S. |
| DREDGE FISHERIES: | | |
| Coastwide scallop dredge | 108 (12 AK) | None documented |
| DIVE, HAND/MECHANICAL COLLECTION FISHERIES: | | |
| AK abalone | 0 | None documented |
| AK clam | 156 | None documented |
| WA herring spawn on kelp | 4 | None documented |
| AK Dungeness crab | 2 | None documented |
| AK herring spawn on kelp | 266 | None documented |
| AK urchin and other fish/shellfish | 570 | None documented |
| CA abalone | 0 | None documented |
| CA sea urchin | 583 | None documented |
| HI black coral diving | 1 | None documented |
| HI fish pond | 16 | None documented |
| HI handpick | 61 | None documented |
| HI lobster diving | 39 | None documented |
| HI spearfishing | 144 | None documented |
| WA/CA kelp | 4 | None documented |
| WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection | 637 | None documented |
| WA shellfish aquaculture | 684 | None documented |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES: | | |
| AK/WA/OR/CA commercial passenger fishing vessel | >7,000 (2,702 AK) | Killer whale, stock unknown<br>Steller sea lion, Eastern U.S.<br>Steller sea lion, Western U.S. |
| LIVE FINFISH/SHELLFISH FISHERIES: | | |
| CA nearshore finfish live trap/hook-and-line | 93 | None documented |

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3; ^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of species or stocks killed or injured in high seas component of the fishery, minus species or stocks have geographic ranges exclusively on the high seas. The species or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

Table 2 - List of Fisheries -- Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| CATEGORY I | | |
| GILLNET FISHERIES: | | |
| Mid-Atlantic gillnet | 6,402 | Bottlenose dolphin, Northern Migratory coastal[1]<br>Bottlenose dolphin, Southern Migratory coastal[1]<br>Bottlenose dolphin, Northern NC estuarine system[1]<br>Bottlenose dolphin, Southern NC estuarine system[1]<br>Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Gray seal, WNA<br>Harbor porpoise, GME/BF<br>Harbor seal, WNA<br>Harp seal, WNA<br>Humpback whale, Gulf of Maine<br>Long-finned pilot whale, WNA<br>Minke whale, Canadian east coast<br>Short-finned pilot whale, WNA<br>White-sided dolphin, WNA |
| Northeast sink gillnet | 3,828 | Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Fin whale, WNA<br>Gray seal, WNA<br>Harbor porpoise, GME/BF[1]<br>Harbor seal, WNA<br>Harp seal, WNA<br>Hooded seal, WNA<br>Humpback whale, Gulf of Maine<br>Minke whale, Canadian east coast<br>North Atlantic right whale, WNA<br>Risso's dolphin, WNA<br>White-sided dolphin, WNA |
| TRAP/POT FISHERIES: | | |
| Northeast/Mid-Atlantic American lobster trap/pot | 11,767 | Harbor seal, WNA<br>Humpback whale, Gulf of Maine<br>Minke whale, Canadian east coast<br>North Atlantic right whale, WNA[1] |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| LONGLINE FISHERIES: | | |
| Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline * | 94 | Atlantic spotted dolphin, GMX continental and oceanic<br>Atlantic spotted dolphin, WNA<br>Bottlenose dolphin, Northern GMX oceanic<br>Bottlenose dolphin, Northern GMX continental shelf<br>Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Cuvier's beaked whale, WNA<br>Gervais beaked whale, GMX oceanic<br>Killer whale, GMX oceanic<br>Long-finned pilot whale, WNA[1]<br>Mesoplodon beaked whale, WNA<br>Northern bottlenose whale, WNA<br>Pantropical spotted dolphin, Northern GMX<br>Pantropical spotted dolphin, WNA<br>Risso's dolphin, Northern GMX<br>Risso's dolphin, WNA<br>Short-finned pilot whale, Northern GMX<br>Short-finned pilot whale, WNA[1]<br>Sperm whale, GMX oceanic |
| CATEGORY II | | |
| GILLNET FISHERIES: | | |
| Chesapeake Bay inshore gillnet[2] | 3,328 | None documented in the most recent 5 years of data |
| Gulf of Mexico gillnet[2] | 724 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, GMX bay, sound, and estuarine<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Western GMX coastal |
| NC inshore gillnet | 2,250 | Bottlenose dolphin, Northern NC estuarine system[1]<br>Bottlenose dolphin, Southern NC estuarine system[1] |
| Northeast anchored float gillnet[2] | 414 | Harbor seal, WNA<br>Humpback whale, Gulf of Maine<br>White-sided dolphin, WNA |
| Northeast drift gillnet[2] | 414 | None documented |
| Southeast Atlantic gillnet[2] | 779 | Bottlenose dolphin, Southern Migratory coastal<br>Bottlenose dolphin, SC/GA coastal<br>Bottlenose dolphin, Central FL coastal<br>Bottlenose dolphin, Northern FL coastal |
| Southeastern U.S. Atlantic shark gillnet | 30 | Atlantic spotted dolphin, WNA<br>Bottlenose dolphin, Central FL coastal[1]<br>Bottlenose dolphin, Northern FL coastal<br>North Atlantic right whale, WNA |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| TRAWL FISHERIES | | |
| Mid-Atlantic mid-water trawl (including pair trawl) | 669 | Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Long-finned pilot whale, WNA<br>Risso's dolphin, WNA<br>Short-finned pilot whale, WNA<br>White-sided dolphin, WNA[1] |
| Mid-Atlantic bottom trawl | 1,388 | Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA[1]<br>Harbor seal, WNA<br>Long-finned pilot whale, WNA[1]<br>Risso's dolphin, WNA[1]<br>Short-finned pilot whale, WNA[1]<br>White-sided dolphin, WNA |
| Northeast mid-water trawl (including pair trawl) | 887 | Harbor seal, WNA<br>Long-finned pilot whale, WNA[1]<br>Short-finned pilot whale, WNA[1]<br>White-sided dolphin, WNA |
| Northeast bottom trawl | 2,584 | Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Gray seal, WNA<br>Harbor porpoise, GME/BF<br>Harbor seal, WNA<br>Harp seal, WNA<br>Long-finned pilot whale, WNA<br>Short-finned pilot whale, WNA<br>White-sided dolphin, WNA[1] |
| Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl | 4,950 | Atlantic spotted dolphin, GMX continental and oceanic<br>Bottlenose dolphin, SC/GA coastal[1]<br>Bottlenose dolphin, Eastern GMX coastal[1]<br>Bottlenose dolphin, GMX continental shelf<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Western GMX coastal[1]<br>Bottlenose dolphin, GMX bay, sound, estuarine[1]<br>West Indian manatee, FL |
| TRAP/POT FISHERIES: | | |
| Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot[2] | 1,282 | Bottlenose dolphin, Biscayne Bay estuarine<br>Bottlenose dolphin, Central FL coastal<br>Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, FL Bay<br>Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion)<br>Bottlenose dolphin, Indian River Lagoon estuarine system<br>Bottlenose dolphin, Jacksonville estuarine system<br>Bottlenose dolphin, Northern GMX coastal |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| Atlantic mixed species trap/pot[2] | 3,526 | Fin whale, WNA<br>Humpback whale, Gulf of Maine |
| Atlantic blue crab trap/pot | 10,008 | Bottlenose dolphin, Charleston estuarine system[1]<br>Bottlenose dolphin, Indian River Lagoon estuarine system[1]<br>Bottlenose dolphin, Jacksonville estuarine system[1]<br>Bottlenose dolphin, SC/GA coastal[1]<br>Bottlenose dolphin, Northern GA/Southern SC estuarine system[1]<br>Bottlenose dolphin, Southern GA estuarine system[1]<br>Bottlenose dolphin, Northern Migratory coastal[1]<br>Bottlenose dolphin, Southern Migratory coastal[1]<br>Bottlenose dolphin, Central FL coastal[1]<br>Bottlenose dolphin, Northern FL coastal[1]<br>Bottlenose dolphin, Northern NC estuarine system[1]<br>Bottlenose dolphin, Southern NC estuarine system[1]<br>West Indian manatee, FL[1] |
| PURSE SEINE FISHERIES: | | |
| Gulf of Mexico menhaden purse seine | 40-42 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, GMX bay, sound, estuarine<br>Bottlenose dolphin, Northern GMX coastal[1]<br>Bottlenose dolphin, Western GMX coastal[1] |
| Mid-Atlantic menhaden purse seine[2] | 56 | Bottlenose dolphin, Northern Migratory coastal<br>Bottlenose dolphin, Southern Migratory coastal |
| HAUL/BEACH SEINE FISHERIES: | | |
| Mid-Atlantic haul/beach seine | 874 | Bottlenose dolphin, Northern NC estuarine system[1]<br>Bottlenose dolphin, Northern Migratory coastal[1]<br>Bottlenose dolphin, Southern Migratory coastal[1] |
| NC long haul seine | 372 | Bottlenose dolphin, Southern NC estuarine system<br>Bottlenose dolphin, Northern NC estuarine system[1] |
| STOP NET FISHERIES: | | |
| NC roe mullet stop net | 13 | Bottlenose dolphin, Southern NC estuarine system[1] |
| POUND NET FISHERIES: | | |
| VA pound net | 231 | Bottlenose dolphin, Northern NC estuarine system<br>Bottlenose dolphin, Northern Migratory coastal[1]<br>Bottlenose dolphin, Southern Migratory coastal[1] |
| CATEGORY III | | |
| GILLNET FISHERIES: | | |
| Caribbean gillnet | >991 | Dwarf sperm whale, WNA |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| DE River inshore gillnet | unknown | None documented in the most recent 5 years of data |
| Long Island Sound inshore gillnet | unknown | None documented in the most recent 5 years of data |
| RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet | unknown | None documented in the most recent 5 years of data |
| Southeast Atlantic inshore gillnet | unknown | None documented |
| TRAWL FISHERIES: | | |
| Atlantic shellfish bottom trawl | >86 | None documented |
| Gulf of Mexico butterfish trawl | 2 | Bottlenose dolphin, Northern GMX oceanic<br>Bottlenose dolphin, Northern GMX continental shelf |
| Gulf of Mexico mixed species trawl | 20 | None documented |
| GA cannonball jellyfish trawl | 1 | None documented |
| MARINE AQUACULTURE FISHERIES: | | |
| Finfish aquaculture | 48 | Harbor seal, WNA |
| Shellfish aquaculture | unknown | None documented |
| PURSE SEINE FISHERIES: | | |
| Gulf of Maine Atlantic herring purse seine | >6 | Harbor seal, WNA<br>Gray seal, WNA |
| Gulf of Maine menhaden purse seine | >2 | None documented |
| FL West Coast sardine purse seine | 10 | Bottlenose dolphin, Eastern GMX coastal |
| U.S. Atlantic tuna purse seine * | 5 | Long-finned pilot whale, WNA<br>Short-finned pilot whale, WNA |
| LONGLINE/HOOK-AND-LINE FISHERIES: | | |
| Northeast/Mid-Atlantic bottom longline/hook-and-line | >1,281 | None documented in the most recent 5 years of data |
| Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon | >403 | Humpback whale, Gulf of Maine |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line | >5,000 | Bottlenose dolphin, GMX continental shelf |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line | <125 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, Northern GMX continental shelf |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon | 1,446 | None documented |
| U.S. Atlantic, Gulf of Mexico trotline | unknown | None documented |
| TRAP/POT FISHERIES | | |
| Caribbean mixed species trap/pot | >501 | None documented |
| Caribbean spiny lobster trap/pot | >197 | None documented |
| FL spiny lobster trap/pot | 1,268 | Bottlenose dolphin, Biscayne Bay estuarine<br>Bottlenose dolphin, Central FL coastal<br>Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, FL Bay estuarine |
| Gulf of Mexico blue crab trap/pot | 4,113 | Bottlenose dolphin, Western GMX coastal<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, GMX bay, sound, estuarine<br>West Indian manatee, FL |
| Gulf of Mexico mixed species trap/pot | unknown | None documented |
| Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot | 10 | None documented |
| U.S. Mid-Atlantic eel trap/pot | unknown | None documented |
| STOP SEINE/WEIR/POUND NET/FLOATING TRAP FISHERIES: | | |
| Gulf of Maine herring and Atlantic mackerel stop seine/weir | unknown | Gray seal, WNA<br>Harbor porpoise, GME/BF<br>Harbor seal, WNA<br>Minke whale, Canadian east coast<br>White-sided dolphin, WNA |
| U.S. Mid-Atlantic crab stop seine/weir | 2,600 | None documented |
| U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net) | unknown | Bottlenose dolphin, Northern NC estuarine system |
| RI floating trap | 9 | None documented |
| DREDGE FISHERIES: | | |

| Fishery Description | Estimated # of vessels/ persons | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| Gulf of Maine mussel dredge | unknown | None documented |
| Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge | >230 | None documented |
| U.S. Mid-Atlantic/Gulf of Mexico oyster dredge | 7,000 | None documented |
| U.S. Mid-Atlantic offshore surf clam and quahog dredge | unknown | None documented |
| HAUL/BEACH SEINE FISHERIES: | | |
| Caribbean haul/beach seine | 15 | None documented in the most recent 5 years of data |
| Gulf of Mexico haul/beach seine | unknown | None documented |
| Southeastern U.S. Atlantic haul/beach seine | 25 | None documented |
| DIVE, HAND/MECHANICAL COLLECTION FISHERIES: | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection | 20,000 | None documented |
| Gulf of Maine urchin dive, hand/mechanical collection | unknown | None documented |
| Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net | unknown | None documented |
| COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES: | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel | 4,000 | Bottlenose dolphin, Eastern GMX coastal<br>Bottlenose dolphin, Northern GMX coastal<br>Bottlenose dolphin, Western GMX coastal<br>Bottlenose dolphin, Biscayne Bay estuarine<br>Bottlenose dolphin, GMX bay, sound, estuarine<br>Bottlenose dolphin, Indian River Lagoon estuarine system<br>Bottlenose dolphin, Southern NC estuarine system |

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; SC- South Carolina; VA - Virginia; WNA - Western North Atlantic; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

Table 3 - List of Fisheries -- Commercial Fisheries on the High Seas

| Fishery Description | # of HSFCA permits | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| Category I | | |
| LONGLINE FISHERIES: | | |
| Atlantic Highly Migratory Species * + | 81 | Atlantic spotted dolphin, WNA<br>Bottlenose dolphin, Northern GMX oceanic<br>Bottlenose dolphin, WNA offshore<br>Common dolphin, WNA<br>Cuvier's beaked whale, WNA<br>Long-finned pilot whale, WNA<br>Mesoplodon beaked whale, WNA<br>Pygmy sperm whale, WNA<br>Risso's dolphin, WNA<br>Short-finned pilot whale, WNA |
| Western Pacific Pelagic (HI Deep-set component) * ^+ | 124 | Blainville's beaked whale, HI<br>Blainville's beaked whale, unknown<br>Bottlenose dolphin, HI Pelagic<br>Bottlenose dolphin, unknown<br>False killer whale, HI Pelagic<br>False killer whale, unknown<br>Humpback whale, Central North Pacific<br>Pantropical spotted dolphin, HI<br>Pantropical spotted dolphin, unknown<br>Risso's dolphin, HI<br>Risso's dolphin, unknown<br>Short-finned pilot whale, HI<br>Short-finned pilot whale, unknown<br>Striped dolphin, HI<br>Striped dolphin, unknown |
| Category II | | |
| DRIFT GILLNET FISHERIES: | | |
| Atlantic Highly Migratory Species | 1 | Undetermined |
| Pacific Highly Migratory Species * ^ | 3 | Long-beaked common dolphin, CA<br>Humpback whale, CA/OR/WA<br>Northern right-whale dolphin, CA/OR/WA<br>Pacific white-sided dolphin, CA/OR/WA<br>Risso's dolphin, CA/OR/WA<br>Short-beaked common dolphin, CA/OR/WA |
| TRAWL FISHERIES: | | |
| Atlantic Highly Migratory Species ** | 3 | Undetermined |
| CCAMLR | 0 | Antarctic fur seal |

| Fishery Description | # of HSFCA permits | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| Western Pacific Pelagic | 1 | Undetermined |
| PURSE SEINE FISHERIES: | | |
| South Pacific Tuna Fisheries | 33 | Undetermined |
| Western Pacific Pelagic | 3 | Undetermined |
| POT VESSEL FISHERIES: | | |
| Pacific Highly Migratory Species ** | 3 | Undetermined |
| South Pacific Albacore Troll | 3 | Undetermined |
| Western Pacific Pelagic | 3 | Undetermined |
| LONGLINE FISHERIES: | | |
| CCAMLR | 0 | None documented |
| South Pacific Albacore Troll | 11 | Undetermined |
| South Pacific Tuna Fisheries ** | 11 | Undetermined |
| Western Pacific Pelagic (HI Shallow-set component) * ^+ | 28 | Bottlenose dolphin, HI Pelagic<br>Bottlenose dolphin, unknown<br>Bryde's whale, HI<br>Bryde's whale, unknown<br>Humpback whale, Central North Pacific<br>Kogia sp. whale (Pygmy or dwarf sperm whale), HI<br>Kogia sp. whale (Pygmy or dwarf sperm whale), unknown<br>Risso's dolphin, HI<br>Risso's dolphin, unknown<br>Striped dolphin, HI<br>Striped dolphin, unknown |
| HANDLINE/POLE AND LINE FISHERIES: | | |
| Atlantic Highly Migratory Species | 3 | Undetermined |
| Pacific Highly Migratory Species | 30 | Undetermined |
| South Pacific Albacore Troll | 8 | Undetermined |
| Western Pacific Pelagic | 8 | Undetermined |
| TROLL FISHERIES: | | |
| Atlantic Highly Migratory Species | 7 | Undetermined |
| South Pacific Albacore Troll | 51 | Undetermined |
| South Pacific Tuna Fisheries ** | 3 | Undetermined |
| Western Pacific Pelagic | 32 | Undetermined |
| LINERS NEI FISHERIES: | | |

| Fishery Description | # of HSFCA permits | Marine mammal species and stocks incidentally killed or injured |
|---|---|---|
| Pacific Highly Migratory Species ** | 1 | Undetermined |
| South Pacific Albacore Troll | 1 | Undetermined |
| Western Pacific Pelagic | 1 | Undetermined |
| FACTORY MOTHERSHIP FISHERIES: | | |
| Western Pacific Pelagic | 1 | Undetermined |
| MULTIPURPOSE VESSELS NEI FISHERIES: | | |
| Atlantic Highly Migratory Species | 1 | Undetermined |
| Pacific Highly Migratory Species ** | 5 | Undetermined |
| South Pacific Albacore Troll | 4 | Undetermined |
| Western Pacific Pelagic | 4 | Undetermined |
| Category III | | |
| LONGLINE FISHERIES: | | |
| Pacific Highly Migratory Species * + | 84 | None documented in the most recent 5 years of data |
| PURSE SEINE FISHERIES | | |
| Atlantic Highly Migratory Species *^ | 0 | Long-finned pilot whale, WNA<br>Short-finned pilot whale, WNA |
| Pacific Highly Migratory Species * ^ | 7 | None documented |
| TROLL FISHERIES: | | |
| Pacific Highly Migratory Species * | 258 | None documented |

List of Terms, Abbreviations, and Symbols Used in Table 3:
GMX- Gulf of Mexico; NEI - Not Elsewhere Identified; WNA - Western North Atlantic.
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ The marine mammal species or stocks listed as killed or injured in this fishery has been observed taken by this fishery on the high seas.
^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of marine mammal species or stocks killed or injured in U.S. waters component of the fishery, minus species or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

| Take Reduction Plans | Affected Fisheries |
|---|---|
| Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32 | Category I<br>Mid-Atlantic gillnet<br>Northeast/Mid-Atlantic American lobster trap/pot<br>Northeast sink gillnet<br>Category II<br>Atlantic blue crab trap/pot<br>Atlantic mixed species trap/pot<br>Northeast anchored float gillnet<br>Northeast drift gillnet<br>Southeast Atlantic gillnet<br>Southeastern U.S. Atlantic shark gillnet*<br>Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^+ |
| Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35 | Category I<br>Mid-Atlantic gillnet<br>Category II<br>Atlantic blue crab trap/pot<br>Mid-Atlantic haul/beach seine<br>Mid-Atlantic menhaden purse seine<br>NC inshore gillnet<br>NC long haul seine<br>NC roe mullet stop net<br>Southeast Atlantic gillnet<br>Southeastern U.S. Atlantic shark gillnet<br>Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot+<br>VA pound net |
| Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic) | Category I<br>Mid-Atlantic gillnet<br>Northeast sink gillnet |
| Pelagic Longline Take Reduction Plan (PLTRP) – 50 CFR 229.36 | Category I<br>Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline |
| Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31 | Category II<br>CA thresher shark/swordfish drift gillnet (≥14 in mesh) |
| | |
| Take Reduction Teams | Affected Fisheries |
| Atlantic Trawl Gear Take Reduction Team (ATGTRT) | Category II<br>Mid-Atlantic bottom trawl<br>Mid-Atlantic mid-water trawl (including pair trawl)<br>Northeast bottom trawl<br>Northeast mid-water trawl (including pair trawl) |
| False Killer Whale Take Reduction Team (FKWTRT) | Category I<br>HI deep-set (tuna target) longline/set line<br>Category II<br>HI shallow-set (swordfish target) longline/set line |

* Only applicable to the portion of the fishery operating in U.S. waters; ^ Only applicable to the portion of the fishery operating in the Atlantic Ocean; +Fishery is proposed to be elevated to Category II in this proposed rule.

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## Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis leading to the certification is set forth below.

Under existing regulations, all individuals participating in Category I or II fisheries must register under the MMPA and obtain an Authorization Certificate. The Authorization Certificate authorizes the taking of non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Additionally, individuals may be subject to a TRP and requested to carry an observer. NMFS has estimated that up to approximately 69,000 fishing vessels, most of which are small entities, may operate in Category I or II fisheries and, therefore, are required to register with NMFS. Of these, approximately 3,600 are new to a Category I or II fishery as a result of this proposed rule. The MMPA registration process is integrated with existing state and Federal licensing, permitting, and registration programs. Therefore, individuals who have a state or Federal fishing permit or landing license, or who are authorized through another related state or Federal fishery registration program, are currently not required to register separately under the MMPA or pay the $25 registration fee. Therefore, there are no direct costs to small entities under this proposed rule.

If a vessel is requested to carry an observer, individuals will not incur any direct economic costs associated with carrying that observer. Potential indirect costs to individuals required to take observers may include: lost space on deck for catch, lost bunk space, and lost fishing time due to time needed by the observer to process bycatch data. For effective monitoring, however, observers will rotate among a limited number of vessels in a fishery at any given time and each vessel within an observed fishery has an equal probability of being requested to accommodate an observer. Therefore, the potential indirect costs to individuals are expected to be minimal because observer coverage would only be required for a small percentage of an individual's total annual fishing time. In addition, section 118 of the MMPA states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting vessels too small to accommodate an observer from this requirement. As a result of this certification, an initial regulatory flexibility analysis is not required and was not prepared. In the event that reclassification of a fishery to Category I or II results in a TRP, economic analyses of the effects of that TRP would be summarized in subsequent rulemaking actions.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

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

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 2005 EA. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there is no need to update the 2005 EA at this time. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an environmental document, as required under NEPA, specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

## References

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Dated: June 22, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[Docket No. 110208116–1315–01]**

**RIN 0648–BA75**

## Atlantic Highly Migratory Species; Electronic Dealer Reporting Requirements

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

**ACTION:** Proposed rule; request for comments; notice of public hearings.

**SUMMARY:** This proposed rule would require that Federal Atlantic swordfish, shark, and tunas dealers report commercially harvested Atlantic sharks, swordfish, and bigeye, albacore, yellowfin, and skipjack (BAYS) tunas to NMFS through an electronic reporting system. At this time, Atlantic Highly Migratory Species (HMS) dealers would not be required to report bluefin tuna through this electronic reporting system, as a separate reporting system is currently in place for this species. This rulemaking also proposes that a dealer would only be authorized to receive commercially harvested Atlantic sharks, swordfish, and BAYS tunas if the dealer's previous reports have been submitted by the dealer and received by NMFS in a timely manner. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a dealer could receive commercially harvested Atlantic sharks, swordfish, and BAYS tunas from a Federally permitted U.S. vessel. Finally, this rulemaking proposes that all first receivers of commercially harvested Atlantic sharks, swordfish, and BAYS tunas by Federally permitted U.S. vessels must obtain a corresponding Federal Atlantic swordfish, shark, and/or tunas dealer permit. First receivers must report the associated catch to NMFS through the electronic reporting system. These measures are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

**DATES:** Written comments must be received on or before August 12, 2011. NMFS will hold eight public hearings on this proposed rule in July 2011. For specific dates and times, see the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** The public hearings will be held in Massachusetts, New York, New Jersey, North Carolina, Florida, and Louisiana. For specific locations see the **SUPPLEMENTARY INFORMATION** section of this document.

You may submit comments, identified by ''0648–BA75,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal at *http://www.regulations.gov.* Please do not submit electronic comments via e-mail, as doing so is likely to delay the timely review and consideration of submitted comments.
- *Fax:* 301–713–1917, Attn: Karyl Brewster-Geisz.
- *Mail:* National Marine Fisheries Service, c/o HMS Management Division, SF/1, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on Proposed Rule for Electronic Dealer Reporting.''
- *Instructions:* All comments received are part of the public record and generally will be posted to Portal *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to Delisse Ortiz with the Atlantic Highly Migratory Species Management Division and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Jackie Wilson at 240–338–3936, or Karyl Brewster-Geisz or Delisse Ortiz at 301–713–2347.

Copies of this proposed rule and related documents, including a Regulatory Impact Review (RIR) and Initial Regulatory Flexibility Analysis (IRFA), for this action are available online at the HMS Management Division Web site: *http://www.nmfs.noaa.gov/sfa/hms/.*

**SUPPLEMENTARY INFORMATION:**

### Background

Atlantic HMS are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.,* and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq.* Under the MSA, NMFS must ensure consistency with the National Standards and manage fisheries to maintain optimum yield, rebuild overfished fisheries, and prevent overfishing. Under the ATCA, the Secretary of Commerce is required to promulgate regulations, as may be necessary and appropriate, to implement the recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT). The authority to issue regulations under MSA and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA (AA). The implementing regulations for Atlantic HMS are at 50 CFR part 635.

*Atlantic HMS Dealer Reporting*

On December 13, 1991 (56 FR 65007), and October 18, 1994 (59 FR 52453), NMFS published in the **Federal Register** final regulations, effective December 10, 1991, and January 1, 1995, respectively, requiring dealers who receive swordfish and sharks to obtain an annual Federal dealer permit and report to NMFS every two weeks. These reports were either ''positive'' reports, where dealers reported the amount and species bought from fishermen, or ''negative'' reports, where dealers indicated no transactions for the reporting period. Swordfish and shark dealers reported voluntarily to NMFS until a rulemaking on August 31, 1990 (55 FR 35643), which required swordfish dealers to report monthly to NMFS as of October 1, 1990. Dealers were first required to report sharks to NMFS on a bi-weekly basis according to the October 18, 1994, rule.

On August 15, 2001 (66 FR 42801), NMFS required dealers to submit bi-weekly reports of BAYS tunas to NMFS. Prior to this rule, which became effective on September 14, 2001, NMFS required dealers to report BAYS only

when received together with sharks and swordfish pursuant to the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Otherwise, dealers voluntarily reported BAYS to NMFS.

To date, such reporting by Federally-permitted dealers has depended on the location of the dealer. For dealers located south of Virginia, reports have been submitted in a paper format to the Southeast Fisheries Science Center (SEFSC). These dealers have been required to provide dressed weight, price per pound, and vessel information compiled over a two-week reporting period. If no purchases of HMS products are made during a reporting period, the dealer is required to submit a ''negative'' report to NMFS indicating that no purchases were made. Dealer reports are scanned, and data are entered into the Pelagic Dealer Compliance (PDC) database housed within the SEFSC. As of July 24, 2008 (June 24, 2008, 73 FR 35778; corrected on July 15, 2008, 73 FR 40658), Federal Atlantic HMS dealers have been required to submit reports of Atlantic tunas, swordfish, and/or sharks received from the 1st through the 15th of each month, and have them received by NMFS not later than the 25th of that month. Reports of Atlantic tunas, swordfish, and/or sharks received on the 16th through the last day of each month must be received by NMFS not later than the 10th of the following month. As a result, assuming timely reporting by dealers, there currently is a delay of 10 to 25 days before the Federal HMS dealer data are available in the PDC database.

For dealers located north of North Carolina, prior to 2004, Federal HMS dealer reports were collected either directly from dealers through Federal field agents during dockside interviews or through a state's trip ticket program, contingent upon the data collection method of the state. In May 2004, the Northeast Regional Office (NERO) of NMFS launched the Standard Atlantic Fisheries Information System (SAFIS) for Federally-permitted seafood dealers. SAFIS is an online application that allows seafood dealers in the Northeast region to enter landings statistics. The partners of the Atlantic Coastal Cooperative Statistics Program (ACCSP) created SAFIS to meet the increasing need for real-time commercial landings data. On May 1, 2004, NERO required dealers issued a Federal dealer permit by NERO to submit all their landings data for each trip through SAFIS. Any dealer that has been issued a permit for a NERO-managed species/species complex (*e.g.,* scallop, bluefish, multispecies, *etc.*) is required to report all their purchases electronically through SAFIS. This includes dealers in states that are physically located in the Southeast region. The only exceptions are those dealers that possess only Atlantic tunas dealer permits or American Lobster dealer permits. SAFIS is available to those tuna dealers who also hold a NERO-managed species/species complex dealer permit. Atlantic bluefin tuna, in all cases, are reported to NMFS through separate reporting mechanisms. Additionally, a swordfish or shark dealer that is located in the Northeast, and does not have a dealer permit issued by NERO (swordfish and shark dealer permits are issued by SERO while tuna dealer permits are issued by NERO), continues to follow the reporting mechanisms that were in place before 2004.

These separate reporting mechanisms in the Southeast and Northeast regions have led to duplicative data submissions in both the Northeast and Southeast systems as well as delays in the receipt of landing data received through dealer reports. As the commercial harvest of HMS is monitored through data received from dealer reports, timely receipt of dealer data is critical for quota monitoring and management of these species. Thus, in this proposed rule, NMFS would require Federal Atlantic HMS dealers to report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through one centralized HMS electronic reporting system which utilizes existing state and Federal electronic reporting programs in the different regions for dealer data entry. The HMS electronic reporting system would be housed in the existing state and Federal electronic reporting programs (*e.g.,* SAFIS and Bluefin Data LLC) to allow dealers to report all landings in one place and to reduce the reporting burden on dealers. In addition, this HMS electronic reporting system would allow dealers to submit Atlantic sharks, swordfish, and BAYS tunas data on a closer to real-time basis and in a more streamlined fashion that would reduce duplicative data submissions from different regions.

*Late Dealer Reports*

In addition to duplicative reporting, there have also been issues of late reporting by Federal Atlantic HMS dealers. This non-compliance has particularly been an issue for a small number of the Atlantic shark dealers. Over time, this pattern of late reporting has resulted in NMFS having to contact dealers regarding late reports via phone calls and certified correspondence regarding their late reports, and, in some cases, necessitated visits by local port agents and/or agents with the National Oceanic and Atmospheric Administration (NOAA) Office of Law Enforcement. These efforts to follow up on late dealer reports negatively affect timely quota monitoring and drain scarce staff resources. To ensure more timely reporting by all Atlantic HMS dealers, this rulemaking is proposing that a Federal Atlantic HMS dealer would only be authorized to receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas if the dealer has submitted all required reports to NMFS. Any delinquent reports would need to be submitted by the dealer and received by NMFS before a Federal Atlantic HMS dealer could receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a Federally-permitted U.S. vessel. Although submission of delinquent reports would allow a dealer to receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a Federally-permitted U.S. vessel, late reporting is still a violation of the regulations. The electronic dealer reporting system would track the timing and submissions of Federal Atlantic HMS dealer reports and automatically notify dealers and NMFS (the HMS Management Division and NMFS Office of Law Enforcement) via e-mail if reports are delinquent.

*First Receiver*

Per 50 CFR 635.4(g), any person that receives, purchases, trades for, or barters for Atlantic HMS for a commercial purpose from a Federally-permitted U.S. vessel must possess a valid Atlantic HMS dealer permit. As mentioned above, Federal Atlantic HMS dealers are required to report any Atlantic tunas, swordfish, and/or sharks that they receive from Federally-permitted U.S. vessels to NMFS on a bi-weekly basis (50 CFR 635.5(b)). Per § 635.4(g)(2), the first receiver of Atlantic shark product harvested by a Federally-permitted U.S. vessel must obtain a Federal Atlantic shark dealer permit, and s/he, or a suitable proxy, must have a current valid Atlantic shark identification workshop certificate per 50 CFR 635.8. For reasons articulated in detail below, the proposed rule would require any person who first receives and processes sharks (*e.g.,* offloading them from the vessels and packing them on ice and in containers for shipment) to obtain a Federal Atlantic HMS dealer permit and to provide species-specific information via dealer reports to NMFS.

In practice, Federal Atlantic shark dealers who purchase Atlantic sharks from Federally-permitted U.S. vessels are not always the first receiver of

sharks. For instance, independent contractors may pack up shark product from a vessel and transport the product to a dealer location; however, these individuals are currently not required to report to NMFS. In addition, in some instances, Federally-permitted dealers with access to a fishing dock may pack product for shipment for a small fee and pass product to other Federally-permitted dealers without access to a dock, who in turn report to NMFS. Subsequently, it is difficult for a dealer to reliably report species-specific information to NMFS based upon product that has already been packed for shipment. This practice also occurs in the swordfish and tunas fisheries but, due to the fact that there are fewer species and price differences between those species are greater, species-specific reporting is more easily achieved. However, in all these cases, if the dealer is not the first receiver, the dealer often does not have the vessel-specific information that NMFS requires in order to properly and accurately manage HMS fisheries. Thus, in order to ensure accurate fish condition (*e.g.,* fins naturally attached to sharks), species-specific and vessel-specific reporting of Atlantic swordfish, sharks, and BAYS tunas, NMFS is proposing to require Federal Atlantic swordfish, shark, and tunas dealer permits for all first receivers of Atlantic sharks, swordfish, and BAYS tunas. This requirement would include those that transport Atlantic swordfish, shark, and BAYS tuna product. First receivers would be required to report all Atlantic sharks, swordfish, and BAYS tunas offloaded from Federally-permitted U.S. fishing vessels to NMFS through the electronic reporting system.

While NMFS is proposing the above approach for this action, NMFS is also considering alternate scenarios regarding who should obtain a Federal HMS dealer permit in order to ensure accurate species-specific reporting. One such scenario would keep the current definition of ''first receiver'' and apply it to all entities that first receive Atlantic swordfish and BAYS tunas, meaning that all first receivers of Atlantic swordfish and BAYS tunas would need to obtain the appropriate Federal HMS dealer permit(s) unless they first receive Atlantic swordfish and BAYS tunas solely for the purpose of transport. NMFS has not preferred this in the proposed action because, as mentioned above, it is difficult for any Federal Atlantic shark dealer to reliably report species-specific information to NMFS based upon product that has already been packed for shipment.

The second scenario would be to modify the definition for first receiver as proposed and require first receivers as well as entities that purchase product from U.S. fishing vessels (*i.e.,* entities who are currently required to obtain a dealer permit) to obtain the appropriate Federal HMS dealer permits. In some cases this would result in duplicative reporting by both the first receiver and the Federally-permitted HMS dealer. However, it would ensure that the person(s) who first receives the product from a U.S. fishing vessel and packs the product would also report to NMFS. Below NMFS asks for specific feedback on these alternate scenarios and the proposed approach.

In summary, this rulemaking proposes that all commercially-harvested Atlantic swordfish, sharks, and BAYS tunas from a Federally-permitted U.S. fishing vessel be offloaded to a Federal Atlantic HMS dealer. All Federal Atlantic sharks, swordfish, and BAYS tunas dealers would be required to report commercially-harvested Atlantic swordfish, sharks, and BAYS tunas in a timely manner to NMFS through an electronic dealer reporting system, and Atlantic HMS dealers would only be able to receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas if the dealer has submitted timely reports to NMFS. This action is required for more timely, efficient, and accurate dealer reporting and subsequent quota monitoring of Atlantic swordfish, sharks, and BAYS tunas. Economic analyses are provided in the draft RIR and IRFA and are not repeated here in their entirety. A copy of the draft RIR and IRFA is available from NMFS (see **ADDRESSES**).

**Electronic Dealer Reporting System for Atlantic HMS Dealers**

The harvest of sharks, tunas, and swordfish tabulated from Federal Atlantic HMS dealer reports are used to monitor commercial quotas and fishing seasons for these species. However, as outlined above, the current regulations and infrastructure of the Atlantic HMS quota-monitoring systems do not deliver data in a sufficiently timely and efficient manner to allow effective management and monitoring of small Atlantic HMS quotas and short seasons. For more effective management and monitoring of Atlantic HMS quotas, NMFS is in need of a more streamlined system where dealers can submit Atlantic HMS data in real time and include additional information regarding Atlantic HMS catch. The system must also be flexible enough to quickly adapt to any future changes in regulations in the Atlantic HMS fisheries.

NMFS is currently developing an electronic dealer reporting system consisting of a Web site-based data entry portal embedded within SAFIS to preclude Northeast dealers from having to report through an additional reporting system. To avoid creating multiple dealer reporting systems in the Southeast, NMFS would also implement the HMS dealer reporting requirements within the new electronic dealer reporting system being implemented in the Southeast. The electronic reporting requirements would be effective on February 1, 2012, in order to allow constituents additional time to learn about the new reporting system.

When the HMS electronic reporting system is implemented in 2012, Atlantic HMS dealers would be required to electronically report any shark, swordfish, or BAYS tunas offloaded from a Federally-permitted U.S. fishing vessel to a Federal Atlantic HMS dealer or to any extensions of a Federal Atlantic HMS dealer's place of business (*e.g.,* trucks or other conveyances). This proposed rule would not apply to Atlantic bluefin tuna reporting, and Atlantic bluefin tuna dealers would continue to follow the current reporting requirements for commercially-harvested Atlantic bluefin tuna.

To better facilitate timely quota monitoring, NMFS is also proposing to increase the frequency of both positive and negative dealer reporting for Atlantic sharks, swordfish, and BAYS tunas. The reporting frequency would be flexible and could be adjusted depending on the available quota, length of fishing season, and species/species complexes, when certain triggers are met by the different fisheries, as described below. As proposed, NMFS would establish a weekly base reporting frequency. Under the proposed rule, for swordfish, an increase in reporting from a weekly to daily basis would occur when 80 percent of the directed fishery's quota is attained. For BAYS tunas, bigeye, yellowfin, and skipjack fisheries are currently not managed under quotas, and the United States has not attained the U.S. allocated albacore tuna quota, which is currently not codified. If such quotas are codified in the future, NMFS proposes to increase the required dealer reporting from a weekly to daily basis when 80 percent of the respective quotas are attained. Additionally, because shark quotas are the smallest of all HMS quotas, NMFS is proposing to require Federal Atlantic shark dealers to report sharks within 24 hours while the fishing seasons for non-sandbar large

coastal sharks (LCS), blacknose sharks, and non-blacknose small coastal sharks (SCS) are open. The quotas for these shark complexes/species are the smallest of all the shark quotas, and their associated fishing seasons have been the shortest in the past. When the fishing seasons for these shark species/complexes are all closed, Federal Atlantic shark dealers would be required to report sharks on a weekly basis unless otherwise notified. In addition, individual Atlantic shark fisheries currently close when the respective quotas reach 80 percent (with the exception of the blacknose shark and non-blacknose shark fisheries, where both fisheries close when either quota reaches 80 percent). NMFS would consider changing this percentage in a future rulemaking, as appropriate, based on the timeliness of electronic reporting by dealers through this new electronic reporting system.

As proposed, NMFS would announce any change in reporting frequency for HMS species by filing an adjustment of the reporting frequency with the Office of the Federal Register for publication. In no case would such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. The public would also be informed simultaneously via the HMS Web site and e-mail notice listserve as well as through e-mail notifications to Federal HMS dealers via e-mail to an e-mail address provided to NMFS by dealers (and individual employees of dealers reporting in the electronic reporting system). NMFS anticipates that this flexibility to adjust the reporting frequency would be most critical for sharks due to small shark quotas.

**Late Dealer Reports**

In addition, because Federal Atlantic HMS dealer reports for some fisheries and some specific dealers are often late, which ultimately affects timely quota monitoring and usually requires staff resources to pursue resolutions, this rulemaking is proposing procedures to ensure that Federal Atlantic HMS dealers submit timely reports to NMFS. NMFS is proposing that Federal Atlantic HMS dealers would only be authorized to receive commercially-harvested Atlantic swordfish, sharks and BAYS tunas if the Federal Atlantic HMS dealer has submitted all required reports to NMFS. Accordingly, NMFS would require all delinquent reports to be submitted by dealers and received by NMFS before a dealer could receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas. Timely submission of reports to NMFS would allow dealers to be eligible to purchase commercially-harvested Atlantic swordfish, sharks, and BAYS tunas without interruption. The electronic dealer reporting system would track the timing and submissions of Federal Atlantic HMS dealer reports and automatically notify dealers (and individual employees of dealers reporting in the electronic reporting system) and NMFS (the HMS Management Division and NMFS Office of Law Enforcement) via e-mail if reports are delinquent. Federal Atlantic HMS dealers who fail to submit reports to NMFS in a timely manner would be in violation and subject to enforcement action, as would those who are offloading, receiving, and/or purchasing HMS product without having submitted all required reports to NMFS.

**First Receiver**

Finally, in order to ensure accurate species- and vessel-specific reporting, this rulemaking proposes that all first receivers of commercially-harvested Atlantic swordfish, sharks, and BAYS tunas by Federally-permitted U.S. vessels must obtain a Federal Atlantic HMS dealer permit. Under existing regulations, in order to obtain a Federal Atlantic shark dealer permit, the first receiver of shark products, or suitable proxy, is required to have a current and valid Atlantic shark identification workshop certificate per 50 CFR 635.8(b). Existing regulations also require that dealers, not the first receivers of Atlantic swordfish and BAYS tunas, report to NMFS on a bi-weekly basis. In the proposed action, first receivers of Atlantic sharks, swordfish, and BAYS tunas, including those that transport products to dealers, would be responsible for electronic reporting of all Atlantic sharks, swordfish, and BAYS tunas product first received from U.S. fishing vessels. NMFS is also considering alternate scenarios regarding who should obtain a Federal HMS dealer permit in order to ensure accurate species-specific reporting, as described above.

**Request for Comments**

NMFS is requesting comments on any of the proposed actions in the proposed rule, RIR and IRFA. NMFS is also requesting comments on specific items related to the proposed action to clarify certain sections of the regulatory text or to help in analyzing potential impacts of the proposed actions. Specifically, NMFS requests comments on:

(1) Changes in who must obtain a Federal HMS dealer permit. NMFS is seeking information on the number of entities that would be affected by the proposed changes to the first receiver definition and the requirement that all first receivers of Atlantic swordfish, sharks, and BAYS tunas must obtain a Federal HMS dealer permit. Specifically, how common is the practice that a transporter, currently exempted under the regulations from having to obtain a dealer permit, is the first receiver of Atlantic swordfish, sharks, and BAYS tunas? Would the other first receiver alternatives described above be preferable (*i.e.,* who should have to obtain a Federal HMS dealer permit)?

(2) The amount of time proposed to provide notice of changes in the required reporting frequency. NMFS is proposing to change the required reporting frequency based on the available quota, length of fishing season, and species/species complexes, when certain triggers are met by the different fisheries. NMFS has proposed that Federal HMS dealers would be notified of changes to the required reporting frequency via e-mail to an e-mail address provided to NMFS by dealers. In addition, NMFS would announce any change to the required reporting frequency for HMS species by filing an adjustment of the reporting frequency with the Office of the Federal Register for publication. In no case would such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. Is that an adequate amount of time for dealers to receive notice? Would a longer timeframe (*e.g.,* five days from date of filing, similar to the notice given for closures in the Atlantic shark fisheries) be more appropriate?

Comments on this proposed rule may be submitted online via *http://www.regulations.gov*, by mail, or by fax (see **DATES** and **ADDRESSES**). Comments may also be submitted at a public hearing (see Public Hearings and Special Accommodations below). NMFS solicits comments on this proposed rule by August 12, 2011.

**Public Hearings and Special Accommodations**

NMFS will hold eight public hearings as listed in the table below for fishery participants and other members of the public regarding this proposed rule. These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jackie Wilson at (240) 338–3936 or Delisse Ortiz at (301) 713–2347 at least 7 days prior to the hearing date. The public is reminded that NMFS expects participants at the public hearings to conduct themselves

appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (*e.g.,* alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

TABLE 1—LOCATIONS AND DATES FOR PUBLIC HEARINGS

| Location | Date | Time | Address |
|---|---|---|---|
| Manteo, NC | July 11, 2011 | 5–7 p.m. | Manteo Town Hall, 407 Budleigh St., Manteo, NC 27954. |
| Kenner, LA | July 13, 2011 | 2–5 p.m. | Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062. |
| Panama City, FL | July 18, 2011 | 5–7 p.m. | Bay County Public Library, 898 West 11th Street, Panama City, FL 32401. |
| Orlando, FL | July 19, 2011 | 5:30–7:30 p.m. | Jean Rhein Central Branch Library, 215 N. Oxford Road, Casselberry, FL 32707. |
| Miami, FL | July 20, 2011 | 2:30–4:30 p.m. | Miami-Dade Public Library, 101 West Flagler Street, Miami, FL 33130. |
| Peabody, MA | July 26, 2011 | 1–3 p.m. | Peabody Institute-West Branch, 603 Lowell Street, Peabody, MA 01960. |
| Bronx, NY | July 27, 2011 | 5:30–7:30 p.m. | Parkchester Library, 1985 Westchester Avenue (at Pugsley Ave.), Bronx, NY 10462. |
| Atlantic City, NJ | July 28, 2011 | 3:30–6:30 p.m. | Atlantic County Library System, Brigantine Branch, 201 15th St. South, Brigantine, NJ 08203. |

**Classification**

The NMFS Assistant Administrator has determined that this proposed action is consistent with the Magnuson-Stevens Act, 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule would modify a collection-of-information requirement associated with dealer reporting for Atlantic HMS dealers subject to the Paperwork Reduction Act (PRA) which has been approved by the Office of Management and Budget (OMB) under control number 0648–0040. The proposed modifications are subject to review and approval by OMB under the PRA. This requirement has been submitted to OMB for approval. The public reporting burden associated with Atlantic HMS dealers having to report Atlantic swordfish, sharks, and BAYS tunas to NMFS electronically (15 minutes per positive report and 5 minutes per negative report) depends on the species/species complex, which fisheries are open, available quota, and amount of time left in the fishing season. NMFS would establish a weekly base reporting frequency and would have the flexibility to increase the reporting frequency from weekly to daily for any HMS species if more frequent reporting is deemed necessary to monitor the available quota. NMFS does not expect to use this flexibility in the near future for BAYS tunas or swordfish, but may need to for sharks. Additionally, as shark quotas are the smallest of all HMS quotas, and their associated fishing seasons have been the shortest in the past, NMFS is proposing to require Federal Atlantic shark dealers to report sharks within 24 hours while the fishing seasons for non-sandbar LCS, blacknose sharks, and non-blacknose SCS are open. When the fishing seasons for these shark species/complexes are all closed, Federal Atlantic shark dealers would be required to report sharks on a weekly basis.

Public reporting burden for Atlantic swordfish and BAYS tunas would be one hour per month (15 minutes per report each week × 4 weeks) or 12 hours per year. Based on the number of Atlantic swordfish and tunas dealer permits (that deal with BAYS tunas) in 2010 (or 711 total permits), this would result in an estimated total annual burden of 8,532 hours.

Atlantic shark dealers would spend approximately 7.5 hours/month reporting to NMFS (15 minutes per report each day × 30 days) while the non-sandbar LCS, blacknose sharks, and non-blacknose SCS fishing seasons were open, and approximately 1 hour per month when the fishing seasons for these fisheries were closed. In 2010, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were open for 33 weeks. Similar season lengths in subsequent years would result in 57.75 hours of reporting by the Federal shark dealer to NMFS while these fisheries were open. However, the non-sandbar LCS, blacknose, or non-blacknose SCS fisheries were closed for 20 weeks during 2010, which would result in 5 hours of reporting by the Federal shark dealer to NMFS under similar fishing seasons. Based on the number of Atlantic shark dealer permits in 2010 (or 175 total permits), this rule change would result in an estimated total annual burden to all the affected entities of 10,981.25 hours and assumes that dealers would report Atlantic sharks, swordfish, and/or BAYS tunas during each reporting period. Negative reports would require less of a reporting burden as negative reports are estimated to only take 5 minutes to complete and send to NMFS. Finally, all 886 permit holders affected by this proposed rule would be considered respondents.

Public comment is sought regarding the estimated burden hours (*i.e.,* 15 minutes per report) associated with electronic reporting for Atlantic HMS dealers. Send comments on this or any other aspects of the collection-of-information to Delisse Ortiz with the Highly Migratory Species Management Division, at the **ADDRESSES** above, and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285. Comments submitted in response to this proposed modification to an existing information collection will be summarized and/or included in the request for OMB approval of this information collection and will also be included in the public record.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

In addition, NMFS has determined that this proposed rule would not affect the coastal zone of any state, and a negative determination pursuant to 15 CFR 930.35 is not required, therefore, pursuant to 15 CFR 930.33(a)(2), coordination with appropriate state

agencies under section 307 of the CZMA is not required.

Ecological impacts, outside of those that have been previously analyzed for Atlantic shark dealer reporting requirements in Amendment 2 to the 2006 Consolidated HMS FMP and categorically excluded for Atlantic swordfish and BAYS tunas, are not expected as a result of this proposed rule. This action would not directly affect fishing effort, quotas, fishing gear, authorized species, interactions with threatened or endangered species, or other relevant parameters. This proposed rule is exempt from the requirement to prepare an Environmental Assessment in accordance with NAO 216–6 because it would not have significant, additional impacts on the human environment, or any environmental consequences that have not been previously analyzed or are categorically excluded in accordance with Sections 5.05b and Section 6.03.c.3(i) of NOAA's Administrative Order (NAO) 216–6. However, social and economic impacts are expected as a result of this proposed action.

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with § 603(b)(1) of the RFA, the purpose of this proposed rulemaking is consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to consider changes to the current regulations and infrastructure of the Atlantic HMS quota-monitoring system by requiring: all Federally-permitted Atlantic HMS dealers to report commercially-harvested Atlantic swordfish, sharks, and BAYS tunas to NMFS through an electronic dealer reporting system; delinquent reports be submitted by dealers and received by NMFS before a dealer could receive commercially-harvested Atlantic swordfish, sharks, and BAYS tunas; and all commercially harvested Atlantic swordfish, sharks, and BAYS tunas by Federally-permitted fishermen be offloaded to Federally-permitted HMS dealers, who must report the associated catch to NMFS. These actions are necessary to ensure timely and accurate reporting, which is critical for quota monitoring and management of these species.

In compliance with § 603(b)(2) of the RFA, the objectives of this proposed rulemaking are to achieve domestic management objectives under the MSA, and to implement the 2006 Consolidated HMS FMP and its amendments. These objectives include the goals in the Consolidated HMS FMP to monitor and control all components of fishing mortality, both directed and incidental, so as to ensure the long-term sustainability of HMS stocks, and to provide the data necessary for assessing HMS fish stocks and managing HMS, including addressing inadequacies in current data collection and the ongoing collection of social and economic data in Atlantic HMS fisheries.

Under § 603(b)(3) of the RFA, Federal agencies are required to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in the fishing industry. NMFS estimates that this proposed rule would affect all Federal Atlantic HMS dealers who first receive Atlantic swordfish, sharks, and BAYS tunas from Federally-permitted commercial fishing vessels in the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea. All of these are considered small entities. As of 2010, there were 886 Federal Atlantic HMS dealer permit holders, of which 175 had Atlantic shark, 330 were Atlantic swordfish, and 381 were Atlantic tunas (bigeye, albacore, yellowfin, and skipjack) dealer permits.

This proposed rule would modify existing reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). If adopted, the rule would require Federal Atlantic HMS dealers to report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system; increase HMS dealer reporting frequency to NMFS, as needed (*i.e.,* daily—weekly reporting); and require a corresponding Federal HMS dealer permit for all first receivers of Atlantic sharks, swordfish, and BAYs tunas offloaded from Federally-permitted U.S. vessels. The HMS dealer permit would require the same application and fees (*i.e.,* $50 to $75) that are currently required for an HMS dealer permit. The information collected through the electronic dealer system would include additional data fields, including vessel and location of catch information; however, many new fields would be auto-populated or selected from data fields in a drop down menu in the electronic system. In addition, under the proposed rule, a dealer would only be authorized to receive commercially-harvested HMS if the dealer had submitted all reports to NMFS within the required timeframe. Failure to report Atlantic sharks, swordfish, and BAYS tunas to NMFS within the required reporting frequency would result in dealers being ineligible to first receive Atlantic sharks, swordfish, and BAYS tunas. This proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the MSA, the ATCA, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, and the Paperwork Reduction Act. NMFS does not believe that the new regulations proposed to be implemented would duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

One of the requirements of an IRFA is to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These impacts are discussed below. Additionally, the RFA (5 U.S.C. 603(c)(1)–(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are:

1. Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
2. Clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;
3. Use of performance rather than design standards; and
4. Exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the MSA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all of the participants in Atlantic HMS fisheries are considered small entities. All Federally-permitted HMS dealers must

currently submit bi-weekly reports of all commercially-harvested HMS. Similarly, the application process for the dealer permit would be the same as the process that is required under the current regulations. The majority of the information required to report in the new reporting system would be the same as what is currently required. However, the proposed rule would require Federally-permitted dealers to report information about commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS in an electronic format rather than paper on a more frequent basis than bi-weekly and for all first receivers of Atlantic sharks, swordfish, and BAYS tunas to have a dealer permit and report the associated catch to NMFS.

NMFS considered and analyzed four alternatives to ensure more timely, efficient, and accurate dealer reporting and subsequent quota monitoring of Atlantic HMS. NMFS considered the following alternatives: Alternative A1—Status quo; Alternative A2—Establish new flexible reporting requirements for all Federally-permitted HMS dealers effective 30 days after publication of the final rule; Alternative A3—Establish new flexible reporting requirements for all Federally-permitted HMS dealers and delay implementation; and Alternative A4—Establish new weekly reporting requirements for all Federally-permitted HMS dealers and delay implementation.

Alternative A1, the No Action alternative, would maintain existing regulations specifying bi-weekly dealer reporting requirements from Federal Atlantic shark, tunas, and swordfish dealers. This alternative would not result in any additional impacts to small entities. Federal HMS dealers are currently required to report any Atlantic tunas, swordfish, and/or sharks that they receive from U.S. vessels to NMFS on a bi-weekly basis. Federal dealers submit their reports in paper format to NMFS by the 10th and 25th of each month and indicate the amount of product received over a two week period, including submission of a ''negative'' report to NMFS indicating no purchases were made during a reporting period. The reports are mailed or faxed to the SEFSC for dealers located south of Virginia. Northeast Atlantic HMS dealers (Virginia through Maine) report HMS to the NEFSC through SAFIS or, to a lesser extent, through a manual system involving the NERO port offices with the exception of bluefin tuna, which is reported through other reporting mechanisms. Under the current regulations, a dealer permit may be revoked, suspended, or modified, and a permit application denied if recordkeeping and reporting requirements for HMS are not met. Current regulations also require any person that receives, purchases, trades for, or barters for Atlantic HMS from a U.S. vessel to possess a valid Atlantic HMS dealer permit. As mentioned above, Federal dealers are required to report any Atlantic tunas, swordfish, and/or sharks that they receive from U.S. vessels to NMFS on a bi-weekly basis. In the shark fishery, the first receiver of Atlantic shark product harvested by Federally-permitted fishermen must also obtain a Federal shark dealer permit and report the associated catch to NMFS. Under the current regulations, dealer reporting is estimated to require individual dealers to spend approximately 15 minutes to complete each report if HMS are purchased or received during the reporting period, and only about 5 minutes to complete a negative report if no HMS were purchased or received. Currently, bi-weekly reports to NMFS are sent in pre-paid NMFS envelopes. Therefore, on an annual basis, reporting HMS product has no associated mailing costs per dealer. The current dealer reporting mechanisms make it difficult to monitor small quotas, and in some cases, results in the fishery closing before the entire quota has been harvested, as is the case for Atlantic shark fisheries. Thus, receiving HMS dealer data on a more frequent basis would allow NMFS to better manage these fisheries, which could ultimately benefit fishermen.

To obtain a dealer permit, NMFS charges an administrative fee of $50 for issuing a dealer permit for the first fishery and $12.50 for each additional fishery, for a total a cost of $75 per dealer for all HMS fisheries. NMFS also requires all Federal Atlantic shark dealer permit holders to complete an Atlantic shark identification workshop every three years. Although there is no associated cost to participate in the dealer workshop certification, participation in the workshop is a time burden of approximately 4 hours per workshop for each shark dealer.

Alternative A2 proposes that all Federally-permitted Atlantic HMS dealers must report commercially-harvested Atlantic sharks, swordfish, and BAYS tunas to NMFS through an electronic reporting system, including submission of a ''negative'' report to NMFS indicating no purchases were made in a given reporting period. To better facilitate timely quota monitoring, NMFS is also proposing to increase the frequency of both positive and negative dealer reporting for Atlantic sharks, swordfish, and BAYS tunas. The reporting frequency would be flexible and could be adjusted depending on the available quota, length of fishing season, and species/species complexes, when certain triggers are met by the different fisheries, as described below. As proposed, NMFS would establish a weekly base reporting frequency. Under the proposed rule, for swordfish, an increase in reporting from a weekly to daily basis would occur when 80 percent of the directed fishery's quota is attained. For BAYS tunas, bigeye, yellowfin, and skipjack fisheries are not managed under quotas, and the United States has not attained the U.S. allocated albacore tuna quota, which is currently not codified. If such quotas are codified in the future, NMFS proposes to increase the required dealer reporting from a weekly to daily basis when 80 percent of the respective quotas are attained. Additionally, because shark quotas are the smallest of all HMS quotas, NMFS is proposing to require Federal Atlantic shark dealers to report sharks within 24 hours while the fishing seasons for non-sandbar LCS, blacknose sharks, and non-blacknose SCS are open. The quotas for these shark complexes/species are the smallest of all the shark quotas, and their associated fishing seasons have been the shortest in the past. When the fishing seasons for these shark species/complexes are all closed, Federal Atlantic shark dealers would be required to report sharks on a weekly basis unless otherwise notified.

As proposed, NMFS would announce any change in reporting frequency for HMS species by filing an adjustment of the reporting frequency with the Office of the Federal Register for publication. In no case would such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. The public would also be informed simultaneously via the HMS Web site and e-mail notice listserve as well as through e-mail notifications to Federal HMS dealers to an e-mail address provided to NMFS by dealers (and individual employees of dealers reporting in the electronic reporting system). NMFS anticipates that this flexibility to adjust the reporting frequency would be most critical for sharks due to small shark quotas.

A dealer would be authorized to receive commercially-harvested Atlantic sharks, swordfish, and BAYS tunas only if the permitted dealer has submitted all required reports to NMFS. Under this alternative, NMFS would also require Federal HMS dealer permits for all first receivers of Atlantic sharks, swordfish, and BAYS tunas. The first receivers/

Federal dealers of Atlantic sharks, swordfish, and BAYS tunas would be required to report all HMS product harvested by U.S. fishing vessels to NMFS. Implementation of these regulations would be effective 30 days after the publication of the final rule.

There may be minor social and economic impacts expected from this alternative as a result of HMS dealers having to purchase computer and Internet services in order to report the associated catch through NMFS' electronic dealer reporting system. According to the SBA, in 2010, approximately 94 percent of businesses have at least one computer. Of businesses with computers, 95 percent have Internet service. Thus, most dealers are assumed to already have a computer and Internet access as part of their regular business operations. The most inexpensive computer that would support the new system may have an average, one-time cost of $615. Internet service rates may vary depending on a variety of factors. A recent report by the SBA Office of Advocacy (2010) indicated that businesses pay an average of $110 per month for Internet service, with most paying between $50 and $99 per month. Therefore, if a dealer needed to purchase a computer it would be a one-time cost of $615. The average annual cost would be $600 for Internet services (assuming dealers would need the most basic Internet connection to support NMFS's electronic reporting system at a cost of $50 per month for Internet service; $50*12 months=$600/year). As such, during the first year, it would cost dealers $1,215 ($615 for computer + $600 for Internet service) for a computer and Internet services, assuming the dealer does not already have a computer and Internet access as part of his/her regular business operations. After the first year, it would cost $600 a year for Internet service. Under this alternative, NMFS would also revise the current dealer reporting requirements as explained above. NMFS estimates that it would take dealers the same amount of time to fill out and submit an individual electronic report as it does for the current report in a paper format (*i.e.,* 15 minutes per report).

At this time, NMFS cannot determine the number of additional individuals that would need to obtain HMS dealer permits due to the first receiver requirement in this proposed action. However, NMFS is seeking specific public comment regarding the universe that would be affected by this action. NMFS did investigate the percent change in the number of Atlantic shark dealer permits from 2007 to 2008 as first receivers of Atlantic shark products were required to obtain a Federal shark dealer permit in 2008. Federal Atlantic shark dealer permit data indicate that there was a decrease in the number of permitted shark dealer facilities from 2007 to 2008. However, because several management measures were also implemented in 2008 (*i.e.,* implementation of shark dealer workshops and the prohibition of sandbar sharks outside of a research fishery) that could have impacted the number of Atlantic shark dealers during this time, it is unclear if changes in the number of permitted shark dealers were the result of the first receiver requirement or other new regulations in the shark fishery. If individuals need to obtain an HMS dealer permit and were to purchase all three HMS dealer permits, it would cost $75 on an annual basis. If those dealers also have to purchase a computer, it would be a one-time cost of $615. The annual cost of maintaining Internet service would be $600 (as outlined above). As such, during the first year, if the dealer had to purchase permits, a computer, and Internet service, it would cost $1,290 ($75 for dealer permits + $1,215 for computer and Internet). After the first year, it would cost $675 for permits and Internet service. However, since most current HMS dealers have a computer and Internet service as part of their business practices, the cost associated with A2 would be the extra time required for reporting on a more frequent basis as explained above. Those entities currently exempt from having to obtain an HMS dealer permit under the transport only exemption may need to purchase dealer permits, a computer, and Internet service. Comment is sought on the number of such entities that would be impacted by this proposed action. Under alternative A2 the proposed regulations would be effective within 30 days after publication of the final rule.

Alternative A3, the preferred alternative, proposes the same requirements as alternative A2; however, alternative A3 would delay implementation of the new regulations until February 2012. NMFS anticipates publishing the final rule for this action in November 2011. This delay would allow dealers an additional three months to learn about the new regulations, purchase a new computer and obtain Internet services, if necessary, and become familiar with the new electronic dealer reporting system before it is required for all HMS dealers in February 2012. Because the proposed action under alternative A3 would allow NMFS time to conduct outreach to HMS dealers regarding the new reporting system and its requirement, and it would allow HMS dealers additional time to learn about and prepare for the new electronic dealer reporting system, NMFS prefers this alternative at this time.

Alternative A4 proposes the same requirements as alternative A3; however, alternative A4 would have weekly dealer reporting requirements for all Atlantic swordfish, shark, and BAYS tunas dealers. Atlantic shark dealers would report on a weekly basis regardless of which shark fishery was open to simplify reporting requirements across all HMS dealers and would reduce the reporting burden on shark dealers by requiring less frequent reporting. While this proposed alternative may simplify dealer reporting, it would not allow for real time data collection of shark landings when shark fisheries with the smallest quotas (*i.e.,* non-sandbar LCS, blacknose sharks, and non-blacknose sharks) were open. This could jeopardize effective management and quota monitoring in the Atlantic shark fishery), which is critical given these fisheries typically have short seasons.

This action does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132.

**List of Subjects in 50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 22, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for part 635 continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

2. In § 635.2, the definition for ''First receive'' is added in alphabetical order and ''First receiver'' is revised to read as follows:

**§ 635.2 Definitions.**

* * * * *

*First receive* means to take immediate possession for commercial purposes of any fish or any part thereof by

acquiring, purchasing, trading or bartering for it as it is offloaded from a fishing vessel of the United States, as defined under § 600.10 of this chapter, whose owner or operator has been issued, or should have been issued, a valid permit under this part. For this definition, possession includes, but is not limited to, handling, receiving, transporting, disposing of, packing, or storing fish offloaded from a vessel.

*First receiver* means any entity, person, or company that first receives fish, or any part thereof, as defined in this part.

* * * * *

3. In § 635.4, paragraphs (g)(1)(i) and (ii) are added and paragraph (g)(3) is revised to read as follows:

**§ 635.4 Permit and fees.**

* * * * *

(g) * * *

(1) * * *

(i) A person that receives, purchases, trades for, or barters for Atlantic bluefin tuna from a fishing vessel of the United States, as defined under § 600.10 of this chapter, must possess a valid Federal Atlantic tunas dealer permit.

(ii) A first receiver, as defined in § 635.2, of Atlantic bigeye, albacore, yellowfin, or skipjack tunas must possess a valid Federal Atlantic tunas dealer permit.

* * * * *

(3) *Swordfish.* A first receiver, as defined in § 635.2, of Atlantic swordfish must possess a valid Federal Atlantic swordfish dealer permit.

* * * * *

4. In § 635.5, paragraphs (b)(1)(i) through (iv) are revised and paragraph (b)(1)(v) is added to read as follows:

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(b) * * *

(1) * * *

(i) Dealers that have been issued or should have been issued a Federal Atlantic tunas, swordfish, and/or shark dealer permit under § 635.4 must submit to NMFS all reports required under this section within the timeframe specified under paragraphs (b)(1)(ii) and (b)(1)(iii). Atlantic bigeye, albacore, yellowfin, or skipjack tunas, swordfish, and sharks commercially-harvested by a U.S. vessel can only be first received by dealers that have been issued or should have been issued an Atlantic tunas, swordfish, and/or sharks dealer permit under § 635.4. All reports must be species-specific and must include the required information about all Atlantic bigeye, albacore, yellowfin, or skipjack tunas, swordfish, and sharks received by the dealer, including the required vessel information, regardless of where harvested or whether the harvesting vessel is permitted under § 635.4. For sharks, each report must specify the total weight of the carcass(es) without the fins for each species, and the total fin weight by grade for all sharks combined. Dealers are also required to submit ''negative'' reports, reports which indicate no receipt of Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and/or sharks, within the timeframe specified under paragraphs (b)(1)(ii) and (b)(1)(iii). As stated in § 635.4(a)(6), failure to comply with these recordkeeping and reporting requirements may result in existing dealer permit(s) being revoked, suspended, or modified, and in the denial of any permit applications.

(ii) *Atlantic tunas and swordfish.* As of February 1, 2012, reports of any Atlantic bigeye, albacore, yellowfin, and skipjack tunas, and/or swordfish first received by dealers from U.S. vessels, as defined under § 600.10 of this chapter, must be submitted electronically by the dealer and received by NMFS no later than 11:30 p.m., local time, on Monday of each week through the HMS electronic dealer reporting system unless the dealer is otherwise notified by NMFS. NMFS will adjust the reporting from a weekly to daily basis for HMS swordfish dealers when 80 percent of the directed fishery's quota is attained. If quotas for Atlantic bigeye, albacore, yellowfin, and skipjack tunas are codified in the future, NMFS will adjust the required dealer reporting from a weekly to daily basis when 80 percent of the respective quotas are attained. If NMFS determines that the required reporting frequency should be changed, NMFS will file for publication with the Office of the Federal Register an adjustment of the reporting frequency. In no case shall such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. Atlantic tunas and swordfish dealers will also be notified by e-mail at the e-mail address provided to NMFS through the HMS electronic dealer reporting system of any changes in the required reporting frequency. Atlantic tunas and swordfish dealers must submit electronic negative reports, reports stating that no Atlantic bigeye, albacore, yellowfin, and skipjack tunas and/or swordfish were first received during a reporting period, as specified in this section or as modified by NMFS in accordance with this section. Reporting requirements for bluefin tuna are specified in paragraph (b)(2) of this section. The negative reporting requirement does not apply for bluefin tuna.

(iii) *Atlantic sharks.* As of February 1, 2012, reports of any Atlantic sharks first received by Atlantic shark dealers from U.S. vessels, as defined under § 600.10 of this chapter, must be submitted electronically by the dealer and received by NMFS, through the HMS electronic dealer reporting system, no later than 11:30 pm, local time, each day of the week (*i.e.,* every 24 hours) while the non-sandbar LCS, non-blacknose SCS, or blacknose shark fisheries remain open. When those fisheries are closed, reports of any Atlantic sharks offloaded to Atlantic shark dealers from U.S. vessels must be electronically submitted by the dealer and received by NMFS, through the HMS electronic dealer reporting system, no later than 11:30 p.m., local time, on Monday of each week unless the dealer is otherwise notified by NMFS. NMFS may adjust the required reporting frequency from weekly to daily for Atlantic sharks based on the available quota and amount of time left in the fishing season for any species other than non-sandbar LCS, non-blacknose SCS, or blacknose shark. If NMFS determines that the required reporting frequency should be changed, NMFS will file for publication with the Office of the Federal Register an adjustment of the reporting frequency. In no case shall such an adjustment be effective less than 3 calendar days after the date of filing with the Office of the Federal Register. Atlantic shark dealers will also be notified by e-mail at the e-mail address provided to NMFS through the HMS electronic dealer reporting system of any changes in the required reporting frequency for Atlantic sharks. Atlantic shark dealers must submit electronic negative reports, reports stating that no Atlantic sharks were first received during a reporting period, as specified in this section or as modified by NMFS in accordance with this section.

(iv) As of February 1, 2012, Atlantic tunas, swordfish, and shark dealers must submit and have NMFS receive reports of all Atlantic bigeye, albacore, yellowfin, and skipjack tunas and swordfish offloaded to a dealer or extensions of a dealer's place of business, through the HMS electronic reporting system in accordance with the reporting frequency specified in paragraphs (b)(1)(ii) and (iii) of this section. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business.

(v) Atlantic HMS dealers are not authorized to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas if the required reports have not been submitted and received by NMFS according to reporting requirements under this section. Delinquent reports automatically result in an Atlantic HMS dealer becoming ineligible to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas regardless of any notification to dealers by NMFS. Atlantic HMS dealers who become ineligible to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas due to delinquent reports are authorized to first receive Atlantic swordfish, sharks, and/or Atlantic bigeye, albacore, yellowfin, and skipjack tunas only once all required and delinquent reports have been submitted and received by NMFS according to reporting requirements under this section.

* * * * *

5. In § 635.8, paragraphs (b)(4) through (b)(6), and (c)(4) are revised to read as follows:

**§ 635.8 Workshops.**

* * * * *

(b) * * *

(4) Only dealers issued a valid shark dealer permit may send a proxy to the Atlantic shark identification workshops. If a dealer opts to send a proxy, the dealer must designate at least one proxy from each place of business listed on the dealer permit, issued pursuant to § 635.4(g)(2), which first receives Atlantic shark. The proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and fills out dealer reports as required under § 635.5. Only one certificate will be issued to each proxy. If a proxy is no longer employed by a place of business covered by the dealer's permit, the dealer or another proxy must be certified as having completed a workshop pursuant to this section. At least one individual from each place of business listed on the dealer permit which first receives Atlantic sharks must possess a valid Atlantic shark identification workshop certificate.

(5) An Atlantic shark dealer issued or required to be issued a shark dealer permit pursuant to § 635.4(g)(2) must possess and make available for inspection a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy at each place of business listed on the dealer permit which first receives Atlantic sharks. For the purposes of this part, trucks or other conveyances of a dealer's place of business are considered to be extensions of a dealer's place of business and must possess a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to a place of business covered by the dealer permit. A copy of a valid Atlantic shark identification workshop certificate must be included in the dealer's application package to obtain or renew an Atlantic shark dealer permit. If multiple businesses are authorized to first receive Atlantic sharks under the Atlantic shark dealer's permit, a copy of the Atlantic shark identification workshop certificate for each place of business listed on the Atlantic shark dealer permit which first receives Atlantic sharks must be included in the Atlantic shark dealer permit renewal application package.

(6) Persons holding an expired Atlantic shark dealer permit and persons who intend to apply for a new Atlantic shark dealer permit will be issued a participant certificate in their name upon successful completion of the Atlantic shark identification workshop. A participant certificate issued to such persons may be used only to apply for an Atlantic shark dealer permit. Pursuant to § 635.8(c)(4), an Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. After an Atlantic shark dealer permit is issued to a person using an Atlantic shark identification workshop participant certificate, such person may obtain an Atlantic shark identification workshop dealer certificate for each location which first receives Atlantic sharks by contacting NMFS at an address designated by NMFS.

(c) * * *

(4) An Atlantic shark dealer may not first receive Atlantic shark without a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy. A valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy must be maintained on the premises of each place of business listed on the dealer permit which first receives Atlantic sharks. An Atlantic shark dealer may not renew a Federal dealer permit issued pursuant to § 635.4(g)(2) unless a copy of a valid dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy has been submitted with the permit renewal application. If the dealer is not certified and opts to send a proxy or proxies to a workshop, the dealer must submit a copy of a valid proxy certificate for each place of business listed on the dealer permit which first receives Atlantic sharks.

* * * * *

6. In § 635.27, paragraph (b)(1)(iv)(C) is revised to read as follows:

**§ 635.27 Quotas.**

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(C) Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Florida Keys areas or in the Gulf of Mexico will be counted against the non-sandbar LCS Gulf of Mexico regional quota. Except for non-sandbar LCS landed by vessels issued a valid shark research permit with a NMFS-approved observer onboard, any non-sandbar LCS reported as harvested in the Atlantic region will be counted against the non-sandbar LCS Atlantic regional quota. Non-sandbar LCS landed by a vessel issued a valid shark research permit with a NMFS-approved observer onboard will be counted against the non-sandbar LCS research fishery quota using scientific observer reports.

* * * * *

7. In § 635.28, paragraph (b)(4) is revised to read as follows:

**§ 635.28 Closures.**

* * * * *

(b) * * *

(4) When the fishery for a shark species group and/or region is closed, a fishing vessel, issued a Federal Atlantic commercial shark permit pursuant to § 635.4, may not possess or sell a shark of that species group and/or region, except under the conditions specified in § 635.22(a) and (c) or if the vessel possesses a valid shark research permit under § 635.32 and a NMFS-approved observer is on board. During the closure period, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may not first receive a shark of that species group and/or region from a vessel issued a Federal Atlantic commercial shark permit, except that a permitted Atlantic shark dealer or processor may possess sharks that were harvested, offloaded, and sold, traded, or bartered, prior to the effective date of the closure and were held in storage. Under a closure for a shark species group, an Atlantic shark dealer, issued a permit pursuant to § 635.4 may, in accordance with State regulations, first receive a shark of that

species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel that fishes only in State waters and that has not been issued a Federal Atlantic commercial shark permit, HMS Angling permit, or HMS Charter/Headboat permit pursuant to § 635.4. Additionally, under a closure for a shark species group and/or regional closure, an Atlantic shark dealer, issued a permit pursuant to § 635.4, may first receive a shark of that species group if the sharks were harvested, offloaded, and sold, traded, or bartered from a vessel issued a valid shark research permit (per § 635.32) that had a NMFS-approved observer on board during the trip sharks were collected.

* * * * *

8. In § 635.31, paragraphs (a)(1)(i), (a)(2)(i), and (a)(2)(ii) are added, paragraph (a)(1)(ii) is added and reserved, and paragraphs (c)(2), (c)(4), (c)(5), (d)(1), and (d)(2) are revised to read as follows:

**§ 635.31 Restrictions on sale and purchase.**

* * * * *

(a) * * *

(1) * * *

(i) A person that owns or operates a vessel from which an Atlantic tuna is landed or offloaded may sell such Atlantic tuna only if that vessel has a valid HMS Charter/Headboat permit, or a valid General, Harpoon, Longline, Purse Seine, or Trap category permit for Atlantic tunas issued under this part. However, no person may sell a BFT smaller than the large medium size class. Also, no large medium or giant BFT taken by a person aboard a vessel with an Atlantic HMS Charter/Headboat permit fishing in the Gulf of Mexico at any time, or fishing outside the Gulf of Mexico when the fishery under the General category has been closed, may be sold (see § 635.23(c)). A person may sell Atlantic bluefin tuna only to a dealer that has a valid permit for purchasing Atlantic bluefin tuna issued under this part. A person may not sell or purchase Atlantic tunas harvested with speargun fishing gear.

(ii) [Reserved]

(2) * * *

(i) Dealers may purchase Atlantic bluefin tuna only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

(ii) Dealers may first receive Atlantic bigeye, albacore, yellowfin and skipjack tunas only if they have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and only from a vessel that has a valid Federal commercial permit for Atlantic tunas issued under this part in the appropriate category.

* * * * *

(c) * * *

(2) Persons that own or operate a vessel for which a valid Federal Atlantic commercial shark permit has been issued and on which a shark from the management unit is possessed, may offload such shark only to a dealer that has a valid permit for shark issued under this part.

* * * * *

(4) Only dealers that have a valid a Federal Atlantic shark dealer permit and who have submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(iii) may first receive a shark from an owner or operator of a U.S. fishing vessel who has a valid Federal Atlantic commercial shark permit issued under this part, except that Atlantic shark dealers may first receive a shark from an owner or operator of a vessel that does not have a Federal Atlantic commercial shark permit if that vessel fishes exclusively in state waters. Atlantic shark dealers may first receive a sandbar shark only from an owner or operator of a vessel who has a valid shark research permit and who had a NMFS-approved observer on board the vessel for the trip in which the sandbar shark was collected. Atlantic shark dealers may first receive a shark from an owner or operator of a fishing vessel that has a permit issued under this part only when the fishery for that species group and/or region has not been closed, as specified in § 635.28(b).

(5) An Atlantic shark dealer issued a permit under this part may first receive shark fins from an owner or operator of a fishing vessel only if the shark fins were harvested in accordance with the regulations found at part 600, subpart N, of this chapter and in § 635.30(c).

(d) *Swordfish.* (1) Persons that own or operate a vessel on which a swordfish in or from the Atlantic Ocean is possessed may sell such swordfish only if the vessel has a valid commercial permit for swordfish issued under this part. Persons may offload such swordfish only to a dealer who has a valid permit for swordfish issued under this part.

(2) Atlantic swordfish dealers may first receive a swordfish harvested from the Atlantic Ocean only from an owner or operator of a fishing vessel that has a valid commercial permit for swordfish issued under this part and only if the dealer has submitted reports to NMFS according to reporting requirements of § 635.5(b)(1)(ii).

9. In § 635.71, paragraphs (a)(3)(i), (a)(3)(ii), (a)(3)(iii), (a)(4)(i), (a)(4)(ii), (a)(55), and (a)(56) are added and paragraphs (d)(11), (d)(14), (d)(16) and (e)(1) are revised to read as follows:

**§ 635.71 Prohibitions.**

(a) * * *

(3) * * *

(i) Purchase, receive, or transfer or attempt to purchase, receive, or transfer, for commercial purposes, Atlantic bluefin tuna landed by owners of vessels not permitted to do so under § 635.4, or purchase, receive, or transfer, or attempt to purchase, receive, or transfer Atlantic bluefin tuna without the appropriate valid Federal Atlantic tunas dealer permit issued under § 635.4.

(ii) First receive, or attempt to first receive, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and sharks landed by owners of vessels not permitted to do so under § 635.4, except that this does not apply to a shark harvested from a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

(iii) First receive, or attempt to first receive, Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, or sharks without the appropriate valid Federal Atlantic HMS dealer permit issued under § 635.4 or submission of reports by dealers to NMFS according to reporting requirements of § 635.5(b)(1)(ii) and § 635.5(b)(1)(iii). This prohibition does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state,

(4) * * *

(i) Sell or transfer or attempt to sell or transfer, for commercial purposes, an Atlantic bluefin tuna other than to a dealer that has a valid Federal Atlantic tunas dealer permit issued under § 635.4.

(ii) Offload an Atlantic bigeye, albacore, yellowfin, or skipjack tuna, swordfish, or shark other than to a dealer that has a valid Federal Atlantic HMS dealer permit issued under § 635.4, except that this does not apply to a shark harvested by a vessel that has not been issued a permit under this part and that fishes exclusively within the waters under the jurisdiction of any state.

* * * * *

(55) Fail to submit a dealer report if issued, or required to have obtained, a Federal Atlantic HMS dealer permit pursuant § 635.4 according to reporting

requirements of § 635.5(b)(1)(ii) and § 635.5(b)(1)(iii).

(56) Fail to electronically submit an Atlantic HMS dealer report through the HMS electronic dealer reporting system to report Atlantic bigeye, albacore, yellowfin, and skipjack tunas, swordfish, and sharks to NMFS in accordance with § 635.5(b)(1)(iv), if issued, or required to have obtained, a Federal Atlantic HMS dealer permit pursuant to § 635.4

* * * * *

(d) * * *

(11) First receive or attempt to first receive Atlantic sharks without a valid Federal Atlantic shark dealer or proxy Atlantic shark identification workshop certificate issued to the dealer or proxy or fail to be certified for completion of a NMFS Atlantic shark identification workshop in violation of § 635.8.

* * * * *

(14) First receive or attempt to first receive Atlantic sharks without making available for inspection, at each of the dealer's places of business listed on the dealer permit which first receives Atlantic sharks, an original, valid dealer or proxy Atlantic shark identification workshop certificate issued by NMFS to the dealer or proxy in violation of § 635.8(b), except that trucks or other conveyances of the business must possess a copy of such certificate.

* * * * *

(16) First receive or attempt to first receive a shark or sharks or part of a shark or sharks landed in excess of the retention limits specified in § 635.24(a).

* * * * *

(e) * * *

(1) First receive or attempt to first receive Atlantic swordfish from the north or south Atlantic swordfish stock without a Federal Atlantic swordfish dealer permit as specified in § 635.4(g).

* * * * *

[FR Doc. 2011–16208 Filed 6–27–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 110606318–1319–01]**

**RIN 0648–BA68**

## Fisheries Off West Coast States; Coastal Pelagic Species Fisheries; Amendment 13 to the Coastal Pelagic Species Fishery Management Plan; Annual Catch Limits

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 13 to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP). This proposed rule will implement parts of proposed Amendment 13 to the CPS FMP, which is intended to ensure the FMP is consistent with advisory guidelines published in Federal regulations. Amendment 13 revises the framework process currently in place to set and adjust fishery specifications and management measures and modifies this framework to include the specification new reference points such as annual catch limit (ACL).

**DATES:** Comments must be received by July 28, 2011.

**ADDRESSES:** You may submit comments, identified by 0648–BA68, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Mail:* Rodney R. McInnis, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802.
- *Fax:* (562) 980–4047, Attn: Joshua Lindsay.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you prefer to remain anonymous). You may submit attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the CPS FMP as Amended through Amendment 13 and the Environmental Assessment/Regulatory Impact Review for Amendment 13, are available from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE. Ambassador Place, Suite 200, Portland, OR 97220–1384 or the Southwest Regional Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Joshua B. Lindsay, Sustainable Fisheries Division, NMFS, at 562–980–4034 or Mike Burner, Pacific Fishery Management Council, at 503–820–2280.

**SUPPLEMENTARY INFORMATION:** The CPS fishery in the U.S. exclusive economic zone (EEZ) off the West Coast is managed under the CPS FMP, which was developed by the Pacific Fishery Management Council (Council) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Species managed under the CPS FMP include Pacific sardine, Pacific mackerel, jack mackerel, northern anchovy, market squid and krill. The CPS FMP was approved by the Secretary of Commerce and was implemented by regulations that can be found at 50 CFR part 660, subpart I.

The MSA was amended in 2007 to include new requirements for ACLs and accountability measures (AMs) and other provisions regarding preventing and ending overfishing and rebuilding fisheries. On January 16, 2009, NMFS revised its guidelines implementing MSA National Standard 1 (74 FR 3178) in response to these changes in the MSA. The revised guidelines explain NOAA's interpretation of the new statutory requirements for specifying ACLs at such levels that overfishing does not occur and that measures be taken to ensure accountability with these limits. The purpose of Amendment 13 is to amend the CPS FMP to ensure that it is consistent with these revised advisory guidelines and to comply with the statute. Specifically, Amendment 13 would revise the framework process to set and adjust fishery specification and management measures, and would establish a framework for specifying new reference points such as ACLs and AMs, as well as other provisions for preventing overfishing such as the potential setting of annual catch targets (ACTs).

Additionally, Amendment 13 would amend the FMP through the following measures that are designed to better

account for scientific and management uncertainty and to prevent overfishing:

• Modify the existing harvest control rules for actively managed species to include a buffer or reduction in acceptable biological catch (ABC) relative to overfishing limit (OFL) to account for scientific uncertainty. This buffer will be recommended during the annual management cycle through a combination of scientific advice from the Scientific and Statistical Committee (SSC) and a policy determination of the Council.

• Maintain the default harvest control rules for monitored stocks but modified to specify the new management reference points. ACLs would likely be specified for multiple years until such time as the species becomes actively managed or new scientific information becomes available. The current buffer of a 75-percent reduction in the ABC control rule (ABC equals 25 percent of OFL/MSY) will remain in use until recommended for modification by the SSC and approved by the Council through the annual harvest and management specification process.

• Add a mechanism for the use of sector-specific ACLs, ACTs and AMs.

Although not a change to the FMP, the Council reaffirmed that all management unit species (MUS) currently in the FMP, including those species categorized as monitored species and prohibited harvest species (krill) are ''in the fishery'' and will remain as MUS. Amendment 13 also adds Pacific herring (*Clupea pallasii pallasii*) and jacksmelt (*Atherinopsis californiensis*) to the FMP as ecosystem component (EC) species. Although the incidental catch of these species within CPS fisheries is extremely small, the intent of this action is to continue to specifically monitor the catches of these species and report catch estimates in the annual Stock Assessment and Fishery Evaluation report along with other incidental catch. In addition to the current ecological considerations in the FMP, the amendment also adds language to specify that the Council will include ecological considerations when reviewing and/or adopting status determination criteria (SDCs), ACLs, and ACTs.

## Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 13, the Magnuson-Stevens Act and other applicable law, subject to further consideration after public comment.

The Council and NMFS prepared an EA for this amendment that discusses the impact on the environment as a result of this proposed rule. A copy of the EA is available from the Council or NMFS (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The purpose of this action is to implement parts of proposed Amendment 13 to the CPS FMP which is intended to ensure the FMP is consistent with the recently revised advisory guidelines implementing MSA National Standard 1 (74 FR 3178). Amendment 13 revises the framework process currently in place to set and adjust fishery specifications and management measures and modifies this framework to include the specification new reference points such as ACL, ACT and AM, as well as other provisions for preventing overfishing.

The proposed action is not expected to have substantial direct or indirect socioeconomic impacts, because harvest limits and management measures influencing ex-vessel revenue and personal income are not established under the range of alternatives considered. Instead, the proposed action revises the framework used in developing management reference points. Additionally, for the current actively managed species within the FMP, Pacific sardine and Pacific mackerel, for which annual harvest limits have been set since 2001, the control rules used in the setting of these limits are not changing based on this action. However, this action will modify the management framework in place to further ensure that overfishing does not occur. Specific catch limits and associated management measures will continue to go through the appropriate rulemaking process with environmental and economic analysis where required.

A fishing vessel is considered a ''small'' business by the U.S. Small Business Administration (SBA) if its annual receipts are not in excess of $4.0 million. Since all of the vessels fishing for CPS have annual receipts below $4.0 million they would all be considered small businesses under the SBA standards. Therefore this rule will not create disproportionate costs between small and large vessels/businesses.

NMFS has determined that this rule will not result in a significant economic impact to a substantial number of small entities.

As a result, a regulatory flexibility analysis is not required, and none has been prepared.

## List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: June 22, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

## PART 660—FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

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

2. Amend § 660.502 by removing the definition of ''Monitored species (MS)'' and revising the definition of ''Harvest guideline'' to read as follows:

### § 660.502 Definitions.

* * * * *

*Harvest guideline* means a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not require complete closure of a fishery. It is operationally similar to an Annual Catch Target (ACT) (as defined at § 600.310(f)(2)).

* * * * *

3. Revise § 660.508 as follows:

### § 660.508 Annual specifications.

(a) The Regional Administrator will determine any harvest guideline, quota, Annual Catch Limit (ACL) (defined at § 600.310(f)(2)) or Annual Catch Target (ACT) (defined at § 600.310(f)(2)) in accordance with the framework process in the FMP.

(b) Any harvest guideline, quota, ACL, or ACT, including any apportionment between the directed fishery and set-aside for incidental harvest, will be published in the **Federal Register**.

(c) The announcement of each harvest guideline, quota, ACL or ACT will contain the following information if available or applicable:

(1) The estimated biomass or MSY proxy on which the harvest guideline, quota, ACL or ACT was determined;

(2) The portion, if appropriate, of the harvest guideline, quota, ACL or ACT

set aside to allow for incidental harvests after closure of the directed fishery;

(3) The estimated level of the incidental trip limit that will be allowed after the directed fishery is closed; and

(4) The allocation, if appropriate, between Subarea A and Subarea B.

(d) As necessary, harvest guidelines, quotas, OFLs (defined at § 600.310(f)(2)), ABCs (defined at § 600.310(f)(2)), ACLs or ACTs, will receive public review according to the following procedure:

(1) Meetings will be held by the Council's CPSMT and AP, where the estimated biomass and/or other biological or management benchmarks will be reviewed and public comments received. Each of these meetings will be announced in the **Federal Register** before the date of the meeting, if possible.

(2) All materials relating to the estimated biomass and/or other biological or management benchmarks will be forwarded to the Council and its Scientific and Statistical Committee and will be available to the public from the Regional Administrator when available.

(3) At a regular meeting of the Council, the Council will review the estimated biomass and/or other biological or management benchmarks and offer time for public comment. If the Council requests a revision, justification must be provided.

(4) The Regional Administrator will review the Council's recommendations, justification, and public comments and base his or her final decision on the requirements of the FMP and other applicable law.

4. Revise § 660.509 to read as follows:

**§ 660.509 Accountability measures (season closures).**

(a) *General rule.* When the directed fishery allocation or incidental allocation is reached for any CPS species it shall be closed until the beginning of the next fishing period or season. Regional Administrator shall announce in the **Federal Register** the date of such closure, as well as any incidental harvest level(s) recommended by the Council and approved by NMFS.

(b) *Pacific Sardine.* When the allocation and reallocation levels for Pacific sardine in § 660.511 (f)–(h) are reached, the Pacific sardine fishery shall be closed until either it re-opens per the allocation scheme in § 660.511 (g) and (h) or the beginning of the next fishing season as stated in § 660.510 (a). The Regional Administrator shall announce in the **Federal Register** the date of the closure of the directed fishery for Pacific sardine.

[FR Doc. 2011–16184 Filed 6–27–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**RIN 0648–AY53**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod Allocations in the Gulf of Alaska; Amendment 83

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

**ACTION:** Notification of availability of fishery management plan amendment; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council submitted Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) to NMFS for review. If approved, Amendment 83 would establish Pacific cod allocations in the Central and Western Gulf of Alaska regulatory areas among various sectors and seasonal apportionments thereof. This action also would limit access to the Pacific cod parallel fishery for Federal fishery participants. This action is necessary to reduce the uncertainty regarding the distribution of Pacific cod catch, enhance stability among the sectors, maintain processing limits to protect coastal fishing communities, and provide entry-level opportunities for the jig sector. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

**DATES:** Comments on the amendment must be received on or before August 29, 2011.

**ADDRESSES:** Send comments to Sally Bibb, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, *Attn:* Ellen Sebastian. You may submit comments, identified by ''RIN 0648–AY53,'' by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (907) 586–7557, *Attn:* Ellen Sebastian.
- *Mail:* P.O. Box 21668, Juneau, AK 99802.
- *Hand delivery to the Federal Building:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. Comments will generally be posted without change. All Personal Identifying Information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Seanbob Kelly, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment. This notice announces that proposed Amendment 83 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) is available for public review and comment.

The groundfish fisheries in the exclusive economic zone of the Gulf of Alaska are managed under the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act.

Pacific cod total allowable catch (TAC) in the Gulf of Alaska is apportioned on the basis of processor component and season, as established under Amendment 23 to the FMP (57 FR 23321, June 3, 1992). Since implementation, 90 percent of the TAC is allocated to vessels catching Pacific cod for processing by the inshore

component and 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. TACs are further apportioned for Pacific cod in the Western, Central, and Eastern GOA regulatory areas. In recent years, competition among participants in the Western and Central GOA Pacific cod fisheries has intensified in recent years due in part to a derby-style race for fish and competition among the various gear types for shares of the TACs. Without sector allocations, future harvests by some sectors may increase and impinge on historical levels of catch by other sectors.

The proposed action would supersede the current 90 percent/10 percent inshore/offshore processing allocations and instead divide the Western and Central GOA Pacific cod TACs among the various gear and operation types. If approved, this action would establish sector allocations for each gear and operation type in the Western and Central GOA Pacific cod fishery, based primarily on historical catches, as well as conservation, catch monitoring, bycatch, PSC avoidance, and social objectives, including considerations for small-boat sectors and coastal communities. This action is expected to enhance stability in the fishery, reduce competition among sectors, and preserve the historical division of catch among sectors.

The Eastern GOA regulatory area would retain the current 90 percent/10 percent inshore/offshore processing allocations. In recent years, only a small proportion of the Eastern GOA TAC has been harvested, although effort and catch has increased in recent years. The potential exists that the lack of any sector allocations in the Eastern GOA would provide an incentive for increased effort in that fishery. However, the Council did not perceive a need for such an action due, in part, to the differences in the prosecution of the Pacific cod fisheries in the Eastern regulatory area, such as the extensive trawl closures effectively prohibiting trawl fishing in the Southeast Outside district of the Eastern regulatory area. As a result, the Council recommended that the Eastern GOA Pacific cod TAC would not be allocated among sectors in this action.

Two elements of Amendment 83 would apply to the entire GOA, including the Western, Central, and Eastern GOA regulatory areas. First, the hook-and-line CV and C/P halibut PSC limits would apply to the entire GOA, described in more detail below. Second, NMFS is proposing new Federal Fishing Permits (FFPs) permitting requirements that would restrict the reissue of, or amendments to, FFPs by permit holders endorsed by gear and operation type to participate in all Federal or parallel Pacific cod fisheries throughout the Western, Central, and Eastern GOA, as described in more detail below.

This proposed action would define sectors based operation type and gear type, including hook-and-line, trawl, pot, and jig. In both the Western and Central GOA, the pot catcher vessel (CV) sector and pot catcher/processor (C/P) sector would be combined. The rationale for combining these sectors is that the pot C/P sector has historically been relatively small and would receive a small, difficult-to-manage allocation. Moreover, the majority of vessels that have participated as pot C/Ps in the GOA Pacific cod fishery in recent years also have fishing history as pot CVs, and will contribute catch history to both the pot C/P and CV allocations. In the Central GOA, the hook-and-line CV sector was further split by vessel length less than 50 ft (15.2 m) length overall (LOA). Historically, the majority of catch by hook-and-line CVs has been made by vessels less than 50 ft (15.2 m) LOA (<50 ft LOA), but in recent years, there has been a substantial increase in effort by hook-and-line CVs that are greater than 50 ft (15.2 m) LOA. Dividing this sector at 50 ft (15.2 m) LOA protects smaller boats from an influx of effort by vessels greater than 50 ft (15.2 m) LOA. However, it also means that vessels greater than 50 ft (15.2 m) LOA that are long-time participants in the fishery will share an allocation with these new entrants. This action would expand opportunities for jig vessels, by providing an initial allocation that is above the sector's historical catch in the fishery, and the opportunity for incremental increases to the jig allocation, if it is fully harvested. Any increases in the jig allocation would result in proportional reductions to the allocations to the other sectors.

This proposed action would not preclude operators from participating in the Western or Central GOA Pacific cod fishery using more than one gear type during a given season or year. For example, an operator could use both trawl and pot gear in the Western or Central GOA Pacific cod fishery during a given season or year, as long as they have the required License Limitation Program (LLP) license endorsements. However, the action does preclude operators from fishing off both the C/P and CV allocations to hook-and-line and trawl gear. The rationale for this restriction is that C/P operators could fish off the hook-and-line C/P or trawl C/P allocation until it is fully harvested, and then could opportunistically continue to fish as CVs, if the hook-and-line or trawl CV allocation has not yet been fully harvested. The purpose of establishing separate C/P and CV allocations is to shield CVs and C/Ps from competing against each other for access to the Pacific cod TAC. Allowing C/Ps to fish off both the C/P and CV allocations for their respective gear type would not meet this intent.

Allocations were calculated by taking each sector's 'best option' from four options in the Western GOA and 6 options in the Central GOA for calculating catch history, and then scaling allocations so that they sum to 100 percent. In the Western GOA, the four options for calculating catch history included the 1995 through 2005 time period. This time period includes 6 years of catch history prior to implementation of the Steller sea lion (SSL) protection measures in 2001 (66 FR 7276, January 22, 2001). In the Western GOA, the SSL protection measures resulted in a dramatic shift of catch from trawl gear to pot gear, and including this earlier time period accounts for the catch history of the trawl sector prior to this shift. The options in the Central GOA do not include the 1995 through 2000 time period and were based on participation from 2000 through 2008. While there was a reduction in trawl catch concurrent with implementation of the SSL protection measures in the Central GOA, the shift was less dramatic than in the Western GOA because, historically, less of the trawl catch occurred in the Central GOA A season.

This proposed action is intended to protect historical processing and community delivery patterns, established in the GOA groundfish fisheries. NMFS would establish a mothership processing cap at 2 percent of the Western GOA Pacific cod TAC, and prohibit mothership activity in the Central GOA. In the Central GOA, no mothership has processed groundfish since 2000. In the Western GOA, there has been limited mothership activity. In addition, NMFS would establish separate processing caps for floating processors that do not harvest groundfish or act as a stationary floating processor in a given year. Eligible vessels would be allowed to process up to 3 percent of the respective Western and Central GOA TACs, provided that they operate within the municipal boundaries of Community Quota Entity (CQE) communities. Although the proposed action provides additional mothership processing opportunities, NMFS would tie this activity to Western and Central GOA CQE communities,

thus providing economic benefits to these coastal communities from any increase in mothership processing activity (e.g., local tax revenues).

If approved, this action would preclude Federally-permitted vessels that do not have LLP licenses from participating in the Western or Central GOA Pacific cod parallel fishery. If Western or Central GOA Pacific cod sector allocations are established, parallel waters activity by Federally-permitted vessel operators who do not hold LLPs could erode the catches of historical participants who contributed catch history to the sector allocations and depend on the Western or Central GOA Pacific cod resource. Vessels fishing in Federal waters are required to hold an LLP license with the appropriate area, gear, and species endorsements, but vessels fishing in parallel State waters are not required to hold an LLP license. This action would be necessary to prevent vessels without LLPs from fishing within State waters for Federal TAC allocations of Pacific cod.

The EA/RIR/IRFA prepared for this action contains a complete description of the alternatives and a comparative analysis of the potential impacts of the alternatives (see **ADDRESSES** for availability). All of the directly regulated entities would be expected to benefit from this action relative to the status quo because the proposed amendment would stabilize the distribution of catch of the GOA Pacific cod TACs among the harvest sectors. The action also has the potential to benefit LLP license holders by precluding Federally-permitted vessels that do not have LLP licenses from participating in the GOA Pacific cod parallel fishery and eroding the catches of historical participants.

Similarly, vessel owners that fish for Pacific cod in the Federal waters have surrendered their FFP before fishing in State waters to avoid NMFS observer, VMS, and recordkeeping and reporting requirements, only to have the FFPs reissued for the opening of the Federal waters fishery. To prevent operators from circumventing these requirements, this action would limit vessel operators throughout the GOA to one FFP reactivation during the 3-year term of the permit.

The EA/RIR/IRFA also analyzed revisions to related provisions governing inseason reallocations of unused Pacific cod allocations, seasonal apportionments, and prohibited species bycatch allowances.

Public comments are being solicited on proposed Amendment 83 to the GOA FMP through the end of the comment period (see DATES). NMFS intends to publish in the **Federal Register** and seek public comment on a proposed rule that would implement Amendment 83, following NMFS' evaluation of the proposed rule under the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on Amendment 83 to be considered in the approval/disapproval decision on Amendment 83. All comments received by the end of the comment period on Amendment 83, whether specifically directed to the GOA FMP amendment or the proposed rule, will be considered in the FMP amendment approval/disapproval decision. Comments received after that date will not be considered in the approval/disapproval decision on the amendment. To be considered, comments must be received, not just postmarked or otherwise transmitted, by the close of business on the last day of the comment period.

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

Dated: June 23, 2011.

**Margo Schulze-Haugen,**

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

[FR Doc. 2011–16163 Filed 6–27–11; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register

Vol. 76, No. 124

Tuesday, June 28, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

June 22, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Agricultural Research Service**

*Title:* Supplemental Nutrition Assistance Program Connection Resource Sharing Form.

*OMB Control Number:* 0518–0031.

*Summary of Collection:* In 2008, the Food Stamp Program was renamed the Supplemental Nutrition Assistance Program (SNAP) and the Food Stamp Nutrition Connection became the SNAP–ED Connection. Date collected using this form helps the SNAP–Ed Connection staff identify nutrition education and training resources for review and inclusion into the SNAP–Ed Connection's Resource Finder Database. State and local SNAP–Ed providers can use this database to identify and acquire existing, available nutrition education materials.

*Need and Use of the Information:* SNAP–ED Connection staff members use information collected by the Resource Sharing Form to build and constantly enhance the online database of nutrition education and training materials known as the Resource Finder Database. SNAP–Ed providers access and use the database to identify and obtain curricula, lesson plan, research, training tools and participant materials. Vital information about these resources, such as a description of the resource, its creator, publisher and ordering information is collected using the Resource Sharing Form. Failure to collect this information would significantly inhibit SNAP–Ed Connection ability to provide up-to-date information on existing nutrition education materials that are appropriate for SNAP–Ed programs and providers.

*Description of Respondents:* Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 50.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 16.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2011–16071 Filed 6–27–11; 8:45 am]

BILLING CODE 3410–03–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–FV–11–0053; FV11–944–1 NC]**

### Specified Commodities Imported Into the United States, Exempt From Import Regulations; Request for Extension of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), this document announces the Agricultural Marketing Service's (''AMS'') intention to request an extension for the forms currently used by importers of commodities that are exempt from section 8e import regulations.

**DATES:** Comments on this document must be received by August 29, 2011.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this document. Comments should be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours, or can be viewed at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sasha Nel, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Room 1406–S, Washington, DC 20250–0237; Tel: (202) 205–2829; E-mail: *sasha.nel@ams.usda.gov.*

Small businesses may request information on complying with this and other marketing order and/or agreement regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/*MarketingOrdersSmallBusinessGuide; or by contacting Laurel May, Marketing

Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Laurel.May@ams.usda.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Specified Commodities Imported Into the United States Exempt from Import Requirements.

*OMB Number:* 0581–0167.

*Expiration Date of Approval:* December 31, 2011.

*Type of Request:* Extension of a currently-approved information collection.

*Abstract:* Section 8e of the Agricultural Marketing Agreement Act of 1937 as amended (7 U.S.C. 601–674; Act) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders, the same or comparable regulations must be issued for imported commodities. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, the following commodities are subject to section 8e import regulations: Avocados; grapefruit; kiwifruit; olives; oranges; fresh prunes; table grapes; potatoes; onions; tomatoes; dates (other than dates for processing); walnuts; dried prunes (suspended); raisins; and hazelnuts. Imports of these commodities are exempt from section 8e requirements if they are imported for such outlets as processing, charity, animal feed, seed, and distribution to relief agencies when those outlets are exempt under the applicable marketing orders.

Safeguard procedures in the form of importer and receiver reporting requirements are used to ensure that the imported commodities are, in fact, shipped to authorized, exempt outlets. Reports required under the safeguard procedure are similar to the reports currently required by most domestic marketing orders, and are required of importers and receivers under the following import regulations: (1) Fruits; import regulations (7 CFR 944.350); (2) vegetables; import regulations (7 CFR 980.501); and (3) specialty crops; import regulations (7 CFR 999.500).

Under these regulations, importers wishing to import commodities for exempt purposes must complete form FV–6, the ''Importer's Exempt Commodity Form,'' prior to importation, through the Marketing Order Online System (MOLS). Launched in August 2008, MOLS is an Internet-based application, managed by the USDA, which allows importers and receivers of fruit, vegetable, and specialty crops to review and search for FV–6 certificates online. If an importer correctly inputs his shipment data into MOLS, he will receive and be able to print a certificate that accompanies the shipment. Data are simultaneously transmitted to the receiver and to AMS, where it is reviewed for compliance purposes by Marketing Order Administration Branch (MOAB) staff, in the USDA's Fruit and Vegetable Programs.

In rare instances a paper form FV–6 may be used. The hardcopy form has four parts, which are distributed as follows: Copy one is presented to the U.S. Customs and Border Protection, Department of Homeland Security; copy two is filed with MOAB within two days of the commodity entering the United States; copy three accompanies the exempt shipment to its intended destination, where the receiver certifies its receipt and that it will be used for exempt purposes, and files that copy with MOAB within two days of receipt; and copy four is retained by the importer.

USDA utilizes this information to ensure that imported goods destined for exempt outlets are given no less favorable treatment that that afforded to domestic goods destined for the same exempt outlets. These exemptions are consistent with section 8e import regulations under the Act.

In addition to renewing the FV–6 form, this information collection package does the same for the FV–7 form, ''Civil Penalty Stipulation Agreement.'' Produce importers sign the FV–7 form, for which there is no burden associated because only a signature is required, to admit that they violated section 8e import requirements and are seeking a reduced fine or penalty.

The information collected through this package is used primarily by authorized representatives of the USDA, including AMS Fruit and Vegetable Programs regional and headquarters staff.

*Estimate of Burden:* The public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* Importers and receivers of exempt commodities.

*Estimated Number of Respondents:* 250.

*Estimated Number of Total Annual Responses:* 8,454.70.

*Estimated Number of Responses per Respondent:* 33.82

*Estimated Total Annual Burden on Respondents:* 697.59 hours.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (2) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments to this document will be summarized and included in the request for OMB approval, and will become a matter of public record.

Dated: June 22, 2011.

**Rayne Pegg,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2011–16129 Filed 6–27–11; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2010–0041]**

### Pioneer Hi-Bred International, Inc.; Determination of Nonregulated Status for Corn Genetically Engineered To Produce Male Sterile/Female Inbred Plants

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public of our determination that a corn line developed by Pioneer Hi-Bred International, Inc., designated as event DP–32138–1, which has been genetically engineered to produce male sterile/female inbred plants for the generation of hybrid corn seed that is non-transgenic, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Pioneer Hi-Bred International, Inc., in its petition for a determination of nonregulated status, our analysis of available scientific data, and comments received from the public in response to our previous notice announcing the availability of the petition for nonregulated status and its associated environmental assessment and plant

pest risk assessment. This notice also announces the availability of our written determination and finding of no significant impact.

**DATES:** *Effective Date:* June 28, 2011.

**ADDRESSES:** You may read the documents referenced in this notice and the comments we received in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming. Those documents are also available on the Internet at *http://www.aphis.usda.gov/biotechnology/not_reg.html* and are posted with the previous notice and the comments we received on the Regulations.gov Web site at *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0041.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, *e-mail: evan.a.chestnut@aphis.usda.gov.* To obtain copies of the documents referenced in this notice, contact Ms. Cindy Eck at (301) 734–0667, *e-mail: cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS received a petition (APHIS Petition Number 08–338–01p) from Pioneer Hi-Bred International, Inc. (Pioneer) of Johnston, IA, seeking a determination of nonregulated status for corn (*Zea mays* L.) designated as event DP–32138–1, which has been genetically engineered to produce male sterile/female inbred plants for the generation of hybrid corn seed that is non-transgenic. The petition stated that corn event DP–32138–1 is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

In a notice [1] published in the **Federal Register** on January 3, 2011 (76 FR 83–84, Docket No. APHIS–2010–0041), APHIS announced the availability of the Pioneer petition and a draft environmental assessment (EA) for public comment. APHIS solicited comments on the petition, whether the subject corn is likely to pose a plant pest risk, and on the draft EA for 60 days ending on March 4, 2011.

APHIS received 52 comments during the comment period, with 8 comments providing support of the EA's preferred alternative and 43 comments expressing general opposition. Those providing support cited several points regarding Pioneer's Seed Production Technology (SPT) process and its benefits including: (1) The SPT process does not introduce a new transgenic gene or trait through commercial hybrid seed or grain production; (2) the SPT process is used to increase productivity and efficiency in seed corn production; and (3) the transgenic material is used two generations before hybrid seed production occurs or three times before commercial grain production. The majority of those opposing expressed general opposition to GE crops and genetically modified organisms but did not provide any specific disagreement with APHIS' analysis. Commenters also expressed concern with genetic contamination; with the effects of GE corn pollen on honeybees, other insects, and/or the whole ecosystem; food and feed safety; and health effects. APHIS has addressed the issues raised during the comment period and has provided responses to these comments as an attachment to the finding of no significant impact.

## National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the determination of nonregulated status for Pioneer's corn event DP–32138–1, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372). Based on our EA, the response to public comments, and other pertinent scientific data, APHIS has reached a finding of no significant impact with regard to the preferred alternative identified in the EA.

## Determination

Based on APHIS' analysis of field and laboratory data submitted by Pioneer, references provided in the petition, peer-reviewed publications, information analyzed in the EA, the plant pest risk assessment, comments provided by the public, and information provided in APHIS' response to those public comments, APHIS has determined that Pioneer's corn event DP–32138–1 is unlikely to pose a plant pest risk and therefore is no longer subject to our regulations governing the introduction of certain genetically engineered organisms.

Copies of the signed determination document, as well as copies of the petition, plant pest risk assessment, EA, finding of no significant impact, and response to comments are available as indicated in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this notice.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 22nd day of June 2011.

**John R. Clifford,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–16128 Filed 6–27–11; 8:45 am]

**BILLING CODE 3410–34–P**

[1] To view the notice, petition, draft EA, the plant pest risk assessment and the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2010-0041.*

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2010–0102]**

### Bayer CropScience LP; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status for Cotton Genetically Engineered for Insect Resistance and Herbicide Tolerance

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Bayer CropScience LP seeking a determination of nonregulated status for cotton designated as TwinLink™ cotton (events T304–40 and GHB119), which has been genetically engineered to be tolerant to the herbicide glufosinate and resistant to several lepidopteran pests. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered cotton is likely to pose a plant pest risk. We are making available for public comment the Bayer petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

**DATES:** We will consider all comments that we receive on or before August 29, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2010–0102–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2010–0102, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2010–0102* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Availability of Documents:* The petition, draft environmental assessment, and plant pest risk assessment are available on the Regulations.gov Web site (see link above) and on the APHIS Web site at *http://www.aphis.usda.gov/brs/aphisdocs/08_34001p.pdf, http://www.aphis.usda.gov/brs/aphisdocs/08_34001p_dea.pdf,* and *http://www.aphis.usda.gov/brs/aphisdocs/08_34001p_dpra.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 08–340–01p) from Bayer CropScience LP (Bayer), seeking a determination of nonregulated status for TwinLink™ cotton (events T304–40 and GHB119), which has been genetically engineered to be tolerant to the herbicide glufosinate and resistant to several lepidopteran pests, stating that TwinLink™ cotton is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, TwinLink™ cotton is a combined-trait cotton developed using conventional breeding techniques to link two deoxyribonucleic acid (DNA) transformation events, each developed using DNA recombinant techniques. By crossing Bayer's Cry1Ab Cotton (event T304–40) with Bayer's Cry2Ae Cotton (event GHB119), Bayer has developed a cotton resistant to lepidopteran pests. The TwinLink™ cotton also expresses a glufosinate ammonium herbicide tolerance trait based on LibertyLink® technology. TwinLink™ cotton is currently regulated under 7 CFR part 340. Interstate movement, importation, and field testing of TwinLink™ cotton have been conducted under notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if TwinLink™ cotton is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Bayer, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of TwinLink™ cotton and it would continue to be a regulated article, or (2) make a determination of nonregulated status for TwinLink™ cotton.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of

nonregulated status for TwinLink™ cotton. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the plant pest risk assessment and the draft EA prepared to examine any potential environmental impacts of the proposed determination of the nonregulated status of the subject cotton lines. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of TwinLink™ cotton and the availability of APHIS' written environmental decision and regulatory determination.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 22nd day of June 2011.

**John R. Clifford,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–16126 Filed 6–27–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2011–0038]**

### Monsanto Co.; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status for Soybean Genetically Engineered for Insect Resistance

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for soybean designated as MON 87701, which has been genetically engineered for insect resistance. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered soybean is likely to pose a plant pest risk. We are making available for public comment the Monsanto petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

**DATES:** We will consider all comments that we receive on or before August 29, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0038-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0038, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-0038* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at:

*http://www.aphis.usda.gov/brs/aphisdocs/09_08201p.pdf,*
*http://www.aphis.usda.gov/brs/aphisdocs/09_08201p _dea.pdf,* and
*http://www.aphis.usda.gov/brs/aphisdocs/09_08201p _dpra.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942; *e-mail: evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667; *email: cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason To Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09–082–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status for soybean (*Glycine max*) designated as event MON 87701, which has been genetically engineered for insect resistance, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, event MON 87701 has been genetically engineered to express a Cry1Ac insecticidal protein derived from the

common soil bacterium *Bacillus thuringiensis.* The petitioner states that the Cry1Ac protein is effective in providing protection from the feeding of lepidopteran insect pests such as soybean looper, corn earworm/bollworm, fall armyworm, green cloverworm, velvetbean caterpillar, lesser cornstalk borer, beet armyworm, and yellow stripe armyworm. Soybean event MON 87701 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event MON 87701 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if soybean event MON 87701 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Monsanto, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of soybean event MON 87701 and it would continue to be a regulated article, or (2) make a determination of nonregulated status for soybean event MON 8770.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for soybean event MON 87701. The draft EA was prepared in accordance with (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the plant pest risk assessment and the draft EA prepared to examine any potential environmental impacts of the proposed determination of the nonregulated status for the deregulation of the subject soybean line, and the plant pest risk assessment. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of soybean event MON 87701 and the availability of APHIS' written environmental decision and regulatory determination.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 22nd day of June 2011.

**John R. Clifford,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–16124 Filed 6–27–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2011–0046]**

### Monsanto Co.; Availability of Petition, Plant Pest Risk Assessment, and Environmental Assessment for Determination of Nonregulated Status for Soybean Genetically Engineered To Have a Modified Fatty Acid Profile and for Tolerance to the Herbicide Glyphosate

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service has received a petition from the Monsanto Company seeking a determination of nonregulated status for soybean designated as MON 87705, which has been genetically engineered to have a modified fatty acid profile and for tolerance to the herbicide glyphosate. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. We are soliciting comments on whether this genetically engineered soybean is likely to pose a plant pest risk. We are making available for public comment the Monsanto petition, our plant pest risk assessment, and our draft environmental assessment for the proposed determination of nonregulated status.

**DATES:** We will consider all comments that we receive on or before August 29, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0046–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0046, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0046* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to

help you, please call (202) 690–2817 before coming.

The petition, draft environmental assessment, and plant pest risk assessment are also available on the APHIS Web site at:

*http://www.aphis.usda.gov/brs/aphisdocs/09_20101p.pdf,*
*http://www.aphis.usda.gov/brs/aphisdocs/09_20101p _dea.pdf,* and
*http://www.aphis.usda.gov/brs/aphisdocs/09_20101p _dpra.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Mr. Evan Chestnut, Policy Analyst, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–0942, e-mail: *evan.a.chestnut@aphis.usda.gov.* To obtain copies of the petition, draft environmental assessment, or plant pest risk assessment, contact Ms. Cindy Eck at (301) 734–0667, e-mail: *cynthia.a.eck@aphis.usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

Under the authority of the plant pest provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

APHIS has received a petition (APHIS Petition Number 09–201–01p) from the Monsanto Company (Monsanto) of St. Louis, MO, seeking a determination of nonregulated status for soybean (*Glycine max*) designated as event MON 87705, which has been genetically engineered to have a modified fatty acid profile and for tolerance to the herbicide glyphosate, stating that this soybean is unlikely to pose a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, soybean event MON 87705 has been genetically engineered to suppress endogenous delta-12 desaturase (*FAD2*) and Acyl-ACP thioesterase (*FATB*) genes which encode two enzymes in the soybean fatty acid biosynthetic pathway in order to produce soybean seeds with decreased levels of saturated (palmitic and stearic) and polyunsaturated (linoleic) fatty acids and increased levels of monounsaturated (oleic) fatty acid. Soybean event MON 87705 have also been genetically engineered to express a 5-enolpyruvylshikimate-3-phosphate synthase protein from *Agrobacterium* sp. strain CP4 (CP4 EPSPS), which confers tolerance to the herbicide glyphosate. Soybean event MON 87705 is currently regulated under 7 CFR part 340. Interstate movements and field tests of soybean event MON 87705 have been conducted under permits issued or notifications acknowledged by APHIS.

Field tests conducted under APHIS oversight allowed for evaluation in a natural agricultural setting while imposing measures to minimize the risk of persistence in the environment after completion of the test. Data are gathered on multiple parameters and used by the applicant to evaluate agronomic characteristics and product performance. These and other data are used by APHIS to determine if the new variety poses a plant pest risk.

In section 403 of the Plant Protection Act, ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS has prepared a plant pest risk assessment to determine if soybean event MON 87705 is unlikely to pose a plant pest risk.

APHIS has also prepared a draft environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Monsanto, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS is considering the following alternatives: (1) Take no action, *i.e.,* APHIS would not change the regulatory status of soybean event MON 87705 and it would continue to be a regulated article, or (2) make a determination of nonregulated status for soybean event MON 87705.

The draft EA has been prepared to provide the APHIS decisionmaker with a review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for soybean event MON 87705. The draft EA was prepared in accordance with (1) the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. We are also soliciting written comments from interested or affected persons on the plant pest risk assessment and the draft EA prepared to examine any potential environmental impacts of the proposed determination for the deregulation of the subject soybean line. The petition, draft EA, and plant pest risk assessment are available for public review, and copies of the petition, draft EA, and plant pest risk assessment are available as indicated under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** above.

After the comment period closes, APHIS will review all written comments received during the comment period and any other relevant information. All comments received regarding the petition, draft EA, and plant pest risk assessment will be available for public review. After reviewing and evaluating the comments on the petition, the draft EA, plant pest risk assessment, and other data, APHIS will furnish a response to the petitioner, either approving or denying the petition. APHIS will also publish a notice in the **Federal Register** announcing the regulatory status of soybean event MON 87705 and the availability of APHIS' written environmental decision and regulatory determination.

**Authority:** 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC this 22nd day of June 2011.

**John R. Clifford,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2011–16123 Filed 6–27–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities; Proposed Collection; Comment Request; FNS User Access Request

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a revision of a currently approved collection. The purpose of this information collection request is to continue the use of the electronic form FNS 674, titled ''FNS User Access Request.'' This form will continue to allow access to current FNS systems, modified access, or to remove user access.

**DATES:** Written comments must be received on or before August 29, 2011.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Leo Wong, Deputy Chief Information Security Officer (CISO), Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 317, Alexandria, VA 22302. Comments may also be submitted via e-mail to *Leo.Wong@fns.usda.gov.* All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 317, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Leo Wong, 703–605–1181.

**SUPPLEMENTARY INFORMATION:**

*Title:* FNS User Access Request.

*OMB Number:* 0584–0532.

*Form Number:* FNS 674.

*Expiration Date:* November 30, 2011.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The FNS 674 is designed to collect user information required to gain access to FNS Information Systems.

*Respondents:* FNS Employees, Contractors, FNS Regions, State Agencies, Field Offices, Partners and Compliance Offices.

**Reporting Burden**

*Estimated Number of Respondents:* 5,000.

*Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 5,000.

*Estimated Time per Response:* 0.1666667 minutes.

*Estimated Total Annual Burden on Respondents:* 833.333 hours.

Dated: June 16, 2011.

**Audrey Rowe,**

*Administrator, Food and Nutrition Services, USDA .*

[FR Doc. 2011–16202 Filed 6–27–11; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Ashley Resource Advisory Committee

**AGENCY:** Forest Service.

**ACTION:** Notice of meeting.

**SUMMARY:** The Ashley Resource Advisory Committee will meet in Vernal, Utah. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to conduct introductions, approve meeting minutes, review the status of approved projects and discuss the options for a field trip to review project locations, set the next meeting date, time and location and receive public comment.

**DATES:** The meetings will be held July 27, 2011, from 6 p.m. to 9 p.m.

**ADDRESSES:** The meetings will be held in the Interagency Fire Dispatch Center conference room at the Ashley National Forest Supervisor's Office, 355 North Vernal Avenue in Vernal, Utah. Written comments should be sent to Ashley National Forest, 355 North Vernal Avenue, Vernal, UT 84078. Comments mat also be sent via e-mail to *ljhaynes@fs.fed.us,* or via facsimile to 435–781–5142.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Ashley National Forest, 355 North Vernal Avenue, Vernal, UT.

**FOR FURTHER INFORMATION CONTACT:** Louis Haynes, RAC Coordinator, Ashley National Forest, (435) 781–5105; *e-mail: ljhaynes@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public. The following business will be conducted: (1) Welcome and roll call; (2) Approval of meeting minutes; (3) Review of approved projects; (4) review of next meeting purpose, location, and date; (5) Receive public comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 20, 2011 will have the opportunity to address the committee at these meetings.

Dated: June 20, 2011.

**Kevin B. Elliott,**

*Forest Supervisor.*

[FR Doc. 2011–16094 Filed 6–27–11; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Central Montana Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Central Montana Resource Advisory Committee will meet in Stanford, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II

of the Act. The meeting is open to the public. This will be the second official meeting of the Central Montana Resource Advisory Committee.

**DATES:** The meetings will be held July 6 and August 3, 2011, 7 p.m.

**ADDRESSES:** The meetings will be held at the Judith Ranger District, 109 Central Ave. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Judith Ranger District. Please call ahead to (406) 566–2292 to facilitate entry into the building to view comments.

**FOR FURTHER INFORMATION CONTACT:** Ron B. Wiseman, District Ranger, Lewis and Clark National Forest, (406) 566–2292, *rwiseman@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed in **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** The following business will be conducted: (1) Discussion and approval of RAC notes, project guidelines, criteria. (2) Discussion of project development and recommendation process. (3) Review and vote on projects. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 27 and July 25 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 109 Central Ave., Stanford, MT 59479, or by e-mail to *rwiseman@fs.fed.us,* or via facsimile to (406) 566–2408.

Dated: June 16, 2011.

**Ron B. Wiseman,**

*District Ranger.*

[FR Doc. 2011–15686 Filed 6–27–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Announcement of Value-Added Producer Grant Application Deadlines

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** Pursuant to 7 CFR part 4284, subpart J, the Rural Business-Cooperative Service (RBS) announces the availability of approximately $37 million in competitive grant funds for Fiscal Year (FY) 2011 to help independent agricultural producers enter into value-added activities. This Notice of Funding Availability (NOFA) announces $19.3 million provided under the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act of 2010 (Pub. L. 111–80), and $17.9 million from the Department of Defense and Full-Year Continuing Appropriations Act of 2011 (Pub. L.112–20).

Awards may be made for planning activities or for working capital expenses, but not for both. The maximum grant amount for a planning grant is $100,000 and the maximum grant amount for a working capital grant is $300,000. Rural Development is encouraging applications that will support communities in urban or rural areas, with limited access to healthy foods and with a high poverty and hunger rate.

Ten percent of available funds are reserved to fund applications submitted by Beginning Farmers or Ranchers and Socially Disadvantaged Farmers or Ranchers as defined at 7 CFR 4284.902. An additional 10 percent of available funds are reserved to fund Mid-Tier Value Chain projects (both collectively referred to as ''reserved funds''). Grants made to Majority Controlled Producer-Based Business Ventures may not exceed 10 percent of the total funds obligated for the program in the fiscal year.

**DATES:** *Application deadlines.* Completed paper applications, for both unreserved funds or reserved funds, must be postmarked and mailed, shipped, or sent overnight no later than August 29, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

Completed electronic applications, for both unreserved funds and reserved funds, must be received by Midnight Eastern Time August 29, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

*Preliminary review deadline.* Applicants may seek a preliminary review of their application for eligibility and completeness. Applications submitted for preliminary review must be received 30 days prior to the application deadline. Any complete application received after 30 days prior to the application deadline will be considered a final application under this Notice for review, scoring, and consideration for selection for award.

**ADDRESSES:** Submit paper applications to the Rural Development State Office for the State in which the Project will primarily take place. Addresses may be found at: *http://www.rurdev.usda.gov/recd_map.html.*

Submit electronic applications at *http://www.grants.gov,* following the instructions found on this Web site.

**FOR FURTHER INFORMATION CONTACT:** Applicants should visit the program Web site at *http://www.rurdev.usda.gov/BCP_VAPG_Grants.html* which contains application guidance. Applicants can also contact their USDA Rural Development State Office by calling 800–670–6553 and pressing ''1.'' Applicants are encouraged to contact their State Offices well in advance of the deadline to discuss their projects and ask any questions about the application process.

Applicants may also contact Lyn Millhiser at 202–720–1227 or Tracey Kennedy at 202–690–1428, or by e-mailing *cpgrants@wdc.usda.gov* for additional information.

Applicants seeking preliminary review of their applications may submit drafts to their State office in accordance with the aforementioned ''Preliminary review deadline.'' The preliminary review will only assess the eligibility of the application and its completeness. The results of the preliminary review are not binding on the Agency.

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden associated with this Notice has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0064.

Producers seeking funding under this Notice have to submit applications that include specified information, certifications, and agreements. All of the forms, information, certifications, and agreements required to apply for grants under this Notice have been authorized under OMB Control Number 0570–0064.

**Overview**

*Federal Agency Name:* Rural Business-Cooperative Service.

*Funding Opportunity Title:* Value-Added Producer Grants.

*Announcement Type:* Initial announcement.

*Catalog of Federal Domestic Assistance Number:* 10.352.

*Dates:* Completed paper applications, for both unreserved funds or reserved funds, must be postmarked and mailed, shipped, or sent overnight no later than August 29, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

All completed electronic applications, for both unreserved funds or reserved funds, must be received by Midnight Eastern Time August 29, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

*Availability of Notice.* This Notice is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/BCP_VAPG_Grants.html.*

**I. Funding Opportunity Description**

*A. Purpose of the Program*

The primary objective of this grant program is to help Independent Producers of Agricultural Commodities, Agriculture Producer Groups, Farmer and Rancher Cooperatives, and Majority-Controlled Producer-Based Business Ventures develop strategies to create marketing opportunities and to help develop Business Plans for viable marketing opportunities regarding production of bio-based products from agricultural commodities. Cooperative Programs will competitively award funds for Planning Grants and Working Capital Grants directly related to the processing and/or marketing of value-added products. In order to provide program benefits to as many eligible applicants as possible, applicants may apply only for a Planning Grant or for a Working Capital Grant, but not both. Grants will only be awarded if Projects are determined to be economically viable and sustainable.

As with all value-added efforts, generating new products, creating expanded marketing opportunities and increasing producer income are the end goals.

Please note that businesses of all sizes may apply, but priority will be given to Operators of Small and Medium-Sized Farms or Ranches that are structured as Family Farms, Beginning Farmers or Ranchers, Socially-Disadvantaged Farmers and Ranchers, Mid-Tier Value Chain projects, and Farmer or Rancher Cooperatives. There is no restriction on the minimum grant size that will be awarded. In FY 2010, 41 percent of awards were $50,000 or less.

*B. Statutory Authority*

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6202 of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246) (*see* 7 U.S.C. 1621 note)) authorizing the establishment of the Value-Added Agricultural Product Market Development grants, also known as Value-Added Producer Grants. The regulations are contained in 7 CFR part 4284, subpart J and are incorporated by reference in this notice. The Secretary of Agriculture has delegated the program's administration to USDA Rural Development Cooperative Programs.

*C. Definition of Terms*

The definitions applicable to this Notice are published at 7 CFR 4284.902. If a term is defined differently in the Departmental Regulations (7 CFR series 3000–3099), 2 CFR part 230, 48 CFR 31.2, or 2 CFR parts 25, 170 or 417, than in this subpart, such term shall have the meaning as found in 7 CFR 4284.902.

**II. Award Information**

A. *Available funds.* In FY 2011, approximately $37 million is being announced from appropriations provided in 2010 and 2011 . Funding made available under this NOFA is funding that was provided under the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act of 2010 (Pub. L. 111–80) and under the Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L.112–20).

B. *Type of instrument.* Grant.

C. *Approximate number of awards.* 250.

D. *Approximate Average Award.* $116,000.

E. *Range of Awards.* There is no minimum award. The maximum amount of grant funds provided to a grant recipient under this Notice is $100,000 for planning grants and $300,000 for Working Capital grants.

F. *Anticipated Award Date.* November 30, 2011.

G. *Project Period Length:* The maximum term of a grant project period is 3 years from date of award. Grant project periods should be scaled to the complexity of the objectives of the project.

**III. Eligibility Information**

*A. Eligible Applicants*

To be eligible for this program, an applicant must meet the eligibility requirements specified in 7 CFR 4284.920. Applicants will be ineligible according to he requirements specified in 7 CFR 4284.921.

*B. Project Eligibility*

To be eligible for this program, a project must meet the product and purpose eligibility requirements specified in 7 CFR 4284.922, including Agency concurrence in the financial feasibility of the project or business to achieve the income, credit, and cash flows to financially sustain the venture over the long term, based upon the adequacy of the feasibility study and/or business plan submitted with the application that is required for working capital projects; or the quality of the evidence for project success provided in applications that qualify for a waiver of the feasibility study and/or business plan submission. If the applicant elects to compete for reserved funds, the requirements specified in 7 CFR 4284.922(c) also apply. It is the Agency's position that harvester operations do not meet the definition requirements for a Farm or Ranch and are not eligible to receive Reserved Funds for a Beginning Farmer or Rancher or a Socially Disadvantaged Farmer or Rancher. Harvester operations may compete for Reserved Funds for a Mid-Tier Value Chain project, as applicable. Applications that propose ineligible expenses in excess of 10 percent of total project costs will be deemed ineligible to compete for funds. Eligible applications containing ineligible expenses of less than 10 percent of total project costs that are selected for award must eliminate those ineligible expenses from the project budget.

*C. Other Eligibility Requirements*

Applicants must comply with all other eligibility requirements found in 7 CFR part 4284, subpart J.

*Active VAPG grant.* If an applicant has an active value-added grant and seeks to submit an application under this Notice, the currently active grant must be closed out no later than 90 days after submission deadline.

Multiple VAPG grants. In accord with 7 CFR 4284.920(e), applicants may not submit multiple grant requests, including separate entities with identical or greater than 75 percent common ownership, and in cases where an applicant is requesting an additional planning or working capital grant for a

project that has already received a planning or working capital grant. If multiple grants are submitted, all such applications will be deemed ineligible to compete for Federal grant funds.

*Grant Period Eligibility:* Applicants may propose a timeframe for the grant project up to a maximum 36 months in length from the grant period date of award. The grant period will begin on the date of award and projects must begin within 90 days of award date. However, awards are not expected to be made until November 30, 2011, so applicants should propose a date after November 30, 2011 to begin their projects. Projects should end not later than 36 months from the grant period date of award . Applications that request funds for a time period beginning prior to November 30, 2011 and/or ending later than 36 months from the grant period date of award will be considered ineligible. The Agency will consider requests for an extension on a case-by-case basis if extenuating circumstances prevent a grantee from completing an award within the approved grant period, but no extensions can be approved to extend the grant period beyond a total of three years from the grant period date of award.

*Priority.* An applicant may apply for priority points if they propose a project that contributes to increasing opportunities for beginning farmers or ranchers, socially disadvantaged farmer or ranchers, or if they are an Operator of a small- or medium-sized farm or ranch that is structured as a family farm, or are a farmer or rancher Cooperative, or if they propose a Mid-Tier value chain project. To be eligible for these priority points, the requirements specified in 7 CFR 4284.922(d) must be met, as applicable. It is the Agency's position that harvester operations do not meet the definition requirements for a Farm or Ranch and are not eligible to receive priority points for a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, an Operator of a small- or medium-sized farm or ranch that is structured as a Family Farm, or a Farmer or Rancher Cooperative. Harvester operations may request priority points for a Mid-Tier Value Chain project, as applicable.

## IV. Fiscal Year 2011 Application and Submission Information

### *A. Address to Request Applications*

The application package, including an application guide and other materials for applying on paper for this funding opportunity, can be obtained at *http://www.rurdev.usda.gov/BCP_VAPG_Grants.html.* Alternatively, applicants can contact their USDA Rural Development State Office by calling 800–670–6553 and pressing ''1.''

To obtain electronic applications, applicants must visit *http://www.grants.gov* and follow the instructions.

### *B. Content and Form of Submission*

All applications must contain the information specified in 7 CFR 4284.931.

Applications may be submitted in paper copy, or electronically only via grants.gov. If submitted as a paper copy, only one original copy should be submitted. An application submission must contain all required components in their entirety. E-mailed or faxed submissions will not be acknowledged, accepted or processed by the Agency.

In accordance with 2 CFR part 25, to apply for Federal grant funding, all applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://www.dnb.com/us.* Similarly, 2 CFR part 25 requires that all applicants maintain registration in the Central Contractor Registration (CCR) database. Applicants must register for the CCR at *http://www.ccr.gov,* and may call the toll-free technical assistance line at 1–866–606–8220 and press ''1'' for CCR.

All recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance with 2 CFR part 170.

### *C. Simplified Applications*

All four applicant types requesting less than $50,000 working capital grant funds may submit a simplified application in accordance with 7 CFR 4284.932. These applicants are not required to provide feasibility studies or business plans, but must provide information to demonstrate the expected increases in customer base and revenues resulting from the project that will benefit the producer applicants supplying the majority of the agricultural commodity for the project. See 7 CFR 4284.922(b)(6)(ii).

In addition, Independent Producer applicants seeking working capital grants of $50,000 or more, who can demonstrate that they are proposing market expansion for an existing value-added product(s) that they currently own and produce from at least 50 percent of their own agricultural commodity and that they have produced and marketed for at least 2 years at time of application submission, may submit a business or marketing plan for the value-added project in lieu of a feasibility study. These simplified applications must still document for increased customer base and increased revenues returning to the applicant producers as a result of the project. See 7 CFR 4284.922(b)(6)(i).

### *D. Submission Dates and Times*

Complete paper applications, for both unreserved funds or reserved funds, must be postmarked and mailed, shipped, or sent overnight no later than August 29, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

All complete electronic applications, for both unreserved funds and reserved funds, must be received by Midnight Eastern Time August 29, 2011 to be eligible for FY 2011 grant funding. Late applications are not eligible for FY 2011 grant funding.

### *E. Incomplete Applications*

Incomplete applications will be rejected. The Agency will notify applicants as to the elements that made the application incomplete. If the Agency receives a resubmitted electronic application by Midnight Eastern Time August 29, 2011, the Agency will reconsider the application. If the Agency receives a paper application that is delivered or postmarked by August 29, 2011, the Agency will reconsider the application.

### *F. Funding Restrictions*

Funding limitations and reservations will apply in accordance with 7 CFR 4284.925

*Matching funds.* Grant funds may be used to pay up to 50 percent of the total eligible project costs, subject to the limitations established for maximum total grant amount. Applicants must certify the availability and source-verify all matching funds at time of application submission. The source and use of both grant and matching funds may not include a Conflict of Interest, as defined in 7 CFR 4284.902, except as provided for in the limited exceptions found at 7 CFR 4284.923.

*Majority controlled producer-based business.* The aggregate amount of awards to majority controlled producer-based businesses for FY 2011 shall not exceed 10 percent of the total funds obligated for the program during the fiscal year.

*Reserved funds.* For FY 2011, 10 percent of total funding available will be used to fund projects that benefit beginning farmers or ranchers, or socially-disadvantaged farmers or ranchers. In addition, 10 percent of total

funding available will also be used to fund projects that propose development of mid-tier value chains.

*Disposition of Reserved funds not obligated.* Any FY 2011 Reserved funds that have not been obligated by June 30, 2011, shall be available to the Secretary to make VAPG grants, subject to this notice, to eligible entities, as determined by the Secretary. For FY 2011, the Secretary has determined that for reserved funds not obligated by June 30, 2011, reservation of funds for categories addressed at 7 CFR 4284.922 (c) will continue.

*Use of grant and matching funds.* Grant and matching funds may be used for the eligible uses specified in 7 CFR 4284.923 but may not be used for ineligible purposes, as provided in 7 CFR 4284.924.

*G. Intergovernmental Review*

If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's award announcement date, the Agency will rescind the award and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

**V. Application Review, Award, and Administration Information**

*A. Preliminary Review*

Applicants may submit drafts of their applications to their State Offices for a preliminary review no later than 30 days prior to the application deadline. The preliminary review is an informal assessment of the eligibility of the application and its completeness. The result of the preliminary review is not binding on the Agency.

*B. Processing Applications*

Applications will be reviewed and processed in accordance with 7 CFR 4284.940.

*C. Application Ineligibility and Withdrawal*

If the Agency determines that an application is ineligible at any time, the Agency will notify the applicant in writing of its determination and any review or appeal rights. If, during the period between the submission of an application and the execution of award documents, the project is no longer viable or the applicant no longer is requesting financial assistance for the project, the applicant must notify the Agency in writing. Upon receipt of such notification, the Agency will rescind the selection or withdraw the application, as applicable.

*D. Application Scoring*

The Agency will score applications according to the procedures and criteria specified in 7 CFR 4284.942, and as specified below.

For each criterion, applicants must demonstrate how the project has merit, and provide rationale for the likelihood of project success. Responses that do not address all aspects of the criterion, or that do not comprehensively convey pertinent project information will receive lower scores. The maximum number of points that will be awarded to an application is 100. Any application receiving less than 45 points will not be funded. The Agency application package will provide additional instruction to assist applicants when responding to the criteria below.

1. *Nature of the Proposed Venture (graduated score 0–30 points).* Working capital applicants should demonstrate the technological feasibility of the project, as well as the operational efficiency, profitability, and overall economic sustainability resulting from the project. Planning grant applicants should address this criterion by describing the expected outcomes as indicated above, and the rationale supporting those expectations. Applicants should reference third-party information that specifically supports the value-added project; discuss the value-added process proposed, potential markets and distribution channels; value to be added to the raw commodity through the value-added process; potential increase in customer base and increased revenue returning to producers; cost and availability of inputs, experience of the applicant in marketing the proposed or similar product; and any other relevant information that supports the viability of the project. Points will be awarded as follows.

i. 0 points will be awarded if the application does not substantively address this criterion.

ii. 10 points will be awarded if the applicant demonstrates weakness in addressing this criterion.

iii. 20 points will be awarded if the applicant partially addresses this criterion.

iv. 30 points will be awarded if the applicant clearly articulates the rationale for the project and demonstrates a high likelihood of success based on technological feasibility and economic sustainability.

2. *Qualifications of Project Personnel (graduated score 0–20 points).* Applicants should identify and describe the qualifications of individuals responsible for leading or managing the total project, as well as those individuals responsible for actually conducting the individual tasks in the work plan. Applications should discuss the credentials, education, capabilities, experience, availability and commitment of project personnel. If staff or consultants have not been selected at the time of application, provide specific descriptions of the qualifications required for the positions to be filled. Points will be awarded as follows:

i. 0 points will be awarded if this criterion is not substantively addressed;

ii. 10 points will be awarded if at least one of the identified staff or consultants demonstrates 5 or more years of relevant experience; or, if no project personnel have been identified but necessary qualifications for the positions to be filled are clearly described;

iii. 20 points will be awarded if all of the identified staff demonstrates relevant qualifications and experience.

3. *Commitments and Support (graduated score 0–10 points).* Applications must demonstrate the project has strong direct financial, technical and logistical support from agricultural producers, end-users, and other third party contributors necessary to successfully complete the project. Producer commitment may be demonstrated by describing cash or in-kind contributions to the project. End-user commitments include contracts or letters of intent or interest in purchasing the value-added product. Third-party commitments may include evidence of critical partnerships, logistical, or technical support necessary for the project to succeed. Points will be awarded as follows:

i. 0 points will be awarded if the applicant does not demonstrate tangible, relevant commitments or support from producers, end-users or other critical third party contributors.

ii. 5 points will be awarded if the applicant partially demonstrates tangible, high quality direct support or commitments from at least one producer, end users, or other third party contributor.

iii. 10 points will be awarded if the applicant demonstrates tangible, high quality direct support or commitments from multiple producers, end-users and critical third-party contributors.

4. *Work Plan and Budget (graduated score 0–20 points).* In accord with 7 CFR 4284.922(b)(5), applicants must submit a comprehensive work plan and budget. The work plan must provide specific and detailed narrative descriptions of

the tasks and the key project personnel that will accomplish the project's goals. The budget must present a detailed breakdown of all estimated costs associated with the activities and allocate those costs among the listed tasks. The source and use of both grant and matching funds must be specified for all tasks. An eligible start and end date for the project itself and for individual project tasks must be clearly indicated and may not exceed Agency specified timeframes for the grant period.

i. 0 points will be awarded if the applicant does not substantively address this criterion.

ii. 10 points will be awarded if the applicant partially addresses this criterion.

iii. 20 points will be awarded if the applicant provides a detailed, comprehensive work plan and budget.

5. *Priority Points (lump sum score 0 or 10 points).* Priority points may be awarded in both the General Funds competition, as well as the Reserved Funds competitions. Qualifying applicants may request priority points if they meet the requirements for one of the following categories and provide the documentation specified in 7 CFR 4284.922(d), as applicable. Priority categories include: Beginning Farmer or Rancher, Socially Disadvantaged Farmer or Rancher, Operator of a Small or Medium-sized farm or ranch that is structured as a Family Farm, Mid Tier Value Chain proposals, and Farmer or Rancher Cooperative. It is recommended that applicants utilize the Agency application package when documenting for priority points and refer to the documentation requirements specified in 7 CFR 4284.922(d). It is the Agency's position that harvester operations do not meet the definition requirements for a Farm or Ranch and are not eligible to receive Priority Points for a Beginning Farmer or Rancher, a Socially Disadvantaged Farmer or Rancher, an Operator of a small- or medium-sized farm or ranch that is structured as a Family Farm, or a Farmer or Rancher Cooperative. Harvesters may request Priority Points for a Mid-Tier Value Chain project, as applicable. All qualifying applicants in this category will receive 10 points. Applicants that do not provide sufficient documentation will receive 0 points.

6. *Administrator Priority Categories (graduated score 0–10 points).* The Administrator of USDA Rural Development Business and Cooperative Programs has discretion to award up to 10 points to an application to improve the geographic diversity of awardees in a fiscal year.

*E. Selection of Applications*

The Agency will select applications for award under this Notice in accordance with the provisions specified in 7 CFR 4284.950(a).

The Agency will conduct an initial screening of all applications for eligibility and to determine whether the application is complete and sufficiently responsive to the requirements set forth in this notice to allow for an informed review.

All eligible and complete proposals will be evaluated by two reviewers based on criteria specified in Section V.D. One of these reviewers will be a Rural Development employee from the servicing State Office and the other reviewer will be a non-Federal individual. The State Office may enlist the support of technical experts qualified as described below and approved by the State Director, to assist the State Office scoring process. All reviewers must meet the following qualifications. Reviewers must have obtained at least a bachelors degree in one or more of the following fields: agri-business, business, economics, finance, or marketing. They must also have a minimum of three years of experience in an agriculture-related field (*e.g.* farming, marketing, consulting, university professor, research, officer for trade association, government employee for an agricultural program). If the reviewer does not have a degree in one of those fields, he/she must possess at least five years of working experience in an agriculture-related field.

Both reviewers will score criteria one through four and the totals for each reviewer will be added together and averaged. The Rural Development Reviewer will also assign priority points based on criterion 5 in Section V.D. These will be added to the average score. The sum of these scores will be ranked high to low and this will comprise the initial ranking.

The Administrator of RBS may, at their discretion, award up to 10 Administrator priority points based on criterion 6 in Section V.D. These points will be added to the cumulative score for a total possible score of 100. A minimum score of 45 points is required for funding.

A final ranking will be obtained based solely on the scores received for criteria 1 through 6 in Section V.D. Applications for reserved funding will be funded in rank order until funds are depleted. Unfunded reserve category applications will be returned to the general fund category where applications will be funded in rank order until the funds are depleted or until the minimum required score has been surpassed. Funding for Majority Controlled Producer-Based Business Ventures (MAJ) is limited to 10 percent of total grant funds obligated. MAJ applications will be funded in rank order until the funding limitation has been reached. Grants to MAJ applicants from reserved funds will count against the funding limitation.

An application that is ranked under this Notice, but is not funded, will not be carried forward into FY 2012. The Agency will notify the applicants of all such applications in writing. Despite the Agency not carrying applications forward in FY 2012, the applicant is permitted to submit the same application, updated for FY 2012, for consideration.

*F. Obligation and Awarding of Funds*

The Agency will obligate and award funds in accordance with the procedures and requirements specified in 7 CFR 4284.951.

## VI. Administrative Information

*A. Administrative and National Policy Requirements*

1. *Review or appeal rights.* A person may seek a review of an Agency decision or appeal to the National Appeals Division in accordance with 7 CFR part 11 of this title as provided in 7 CFR 4284.903.

2. *Compliance with other laws and regulations.* The provisions of 7 CFR 4284.905 apply to this Notice, which includes requiring producers to be in compliance with other applicable Federal laws.

3. *Monitoring and reporting program performance.* The provisions of 7 CFR 4284.960 apply to this Notice.

4. *Grant servicing.* All grants awarded under this Notice shall be serviced in accordance with 7 CFR part 1951, subparts E and O as applicable, and the Departmental Regulations (7 CFR parts 3000–3099), with the exception that delegation of the post-award servicing of the program does not require the prior approval of the Administrator.

5. *Transfer of obligations.* Any transfer of funds obligated under this Notice from an applicant to a different applicant must comply with the requirements specified in 7 CFR 4284.962.

6. *Grant close out and related activities.* The provisions of 7 CFR 4284.963 apply to this Notice.

7. *Exception authority.* The provisions of 7 CFR 4284.904 apply to this Notice.

8. *Departmental regulations.* Unless specifically stated otherwise in this Notice or in 7 CFR part 4284, subpart J,

this Notice incorporates by reference the regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including, but not necessarily limited to, 7 CFR parts 3015 through 3019, 7 CFR part 3021, 2 CFR parts 25, 170 and 417, and 7 CFR part 3052; and successor regulations to these parts.

9. *Cost principles.* This Notice incorporates by reference the cost principles found in 2 CFR part 230 and in 48 CFR 31.2.

*B. Environmental Review*

All recipients under this Notice are subject to the requirements of 7 CFR part 1940, subpart G and any successor regulation. However, 7 CFR 1940.333 generally excludes applications for planning grants. Applicants for working capital grants must submit Form RD 1940–20, ''Request for Environmental Information,'' as part of this application.

**VII. Agency Contacts**

For general questions about this announcement and for program technical assistance, applicants should contact their USDA Rural Development State Office at *http://www.rurdev.usda.gov/recd_map.html.* The State Office can also be reached by calling 800–670–6553 and pressing ''1.'' If an applicant is unable to contact their State Office, a nearby State Office may be contacted or the RBS National Office can be reached by calling Lyn Millhiser at (202) 720–1227 or Tracey Kennedy at 202–690–1428, or via e-mail: *cpgrants@wdc.usda.gov.* Applicants are also encouraged to visit the application Web site for application tools, including an application guide and templates. The Web address is: *http://www.rurdev.usda.gov/BCP_VAPG_Grants.html.*

**VIII. Nondiscrimination Statement**

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (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 TDD).

To file a complaint of discrimination write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.

Dated: June 21, 2011.

**Judith A. Canales,**

*Administrator, Rural Business—Cooperative Service.*

[FR Doc. 2011–16121 Filed 6–27–11; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Rural Broadband Access Loans and Loan Guarantees Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funding availability (NOFA).

**SUMMARY:** The United States Department of Agriculture's (USDA) Rural Utilities Service (RUS) announces the availability of $325,663,157 in loan funds for the Rural Broadband Access Loans and Loan Guarantees Program for fiscal year (FY) 2011. A Notice of Solicitation of Applications (NOSA) was previously published in the **Federal Register** on March 14, 2011, at 76 FR 13797, prior to the passage of a final appropriations bill identifying a definite funding amount. The maximum amount of a loan under this authority will be $75 million. For all other information and requirements on how applicants can apply for Rural Broadband Access Loans and Loan Guarantees Program funds, please refer to the March 14, 2011, NOSA in the **Federal Register** and the interim regulation for the program published in the **Federal Register** at 76 FR 13770.

**FOR FURTHER INFORMATION CONTACT:** *Agency Contact:* Kenneth Kuchno, Director, Broadband Division, Rural Utilities Service, STOP 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, Telephone (202) 690–4673, Facsimile (202) 690–4389.

**DATES:** Applications under this NOFA will be accepted immediately.

**ADDRESSES:** *Application Requirements and Addresses:* All requirements and addresses for submission of an application under the Broadband Program are set forth in the interim regulation published in the **Federal Register** on March 14, 2011 at 76 FR 13770.

*Application Materials:* Applications for the Broadband Program will be available at *http://www.rurdev.usda.gov/utp_farmbill.html.*

Dated: May 26, 2011.

**Jonathan Adelstein,**

*Administrator, Rural Utilities Service.*

[FR Doc. 2011–16073 Filed 6–27–11; 8:45 am]

BILLING CODE P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a State Advisory Committee (SAC) meeting of the Arkansas Advisory Committee to the Commission will convene on Thursday, July 28, 2011 at 2 p.m. and adjourn at approximately 5 p.m. (CST) at University of Little Rock William H. Bowen School of Law, Faculty Library, Room 422, 1201 McMath Avenue, Little Rock, AR 72202. The purpose of the meeting is to continue planning a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by August 11, 2011. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC on June 23, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2011–16102 Filed 6–27–11; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Vermont Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Vermont State Advisory Committee will convene at 10:30 a.m. on Tuesday, July 12, 2011, at the University of Vermont, Bishop Joyce Conference Room, 411 Main Street, Burlington, VT 05405. The purpose of the planning meeting is to plan the committee's future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Friday, August 12, 2011. The address is Eastern Regional Office, 624 9th Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact the Eastern Regional Office at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC on June 23, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2011–16108 Filed 6–27–11; 8:45 am]

**BILLING CODE 6335–01–P**

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA), that an orientation and a planning meeting of the Connecticut State Advisory Committee will convene at 10:30 a.m. on Wednesday, July 20, 2011, at the University of Connecticut, School of Law, Faculty Lounge, 55 Elizabeth Street, Hartford, CT 06105. The purpose of the orientation meeting is to review the rules of operation for this Federal advisory committee with the newly appointed committee members; the purpose of the planning meeting is to plan the committee's future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by Monday, August 22, 2011. The address is Eastern Regional Office, 624 9th Street, NW., Suite 740, Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact the Eastern Regional Office at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend these meetings and require the services of a sign language interpreter should contact the Eastern Regional Office at least ten (10) working days before the scheduled date of the meetings.

Records generated from these meetings may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meetings will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC on June 23, 2011.

**Peter Minarik,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 2011–16114 Filed 6–27–11; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* International Trade Administration (ITA).

*Title:* SABIT Participant Application, Program Exit Questionnaire, and Alumni Success Story Report.

*OMB Control Number:* 0625–0225.

*Form Number(s):* ITA–4143P–3.

*Type of Request:* Regular submission.

*Burden Hours:* 4,400.

*Number of Respondents:* 2,000.

*Average Hours per Response:* 3 hours for application; 1 hour for program exit questionnaire; and 1 hour for alumni success form.

*Needs and Uses:* The information collected by the Special American Business Internship Training Program (SABIT) application for participation in the SABIT Group Program will be used by ITA staff to determine the quality of applicants for SABIT's programs and create delegations of professionals from Eurasia and other regions. The program exit questionnaire will be used to improve the program by determining what worked and what did not work. The alumni success form will be used to track SABIT alumni to determine how well the program is meeting its foreign policy objectives.

*Affected Public:* International individuals or households; International businesses or other for-profit organizations.

*Frequency:* Annually.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Wendy Liberante, (202) 395–3647.

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 Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: June 22, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–16078 Filed 6–27–11; 8:45 am]

BILLING CODE 3510–HE–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket T–2–2011]**

### Foreign-Trade Zone 26; Atlanta, GA; Application for Temporary/Interim Manufacturing Authority; Makita Corporation of America; (Hand-Held Power Tool and Gasoline/Electric-Powered Garden Product Manufacturing); Buford, GA

An application has been submitted to the Executive Secretary of the Foreign-Trade Zones Board (the Board) by the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, requesting temporary/interim manufacturing (T/IM) authority within FTZ 26 at the Makita Corporation of America (Makita) facility, located in Buford, Georgia. The application was filed on June 22, 2011.

The Makita facility (300 employees, 75 acres, 1.25 million units per year capacity) is located at 2650 Buford Highway, Buford (proposed Site 20). Under T/IM procedures, the company has requested authority to produce engine blowers (HTSUS 8414.59, duty-free–2.3%); table, slide and compound miter saws (HTSUS 8465.91, 3.0%); drills and drill kits (HTSUS 8467.21, 1.7%); drill and saw kits (HTSUS 8467.22, duty-free); drill, grinder, hammer, sander, planer, router and screw driver kits (HTSUS 8467.29, duty-free); and, gasoline and electric-powered brush cutters and hedge trimmers (8467.89, duty-free). Foreign components that would be used in production (representing 64% of the value of the finished product) include: batteries (HTSUS 8507.80, 3.4%); armatures (HTSUS 8503.00, free–6.5%); tool bags (HTSUS 4202.92, 3.4–20%); driver, hammer and angle drills (HTSUS 8467.21, 1.7%); chargers (HTSUS 8504.40, free–1.5%) flashlights (HTSUS 8513.10, 3.5–12.5%); gears, housings, clutches and gear shafts (HTSUS 8483.90, 2.5–5.5%); radios (HTSUS 8527.92, free–3%); grips, thumb screws, knobs and handles (HTSUS 3926.90, free–6.5%); tool chests and drill chucks (HTSUS 8466.10, 3.9%); wrenches (HTSUS 8204.11, 9%); switch units (HTSUS 8536.50, free–2.7%); power cords (HTSUS 8544.42, free–2.6%); flanges (HTSUS 7307.91, 3.2%–5.5%); screws and bolts (HTSUS 7318.15, free–8.5%); rubber rings, sleeves, grommets and plates (HTSUS 4016.99, free–4.3%); screws (HTSUS 7318.14, 6.2–8.6%); ball bearings (HTSUS 8482.10, 2.4–9%); battery covers and lenses (HTSUS 3923.50, 5.3%) grease, lubricants and additives (HTSUS 2710.19, 5.7%); felt rings (HTSUS 5911.90, 3.8%); lock springs (HTSUS 7320.20, free–3.9%); lead wire assemblies (HTSUS 8544.49, free–5.3%); needle cages (HTSUS 8482.40, 5.8%); drill bits (HTSUS 8207.90, 1.6–4.8%); socket wrenches (HTSUS 8204.20, 9.0%); styrene polymers (HTSUS 3903.19, 6.5%); polyamides (HTSUS 3908.10, 6.3%); resins (HTSUS 8543.70, free–2.6%); and, batteries (HTSUS 8507.30, 2.5%). T/IM authority could be granted for a period of up to two years.

FTZ procedures could exempt Makita from customs duty payments on the foreign components used in export production. The company anticipates that some 47 percent of the plant's shipments will be exported. On its domestic sales, Makita would be able to choose the duty rates during customs entry procedures that apply to hand-held power tools and gasoline/electric-powered garden products (duty rate free–3%) for the foreign inputs noted above.

In accordance with the Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations pursuant to Board Orders 1347 and 1480.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for their receipt is July 28, 2011.

Makita has also submitted a request to the FTZ Board for FTZ manufacturing authority beyond the two-year T/IM period, which may include additional products and components. It should be noted that the request for extended authority would be docketed separately and would be processed as a distinct proceeding. Any party wishing to submit comments for consideration regarding the request for extended authority would need to submit such comments pursuant to the separate notice that would be published for that request.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the address listed above, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher.Kemp@trade.gov* or (202) 482–0862.

Dated: June 22, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–16210 Filed 6–27–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a timely request to revoke one antidumping duty order in part.

**DATES:** *Effective Date:* June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, *telephone:* (202) 482–4697.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with May anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Ball Bearings and Parts Thereof from Japan for one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

**Notice of No Sales**

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be made in accordance with 19 CFR 351.303 and are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Six copies of the submission should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on every party on the Department's service list.

**Respondent Selection**

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

**Separate Rates**

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2,1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate-rate status unless they respond to all parts of the questionnaire as mandatory respondents.

**Initiation of Reviews**

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than May 31, 2012.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings**. | |
| BELGIUM: Stainless Steel Plate in Coils A–423–808 | 5/1/10–4/30/11 |
| Aperam Stainless Belgium N.V. (f.k.a. ArcelorMittal Stainless Belgium N.V.) | |
| CANADA: Citric Acid and Certain Citrate Salts A–122–853 | 5/1/10–4/30/11 |
| Jungbunzlauer Canada Inc. | |
| FRANCE: Ball Bearings and Parts Thereof A–427–801 | 5/1/10–4/30/11 |
| Audi AG | |
| Bosch Rexroth SAS | |
| Caterpillar Group Services S.A. | |
| Caterpillar Materials Routiers S.A.S. | |
| Caterpillar S.A.R.L. | |
| Eurocopter SAS | |
| Intertechnique SAS | |
| Kongskilde Limited | |
| Perkins Engines Company Limited | |
| SKF France, S.A./SKF Aerospace France S.A.S. | |
| SNECMA | |
| SNR Roulements S.A./SNR Europe/NTN Corporation | |
| Volkswagen AG | |
| Volkswagen Zubehor GmbH | |
| GERMANY: Ball Bearings and Parts Thereof A–428–801 | 5/1/10–4/30/11 |
| Audi AG | |
| Bayerische Motoren Werke AG | |
| Bosch Rexroth AG | |
| BSH Bosch und Siemens Hausgerate GmbH | |
| Caterpillar S.A.R.L. | |
| Kongskilde Limited | |
| myonic GmbH | |
| Robert Bosch GmbH | |
| Robert Bosch GmbH Power Tools and Hagglunds Drives | |
| Schaeffler KG | |
| Schaeffler Technologies GmbH and Co. KG | |
| SKF GmbH | |
| Volkswagen AG | |
| Volkswagen Zubehor GmbH | |
| INDIA: Certain Welded Carbon Steel Standard Pipes and Tubes A–533–502 | 5/1/10–4/30/11 |
| Arihant Domestic Appliances Ltd. | |
| Good Luck Steel Tubes Ltd. and all affiliates | |
| Good Luck Industries | |
| Innoventive Industries Ltd. | |
| Jindal Group and all affiliates | |
| Jindal Industries Ltd. | |
| Jindal Saw Ltd. | |
| JindalSteel and Power Ltd. | |
| JSL Ltd. | |
| JSW steel Ltd. | |
| Jotindra Steel and Tubes Ltd. | |
| Lloyds Group and all affiliates | |
| Lloyds Metals & Engineers Ltd. | |
| Lloyds Steel Industries Ltd. | |
| Welspun Group and all affiliates | |
| Welspun Corp. Ltd. | |
| Welspun Trading Ltd. | |
| Welspun Steel Ltd. | |
| Welspun Investments and Commercials Ltd. | |
| ITALY: Ball Bearings and Parts Thereof A–475–801 | 5/1/10–4/30/11 |
| Audi AG | |
| Bosch Rexroth S.p.A. | |
| Caterpillar Overseas S.A.R.L. | |
| Caterpillar of Australia Pty. Ltd. | |
| Caterpillar Group Services S.A. | |

| | Period to be reviewed |
|---|---|
| Caterpillar Mexico, S.A. de C.V. | |
| Caterpillar Americas C.V. | |
| Eurocopter S.A.S. | |
| Hagglunds Drives S.r.l. | |
| Kongskilde Limited | |
| Perkins Engines Company Ltd. | |
| Schaeffler Italia SpA | |
| The Schaeffler Group | |
| Schaeffler Italia s.r.l, and WPB Water Pump Bearing GmbH & Co. KG | |
| SKF Industrie S.p.A., and Somecat S.p.A. | |
| SNECMA | |
| Volkswagen AG | |
| Volkswagen Zubehor GmbH | |
| JAPAN: Ball Bearings and Parts Thereof A–588–804 | 5/1/10–4/30/11 |
| Asahi Seiko Co., Ltd. | |
| Aisin Seiki Co. Ltd. | |
| Audi AG | |
| Bosch Packaging Technology K.K. | |
| Bosch Rexroth Corporation | |
| Caterpillar Inc. | |
| Caterpillar Japan Ltd. | |
| Caterpillar Overseas S.A.R.L. | |
| Caterpillar Group Services S.A. | |
| Caterpillar Brazil Ltd. | |
| Caterpillar Africa Pty. Ltd. | |
| Caterpillar of Australia Pty. Ltd. | |
| Caterpillar S.A.R.L. | |
| Caterpillar Americas Mexico, S. de R.L. de C.V. | |
| Caterpillar Logistics Services China Ltd. | |
| Caterpillar Mexico, S.A. de C.V. | |
| Glory Ltd. | |
| Hagglunds Ltd. | |
| Hino Motors Ltd. | |
| JTEKT Corporation | |
| Kongskilde Limited | |
| Mazda Motor Corporation | |
| Nachi-Fujikoshi Corporation | |
| NSK Ltd. | |
| NSK Corporation | |
| NTN Corporation | |
| Perkins Engines Company Limited | |
| Sapporo Precision, Inc., and Tokyo Precision, Inc. | |
| Volkswagen AG | |
| Volkswagen Zubehor GmbH | |
| Yamazaki Mazak Trading Corporation | |
| REPUBLIC OF KOREA: Certain Polyester Staple Fiber A–580–839 | 5/1/10–4/30/11 |
| Huvis Corporation | |
| Woongjin Chemical Company, Ltd. | |
| SOCIALIST REPUBLIC OF VIETNAM: Frozen Warmwater Shrimp A–552–802 | 2/1/10–1/31/11 |
| Thong Thuan Company Limited/Thong Thuan Seafood Company Limited [3] | |
| TAIWAN: Certain Circular Welded Carbon Steel Pipe and Tubes A–583–008 | 5/1/10–4/30/11 |
| E United Group and all affiliates | |
| Yieh Corp. | |
| Yieh Phui Enterprise Co., Ltd. | |
| Yieh Hsing Enterprise Co., Ltd. | |
| Chung Hung Steel Corp. | |
| Far East Machinery Co. Ltd. | |
| Kao Hsing Chang Iron & Steel Corp., also known as Kao Hsiung Chang Iron & Steel Corp. | |
| Tension Steel Industries Co. Ltd. | |
| TAIWAN: Polyester Staple Fiber A–583–833 | 5/1/10–4/30/11 |
| Far Eastern New Century Corporation (formerly known as Far Eastern Textiles Co., Ltd.) | |
| Nan Ya Plastics Corporation | |
| THE PEOPLE'S REPUBLIC OF CHINA: Certain Oil Country Tubular Goods [4] A–570–943 | 11/17/09–4/30/11 |
| Anhui Tianda Oil Pipe Co., Ltd. | |
| Baoshan Iron & Steel Co., Inc. | |
| Baosteel Group | |
| Benxi Northern Steel Pipes Co., Ltd. | |
| Cangzhou Huaye Metal Products Co., Ltd. | |
| Cangzhou Qiancheng Steel Pipe Co. | |
| Faray Petroleum Steel Pipe Co., Ltd. | |
| Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch | |
| Freet Petroleum Equipment Group Co., Ltd. | |
| Guangzhou Juyi Steel Pipes Co., Ltd. | |
| Hebei Machinery Import & Export Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd. | |
| Hefei Zijin Steel Tube Manufacturing Co., Ltd. | |
| Hengyang Steel Tube Group Int'l Trading Inc. | |
| Hengyang Valin MPM Tube Co., Ltd. | |
| Hengyang Valin Steel Tube Co., Ltd. | |
| Huai'an Zhenda Steel Tube Manufacturing Co., Ltd. | |
| Huludao City Steel Pipe Industrial Co., Ltd. | |
| Huludao Steel Pipe Industrial Co., Ltd. | |
| Jiangsu Changbao Precision Tube Co., Ltd. | |
| Jiangsu Changbao Steel Tube Co., Ltd. | |
| Jiangsu Chengde Steel Tube Share Co., Ltd. | |
| Jiangsu Yulong Steel Pipe Co., Ltd. | |
| Jiangyin Chuangzin Oil Pipe | |
| Jiangyin City Changjiang Steel Pipe Co., Ltd. | |
| Jiangyin City Seamless Steel Tube Factory | |
| Jinan Meide Casting Co., Ltd. | |
| Northern Tool Equipment Co., Ltd. | |
| Shandong Dongbao Steel Pipe Co., Ltd. | |
| Shandong Molong Group Co. | |
| Shandong Molong Petroleum Machinery Co., Ltd. | |
| Shengli Oil Field Freet Import & Export Co., Ltd. | |
| Shengli Oil Field Freet Petroleum Equipment Co., Ltd. | |
| Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd. | |
| Shengli OilfField Highland Petroleum Equipment Co., Ltd. | |
| Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co., Ltd. | |
| Tianjin Pipe (Group) Co., Ltd. | |
| Tianjin Pipe International Economic & Trading Corp. | |
| Tianjin Shuangjie Pipe Manufacturing Co., Ltd. | |
| Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd. | |
| Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd. | |
| Wuxi Fastube Industry Co. | |
| Wuxi Huayou Special Steel Co., Ltd. | |
| Wuxi Seamless Oil Pipe Co., Ltd. | |
| Wuxi Seamless Special Pipe Co., Ltd. | |
| Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd. | |
| Xi'An Meixinte Industrial & Trading Co., Ltd. | |
| Xigang Seamless Steel Tube Co., Ltd. | |
| Yangzhou Chengde Steel Tube Co., Ltd. | |
| Yangzhou Lontrin Steel Tube Co., Ltd. | |
| Yantai Yuanhua Steel Tubes Co., Ltd. | |
| ZhangJiaGang ZhongYuan Pipe-Making Co. | |
| Zhejiang Jianli Enterprise Co., Ltd. | |
| THE PEOPLE'S REPUBLIC OF CHINA: Citric Acid and Certain Citrate Salts[5] A–570–937 | 5/1/10–4/30/11 |
| Huangshi Xinghua Biochemical Co., Ltd. | |
| RZBC Co., Ltd./RZBC Imp. & Exp. Co., Ltd./RZBC (Juxian) Co., Ltd. | |
| THE PEOPLE'S REPUBLIC OF CHINA: Pure Magnesium[6] A–570–832 | 5/1/10–4/30/11 |
| Tianjin Magnesium International, Ltd. | |
| TURKEY: Certain Welded Carbon Steel Pipe and Tube A–489–501 | 5/1/10–4/30/11 |
| Borusan Group and all affiliates | |
| Borusan Mannesmann Boru Sanayi ve Ticaret A.S. | |
| Borusan Birlesik Boru Fabrikalari San ve Tic. | |
| Borusan Istikbal Ticaret T.A.S. | |
| Boruson Holding A.S. | |
| Boruson Gemlik Boru Tesisleri A.S. | |
| Borusan Ihracat Ithalat ve Dagitim A.S. | |
| Borusan Ithicat ve Dagitim A.S. | |
| Tubeco Pipe and Steel Corporation | |
| ERBOSAN Erciyas Boru Sanayi ve Ticaret A.S. | |
| Toscelik Profil ve Sac Endustrisi A.S. | |
| Toscelik Metal Ticaret A.S. | |
| Tosyali Dis Ticaret A.S. | |
| Yucel Group and all affiliates | |
| Yucel Boru ve Profil Endustrisi A.S. | |
| Yucelboru Ihracat Ithalat ve Pazarlama A.S. | |
| Cayirova Boru Sanayi ve Ticaret A.S. | |
| TURKEY: Light-Walled Rectangular Pipe and Tube A–489–815 | 5/1/10–4/30/11 |
| Noksel Celik Boru Sanayi A.S. | |
| UNITED KINGDOM: Ball Bearings and Parts Thereof A–412–801 | 5/1/10–4/30/11 |
| Bayerische Motoren Werke AG | |
| Bosch Rexroth Limited | |
| Caterpillar S.A.R.L. | |
| Caterpillar Group Services S.A. | |
| Caterpillar of Australia Pty Ltd. | |
| Caterpillar Overseas S.A.R.L. | |

| | Period to be reviewed |
|---|---|
| Caterpillar Marine Power UK<br>NSK Bearings Europe Ltd.<br>NSK Europe Ltd.<br>Perkins Engines Company Ltd.<br>SKF (UK) Limited SNFA Operations<br>SKF UK Limited Stonehouse Operations | |
| **Countervailing Duty Proceedings** | |
| THE PEOPLE'S REPUBLIC OF CHINA: Citric Acid and Certain Citrate Salts C–570–938 .....<br>Huangshi Xinghua Biochemical Co., Ltd.<br>RZBC Co., Ltd./RZBC Imp. & Exp. Co., Ltd./RZBC (Juxian) Co., Ltd. | 1/1/10–12/31/10 |

**Suspension Agreements**

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia S.p.A.* v. *United States,* 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: June 22, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–16216 Filed 6–27–11; 8:45 am]

**BILLING CODE 3510–DS–P**

[3] This company was inadvertently omitted from the initiation notice that published on March 31, 2011 (76 FR 17825).

[4] If one of the above-named companies does not qualify for a separate rate, all other exporters of Certain Oil Country Tubular Goods from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If one of the above-named companies does not qualify for a separate rate, all other exporters of Citric Acid and Certain Citrate Salts from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above-named company does not qualify for a separate rate, all other exporters of Pure Magnesium from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–403–802]**

### Fresh and Chilled Atlantic Salmon From Norway: Preliminary Results of Full Third Sunset Review of Countervailing Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 3, 2011, the Department of Commerce (the Department) initiated a sunset review of the countervailing duty (CVD) order on fresh and chilled Atlantic salmon from Norway pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 89 (January 3, 2011) (*Sunset Initiation*). On the basis of adequate substantive responses submitted by domestic and respondent interested parties, the Department determined to conduct a full sunset review of this CVD order pursuant to section 751(c) of the Act and 19 CFR 351.218(e)(2). As a result of our analysis, the Department preliminary finds that revocation of the CVD order would likely lead to continuation or recurrence of a countervailable subsidy.

**DATES:** *Effective Date:* June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4793.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 3, 2011, the Department initiated the third sunset review of the CVD order on fresh and chilled Atlantic salmon from Norway pursuant to section 751(c) of the Act. *See Sunset Initiation.* On January 13, 2011, the Government of Norway (GON), Norwegian Seafood Federation (NSF), and Aquaculture Division of the Norwegian Seafood Association (ADNSA) (collectively, the respondents), filed letters of appearance in the review.[1] On January 18, 2011, Phoenix Salmon U.S., Inc. (Phoenix Salmon), a domestic producer of fresh and chilled Atlantic salmon, filed a notice of intent to participate in the review.[2]

On January 21, 2011, NSF and ADNSA supplemented their letter of appearance by submitting to the Department a list of their members. On February 2, 2011, the Department received a substantive response from Phoenix Salmon and a joint substantive response from the respondents within the deadline specified in 19 CFR 351.218(d)(3)(i). The Department received rebuttal comments from Phoenix Salmon and the GON on February 14, 2011. On February 25, 2011, the GON submitted a surrebuttal to Phoenix Salmon's rebuttal responding to the company's claims that NSF and ADNSA are not interested parties.

On March 3, 2011, Department officials met with Phoenix Salmon, who reiterated statements made in its submissions regarding the interested party status of NSF and ADNSA. *See* Memorandum to the File, through Melissa Skinner, Director, AD/CVD Operations, Office 3, from Kristen Johnson, Trade Analyst, AD/CVD Operations, Office 3, regarding ''Meeting with Counsel for the Domestic Interested Party,'' (March 3, 2011). On March 4, 2011, the Department issued a letter to NSF and ADNSA requesting that each association identify their members that are producers or exporters of the subject merchandise. On March 11, 2011, NSF and ADNSA submitted annotated membership lists, which identify the members of each association that are producers or exporters of subject merchandise. On March 16, 2011, Phoenix Salmon submitted comments on the membership lists submitted by NSF and ADNSA.

On April 6, 2011, the Department issued its adequacy determination memorandum. The Department found that the domestic and respondent parties submitted adequate substantive responses and that NSF and ADNSA have standing as interested parties in this review. The Department, therefore, determined to conduct a full sunset review of this CVD order. *See* Memorandum to Gary Taverman, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Melissa Skinner, Director, Antidumping and Countervailing Duty Operations, Office 3, regarding ''Adequacy Determination: Third Sunset Reviews of the Antidumping and Countervailing Duty Orders on Fresh and Chilled Atlantic Salmon From Norway,'' (April 6, 2011). On April 12, 2011, the Department extended the deadline for the preliminary and final results of this sunset review. *See Fresh and Chilled Atlantic Salmon From Norway: Extension of Time Limits for Preliminary and Final Results of Full Third Antidumping and Countervailing Duty Sunset Reviews,* 76 FR 20312 (April 12, 2011) (*Salmon Extension Notice*). The Department did not receive comments on the adequacy determination memorandum from any party to this review.

## Scope of the Order

The product covered by the order is the species Atlantic salmon (Salmo Salar) marketed as specified herein; the order excludes all other species of salmon: Danube salmon, Chinook (also called ''king'' or ''quinnat''), Coho (''silver''), Sockeye (''redfish'' or ''blueback''), Humpback (''pink'') and Chum (''dog'').[3] Atlantic salmon is a whole or nearly-whole fish, typically (but not necessarily) marketed gutted, bled, and cleaned, with the head on. The subject merchandise is typically packed in fresh-water ice (''chilled''). Excluded from the subject merchandise are fillets, steaks and other cuts of Atlantic salmon. Also excluded are frozen, canned, smoked or otherwise processed Atlantic salmon. Atlantic salmon is currently provided for under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 0302.12.0003 and 0302.12.0004.

The HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

## Analysis of Comments Received

All issues raised in this review are addressed in the Issues and Decision Memorandum for the Preliminary Results of Full Third Sunset Review of the Countervailing Duty Order on Fresh and Chilled Atlantic Salmon from Norway (Decision Memorandum) from Edward C. Yang, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this preliminary notice, which is hereby adopted by this notice. Parties can find a complete discussion of all issues raised in this full sunset review and the corresponding recommendations in this public memorandum, which is on file in the Department's Central Records Unit. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://trade.gov/ia.* The paper copy and electronic version of the Decision Memorandum are identical in content.

## Preliminary Results of Review

The Department preliminarily determines that revocation of the CVD order on fresh and chilled Atlantic salmon would likely lead to continuation or recurrence of a countervailable subsidy at the rate of 2.20 percent *ad valorem* for all producers/exporters of subject merchandise from Norway. Interested parties may submit case briefs no later than 50 days after the date of publication of the preliminary results of this full sunset review, in accordance with 19 CFR 351.309(c)(1)(i). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than the five days after the time limit for filing case briefs in accordance with 19 CFR 351.309(d).

A hearing if requested will be held two days after the date the rebuttal briefs are due. The Department will issue a notice of final results of this full sunset review, which will include the results of its analysis of issues raised in any such comments, no later than November 29, 2011. *See Salmon Extension Notice.*

We are issuing and publishing the results and notice in accordance with

[1] These public documents and all other public documents and public versions of proprietary documents with regard to this third full sunset review are available on the public record located in the Department's Central Records Unit at room 7046 of the main Department of Commerce building.

[2] Phoenix Salmon claimed to be the successor to the two domestic producers who participated in the prior sunset review—Atlantic Salmon of Maine and Heritage Salmon Company, Inc.

[3] On August 5, 2009, the Department made a final scope ruling determining that whole salmon steaks are within the scope of the order. *See Notice of Scope Rulings,* 75 FR 14138 (March 24, 2010).

sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 21, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–16217 Filed 6–27–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA521**

### Fisheries of the South Atlantic and Gulf of Mexico; South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting via conference call.

**SUMMARY:** The South Atlantic Fishery Management Council (SAFMC) will hold a meeting of its Scientific and Statistical Committee (SSC) to discuss the Acceptable Biological Catch (ABC) recommendation for Atlantic Migratory Group Spanish mackerel and assessment priorities for 2013. See **SUPPLEMENTARY INFORMATION.**

**DATES:** The meeting will be held on Friday, July 29, 2011, via conference call from 1:30 p.m. to 2:30 p.m. E.D.T. See **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Listening stations are available at the South Atlantic Fishery Management Council, 4055 Faber Place Drive #201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366; *e-mail: Kim.Iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** Under the Magnuson-Stevens Reauthorized Act, the SSC is the body responsible for reviewing the Council's scientific materials. The SSC will discuss an alternative approach to deriving ABC for Atlantic Migratory Group Spanish Mackerel and SEDAR assessment priorities for 2013.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 3 business days prior to the meeting.

Dated: June 23, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–16168 Filed 6–27–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA522**

### Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The South Atlantic Fishery Management Council (Council) will hold a meeting of its Law Enforcement AP in Orlando, FL.

**DATES:** The meeting will take place July 20, 2011. See **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The meeting will be held at the Marriott Renaissance Orlando Hotel, 5445 Forbes Place, Orlando, FL 32812; *telephone:* (407) 240–1000.

**FOR FURTHER INFORMATION CONTACT:** Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *telephone:* (843) 571–4366 or *toll free:* (866) SAFMC–10; *fax:* (843) 769–4520; *e-mail: kim.iverson@safmc.net.*

**SUPPLEMENTARY INFORMATION:** Members of the Law Enforcement AP will meet from 8:30 a.m. to 5 p.m. on July 20, 2011.

The Law Enforcement AP will review the Comprehensive Annual Catch Limit (ACL) Amendment as well as Regulatory Amendment 11 to the Snapper Grouper Fishery Management Plan. The Comprehensive ACL Amendment establishes ACLs and Accountability Measures for species not undergoing overfishing in order to comply with the Magnuson-Stevens Act. Changes affect snapper grouper complex species, dolphin, wahoo and golden crab. Regulatory Amendment 11 addresses the current 240-foot depth closure (also known as the 40-fathom closure) implemented through Amendment 17B. The closure currently applies to deepwater snapper grouper species (snowy grouper, blueline tilefish, yellowedge grouper, misty grouper, queen snapper, and silk snapper) and was put in place to minimize bycatch of speckled hind and warsaw grouper. The AP will receive an overview of the amendments and provide recommendations.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

**Note:** The times and sequence specified in this agenda are subject to change.

Dated: June 23, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–16170 Filed 6–27–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA402**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Coastal Commercial Fireworks Displays at Monterey Bay National Marine Sanctuary, CA

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the Monterey Bay National Marine Sanctuary (MBNMS) to incidentally harass, by Level B harassment only, two species of marine mammals incidental to permitting professional fireworks

displays within the sanctuary in California waters.

**DATES:** This authorization is effective from July 4, 2011, through July 3, 2012.

**ADDRESSES:** A copy of the IHA and application are available by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the application containing a list of the references used in this document may be obtained by writing to the above address, telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**) or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Supplemental documents are available at the same site. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, NMFS, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 101(a)(5)(D) of the MMPA (16 U.S.C. 1371 (a)(5)(D)) directs the Secretary of Commerce (Secretary) to authorize, upon request, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock, by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and a notice of a proposed authorization is provided to the public for review.

Authorization for incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock and its habitat, and monitoring and reporting of such takings. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA establishes a 45-day time limit for NMFS' review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the public comment period, NMFS must either issue or deny the authorization.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

## Summary of Request

On April 28, 2011, NMFS received an application from the MBNMS requesting an IHA under section 101 (a)(5)(D) of the MMPA for the potential harassment of California sea lions (*Zalophus californianus*) and harbor seals (*Phoca vitulina*) incidental to coastal fireworks displays conducted at MBNMS under permits issued by MBNMS. This would effectively constitute a renewed authorization; NMFS first issued an IHA to MBNMS on July 4, 2005 (70 FR 39235; July 7, 2005), and subsequently issued five-year regulations governing the annual issuance of Letters of Authorization under section 101 (a)(5)(A) of the MMPA (71 FR 40928; July 19, 2006). Those regulations expire on July 3, 2011.

The MBNMS adjoins 276 mi (444 km), or approximately 25 percent, of the central California coastline, and encompasses ocean waters from mean high tide to an average of 25 mi (40 km) offshore between Rocky Point in Marin County and Cambria in San Luis Obispo County. Fireworks displays have been conducted over current MBNMS waters for many years as part of national and community celebrations (*e.g.,* Independence Day, municipal anniversaries), and to foster public use and enjoyment of the marine environment. In central California, marine venues are the preferred setting for fireworks in order to optimize public access and avoid the fire hazard associated with terrestrial display sites. Many fireworks displays occur at the height of the dry season in central California, when area vegetation is particularly prone to ignition from sparks or embers.

In 1992, the MBNMS was the first national marine sanctuary (NMS) to be designated along urban shorelines and therefore has addressed many regulatory issues previously not encountered by the NMS program. Since 1993, the MBNMS, a component of NOAA's Office of National Marine Sanctuaries, has processed requests for the professional display of fireworks that affect the sanctuary. The MBNMS has determined that debris fallout (*i.e.,* spent pyrotechnic materials) from fireworks events may constitute a discharge into the sanctuary and thus violate sanctuary regulations, unless a permit is issued by the superintendent. Therefore, sponsors of fireworks displays conducted in the MBNMS are required to obtain sanctuary authorization prior to conducting such displays (see 15 CFR 922.132).

Authorization of professional firework displays has required a steady refinement of policies and procedures related to this activity. Fireworks displays, and the attendant increase in human activity, are known to result in the behavioral disturbance of pinnipeds, although there is no known instance of this disturbance resulting in more than temporary abandonment of haul-outs. As a result, pinnipeds hauled out in the vicinity of permitted fireworks displays may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Numbers of California sea lions and harbor seals, the species that may be subject to harassment, have been recorded extensively at four regions where fireworks displays are permitted in MBNMS. Based on these data and MBNMS' estimated maximum number of fireworks displays, NMFS has authorized MBNMS' request to incidentally harass up to 6,170 California sea lions and 1,065 harbor seals during the one-year time span of the proposed IHA, from July 4, 2011 to July 3, 2012.

## Description of the Specified Activity

In accordance with regulations implementing the MMPA, NMFS published notice of the proposed IHA in the **Federal Register** on May 20, 2011 (76 FR 29196). A complete description of the action was included in that notice and will not be reproduced here.

The MBNMS has issued 87 permits for professional fireworks displays since 1993. However, the MBNMS staff projects that as many as 20 coastal displays per year may be conducted in, or adjacent to, MBNMS boundaries in the future. Thus, the number of displays will be limited to not more than 20 events per year in four specific areas along 276 mi (444 km) of coastline. Fireworks displays will not exceed 30

minutes (with the exception of up to two displays per year, each not to exceed 1 hour) in duration and will occur with an average frequency of less than or equal to once every two months within each of the four prescribed display areas. NMFS believes—and extensive monitoring data indicates—that incidental take resulting from fireworks displays will be, at most, the short-term flushing and evacuation of non-breeding haul-out sites by California sea lions and harbor seals.

MBNMS' four designated display areas, which were described in detail in NMFS' notice of proposed IHA (76 FR 29196), include Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek). The number of displays will be limited to not more than 20 total events per year within these four specific areas combined, along the whole 276 mi (444 km) of coastline. This effectively limits permitted fireworks displays to approximately five percent of the MBNMS coastline.

A more detailed description of the fireworks displays permitted by MBNMS may be found in MBNMS' application, in MBNMS' Assessment of Pyrotechnic Displays and Impacts within the MBNMS 1993–2001 (2001), or in the report of Marine Mammal Acoustic and Behavioral Monitoring for the MBNMS Fireworks Display, 4 July 2007 (2007), which are available at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

**Comments and Responses**

On May 20, 2011, NMFS published a notice of the proposed IHA (76 FR 29196) in response to MBNMS' request to take marine mammals incidental to permitting of coastal fireworks displays and requested comments and information concerning that request. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission (MMC). The MMC recommended that NMFS issue the requested authorization, subject to inclusion of the proposed mitigation and monitoring measures. As described in this document, NMFS has included the proposed measures in the final authorization.

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species that may be harassed incidental to permitted fireworks displays are the harbor seal and California sea lion. Neither of these species is listed as threatened or endangered under the ESA, nor are they categorized as depleted under the MMPA. NMFS presented a more detailed discussion of the status of these stocks and their occurrence in the action area in the notice of the proposed IHA (76 FR 29196; May 20, 2011).

**Potential Effects of the Activity on Marine Mammals**

NMFS has determined that permitted coastal fireworks displays, as outlined in the project description, have the potential to result in behavioral harassment of California sea lions and harbor seals that may be swimming, foraging, or resting in the display vicinity. Based on the analysis contained in NMFS' notice of proposed IHA, it is unlikely that this project will result in temporary or permanent hearing impairment or non-auditory physical or physiological effects for any marine mammal. Given the frequency, duration, and intensity of sounds (maximum measured 82 dB sound pressure level for larger aerial shells) that marine mammals may be exposed to, it is unlikely that they would sustain temporary, much less permanent, hearing impairment during fireworks displays. Observations of behavioral disturbance of pinnipeds, resulting from sound and light from fireworks displays or from increased vessel traffic in the vicinity of a display, have been limited to short-term disturbance only.

The effects of behavioral disturbance resulting from this project are difficult to predict, as behavioral responses to sound are highly variable and context specific. A number of factors may influence an animal's response to noise, including its previous experience, its auditory sensitivity, its biological and social status (including age and sex), and its behavioral state and activity at the time of exposure. These behavioral changes may include changes in vocalization; visible startle response or aggressive behavior; avoidance of areas where noise sources are located; and/or flight responses. Pinnipeds may increase their time spent in water, possibly to avoid disturbance on land. Because permitted fireworks displays are limited in number and are of short duration, they are unlikely to result in permanent displacement from a given area. In addition, timing restrictions are in place to ensure that no displays are permitted during sensitive breeding periods. Temporary avoidance of haul-out areas resulting from fireworks displays could be experienced by individual marine mammals but would not be likely to cause population level impacts, or affect any individual's long-term fitness.

**Anticipated Effects on Habitat**

NMFS provided a detailed discussion of the potential effects of this action on marine mammal habitat in the notice of the proposed IHA (76 FR 29196; May 20, 2011). Coastal fireworks displays at MBNMS will not result in permanent impacts to habitats used directly by marine mammals, such as haul-out sites, and are unlikely to impact food sources such as forage fish. As described in the proposed IHA, impacts to habitat could come through debris or chemical residue from fireworks. However, no negative impacts to water quality have been detected, and it is unlikely that the limited amount of fireworks used per year would degrade habitats. In addition, MBNMS requires permittees to remove all debris following fireworks displays. While some debris is likely to remain, NMFS does not believe the small amount of remaining debris is likely to significantly impact the environment, including marine mammals or their habitat. Therefore, the main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals, as discussed previously in this document, and habitat is unlikely to suffer significant impacts.

**Mitigation**

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

The MBNMS and NMFS worked to craft a set of mitigation measures designed to minimize fireworks impacts on the marine environment, as well as to outline the locations, frequency, and conditions under which the MBNMS will authorize marine fireworks displays. These mitigation measures, which were successfully implemented under NMFS-issued ITAs from 2005–2010, include four broad approaches for managing fireworks displays:

- Establish a sanctuary-wide seasonal prohibition to safeguard pinniped reproductive periods. Fireworks events will not be authorized between March 1 and June 30 of any year, since this period is the primary reproductive season for pinnipeds in MBNMS.
- Establish four conditional display areas and prohibit displays along the

remaining 95 percent of sanctuary coastal areas. Permitted fireworks displays will be confined to four prescribed areas of the sanctuary while prohibiting displays along the remaining 95 percent of sanctuary coastal areas. The conditional display areas are located at Half Moon Bay, the Santa Cruz/Soquel area, the northeastern Monterey Peninsula, and Cambria (Santa Rosa Creek).

• Create a per-annum limit on the number of displays allowed in each display area. There is a per-annum limit of 20 displays along the entire sanctuary coastline in order to prevent cumulative negative environmental effects from fireworks proliferation. Additionally, displays will be authorized at a frequency equal to or less than one every two months in each area.

• Retain permitting requirements and general and special restrictions for each event. Fireworks displays will not exceed thirty minutes with the exception of two longer displays per year that will not exceed one hour. Standard requirements include the use of a ramp-up period, wherein salutes are not allowed in the first five minutes of the display; the removal of plastic and aluminum labels and wrappings; and post-show reporting and cleanup. The sanctuary will continue to assess displays and restrict the number of aerial salute effects on a case-by-case basis, and will implement general and special restrictions unique to each fireworks event as necessary.

These measures are designed to prevent an incremental proliferation of fireworks displays and disturbance throughout the sanctuary and minimize area of impact by confining displays to primary traditional use areas. They also effectively remove fireworks impacts from 95 percent of the sanctuary's coastal areas, place an annual quota and multiple permit conditions on the displays authorized within the remaining five percent of the coast, and impose a sanctuary-wide seasonal prohibition on all fireworks displays. These measures were developed in order to assure that protected species and habitats are not jeopardized by fireworks activities. They have been well received by local fireworks sponsors who have pledged their cooperation in protecting sanctuary resources.

NMFS has carefully evaluated the mitigation measures described previously and considered their effectiveness in past implementation to determine whether they are likely to effect the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures includes consideration of the following factors in relation to one another: (1) The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals, (2) the proven or likely efficacy of the specific measure to minimize adverse impacts as planned; (3) the practicability of the measure for applicant implementation, including consideration of personnel safety, and practicality of implementation.

It is unlikely that injury, serious injury, or mortality to marine mammals would result from any permitted coastal fireworks display. The impacts of the project will likely be limited to temporary behavioral disturbance. However, to reduce the amount and degree of behavioral disturbance that occurs, NMFS and MBNMS have developed the previously described mitigation measures. Based on evaluation of the applicant's proposed measures and their efficacy over the past 6 years of permitting fireworks, NMFS has determined that these mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for IHAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The MBNMS has monitored commercial fireworks displays for potential impacts to marine life and habitats for many years, beginning in 1993. Though monitoring techniques and intensity have varied over the years and visual monitoring of wildlife abundance and behavioral responses to nighttime displays is challenging, observed impacts have been consistent. Wildlife activity nearest to disturbance areas returns to normal (pre-display species distribution, abundance, and activity patterns) within 12–15 hours, and no signs of wildlife injury or mortality have ever been discovered as a result of managed fireworks displays.

In order to continue the long-term understanding of the effects of fireworks displays on pinnipeds, as well as to estimate levels of incidental take and ensure compliance with MMPA authorizations, MBNMS will require its applicants to conduct a pre-event census of local marine mammal populations within the acute fireworks impact area no earlier than 36 hours prior to the display. Each applicant will also be required to conduct post-event monitoring in the acute fireworks impact area to record injured or dead marine mammals, within 24 hours of completion of the display. In addition, applicants will be required to notify NMFS and the local stranding network of any injured or dead marine mammals discovered during post-event monitoring.

MBNMS must submit a draft annual monitoring report to NMFS within 60 days after the conclusion of the calendar year. MBNMS must submit a final annual monitoring report to the NMFS within thirty days after receiving comments from NMFS on the draft report. If no comments are received from NMFS, the draft report will be considered to be the final report. In addition, the MBNMS will continue to make its information available to other marine mammal researchers upon request.

**Estimated Take by Incidental Harassment**

NMFS is authorizing MBNMS to take harbor seals and California sea lions, by Level B harassment only, incidental to permitting of coastal fireworks displays. These activities are expected to harass marine mammals present in the vicinity of the displays through behavioral disturbance only, in the form of temporary evacuation of usual and accustomed haul-out sites. The estimated take of sea lions and harbor seals was determined by using a synthesis of information, including unpublished data gathered by MBNMS biologists at the specific display sites, unpublished aerial survey data from Point Piedras Blancas to Bodega Rock, results of independent surveys conducted in the MBNMS and personal communication with those researchers, and population estimates from surveys covering larger geographic areas. Numbers of animals that may be present were analyzed for four general areas: Half Moon Bay (HMB), North Monterey Bay (NMB; containing Santa Cruz/Soquel sites), South Monterey Bay (SMB; containing Monterey Peninsula sites), and Cambria. Table 1 details the total number of authorized takes. Methodology of take estimation was

discussed in detail in NMFS' notice of proposed IHA (76 FR 29196; May 20, 2011).

TABLE 1—AUTHORIZED NUMBERS OF INCIDENTAL MARINE MAMMAL TAKES, BY DISPLAY AREA

| Display location | Time of year | Estimated maximum number of events per year | Estimated maximum number of animals present per event (total) | |
|---|---|---|---|---|
| | | | California sea lions | Harbor seals |
| HMB | July | 4 | 100 (400) | 65 (260) |
| NMB (Santa Cruz) | October | 3 | 190 (570) | 5 (15) |
| NMB (Aptos) | October | 2 | 5 (10) | 50 (100) |
| NMB (Capitola) | May | 1 | 190 | 50 |
| SMB (Monterey) | July | 4 | 800 (3,200) | 60 (240) |
| SMB (Monterey) | January | 1 | 1,500 | 60 |
| SMB (Pacific Grove) | July | 1 | 150 | 100 |
| Cambria* (high intensity) | July | 2 | 50 (100) | 60 (120) |
| Cambria* (low intensity) | July | 2 | 25 (50) | 60 (120) |
| Total | | 20 | 6,170 | 1,065 |

* Intensity refers to public and private displays. Private displays tend to be of lower intensity, and would thus likely result in lower numbers of California sea lions disturbed. Harbor seals are more sensitive to stimuli than California sea lions and numbers disturbed would likely be unchanged.

**Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as '' * * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

In determining whether or not authorized incidental take will have a negligible impact on affected species stocks, NMFS considers a number of criteria regarding the impact of the proposed action, including the number, nature, intensity, and duration of Level B harassment take that may occur. The effects of coastal fireworks displays are typically limited to short term and localized changes in behavior, including temporary departures from haul-outs to avoid the sight and sound of commercial fireworks. Fireworks displays are inherently highly limited in duration and will not occur on consecutive days at any fireworks site in the sanctuary. The mitigation measures proposed by MBNMS—and implemented as components of NMFS' incidental take authorizations since 2005—further reduce potential impacts. As described previously, these measures ensure that permitted fireworks displays avoid times of importance for breeding, as well as limiting displays to five percent of sanctuary coastline that is already heavily used by humans, and generally limiting the overall amount and intensity of activity. No take by injury and/or death is anticipated, and harassment takes will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. Additionally, the MBNMS fireworks displays will not have an unmitigable adverse impact on the availability of marine mammal stocks for subsistence use, as there are no subsistence uses for California sea lions or harbor seals in California waters.

As shown in Table 1, at all four designated display sites combined, twenty fireworks events per year could likely disturb a maximum total of 6,170 California sea lions out of a total estimated population of 238,000. This number is small relative to the population size (2.6 percent). For harbor seals, a maximum of 1,065 animals out of a total estimated population of 34,233 could be disturbed within the sanctuary as a result of twenty fireworks events per year at all four designated display sites combined. These numbers are small relative to the population size (3.1 percent).

Based on the foregoing analysis, behavioral disturbance to marine mammals in MBNMS will be of low intensity and limited duration. To ensure minimal disturbance, MBNMS will implement the mitigation measures described previously, which NMFS has determined will serve as the means for effecting the least practicable adverse effect on marine mammals stocks or populations and their habitat. NMFS finds that MBNMS' permitting of coastal fireworks displays will result in the incidental take of small numbers of marine mammals, and that the authorized number of takes will have no more than a negligible impact on the affected species and stocks.

**Impact on Availability of Affected Species for Taking for Subsistence Uses**

There are no relevant subsistence uses of marine mammals implicated by this action.

**Endangered Species Act (ESA)**

There are no ESA-listed marine mammals under NMFS' jurisdiction found in the action area that will be affected by the action; therefore, no consultation under the ESA is required by NMFS.

**National Environmental Policy Act (NEPA)**

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as implemented by the regulations published by the Council on Environmental Quality (40 CFR parts 1500–1508), and NOAA Administrative Order 216–6, NMFS and MBNMS prepared an Environmental Assessment (EA) on the Issuance of Regulations Authorizing Incidental Take of Marine Mammals and Issuance of National Marine Sanctuary Authorizations for Coastal Commercial Fireworks Displays within the Monterey Bay National Marine Sanctuary, to consider the direct, indirect and cumulative effects to the human environment resulting from issuance of sanctuary permits for fireworks displays and issuance of an IHA to MBNMS. NMFS signed a Finding of No Significant Impact (FONSI) on June 21, 2006. NMFS has reviewed MBNMS's application and determined that there are no substantial changes to the proposed action and that there are no new direct, indirect, or cumulative effects to the human environment resulting from issuance of an IHA to

MBNMS. Therefore, NMFS has determined that a new or supplemental EA or Environmental Impact Statement is unnecessary, and reaffirms the existing FONSI for this action. The existing EA and FONSI for this action are available for review at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

**Determinations**

NMFS has determined that the impact of conducting the specific activities described in this notice and in the IHA request in the specific geographic region in California may result, at worst, in a temporary modification in behavior (Level B harassment) of small numbers of marine mammals. Further, this activity is expected to result in a negligible impact on the affected species or stocks of marine mammals. The provision requiring that the activity not have an unmitigable impact on the availability of the affected species or stock of marine mammals for subsistence uses is not implicated for this action.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to MBNMS to permit fireworks displays in the coastal waters of California from the period of July 4, 2011, through July 3, 2012, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: June 23, 2011.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–16204 Filed 6–27–11; 8:45 am]

BILLING CODE 3510–22–P

## CONSUMER PRODUCT SAFETY COMMISSION

**[CPSC Docket No. 11–C0005]**

## Viking Range Corporation, Provisional Acceptance of a Settlement Agreement and Order

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Viking Range Corporation, containing a civil penalty of $450,000.00.

**DATES:** Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by July 13, 2011.

**ADDRESSES:** Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 11–C0005, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

**FOR FURTHER INFORMATION CONTACT:** William J. Moore, Trial Attorney, Division of Enforcement and Information, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7583.

**SUPPLEMENTARY INFORMATION:** The text of the Agreement and Order appears below.

Dated: June 21, 2011.

**Todd A. Stevenson,**

*Secretary.*

**Settlement Agreement**

1. In accordance with 16 CFR 1118.20, Viking Range Corporation (''Viking'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') hereby enter into this Settlement Agreement (''Agreement'') under the Consumer Product Safety Act (''CPSA''). The Agreement and the incorporated attached Order resolve the Staff's allegations set forth below.

**The Parties**

2. The Staff is the staff of the Consumer Product Safety Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Viking is a corporation organized and existing under the laws of the State of Mississippi, with its principal corporate office located at 111 W. Front Street, Greenwood, Mississippi.

**Staff Allegations**

4. Between 1999 and April 2006, Viking manufactured and distributed approximately forty-five thousand (45,000) built-in, 48 inch, side-by-side refrigerators and 36 inch refrigerators with bottom freezers under the Viking brand name (the ''Refrigerators''). The Refrigerators were sold nationwide through retailers and authorized Viking distributors for between $4,700 and $6,400.

5. The Refrigerators are ''consumer products'' and, at all times relevant hereto, Viking was a ''manufacturer'' of these consumer products, which were ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8) and (11) of the CPSA, 15 U.S.C. 2052(a)(5), (8) and (11).

6. The Refrigerators are defective because the ''tower'' hinges attaching the Refrigerator door to the cabinet can detach, allowing the door to fall on consumers.

7. Viking received its first complaints involving hinge failure in January 2001 and introduced redesigned hinges by January 2002.

8. By September 2006, Viking stopped using the ''tower'' hinge on new production. By April 2008, Viking had received eight injury complaints. In April 2008, Viking developed a new field repair fix kit for consumers whose refrigerators exhibited problems with the hinges.

9. Despite being aware of the information set forth in Paragraphs six through eight, Viking did not report to the Commission until April of 2009. By that time, Viking was aware of at least ten injury reports involving Refrigerator hinge failures. The Refrigerators were recalled in June of 2009.

10. Although Viking had obtained sufficient information to reasonably support the conclusion that the Refrigerators contained a defect which could create a substantial product hazard, or created an unreasonable risk of serious injury or death, Viking failed to immediately inform the Commission of such defect or risk as required by sections 15(b)(3) and (4) of the CPSA, 15 U.S.C. 2064(b)(3) and (4). In failing to do so, Viking knowingly violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4) as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

11. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Viking is subject to civil penalties for its knowing failure to report as required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

**Response of Viking Range Corporation**

12. Viking denies the allegations of the Staff that the Refrigerators contain a defect which could create a substantial product hazard or create an unreasonable risk of serious injury or death, and denies that it violated the reporting requirements of Section 15(b) of the CPSA, 15 U.S.C. 2064(b).

**Agreement of the Parties**

13. Under the CPSA, the Commission has jurisdiction over this matter and over Viking.

14. In settlement of the Staff's allegations, Viking shall pay a civil penalty in the amount of four hundred fifty thousand dollars ($450,000.00) within twenty (60) calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via *http://www.pay.gov.*

15. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute an admission by Viking or a determination by the Commission that Viking violated the CPSA's reporting requirements.

16. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

17. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Viking knowingly, voluntarily and completely waives any rights it may have in this matter to the following: (i) An administrative or judicial hearing; (ii) judicial review or other challenge or contest of the Commission's actions; (iii) a determination by the Commission as to whether Viking failed to comply with the CPSA and the underlying regulations; (iv) a statement of findings of fact and conclusions of law; and (v) any claims under the Equal Access to Justice Act.

18. The Commission may publicize the terms of the Agreement and the Order.

19. The Agreement and the Order shall apply to and be binding upon Viking and each of its successors and/or assigns.

20. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Viking and each of its successors and/or assigns to appropriate legal action.

21. The Agreement may be used in interpreting the Order. Understandings, agreements, representations or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification or alteration is sought to be enforced.

22. If any provision of the Agreement or the Order is held to be illegal, invalid or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Viking agree that severing the provision materially affects the purpose of the Agreement and the Order.

VIKING RANGE CORPORATION

Dated: *5/19/11*

By: Fred Carl, Jr., President and Chairman of the Board, Viking Range Corporation, 111 W. Front Street, Greenwood, MS 38930.

Dated: *5/20/11*

By: Michael J. Gidding, Esquire, Brown & Gidding PC, 3201 New Mexico Avenue, NW, Suite 242, Washington, DC 20016–2756, Counsel for Viking Range Corporation.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Cheryl A. Falvey, General Counsel.

Mary B. Murphy, Assistant General Counsel

Dated: *6/17/11*

By: William J. Moore, Jr, Trial Attorney, Division of Compliance, Office of the General Counsel.

**Order**

Upon consideration of the Settlement Agreement entered into between Viking Range Corporation (''Viking''), and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Viking, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

*Ordered* that the Settlement Agreement be, and is, hereby, accepted; and it is

*Further Ordered* that Viking shall pay a civil penalty in the amount of four hundred fifty thousand dollars ($450,000.00) within sixty (60) days of service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made by electronically to the CPSC via *http://* www.pay.gov. Upon the failure of Viking to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Viking at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 17th day of June, 2011.

By Order of the Commission.

Todd A. Stevenson,

*Secretary, U.S. Consumer Product Safety Commission.*

[FR Doc. 2011–16198 Filed 6–27–11; 8:45 am]

**BILLING CODE 6355–01–P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### U.S. Air Force Academy Board of Visitors; Notice of Meeting

**AGENCY**: U.S. Air Force Academy Board of Visitors, DoD.

**ACTION:** Meeting notice.

**SUMMARY:** In accordance with 10 U.S.C. 9355, the United States Air Force Academy (USAFA) Board of Visitors (BoV) will meet in Harmon Hall, 2304 Cadet Drive, Suite 3300, at USAFA in Colorado Springs, CO, on July 15–16, 2011. Activities will begin on Friday, July 15 at 10 a.m. with an optional tour, and the formal meeting will convene at 1:30 p.m. The next day, the activities will begin at 7 a.m. and the formal meeting will convene at 8:15 a.m. The purpose of this meeting is to review morale and discipline, social climate, curriculum, instruction, infrastructure, fiscal affairs, academic methods, and other matters relating to the Academy. Specific topics for this meeting include a USAFA metrics review, the USAFA Diversity strategic plan, the USAFA Prep School mission, the USAFA Sexual Assault and Harassment culture and program, the Superintendent's and Command Chief update, and the AF Academy Athletic Corporation.

In accordance with 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155, two portions of this meeting shall be closed to the public because they will involve matters covered by subsection (c)(6) of 5 U.S.C. 552b.

Public attendance at the open portions of this USAFA BoV meeting shall be accommodated on a first-come, first-served basis up to the reasonable and safe capacity of the meeting room. In addition, any member of the public wishing to provide input to the USAFA BoV should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements must address the following details: The issue, discussion, and a recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and provide any necessary background information. Written statements can be submitted to the Designated Federal

Officer (DFO) at the Air Force Pentagon address detailed below at any time. However, if a written statement is not received at least 10 days before the first day of the meeting which is the subject of this notice, then it may not be provided to, or considered by, the BoV until its next open meeting. The DFO will review all timely submissions with the BoV Chairperson and ensure they are provided to members of the BoV before the meeting that is the subject of this notice. For the benefit of the public, rosters that list the names of BoV members and any releasable materials presented during open portions of this BoV meeting shall be made available upon request.

If, after review of timely submitted written comments, the BoV Chairperson and DFO deem appropriate, they may choose to invite the submitter of the written comments to orally present their issue during an open portion of the BoV meeting that is the subject of this notice. Members of the BoV may also petition the Chairperson to allow specific persons to make oral presentations before the BoV. Per 41 CFR 102–3.140(d), any oral presentations before the BoV shall be in accordance with agency guidelines provided pursuant to a written invitation and this paragraph. Direct questioning of BoV members or meeting participants by the public is not permitted except with the approval of the DFO and Chairperson.

**FOR FURTHER INFORMATION CONTACT:** Or to attend this BoV meeting, contact Mr. Dave Boyle, USAFA Programs Manager, Directorate of Force Development, Manpower, Personnel, and Services, AF/A1DOA, 2221 S. Clark St, Ste. 500, Arlington, VA 22202, (240) 612–4019.

**Bao-Anh Trinh,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 2011–16109 Filed 6–27–11; 8:45 am]

**BILLING CODE 5001–10–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** U.S. Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for domestic licensing by the Department of the Navy.

*The following patents are available for licensing:* U.S. Patent No. 7,231,356: Operating Plan for Machinery//U.S. Patent No. 7,260,833: One-Way Network Transmission Interface Unit//U.S. Patent No. 7,280,925: Installed Instrumentation Maintenance Method//U.S. Patent No. 7,278,514: Acoustic Noise Filter//U.S. Patent No. 7,284,570: Electrically Powered Valve for Controlling, Monitoring and Evaluating Fluid Flow//U.S. Patent No. 7,290,738: Dual Jet Emerging Lift Augmentations System for Airfoils and Hydrofoils//U.S. Patent No. 7,301,641: Fiber Optic Smoke Detector//U.S. Patent No. 7,307,702: Color Switchable Stress-Fracture Sensor for Damage Control//U.S. Patent No. 7,316,194: Rudders for High-Speed Ships//U.S. Patent No. 7,322,786: Mobile Loader for Transfer of Containers Between Delivery Vehicles and Marine Terminal Cranes//U.S. Patent No. 7,324,016: Navigational Indicating System for Rotary Wing Aircraft//U.S. Patent No. 7,328,879: Equipment Installation Support on Foundation//U.S. Patent No. 7,340,918: Magnetostrictive Drive of Refrigeration Systems//U.S. Patent No. 7,367,464: Pendulation Control System With Active Rider Block Tagline System for Shipboard Cranes//U.S. Patent No. 7,374,668: Valve Automated In-Situ Cleaning System for Oil Water Separator//U.S. Patent No. 7,390,380: Processing of Shipboard Wastewater//U.S. Patent No. 7,432,821: Fiber Optic Measurement of Bearing Surface Wear//U.S. Patent No. 7,430,866: Air-Independent Fuel Combustion Energy Conversion//U.S. Patent No. 7,436,090: Direct Drive Hybrid Rotary Motor//U.S. Patent No. 7,443,764: Resonant Acoustic Projector//U.S. Patent No. 7,441,308: Watertight Door Hinge Support//U.S. Patent No. 7,451,719: High Temperature Superconducting Degaussing System//U.S. Patent No. 7,451,714: All Purpose Seal//U.S. Patent No. 7,479,193: Preparation of Positive Magnetostrictive Materials for Use Under Tension//U.S. Patent No. 7,492,240: Integrated Capacitor and Inductor//U.S. Patent No. 7,519,502: Surface Profile Measurement Processing Method//U.S. Patent No. 7,517,263: Advanced Blade Sections for High Speed Propellers//U.S. Patent No. 7,517,191: Operational Maintenance of Air-Conditioning Installations//U.S. Patent No. 7,516,712: Vertical Damper For Mooring Vessels//U.S. Patent No. 7,521,708: High Sensitivity Ring-Squid Magnetic Sensor//U.S. Patent No. 7,525,711: Actively Tunable Electromagnetic Metamaterial//U.S. Patent No. 7,548,489: Method for Designing a Resonant Acoustic Projector//U.S. Patent No. 7,547,997: Aircraft Electrical Servicing Adapter//U.S. Patent No. 7,552,018: Method for Quickly Quantifying the Resistance of a Thin Film as a Function of Frequency//U.S. Patent No. 7,556,471: Inter-Ship Personnel Transfer Device and Method of Moving Between Compacted State and Non-Compacted State//U.S. Patent No. 7,557,485: Ion Conducting Electrolyte Brush Additives//U.S. Patent No. 7,557,747: Method and Apparatus Using Fast Electronic Switching for Multi-Channelizing a Single-Channel Radar System//U.S. Patent No. 7,564,152: High Magnetostriction of Positive Magnetostrictive Materials Under Tensile Load//U.S. Patent No. 7,592,173: Sea Operationally Enhanced Bioreactor//U.S. Patent No. 7,592,727: Quiet Load for Motor Testing//U.S. Patent No. 7,597,010: Method of Achieving High Transduction Under Tension or Compression//U.S. Patent No. 7,621,230: Carrier and Flow-Through Ship//U.S. Patent No. 7,624,080: A Smart Sensor Continuously Adapting to a Data Stream in Real Time Using Both Permanent and Temporary Knowledge Bases to Recognize Sensor Measurements//U.S. Patent No. 7,681,515: Life Raft Launcher//U.S. Patent No. 7,685,922: Composite Ballistic Armor Having Geometric Ceramic Elements for Shock Wave Attenuation//U.S. Patent No. 7,707,957: Structural Support to Underwater Vessels Using Shape Memory Alloys//U.S. Patent No. 7,714,536: Battery Charging Arrangement for Unmanned Aerial Vehicle Utilizing the Electromagnetic Field Associated With Utility Power Lines to Generate Power to Inductively Charge Energy Supplies//U.S. Patent No. 7,720,566: Control Algorithm for Vertical Package Conveyor//U.S. Patent No. 7,734,449: Numerical Modeling of Nonlinear Ship-Wave Interactions//U.S. Patent No. 7,736,063: Bearing Apparatus Having Electrorheological Fluid Lubricant//U.S. Patent No. 7,756,689: Numerical Modeling of Six-Degree-Freedom Ship Motion//U.S. Patent No. 7,760,585: Through the Bulkhead Repeater//U.S. Patent No. 7,761,125: Intermodulation Distortion Reduction Methodology for High Temperature Superconductor Microwave Filters//U.S. Patent No. 7,761,226: Interactive Pedestrian Routing System//U.S. Patent No. 7,793,374: Adjustable Height Bridging Ramp System//U.S. Patent No. 7,794,808: Elastomeric Damage-Control Barrier//U.S. Patent No. 7,795,120: Doping Wide Band Gap Semiconductors//U.S. Patent No.

7,797,130: Baseline Comparative Leading Indicator Analysis//U.S. Patent No. 7,798,873: Design of a Flush Inlet as Integrated With a Ship Hull for Waterjet Propulsion//U.S. Patent No. 7,808,426: Remote Sensing of Wave Heights Using a Broadband Radar Arrangement//U.S. Patent No. 7,818,193: Ship Stowage Aid Analysis Program//U.S. Patent No. 7,830,302: Remote Sensing of Wave Heights Using a Narrowband Radar Arrangement//U.S. Patent No. 7,833,627: Composite Armor Having Layered Metallic Matrix and Dually Embedded Ceramic Elements//U.S. Patent No. 7,834,490: Bimetallic Strips for Energy Harvesting, Actuation and Sensing//U.S. Patent No. 7,839,721: Modal Beam Processing of Acoustic Vector Sensor Data//U.S. Patent No. 7,841,290: Marine Shaftless External Propulsor//U.S. Patent No. 7,854,189: Modular Missile Launching Assembly//U.S. Patent No. 7,854,912: High Strength Zr (Hf or Ti)—Ta-B Ceramics//U.S. Patent No. 7,864,394: Dynamically Variable Metamaterial Lens and Method//U.S. Patent No. 7,894,204: Matrix Board Assembly//U.S. Patent No. 7,900,453: Metal Fuel Combustion and Energy Conversion System//U.S. Patent No. 7,905,192: Integrated Underwater Surface Cleaning and Effluent Treatment System//U.S. Patent No. 7,938,053: Armor//U.S. Patent No. 7,946,149: Explosive Pulse Testing of Protective Specimens//U.S. Patent No. 7,946,211: Electrical and Elastomeric Disruption of High-Velocity Projectiles//U.S. Patent No. 7,952,239: Bimetallic Strips for Energy Harvesting, Actuation and Sensing//U.S. Statutory Invention Registration No. Us H2206: Tactile Side-Slip Corrective Yaw Control for Aircraft//U.S. Statutory Invention Registration No. Us H2223: Patterned Micrometer-Sized Antibody Features.

**ADDRESSES:** Requests for copies of the patents cited should be directed to: Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0022, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, and must include the patent number.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joseph Teter, Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0022, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone 301–227–4299.

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: June 22, 2011.

**L.R. Almand,**

*Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 2011–16140 Filed 6–27–11; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF DEFENSE

### Department of Navy

### Notice of Availability of Government-Owned Inventions; Available for Licensing

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

*The following patents are available for licensing:*

U.S. Patent No. 7,836,723 B2: Air Conditioning System, issued on November 23, 2010

U.S. Patent No. 7,667,399 B2: Large Area Hybrid Photomultiplier Tube, issued on February 23, 2010

U.S. Patent No. 7,687,992 B2: Gating Large Area Hybrid Photomultiplier Tube, issued on March 30, 2010

U.S. Patent No. 7,714,991 B1: Fiber Optic Optical Subassembly Configuration, issued on May 11, 2010

U.S. Patent No. 7,776,233 B2: Oleaginous Corrosion Resistant Composition, issued on August 17, 2010

U.S. Patent No. 7,811,391: Composition and Process for Preparing Protective Coatings on Metal Substrates, issued on October 12, 2010

U.S. Patent No. 7,819,031 B2: Parachute Opening and Shock Emulator, issued October 26, 2010

U.S. Patent No. 7,820,076 B2: Oleaginous Corrosion and Mildew-Inhibiting Composition, issued October 26, 2010

U.S. Patent Application No. 7,839,304 B2: Method and System for Alerting Aircrew to Unsafe Vibration Levels, issued November 23, 2010

U.S. Patent No. 7,853,144 B2: Optical Bench Fiber Optic Transmitter, issued December 14, 2010

U.S. Patent No. 7,897,558 B1: Siloxane Solvent Composition, issued March 1, 2011

U.S. Patent No. 7,954,410 B2: Fast Rope, issued June 7, 2011

U.S. Patent Application No. 12/554,147: Integrated Net-Centric Diagnostics Dataflow for Avionics System, Navy Case No. 98492, filed on September 4, 2009

U.S. Patent Application No. 12/821,812: Global Visualization Process Terrain Database Builder, Navy Case No. PAX31, filed on June 23, 2010

U.S. Patent Application No. 12/945,923: Body Core Thermo-Regulation Cooling Sleeve, Navy Case No. PAX33, filed on August 26, 2010

U.S. Patent Application No. 12/868,772: Colorimetric Method for Detection of Biodiesel in Fuel, Navy Case No. PAX37, filed on August 26, 2010

U.S. Patent Application No. 12/905,177: Gradient Magnetometer Atom Interferometer, Navy Case No. PAX41, filed on October 15, 2010

U.S. Patent Application No. 12/792, 183: Extended Range Optical Imaging System for use in Turbid Media, Navy Case No. PAX44, filed on June 2, 2010.

**ADDRESSES:** Requests for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business and Partnership Office, Office of Research and Technology Applications, Building 505, 22473 Millstone Road, Patuxent River, MD 20670, 301–342–5586 or e-mail *paul.fritz@navy.mil.*

**DATES:** Requests for data, samples, and inventor interviews should be made prior to August 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business and Partnership Office, Office of Research and Technology Applications, Building 505, 22473 Millstone Road, Patuxent River, MD 20670, 301–342–5586 or e-mail *paul.fritz@navy.mil.*

**SUPPLEMENTARY INFORMATION:** The U.S. Navy intends to move expeditiously to license these inventions. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business and Partnership Office, Office of Research and Technology Applications, Building 505, 22473 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to existing licensee's, small business firms, and consortia involving small business firms. The Navy intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

A Patent Cooperative Treaty application may be filed for each of the patents as noted above. The Navy intends that licensees interested in a license in territories outside of the United States will assume foreign prosecution and pay the cost of such prosecution.

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: June 21, 2011.

**L.R. Almand,**

*Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 2011–16135 Filed 6–27–11; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–380]**

### Application to Export Electric Energy; Freepoint Commodities, LLC

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Freepoint Commodities, LLC has requested authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

**DATES:** Comments, protests, or requests to intervene must be submitted to DOE and received on or before July 28, 2011.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, *Mail Code:* OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

**FOR FURTHER INFORMATION CONTACT:** Lamont Jackson (Program Office) 202–586–0808.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On April 15, 2011, DOE received an application from Freepoint Commodities requesting authority to transmit electric energy from the United States to Canada for ten years as a power marketer. Freepoint Commodities proposes to use existing authorized international electric transmission facilities that are appropriate for open access by third parties, including facilities that have been authorized but not yet constructed and placed into operation. Neither Freepoint Commodities nor any of its affiliates owns, controls or operates any electric transmission facilities in the United States.

The electric energy that Freepoint Commodities proposes to export to Canada would be surplus energy purchased from electric utilities and Federal power marketing agencies within the United States. The existing international transmission facilities to be utilized by Freepoint Commodities have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE and must be received on or before the date listed above.

Comments on the Freepoint Commodities application to export electric energy to Canada should be clearly marked with OE Docket No. EA–380. An additional copy is to be filed directly with Daniel M. Hecht, General Counsel, Freepoint Commodities, LLC, 1281 E. Main Street, Third floor, Stamford, CT 06902 and Margaret A. Moore, Vincenzo Franco, and Julia Wood, Van Ness Feldman, P.C., 1050 Thomas Jefferson St., NW., seventh floor, Washington, DC 20007. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC on June 21, 2011.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2011–16146 Filed 6–27–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–379]**

### Application to Export Electric Energy; Freepoint Commodities, LLC

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Freepoint Commodities, LLC has requested authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act (FPA).

**DATES:** Comments, protests, or requests to intervene must be submitted to DOE and received on or before July 28, 2011.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, *Mail Code:* OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

**FOR FURTHER INFORMATION CONTACT:** Lamont Jackson (Program Office) 202–586–0808.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C.824a(e)).

On April 15, 2011, DOE received an application from Freepoint Commodities requesting authority to transmit electric energy from the United States to Mexico for ten years as a power marketer. Freepoint Commodities proposes to use existing authorized international electric transmission facilities that are appropriate for open access by third parties, including facilities that have been authorized but not yet constructed and placed into operation. Neither Freepoint Commodities nor any of its affiliates owns, controls or operates any electric transmission facilities in the United States.

The electric energy that Freepoint Commodities proposes to export to Mexico would be surplus energy purchased from electric utilities and Federal power marketing agencies within the United States. The existing international transmission facilities to be utilized by Freepoint Commodities have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

*Procedural Matters:* Any person desiring to become a party to these

proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE and must be received on or before the date listed above.

Comments on the Freepoint Commodities application to export electric energy to Mexico should be clearly marked with OE Docket No.EA–379. An additional copy is to be filed directly with Daniel M. Hecht, General Counsel, Freepoint Commodities, LLC, 1281 E. Main Street, Third floor, Stamford, CT 06902 and Margaret A. Moore, Vincenzo Franco, and Julia Wood, Van Ness Feldman, P.C., 1050 Thomas Jefferson St., NW., seventh floor, Washington, DC 20007. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.Hopkins@hq.doe.gov.*

Issued in Washington, DC on June 21, 2011.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. 2011–16145 Filed 6–27–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### DOE Response to Recommendation 2010–2 of the Defense Nuclear Facilities Safety Board, Pulse Jet Mixing at the Waste Treatment and Immobilization Plant

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** On May 20, 2011, the Defense Nuclear Facilities Safety Board reaffirmed their Recommendation 2010–2, concerning *Pulse Jet Mixing at the Waste Treatment and Immobilization Plant,* to the Department of Energy. In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(d), The following represents the Secretary of Energy's final decision on the recommendation and the reasoning for his decision.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Petras, Nuclear Engineer, Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Washington, DC on June 20, 2011.

**Mari-Josette Campagnone,**

*Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security.*

June 20, 2011

The Honorable Peter S. Winokur, Chairman,
Defense Nuclear Facilities Safety Board,
625 Indiana Avenue, NW, Suite 700,
Washington, DC 20004–2901.

Dear Mr. Chairman:

This letter responds to your May 20, 2011, letter which reaffirmed the Defense Nuclear Facilities Safety Board (Board) Recommendation 2010–2, *Pulse Jet Mixing (PJM) at the Waste Treatment and Immobilization Plant (WTP).*

Your reaffirmation letter interpreted the Department of Energy's (DOE) February 10, 2011, response to Recommendation 2010–2 as a rejection of sub-recommendations 3 and 4. The intent of our response was not to reject any of the sub-recommendations, but to clarify the actions being taken to validate the design, operation, and safety of the WTP PJM and transfer systems.

Our response explained that we agreed with both the intent of your Recommendation and that more testing and analyses should be conducted to provide additional confidence that the WTP PJM and transfer systems will achieve design and operating requirements. Since then, we have worked closely to ensure a mutual understanding of your Recommendation. The enclosure to this letter documents the significant progress we have collectively made in achieving the necessary clarification and a path forward for implementing your Recommendation. DOE is encouraged by the level of clarity achieved to date, and confident we have established the foundational premises needed to bring each of the remaining issues to closure, using the Implementation Plan (IP) as the vehicle for documenting a final technical approach that can be mutually endorsed.

This clarification serves to restate my decision to accept your Recommendation 2010–02. We believe our IP will meet the underlying safety improvement objectives of your Recommendation. Pursuant to 42 U.S.C. § 2286e, an IP for this Recommendation will be prepared and delivered to the Board no later than 90 days after publication of this response in the *Federal Register.*

We look forward to further working with the Board and your staff to reach final closure on the intent and scope of deliverables while maintaining our obligations to address Hanford's environmental liabilities. We are confident that the IP for Recommendation 2010–2 is being developed, such that the WTP Project completes its design and construction activities with full assurance of nuclear safety for the life of WTP operations.

Mr. Dale Knutson is the responsible manager for Recommendation 2010–02. If you have any further questions, please contact me or Dr. Inés R. Triay, Assistant Secretary for Environmental Management, at (202) 586–7709.

Sincerely,

Steven Chu

Enclosure

### Enclosure to 2010–2 Reaffirmation Response

DOE has taken, and continues to take, steps to increase confidence that the pulse jet-mixed vessels will comply with operating requirements. Your reaffirmation letter highlights several primary elements of the Recommendation, and we believe our shared concerns regarding pulse jet mixing at the Waste Treatment Plant (WTP) will be adequately addressed by the Department of Energy's (DOE) current direction related to resolving pulse jet mixing and transfer system uncertainty. The project will rely on preventing nuclear criticality safety hazards by establishing and implementing waste acceptance criteria (WAC) for any waste transferred to WTP. A large scale test program will be used to determine the performance limits of the mixing, sampling, and transfer systems and its results will be used to confirm the WAC are implemented with due consideration for uncertainties and margins.

Significant progress has been made on achieving the clarifications needed to further develop, and ultimately complete the implementation plan for Defense Nuclear Facilities Safety Board's (Board) Recommendation 2010–2. The Board's May 20, 2011, letter which reaffirmed the Defense Nuclear Facilities Safety Board Recommendation 2010–2, *Pulse Jet Mixing at the Waste Treatment and Immobilization Plant,* identified the following residual concerns; progress in achieving clarification on each of those concerns is provided:

- *Testing must be done at the proper scale to demonstrate the limits of*

*performance of the vessel mixing and transfer systems.*

WTP will perform the first Large Scale Integrated Tests (LSIT) at 4, 8 and 14-foot scale. The project has identified commercially available vessels to support this increment of testing. If test results indicate a larger scale test than the 14-foot vessel is beneficial, a decision point will be included in the implementation plan to determine the scope and benefit of testing at a larger scale. A full technical justification will be provided that will support our decision.

• *These tests must be conducted using appropriate waste simulants with properties that conservatively envelope the properties of the high-level wastes stored in Hanford's tank farms.*

WTP has issued a charter and formed a panel of subject matter experts to review and advise on all aspects of large-scale mixing including the simulants to be used for LSIT that address the physical parameters of testing and represent known properties of tank waste. There are concerns with selection of simulants which include manufacture, use and disposal of large volumes of potentially very hazardous simulant materials that would require a significant waste disposal effort of its own; and potentially prohibitive cost for manufacture and disposal of simulants. It is understood these considerations represent tradeoffs, but the goal is to ultimately not undermine the representative accuracy of the simulants required for testing.

• *Testing must demonstrate that pulse-jet mixed vessels can be adequately operated using prototypic equipment (e.g., control systems) during multi-batch operations.*

DOE has approved an additional scope of work to release the contractor to initiate design, procurement and perform ''informational testing'' activities that will be the predecessor to the more formalized testing; conducted in accordance with NQA–1 requirements, to support design confirmation.

• *The heel removal and cleanout systems must be designed and tested as early as practicable, the performance limits for these systems established, and the limits of their operation factored into the development of the WAC and the operating envelope of WTP.*

Components of large scale testing that will result in a better understanding of mixing characteristics such as bottom motion, zones of influence and partial particle separation will be performed early within the testing program to better define what is required for heel removal and cleanout system designs. The project then intends to test heel removal and cleanout very early in the testing phase and in every scale of LSIT in order to inform design decisions for process vessels.

• *The Board considers that DOE has rejected sub-Recommendation 3 associated with the use of large scale tests to verify and validate computational fluid dynamic (CFD) models of full-scale WTP mixing systems * * * the Board believes that obtaining data from near full-scale tests is necessary to establish within a reasonable range of uncertainty, that the WTP's CFD model is an accurate representation of the full scale mixing systems.*

DOE agrees that it is necessary that the CFD model adequately represent full-scale mixing systems, but has not yet concluded that data from future near-full-scale tests is necessary to complete model verification and validation (V&V). DOE is in the process of determining if existing data sets are sufficient to complete V&V requirements of the CFD model for pulse jet-mixed vessels in accordance with the ASME V&V 20–2009, *Standard for Verification and Validation in Computational Fluid Dynamics and Heat Transfer.* The DOE review is ongoing, including evaluation by subject matter experts from the National Energy Technology Laboratory. If necessary, additional data sets, that may include the upcoming near-full-scale tests, will be collected to support the V&V.

• *The Board also considers that DOE has rejected sub-recommendation 4 associated with the capability of WTP and tank farms to obtain representative samples. The DNFSB also stated that: Testing must demonstrate that representative samples can be taken from waste feed delivery tanks to meet the Waste Acceptance Criteria (WAC), and from WTP process vessels to meet safety related operating requirements.*

WTP distinguishes between *safety samples* and *process samples,* and has plans to accomplish both in a manner that will result in meeting the WAC and conducting safe and reliable operations in WTP. The current control strategy for the Pretreatment Facility safety basis requires confirmatory samples for criticality safety and inventory control samples for the Low-Activity Waste Facility safety basis. The sampling portion of the control strategy for criticality safety is in revision based on previous mixing tests results, which concluded that the assumptions in the Criticality Safety Evaluation could not be sufficiently verified in pulse jet mixed vessels. The samples for Low-Activity Waste Facility safety basis compliance can be obtained with the current sampling design. DOE will continue to work closely with the Board staff to establish a common definition of *representative* samples as applied to the discussion above.

[FR Doc. 2011–16138 Filed 6–27–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### DOE Final Decision in Response to Recommendation 2010–1 of the Defense Nuclear Facilities Safety Board, Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** On April 27, 2011, The Defense Nuclear Facilities Safety Board reaffirmed their Recommendation 2010–1, *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers,* to the Department of Energy. In accordance with section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(d), the following represents the Secretary of Energy's final decision on the recommendation and the reasoning for his decision.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amanda Anderson, Nuclear Engineer, Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Issued in Washington, DC on May 27, 2011.

**Mari-Josette Campagnone,**

*Departmental Representative to the Defense Nuclear Facilities Safety Board, Office of Health, Safety and Security.*

Report on the Secretary of Energy's Final Decision and Supporting Reasoning Regarding Defense Nuclear Facilities Safety Board (Board) Recommendation 2010–1, *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers*

SUMMARY: This report, together with its attachments, documents the Secretary of Energy's final decision and supporting reasoning regarding Defense Nuclear Facilities Safety Board (DNFSB or Board) Recommendation 2010–1, *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers.*

DISCUSSION: The Board issued Recommendation 2010–1 on October 29, 2010. The Recommendation focused on the Department of Energy (DOE) requirements for developing and approving Documented Safety Analyses for nuclear facilities. The Recommendation identified six specific sub-recommendations.

As explained in detail in the Department's February 28, 2011, response to the Recommendation (the text of which is included as Attachment 1 to this report), the Secretary of Energy agreed with the intent of the Recommendation, but took exception to some of the included technical details on how best to meet that intent. The Secretary of Energy's response constituted a partial acceptance of the Recommendation.

Per 42 United States Code (USC) Section 2286d paragraph (d), when the Secretary of Energy does not fully accept a Recommendation, the Board must either reaffirm or revise the recommendation, and the Secretary of Energy must then:

* * * consider the Board's action and make a final decision on whether to implement all or part of the Board's recommendations. Subject to subsection (h), the Secretary shall publish the final decision and the reasoning for such decision in the Federal Register and shall transmit to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives a written report containing that decision and reasoning.

The Board reaffirmed the Recommendation in a letter to the Secretary of Energy on April 27, 2011. In the letter, the Board provided clarifications regarding the purposes for each sub-recommendation and stated that there was flexibility in the manner in which the sub-recommendations were intended to be implemented by the Department. The Secretary of Energy agreed that the clarifications provided by the Board will allow the Department to develop an Implementation Plan that satisfies DOE's and the Board's mutual objectives of ensuring that DOE requirements are clear and ensure adequate protection of the public, workers, and the environment. For example, the Board clarified that use of the term structures, systems, and components (SSCs) controls is inclusive of administrative controls. Further, the Board clarified that the recommendation did not require that the Department use quantitative risk assessment to make determinations of what constitutes adequate protection for the public.

In a letter dated May 27, 2011, the Secretary of Energy reaffirmed his February 28, 2011, response as his final decision (the text of which is included as Attachment 2 to this report). DOE agrees with the critical importance of the use of the 25 rem evaluation guideline in determining safety controls that provide adequate protection of the public. DOE has appropriately applied this approach in the safety analyses for the overwhelming majority of its nuclear facilities. For the few existing facilities where existing safety controls could not mitigate the dose below the 25 rem guideline in some accident scenarios, DOE has implemented necessary compensatory measures and will continue to strengthen both those and take any additional measures necessary to provide adequate public protection. Further, the Secretary of Energy confirmed continuation of the policy that the 25 rem evaluation guideline will be met for all new facilities.

DOE believes its existing nuclear safety regulatory framework, utilizing the DOE Standard 3009, *Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses,* as a safe harbor methodology, can continue to be used to effectively implement the 10 CFR 830 safety basis requirements. DOE has committed to and is in the process of revising Standard 3009 and its associated safety analysis review Standard (DOE Standard 1104, *Review and Approval of Nuclear Facility Safety Basis and Safety Design Basis Documents*) to ensure the Standards clearly describe how the 25 rem evaluation guideline is to be applied for designating safety controls and the process that will be followed when mitigated dose cannot be reduced to less than the 25 rem evaluation guideline.

DOE will strengthen its review criteria and approval process for situations where the 25 rem evaluation guideline cannot be met for existing facilities, including designation of appropriate senior management levels of approval authority when the guideline is exceeded. DOE anticipates the review criteria to be deterministic criteria rather than criteria that would required a risk analysis.

Attachment 1

February 28, 2011

The Honorable Peter S. Winokur,
Chairman, Defense Nuclear Facilities Safety Board,
625 Indiana Avenue, NW Suite 700,
Washington, DC 20004.

Dear Mr. Chairman:

This is in response to your October 29, 2010, letter which provided Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 2010–1, *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers.*

The Department of Energy (DOE) is strongly dedicated to the safety of the public, our workers, and the environment at all of our facilities. We share your conviction that a clear set of requirements and standards is vital for safe operations. In 2008, we began a comprehensive re-examination of our nuclear safety requirements to assure they were clear, concise, complete, and current. In March 2010, we enhanced our Directives Reform effort to better define and expedite it, and we have made good progress in revising key nuclear safety Directives and the DOE Nuclear Safety Policy.

We have not changed our interpretation of requirements for developing and approving Documented Safety Analyses (DSAs). We have made significant nuclear safety improvements by upgrading facility safety bases and designs and by improving our safety standards and procedures. Much has been learned and will continue to be learned about improving safety. With your assistance, we have applied the lessons learned from industry incidents to upgrade our requirements. Our improving safety record reflects these lessons.

Though DOE has an improving safety record, we always strive to do better. Complacency will not be tolerated. With this in mind, the Department has carefully evaluated Recommendation 2010–1 and how we can use it to improve nuclear safety at the Department. The Department partially accepts the Board's Recommendation; a detailed explanation is provided below. We have clarified aspects of sub-recommendation 1, 2, 3c, 4 and 5e. Several elements of Recommendation 2010–1 will be addressed in the revision of Standard 3009, *Preparation Guide for U.S. Department of Energy Nonreactor Nuclear Facility Documented Safety Analyses.* As we develop the Implementation Plan for Recommendation 2010–1, we will further engage the Board.

*Sub-recommendation 1—Immediately affirm the requirement that unmitigated, bounding-type accident scenarios will be used at DOE's defense nuclear facilities to estimate dose consequences at the site boundary, and that a sufficient combination of SSCs must be designated safety class to prevent exposures at the site boundary from approaching 25 rem TEDE [Total Effective Dose Equivalent].*

DOE Standard 3009 details DOE's expectations for accident analyses to identify hazard controls for most DOE nuclear facilities. DOE agrees that Standard 3009 specifies that the consequences of unmitigated accidents should to be compared to the 25 rem TEDE Evaluation Guideline to determine if safety class controls are warranted. As you know, new facilities follow the 25 rem TEDE limit as a siting criteria according to DOE Standard 1189, *Integration of Safety into the Design Process.* For existing facilities safety class Structures, Systems and Components (SSCs) are normally utilized to prevent exposures from exceeding 25 rem TEDE. Standard 3009 also includes provisions for use of other means and controls to assure safety where off-site exposures are not reduced to below 25 rem TEDE, or where SSCs are not available. The revised Standard 3009 will further clarify the use of the Evaluation Guideline in accident analyses for both new and existing facilities.

*Sub-recommendation 2—For those defense nuclear facilities that have not implemented compensatory measures sufficient to reduce exposures at the site boundary below 25 rem TEDE, direct the responsible program secretarial officer to develop a formal plan to meet this requirement within a reasonable timeframe.*

DOE's responsible Program Secretarial Officer has evaluated the safety measures planned or currently in place to protect the public at the few remaining defense nuclear facilities that have potential accident doses above the 25 rem TEDE, and has determined that these measures provide adequate protection. This conclusion is based on an evaluation of all protective measures in place at these facilities, including disciplined formal operations, training, safety management programs, control of materials, and layers of controls to prevent accidents and/or mitigate their consequences.

Consistent with DOE's commitment to continuous safety improvement, we will

continue to evaluate options for enhancing the safety of these facilities. In some cases, such as the Plutonium Facility (PF–4) at Los Alamos National Laboratory, DOE anticipates that several near-term planned improvements will reduce the bounding mitigated dose to below 25 rem TEDE. Additionally, we have already made substantial progress in reducing the projected offsite dose that could result from specific types of accidents. For many limited life facilities we will achieve permanent, long-term risk reduction through deactivation and decommissioning. Once we revise DOE Standard 3009, DOE will evaluate the documented safety analyses for all facilities as part of the required periodic update process. The Implementation Plan will describe the steps that will be taken to evaluate safety improvement options for those facilities determined to need such improvements.

*Sub-recommendation 3—Revise DOE Standard 3009–94 to identify clearly and unambiguously the requirements that must be met to demonstrate that an adequate level of protection for the public and workers is provided through a DSA. This should be accomplished, at a minimum, by: (followed by four paragraphs labeled a–d).*

DOE is revising DOE Standard 3009 to clearly indicate which of its provisions are mandatory. DOE will implement the specific steps identified in paragraphs (a), (b), and (d) of this sub-recommendation. However, DOE will not commit to implementing paragraph (c) as written, because doing so would predetermine a specific outcome to the current revision process without any technical basis. This would be contrary to DOE's standards development process. DOE will consider the advice provided in paragraph (c) (i.e., identification of the criteria that must be met for safety class Systems, Structures and Components (SSCs)), during the Standard 3009 revision process.

The Implementation Plan will outline the development process and how the steps identified in all the paragraphs in this sub-recommendation will be followed.

*Sub-recommendation 4—Amend 10 CFR Part 830 by incorporating the revised version of DOE Standard 3009–94 into the text as a requirement, instead of as a safe harbor cited in Table 2.*

The purpose of a ''safe-harbor'' is to provide a standard methodology that, if followed, will provide credible analyses and adequate safety. Nothing in the concept implies that ''safe-harbor'' methodologies are the only way to meet requirements. Of course, alternative approaches must be approved by DOE, and the criteria for accepting these alternatives should be clearly defined.

DOE is planning to review 10 CFR 830 (issued in 2001), which identifies nuclear safety requirements, but we cannot commit to the exact language prescribed in the Recommendation-that is placing Standard 3009 in the body of the rule. As a part of our review, we will update DOE Standard 3009, clearly identifying those provisions that are mandatory. When DOE Standard 3009 is not applied, appropriate means for reviewing and improving alternative methodologies will be established. This will assure implementation of DOE Standard 3009, where appropriate, while maintaining the flexibility to improve the standard, as needed. This approach has allowed DOE to make several important improvements to DOE Standards in the past. Details of the revision process will be provided in the Implementation Plan.

*Sub-recommendation 5—Formally establish the minimum criteria and requirements that govern Federal approval of the DSA, by revision of DOE Standard 1104–2009, and other appropriate documents. The criteria and requirements should include: (followed by five paragraphs labeled a–e).*

DOE agrees with the need for clear guidelines and requirements on the appropriate delegation of nuclear safety authorities and will revise DOE Standard 1104–2009 and other appropriate DOE documents to achieve this. DOE will implement the specific steps identified in paragraphs (a) through (d) of this sub-recommendation. However, DOE cannot commit to implementing paragraph (e) as written, because it implies that quantitative risk-based decision making must be established and used. The Department is exploring how quantitative methods could be applied to support decision-making on safety issues at our sites and will keep the Board apprised of developments in this area. Today, deterministic and qualitative means are used.

The Department agrees that the decision to approve safety bases must rest on a documented conclusion. The conclusion should indicate that the safety basis provides a reasonable assurance that the facility can be operated safely, that the hazards have been adequately analyzed, and that the engineered and administrative controls provide adequate protection for the public, workers and the environment. The Implementation Plan will outline DOE's revision to standard 3009 and the safety basis development process, will clarity the safety basis approval process, and identify how the steps in this sub-recommendation will be addressed.

*Sub-recommendation 6—Formally identify the responsible organization and identify the processes for performing independent oversight to ensure the responsibilities identified in Item 5 above are fully implemented.*

DOE has already identified the responsible organization for performing independent oversight for the Secretary: the Office of Independent Oversight, within the Office of Health, Safety and Security (HSS). However, HSS Independent Oversight protocols and delegation processes will be reviewed and modified as necessary to assure adequate oversight of nuclear safety delegations. The Implementation Plan will describe the steps DOE will take review and update the protocols and delegation processes.

We appreciate your advice and will continue working closely with the Board to improve the Department's Directives in a manner that meets our shared objectives to the safe, effective, and efficient execution of our mission. We look forward to working further with the Board and its staff as we prepare the Implementation Plan.

If you have any further questions please contact Glenn Podonsky, Chief, Office of Health, Safety and Security, at 202–287–6071.

Sincerely,

Steven Chu.

Attachment 2

May 27, 2011

The Honorable Peter S. Winokur,
Chairman, Defense Nuclear Facilities Safety Board,
625 Indiana Avenue, NW Suite 700,
Washington, DC 20004.

Dear Mr. Chairman:

Thank you for the clarification provided in the Defense Nuclear Facilities Safety Board's letter dated April 27, 2011, reaffirming Recommendation 2010–1, *Safety Analysis Requirements for Defining Adequate Protection for the Public and the Workers.* As described in our initial response, dated, February 28, 2011, we had largely agreed with the intent of your Recommendation, but had disagreed on some of its technical details. Your letter addressed those details, and indicated that you intended for there to be flexibility in implementing them.

Since last February, our staffs have worked closely to ensure that we understood the original intent of Recommendation 2010–1, as well as the underlying safety improvements that were sought. Valuing the significance of this recommendation, and the importance I place upon having an effective working relationship with your office, I have also directed that Deputy Secretary Dan Poneman and Associate Deputy Secretary Mel Williams maintain an active engagement with the Board members to facilitate effective communications between our organizations on all safety matters. The clarifications you provided in your reaffirmation letter have furthered that dialogue, and will help guide our work to develop an Implementation Plan that satisfies our mutual objectives of ensuring that our requirements are clear, ensure adequate protection of the public, workers and the environment, and can be implemented as written.

We are well on our way to making some of the improvements that our staffs have discussed. I deeply appreciate the efforts both the DNFSB and DOE have made in working together, especially in the past month. While the analysis and conclusions in my enclosed letter dated February 28, 2011, still hold and constitute my final decision, I believe our implementation plan will meet the underlying safety improvement objectives of your Recommendation. I have assigned Dr. James B. O'Brien, Acting Director, Office of Nuclear Safety, within the Office of Health, Safety and Security, to be the Department's responsible manager for developing the Implementation Plan. Dr. O'Brien can be reached at (301) 903–3331.

Sincerely,

Steven Chu.

Attachment 2

[FR Doc. 2011–16141 Filed 6–27–11; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER11–3243–001.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per: Amendment to Submission of Response to Request for Additional Information to be effective N/A.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5071.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3653–001.
*Applicants:* Florida Power & Light Company.
*Description:* Florida Power & Light Company submits tariff filing per 35.17(b): FPL and OUC Non-Substantive Amendment to Service Agreement No. 297 to be effective 8/1/2011.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5093.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3820–000.
*Applicants:* Newmont Nevada Energy Investment, LLC.
*Description:* Newmont Nevada Energy Investment, LLC submits tariff filing per 35.12: Newmont Nevada Energy Investment LLC Baseline Tariff Filing to be effective 6/14/2011.
*Filed Date:* 06/14/2011.
*Accession Number:* 20110614–5168.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 05, 2011.

*Docket Numbers:* ER11–3841–000.
*Applicants:* PacifiCorp.
*Description:* PacifiCorp submits tariff filing per 35.13(a)(2)(iii: OATT Generator Imbalance Revisions to be effective 8/21/2011.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5034.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3842–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* Duke Energy Carolinas, LLC submits tariff filing per 35: MBR Tariff Compliance Filing (Related to ER11–3061) to be effective 5/23/2011.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5047.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3843–000.
*Applicants:* Southern California Edison Company.
*Description:* Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Sentinel Project Tie-Line Facilities Agreement to be effective 6/22/2011.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5072.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3844–000.
*Applicants:* Carolina Power & Light Company.
*Description:* Carolina Power & Light Company submits tariff filing per 35: Revised Market-Based Rate Tariff of Carolina Power and Light to be effective 5/23/2011 under ER11–3844 Filing Type: 80.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5073.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3845–000.
*Applicants:* Kansas City Power & Light Company.
*Description:* Kansas City Power & Light Company submits tariff filing per 35.13(a)(2)(iii: KCP&L RS 130 (1st Revised) Filing to be effective 8/20/2011.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5092.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

*Docket Numbers:* ER11–3846–000.
*Applicants:* El Paso Electric Company.
*Description:* El Paso Electric Company submits tariff filing per 35.1: Rate Schedules to be effective 6/21/2011.
*Filed Date:* 06/21/2011.
*Accession Number:* 20110621–5094.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, July 12, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 proceedings 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.

Dated: June 21, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–16077 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG11–95–000.
*Applicants:* Calpine Greenleaf, Inc.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Calpine Greenleaf, Inc.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5168.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2138–001; *ER10–2139–001.*
*Applicants:* Grand Ridge Energy II LLC, Grand Ridge Energy III LLC.
*Description:* Triennial Report of Grand Ridge Energy II LLC and Grand Ridge Energy III.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5182.
*Comment Date:* 5 p.m. Eastern Time on Friday, August 19, 2011.

*Docket Numbers:* ER10–2719–005; *ER10–2718–005; ER10–2578–007; ER10–2633–005; ER10–2570–005; ER10–2717–005; ER10–3140–005.*
*Applicants:* East Coast Power Linden Holding, LLC, Cogen Technologies Linden Venture, L.P., Fox Energy Company, LLC, Birchwood Power Partners, L.P., Shady Hills Power Company LLC, EFS Parlin Holdings, LLC, Inland Empire Energy Center, LLC.
*Description:* Notice of Non-Material Change in Status of GE Companies *et al.*
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5176.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER10–3122–001.
*Applicants:* AES Placerita, Incorporated.
*Description:* Supplement to Notice of Non-Material Change in Status of AES Placerita, Incorporated.
*Filed Date:* 05/27/2011.
*Accession Number:* 20110527–5143.
*Comment Date:* 5 p.m. Eastern Time on Friday, July 1, 2011.

*Docket Numbers:* ER11–2224–009.
*Applicants:* New York Independent System Operator, Inc.
*Description: New York Independent System Operator, Inc. submits tariff filing per 35: Compliance Filing—ICAP Demand Curves to be effective 12/31/9998.*
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5147.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER11–2592–001.
*Applicants:* Pacific Gas and Electric Company, Southern California Edison Company.
*Description:* Joint Progress Report, Motion for Extension of Temporary Waiver of Certain CAISO Tariff Provisions and Request for Expedited Consideration of Pacific Gas and Electric Company, *et. al.*
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5164.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER11–2694–001.
*Applicants:* Southern California Edison Company, Pacific Gas and Electric Company.
*Description:* Southern California Edison Company submits Joint Progress Report and Motion for Extension of Temporary Waiver of Certain California Independent System Operator (CAISO) Tariff Provisions, and Request for Expedited Consideration.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5165.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER11–3837–000.
*Applicants:* Southern California Edison Company.
*Description:* Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: LGIA BLM Project Coso Energy Developers to be effective 6/2/2011.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5114.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER11–3838–000.
*Applicants:* Westar Energy, Inc.
*Description:* Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: Oklahoma Municipal Power Authority Balancing Area Services Agreement to be effective 6/1/2011.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5153.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER11–3839–000.
*Applicants:* Nevada Power Company.
*Description:* Nevada Power Company submits tariff filing per 35.13(a)(2)(iii: Rate Schedule No. 30 Amended & Restated Transmission Facilities Agreement to be effective 6/20/2011.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5154.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

*Docket Numbers:* ER11–3840–000.
*Applicants:* Calpine Greenleaf, Inc.
*Description:* Calpine Greenleaf, Inc. submits tariff filing per 35.12: Application for Market-Based Rate Authorization to be effective 6/21/2011.
*Filed Date:* 06/20/2011.
*Accession Number:* 20110620–5159.
*Comment Date:* 5 p.m. Eastern Time on Monday, July 11, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

As it relates to any qualifying facility filings, the notices of self-certification [or self-recertification] listed above, do not institute a proceeding regarding qualifying facility status. A notice of self-certification [or self-recertification] simply provides notification that the entity making the filing has determined the facility named in the notice meets the applicable criteria to be a qualifying facility. Intervention and/or protest do not lie in dockets that are qualifying facility self-certifications or self-recertifications. Any person seeking to challenge such qualifying facility status may do so by filing a motion pursuant to 18 CFR 292.207(d)(iii). Intervention and protests may be filed in response to notices of qualifying facility dockets other than self-certifications and self-recertifications.

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 proceedings 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.

Dated: June 21, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–16076 Filed 6–27–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL11–46–000]**

### NextEra Energy Resources, LLC, Peetz Logan Interconnect, LLC, PWEC, LLC; Notice of Petition for Declaratory Order

Take notice that on June 20, 2011, pursuant to Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (FERC or Commission), NextEra Energy Resources, LLC (NextEra) and two of its indirect subsidiaries, Peetz Logan Interconnect, LLC (PLI) and PWEC, LLC (PWEC), collectively filed a petition for declaratory order to confirm the priority rights of PWEC to capacity over the radial line constructed by PLI to interconnect NextEra's new wind-powered generation to the integrated transmission grid. The radial facilities over which this priority access confirmation is sought include an approximately 78.2 mile, 230 kV radial transmission line and related equipment and facilities owned by PLI (collectively, the PLI Facilities). For the convenience in this petition, all of NextEra's Logan County, Colorado projects collectively are hereinafter referred to as the Logan County Wind Projects, which include Logan Wind Energy, LLC, Peetz Table Wind Energy, LLC, and Northern Colorado Wind Energy, LLC.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on July 21, 2011.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16181 Filed 6–27–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. OR11–11–000]**

### Mid-America Pipeline Company, LLC; Notice of Petition for Declaratory Order

Take notice that on May 26, 2011, pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.207(a)(2)(2011),

Mid-America Pipeline Company, LLC (Mid-America), petitioned the Commission to issue a declaratory order approving the overall tariff, rate and priority service structure for a proposed expansion of Mid-America's existing Rocky Mountain pipeline system (the Expansion).

Mid-America states that the Expansion would provide needed additional capacity for the transportation of natural gas liquids on Mid-America's Rocky Mountain pipeline system from the Green River, Uintah and Piceance Basins in Wyoming, Utah and Colorado to the terminus of the System at the fractionation hub at Hobbs/Gaines, Texas.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 proceedings 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.

*Comment Date:* 5 p.m. Eastern Time on Friday, July 8, 2011.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16175 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–3312–000]**

### New York Independent System, Operator, Inc.; Notice of Filing

Take notice that, on June 21, 2011, the New York Independent System Operator, Inc. filed to amend its filing in the above captioned docket with information required under the Commission's regulations. Such filing served to reset the filing date in this proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on July 12, 2011.

Dated: June 22, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16173 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–3840–000]**

### Calpine Greenleaf, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Calpine Greenleaf, 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 July 12, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive 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.

Dated: June 22, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16172 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2206–030]**

### Progress Energy Carolinas; Notice of Meeting

On May 31, 2011, Progress Energy Carolinas (Progress Energy), licensee for the Yadkin-PeeDee Hydroelectric Project No. 2206, contacted Commission staff regarding a meeting with the National Marine Fisheries Service (NMFS) and staff to discuss what is needed to complete formal consultation for shortnose sturgeon (*Acipenser brevirostrum*) under section 7 of the Endangered Species Act. Accordingly, Commission staff will meet with representatives of NMFS and Progress Energy, the Commission's non-Federal representative for the Yadkin-PeeDee Project, on Wednesday, July 13, 2011. The meeting will start at 10 a.m. at NMFS' office at 263 13th Avenue South, St. Petersburg, Florida. All local, state, and Federal agencies, and interested parties, are hereby invited to attend and observe this meeting. Questions concerning the meeting should be directed to Ryan Hendren of NMFS at (727) 551–5610.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16176 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[ Project No. 14127–000]**

### Natural Currents Energy Services, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On March 29, 2011, and supplemented on May 31, 2011, Natural Currents Energy Services, LLC filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Cohansey River Energy Project, which would be located on the Cohansey River in Cumberland County, New Jersey. The proposed project would not use a dam or impoundment. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) Installation of 10 to 30 NC Sea Dragon or Red Hawk tidal turbines at a rated capacity of 100 kilowatts, (2) an estimated 660 ~ 985 feet in length of additional transmission infrastructure, and (3) appurtenant facilities. The project is estimated to have an annual minimum generation of 3,504,000 kilowatt-hours with the installation of 10 units.

*Applicant Contact:* Mr. Roger Bason, Natural Currents Energy Services, LLC, 24 Roxanne Boulevard, Highland, New York 12561, (845) 691–4009.

*FERC Contact:* Woohee Choi (202) 502–6336.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14127–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16178 Filed 6–27–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

**[Project No. 14213–000]**

### Ashton Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 13, 2011, Ashton Hydro, 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 Ashton Hydroelectric Project (Ashton Dam Project or project) to be located on the Blackstone River, in the Town of Cumberland, in Providence County, Rhode Island. 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 run-of-the-river project would consist of: (1) The existing 400-foot-long, 20-foot-high Ashton Dam, which is owned by the Rhode Island Department of Environmental Management and includes a 250-foot-long main spillway, a two-gated outlet structure, and a 150-foot-long auxiliary spillway; (2) an existing 35 acre reservoir having a normal storage capacity of about 112 acre-feet (ac-ft) at elevation of 74 feet above mean sea level and a maximum storage capacity of about 200 ac-ft; (3) a new intake on the upstream face of the existing dam; (4) a new powerhouse that would be integrated into the existing dam at the existing auxiliary spillway and outlet structure containing a single 1.0 megawatt bulb turbine-generating unit; (5) a new 0.25-mile-long, 13.8-kilovolt transmission line extending from the new switchyard/substation to the existing utility pole number 47 in Cumberland, Rhode Island; and (6) fish passage/protection measures. The estimated annual generation of the project would be 3.5 gigawatt-hours.

*Applicant Contact:* Mr. Bruce DiGennaro, Managing Partner, Essex Energy Partners, LLC, 27 Vaughan Ave., Newport, Rhode Island 02840; *phone:* (401) 619–4872.

*FERC Contact:* John Ramer; *phone:* (202) 502–8969.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14213–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16180 Filed 6–27–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14212–000]**

### Albion Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 13, 2011, Albion Hydro, 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 Albion Hydropower Project (Albion Dam Project or project) to be located on the Blackstone River, in the Town of Cumberland, in Providence County, Rhode Island. 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 run-of-the-river project would consist of: (1) The existing 400-foot-long, 25-foot-high Albion Dam, which is owned by the Rhode Island Department of Transportation and includes a 300-foot-long overflow spillway and a two-gated outlet structure; (2) an existing 55 acre reservoir having a normal storage capacity of about 235 acre-feet (ac-ft) at elevation of 87.5 feet and a maximum storage capacity of about 347 ac-ft; (3) a new intake on the upstream face of the existing dam; (4) a new powerhouse that would be integrated into the existing dam at the existing outlet structure containing a single 1.2 megawatt bulb turbine-generating unit; (5) a new 600-foot-long, 13.8-kilovolt transmission line extending from the new switchyard/substation to the existing Bell Atlantic utility pole number 31–1 in Cumberland, Rhode Island; and (6) fish passage/protection measures. The estimated annual generation of the project would be 4.0 gigawatt-hours.

*Applicant Contact:* Mr. Bruce DiGennaro, Managing Partner, Essex Energy Partners, LLC, 27 Vaughan Ave., Newport, Rhode Island 02840; phone: (401) 619–4872.

*FERC Contact:* John Ramer; phone: (202) 502–8969.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14212–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16179 Filed 6–27–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14116–000; Project No. 14128–000]**

### Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

Keechelus Hydropower, LLC, Project No. 14116–000

Qualified Hydro 32, LLC, Project No. 14128–000

On March 21, 2011, the Keechelus Hydropower, LLC (Keechelus Hydropower), 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 Keechelus Dam Hydroelectric Project (project) to be located on Keechelus Lake, Kittitas County, Washington. Another permit application for this same site was filed by Qualified Hydro 32, LLC (Qualified Hydro), on March 30, 2011. Both of the proposed projects would utilize the existing Keechelus Dam, which is owned by the U.S. Bureau of Reclamation. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Keechelus Hydropower project would consist of the following: (1) A 36-inch-diameter, 620-foot-long steel-reinforced plastic pipe penstock; (2) a 40-foot-long, 30-foot-wide concrete powerhouse; (3) a single 500-kilowatt (kW) Francis turbine; (4) a 5,900-foot-long, 13.8-kilovolt (kV) underground cable connecting to an existing transmission line; and (5) appurtenant facilities. The estimated annual generation of the project would be 4 gigawatt-hours (GWh).

The proposed Qualified Hydro project would consist of the following: (1) A 14-foot-wide intake structure containing trash racks, an intake gate, and associated accessories adjacent to the existing intake; (2) a 750-foot-long, 6-foot-diameter buried steel penstock; (3) a 40-foot-long, 50-foot-wide reinforced concrete powerhouse containing a 2-megawatt (MW) Francis turbine; (4) a 40-foot-long, 40-foot-wide sub-station; (5) a 1.15-mile long, 34.5–69-kilovolt (kV) transmission line; and (6) appurtenant facilities. The estimated annual generation of the project would be 6.7 GWh.

*Applicant Contact (Keechelus Hydropower):* Mr. Carl Spetzler, CEO, Orenco Hydropower, Inc., 745 Emerson Street, Palo Alto, California 94301; phone: (650) 475–4467.

*Applicant Contact (Qualified Hydro):* Ms. Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114; phone: (978) 226–1531.

*FERC Contact:* Kelly Wolcott, (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of

intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about these projects, including copies of the applications, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket numbers (P–14116–000 and P–14128–000) in the docket number field to access the documents. For assistance, contact FERC Online Support.

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16177 Filed 6–27–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–3322–000]**

### PJM Interconnection, L.L.C.; Notice of Discussion Topics for Staff Technical Conference

Take notice that a technical conference in the above captioned proceeding will be held on July 29, 2011, beginning at 9 a.m. (EDT) in the Commission Meeting Room at the Commission's headquarters, located at 888 First Street, NE., Washington, DC 20426. The technical conference will be led by Commission staff. Commissioners may be in attendance. All interested parties are invited to attend. Registration is not required.

On June 3, 2011, the Commission issued an order in this proceeding, which accepted and suspended proposed tariff changes submitted by PJM Interconnection, L.L.C. (PJM), subject to refund and the outcome of a technical conference.[1] This notice establishes the topics for discussion at the technical conference to be held in order to discuss the performance measurement of demand response in PJM's capacity market, the Reliability Pricing Model (RPM).

The purpose of the technical conference is to discuss issues surrounding PJM's April 7, 2011 filing, which proposes to modify the reference point of capacity demand response load reductions so that each end-use customer's actual load reduction results in a metered load that is less than the customer's Peak Load Contribution (PLC).[2]

In addition to the issues identified by the Commission in the June 3 Order, there will be a discussion on the topics identified in the Appendix.

Also, to supplement the record, PJM should provide information and data on the following issues, as relevant to the proceeding, by July 11, 2011. PJM should provide examples and/or details regarding how an increase in the number of aggregators reporting compliance in excess of PLC presents a threat to system reliability. In addition, PJM should explain whether the 1,000 MW of demand response that was in excess of PLC in 2010 was concentrated in one zone or whether the demand response was spread out over several zones. PJM should also provide data regarding whether the customer reductions in 2010 that ranged from 150 percent to 300 percent or more of their PLC, and which accounted for 28 percent of total guaranteed load drop (GLD) reductions, were associated solely with aggregation or if these reductions were also associated with individual market participants.[3] Further, PJM should provide information on the prevalence of PJM customers with limited curtailment capability, particularly with regards to customers associated with the 48 percent of total GLD reductions that were recorded at less than or equal to 75 percent of the customer's PLCs, as detailed in the 2010 State of the Market Report for PJM. Finally, PJM should describe the prevalence of peak-shaving activity in the PJM market and whether it is possible to distinguish between peak-shaving activity and changes in peak demand over time.

Other parties are also free to file data related to these issues. While responses should be provided by July 11, 2011, Commission staff may further discuss the responses, and may have additional questions, during the technical conference.

Parties will have 15 days after the technical conference to respond to the issues raised at the conference as well as PJM's responses to the issues detailed above.

Parties that have intervened in the proceeding and that are interested in participating on a panel should contact Tristan Cohen at *Tristan.Cohen@ferc.gov* or (202) 502–6598 by July 1, 2011. A subsequent notice will be issued announcing panelists and the format of the conference.

The conference will be transcribed. Transcripts will be available immediately for a fee from Ace Reporting Company (202–347–3700 or 1–800–336–6646). A free webcast of this event is also available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

Parties seeking additional information regarding this conference should contact Tristan Cohen at *Tristan.Cohen@ferc.gov* or (202) 502–6598.

[1] 135 FERC ¶ 61,212 (2011).

[2] PJM describes the PLC as the average of the end-user's actual load during the five coincident peak hours of the preceding delivery year. PJM April 7, 2011 Filing at note 11.

[3] Monitoring Analytics, Vol II, at 135 (2010), *available at http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2010/2010-som-pjm-volume2.pdf.*

Dated: June 21, 2011.

**Kimberly D. Bose,**

*Secretary.*

## Appendix

**Discussion Topics for Technical Conference on Performance Measurement of Demand Response in the PJM Capacity Market, July 29, 2011**

*I. Reliability Issues*

1. Whether the customer baseline load (CBL) or peak load contribution (PLC) is a more accurate capacity market performance measure of what a demand response customer would have consumed in the absence of an instruction to reduce load.

2. Whether a demand response resource should be obligated to reduce below its PLC during an emergency event, even if the magnitude of supply that the resource is providing is otherwise equivalent to its capacity commitment.

3. Whether the current PJM add-back process under the guaranteed load drop (GLD) option, which is used to calculate peak load for capacity for the following delivery year, accurately reflects the fact that the load reduction of an over-performing demand response customer (a customer that provides a level of response greater than the MW nominated for it in the capacity auction) has been used to support an under-performing customer (a customer that provides a level of response less than the nominated MW) in a portfolio aggregated to meet the capacity commitment.

4. Whether PJM dispatchers account for PLCs during an emergency.

5. Whether any load in PJM can be at load levels in excess of PLC during an emergency.

*II. Capacity Obligations*

6. Discuss the capacity obligations of end-use customers whose demand response resources have been committed in a prior RPM auction.

7. Whether the PLC limit on nominations in the capacity auction should serve as a basis for requiring load reductions of capacity resources to be below PLC.

*III. Load Reductions and Incentives*

8. Whether the same MW reduction that is voluntarily made by a peak shaving customer in order to reduce capacity costs should also be eligible to receive incentives from PJM's Load Management programs.

9. Whether the current GLD option provides an incentive for aggregators to offset under-performing resources with resources that over-perform.

*IV. Impact of PJM's Proposal*

10. Whether PJM's proposal undermines the GLD methodology.

11. Whether PJM's proposal unduly discriminates against resources on days other than the coincident peak days and whether PJM's proposal negatively affects Annual Demand Resource aggregations.

[FR Doc. 2011–16174 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. TS11–4–000]**

### The Connecticut Transmission Municipal Electric Energy Cooperative; Notice of Request for Waiver or Exemption

Take notice that on June 8, 2011, the Connecticut Transmission Municipal Electric Energy Cooperative filed a petition requesting full waiver or exemption from any reciprocity-based standards of conduct requirements under Order Nos. 899, FERC Stats. & Regs. ¶ 31,035 (2006), or Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008).

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

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 proceedings 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.

*Intervention and Protest Date:* 5 p.m. Eastern Time on Wednesday June 29, 2011.

Dated: June 22, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–16171 Filed 6–27–11; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–SFUND–2011–0523; FRL–9425–7]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Continuous Release Reporting Regulations (CRRR) Under CERCLA 1980 (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on December 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before August 29, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2011–0523, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: superfund.docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Superfund Docket, Environmental Protection Agency, Mailcode: [2822T], 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special

arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–HQ–SFUND–2011–0523, EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:**

Lynn M. Beasley, Regulation and Policy Development Division, Office of Emergency Operations (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–1965; *fax number:* (202) 564–2625; *e-mail address: Beasley.lynn@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–SFUND–2011–0523, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Superfund 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 Superfund Docket is 202–566–0276.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) 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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What information collection activity or ICR does this apply to?

*Affected entities:* Entities potentially affected by this action are not defined. The usage and release of hazardous substances are pervasive throughout industry. EPA expects a number of different industrial categories to report hazardous substance releases under the provisions of the CRRR. No one industry sector or group of sectors is disproportionately affected by the information collection burden.

*Title:* Continuous Release Reporting Regulations (CRRR) under CERCLA 1980 (Renewal).

*ICR numbers:* EPA ICR No. 1445.11, OMB Control No. 2050–0086.

*ICR status:* This ICR is currently scheduled to expire on December 31, 2011. 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 103(a) of CERCLA, as amended, requires the person in charge of a vessel or facility to immediately notify the National Response Center (NRC) of a hazardous substance release into the environment if the amount of the release equals or exceeds the substance's reportable quantity (RQ). The RQ of every hazardous substance can be found in Table 302.4 of 40 CFR 302.4.

Section 103(f)(2) of CERCLA provides facilities relief from this per-occurrence notification requirement if the hazardous substance release at or above the RQ is continuous and stable in quantity and rate. Under the Continuous Release Reporting Requirements (CRRR), to report such a release as a continuous release you must make an initial telephone call to the NRC, an

initial written report to the EPA Region, and, if the source and chemical composition of the continuous release does not change and the level of the continuous release does not significantly increase, a follow-up written report to the EPA Region one year after submission of the initial written report. If the source or chemical composition of the previously reported continuous release changes, notifying the NRC and EPA Region of a change in the source or composition of the release is required. Further, a significant increase in the level of the previously reported continuous release must be reported immediately to the NRC according to section 103(a) of CERCLA. Finally, any change in information submitted in support of a continuous release notification must be reported to the EPA Region.

The reporting of a hazardous substance release that is equal to or above the substance's RQ allows the Federal government to determine whether a Federal response action is required to control or mitigate any potential adverse effects to public health or welfare or the environment. The continuous release of hazardous substance information collected under CERCLA section 103(f)(2) is also available to EPA program offices and other Federal agencies who use the information to evaluate the potential need for additional regulations, new permitting requirements for specific substances or sources, or improved emergency response planning. State and local government authorities and facilities subject to the CRRR use release information for purposes of local emergency response planning. Members of the public, who have access to release information through the Freedom of Information Act, may request release information for purposes of maintaining an awareness of what types of releases are occurring in different localities and what actions, if any, are being taken to protect public health and welfare and the environment. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) 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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10.2 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.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

*Estimated total number of potential respondents:* 3,856.

*Frequency of response:* On occasion.

*Estimated total average number of responses for each respondent:* 8.

*Estimated total annual burden hours:* 315,176 hours.

*Estimated total annual costs:* $15,456,936. This includes an estimated burden cost of $15,310,231and an estimated cost of $146,705 for capital investment or maintenance and operational costs.

For this renewal, we are also providing estimates for use of Continuous Release Reporting Forms (the Forms). The ICR provides a detailed explanation of the Agency's estimate for use of the Forms, which is briefly summarized here:

*Estimated total annual burden hours:* 315,899 hours.

*Estimated total annual costs:* $15,453,810. This includes an estimated burden cost of $15,307,105 and an estimated cost of $146,705 for capital investment or maintenance and operational costs.

**Are there changes in the estimates from the last approval?**

There is an increase of 14,458 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's use of data on the actual number of continuous release reports from several regions and applying a growth rate consistent with prior years reporting. The average annual percent increase in facilities in the previous ICR was approximately 7.5%. The same percent increase was assumed for this ICR. The unit burden hours per respondent information collection activity remains the same as the previous ICR.

**What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: June 22, 2011.

**Kimberly J. Jennings,**

*Acting Deputy Director, Office of Emergency Management.*

[FR Doc. 2011–16193 Filed 6–27–11; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OEI–2006–0037, FRL–9425–2]**

## Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Exchange Network Grants Progress Report (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of

Management and Budget (OMB). This ICR is scheduled to expire on 11/30/11. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Additional comments may be submitted on or before July 28, 2011.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OEI–2006–0037, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., 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. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statue. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or DC–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Ryan Humrighouse, Mail Code 2823T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1680; fax number: 202–566–1684; e-mail address: *humrighouse.ryan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**How can I access the docket and/or submit comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OEI–2006–0037 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the OEI 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 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 OEI Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search'' then key in the docket ID number identified in this document.

**What information is EPA particularly interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) 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 appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What should I consider when I prepare my comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What information collection activity or ICR does this apply to?**

*Docket ID No. EPA–HQ–OPEI–2006–0037*

*Affected entities:* Entities potentially affected by this action are States, Tribal, and Territorial Environmental Offices receiving National Environmental Information Exchange Network (NEIEN) grants.

*Title:* Exchange Network Grants Progress Report (Renewal).

*ICR numbers:* EPA ICR No. 2207.04, OMB Control No. 2025–0006.

*ICR Status:* This ICR is scheduled to expire on November 30, 2011. 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 and 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:* This notice announces the collection of information related to the U.S. EPA NEIEN Grant Program. The EPA Office of Environmental

Information provides funding to EPA's Exchange Network partners (states, territories, and Federally recognized Indian Tribes) to support the development of the NEIEN. The NEIEN is an Internet and- standards-based, secure information system that supports the electronic collection, exchange, and integration of data among its partners. Funding for the Grant Program has been provided through annual congressional appropriations for the EPA.

To enhance the quality and overall public benefit of the Network, EPA proposes to collect information from the NEIEN grantees about how they intend to ensure quality in their projects and the environmental outcomes and outputs from their projects. The proposed Quality Assurance Reporting Form is intended to provide a simple means for grant recipients to describe how quality will be addressed throughout their projects. The Quality Assurance Reporting Form is derived from guidelines provided in the NEIEN 2006 grant solicitation notice. As a stipulation of their award, grant recipients are to submit the form within ninety days of grant award.

Grantees are currently required to submit semi-annual progress reports as a stipulation of their award. In these reports, grantees outline project goals, activities required to meet these goals, and outputs and outcomes of activities to date. At the request of numerous grantees, we are proposing to offer the Progress Reporting Form as a vehicle for collecting information. This form is easier to complete than an unstructured narrative; it can be used as the semi-annual and final report form and the information returned will be of higher quality and comparable.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.5 hours for the Semi-Annual Report Form per response and 1 hour per Quality Assurance Form 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 that 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:* State, Tribal, and Territorial Environmental Offices receiving NEIEN grants.

*Estimated Number of Respondents:* 225. Frequency of Response: Twice for the Semi-Annual Report Form; once for the Quality Assurance Form.

*Estimated Total Annual Hour Burden:* 733. *Estimated Total Annual Cost:* $37,000 includes $0 annualized capital or O&M costs and $37,000 annual labor costs.

**Are there changes in the estimates from the last approval?**

*Changes in the Estimates:* There is no change in estimate from the last ICR renewal.

**What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: June 22, 2011.

**Jeffrey Wells,**

*Acting Director, Information Exchange & Services Division.*

[FR Doc. 2011–16194 Filed 6–27–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–10321]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Early Retiree Reinsurance Program (ERRP); *Use:* Under section 1102 of the Affordable Care Act and implementing regulations at 45 CFR part 149, employment-based plans that offer health benefits to early retirees and their spouses, surviving spouses and dependents are eligible under a temporary program to receive a tax-free reimbursement for the costs of certain health benefits for such individuals (the Early Retiree Reinsurance Program, or ERRP). In order to qualify, plan sponsors must submit a complete application to the U.S. Department of Health & Human Services (HHS). In order to receive reimbursement under the program, they must also submit documentation of actual costs for health care benefits, which consists of documentation of actual costs for the items and services involved, and a list of individuals to whom the documentation applies. Once HHS reviews and analyzes the information on the application, notification will be sent to the plan sponsor about its eligibility to participate in the program. Once HHS reviews and analyzes each reimbursement request, reimbursement under the program will be made to the sponsor, as appropriate. The program's funding is limited to $5 billion, and the program sunsets on January 1, 2014.

As compared with the burden estimates OMB approved on December 22, 2010, for OMB #0938–1087. There is a nominal change to burden of 1 hour, to account for the fact that sponsors have an obligation to update any incorrect or outdated information in their applications. Beyond that, there is no change to burden. The burden hours associated with reading the guidance materials related to disclosing data inaccuracies that are being included with this revised PRA submission, and with completing the Prima Facie Evidence Cover Sheet that is being

included with this revised PRA submission, were already accounted for in the PRA package OMB approved on December 22, 2010. Specially, the burden associated with completing the Prima Facie Evidence cover sheet, was included in the burden estimate for submitting a reimbursement request. The burden associated with reading the guidance paper on reporting data inaccuracies was already included in the burden estimate for disclosing data inaccuracies. *Form Number:* CMS–10321 (OCN: 0938–1087); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions: State, Local, or Tribal Governments; *Number of Respondents:* 13,200; *Number of Responses;* 71,330; *Total Annual Hours:* 1,927,575. (For policy questions regarding this collection, contact Dave Mlawsky at (410) 786–6851. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on July 28, 2011.

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: June 23, 2011.

**Michelle Shortt,**

*Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2011–16233 Filed 6–24–11; 4:15 pm]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0481]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; New Animal Drugs for Investigational Uses

**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 reporting and recordkeeping requirements for ''New Animal Drugs for Investigational Uses.''

**DATES:** Submit electronic or written comments on the collection of information by August 29, 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:** Juanmanuel Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@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.

**New Animal Drugs for Investigational Uses—21 CFR Part 511 (OMB Control Number 0910–0117—Extension)**

FDA has the authority under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to approve new animal drugs. Section 512(j) of the FD&C Act (21 U.S.C. 360b(j)) authorizes FDA to issue regulations relating to the investigational use of new animal drugs. The regulations setting forth the conditions for investigational use of new animal drugs have been codified at part 511 (21 CFR part 511). If the new animal drug is only for tests in vitro or in laboratory research animals, the person distributing the new animal drug must maintain records showing the name and post office address of the expert or expert organization to whom it is shipped and the date, quantity, and batch or code mark of each shipment and delivery for a period of 2 years after such shipment or delivery. Before shipping a new animal drug for clinical investigations in animals, a sponsor must submit to FDA a Notice of Claimed Investigational Exemption (NCIE). The NCIE must contain, among other things, the following specific information: (1) Identity of the new animal drug, (2) labeling, (3) statement of compliance of any non-clinical laboratory studies with good laboratory practices, (4) name and address of each clinical investigator, (5) the approximate number of animals to be treated or amount of new animal drug(s) to be shipped, and (6)

information regarding the use of edible tissues from investigational animals. Part 511 also requires that records be established and maintained to document the distribution and use of the investigational drug to assure that its use is safe, and that the distribution is controlled to prevent potential abuse. The Agency uses these required records under its Bio-Research Monitoring Program to monitor the validity of the studies submitted to FDA to support new animal drug approval and to assure that proper use of the drug is maintained by the investigator.

Investigational new animal drugs are used primarily by drug industry firms, academic institutions, and the government. Investigators may include individuals from these entities as well as research firms and members of the medical professional. Respondents to this collection of information are the persons who use new animal drugs investigationally.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| 21 CFR Part | Number of respondents | Number of responses per respondent | Total annual responses | Average burden per response | Total hours |
|---|---|---|---|---|---|
| 511.1(b)(4) | 206 | 6.01 | 1,238 | 1 | 1,238 |
| 511.1(b)(5) | 206 | .34 | 70 | 8 | 560 |
| 511.1(b)(6) | 206 | .01 | 2 | 1 | 2 |
| 511.1(b)(8) (ii) | 206 | .07 | 15 | 2 | 30 |
| 511.1(b)(9) | 206 | .07 | 15 | 8 | 120 |
| Total | | | | | 1,950 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

| 21 CFR Part | Number of recordkeepers | Number of records per recordkeeper | Total annual records | Average burden per recordkeeping | Total hours |
|---|---|---|---|---|---|
| 511.1(a)(3) | 206 | 2.30 | 473 | 1 | 473 |
| 511.1(b)(3) | 206 | 6.01 | 1238 | 1 | 1,238 |
| 511.1(b)(7)(ii) | 206 | 6.01 | 1238 | 3.5 | 4,333 |
| 511.1(b)(8)(i) | 206 | 6.01 | 1238 | 3.5 | 4,333 |
| Total | | | | | 10,377 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the time required for reporting requirements, record preparation, and maintenance for this collection of information is based on Agency communication with industry. Based on the number of sponsors subject to animal drug user fees, FDA estimates that there are 206 respondents. We use this estimate consistently throughout the table and calculate the ''No. of Responses per Respondent'' by dividing the total annual responses by number of respondents. Additional information needed to make a final calculation of the total burden hours (*i.e.,* the number of respondents, the number of recordkeepers, the number of NCIEs received, *etc.*) is derived from Agency records.

Dated: June 22, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–16090 Filed 6–27–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0010]**

### Cooperative Agreement To Support Shellfish Safety Assistance Project

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN), Office of Food Safety is announcing its intent to award a single source cooperative agreement to support the Interstate Shellfish Sanitation Conference (ISSC). The purpose of this cooperative agreement is to enhance the FDA molluscan shellfish sanitation program and provide the public greater assurance of the quality and safety of these products.

**DATES:** Important dates are as follows:

1. The application due date is July 15, 2011.
2. The anticipated start date is September 1, 2011.
3. The opening date is June 28, 2011.
4. The expiration date is July 16, 2011.

**FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:**

*For Programmatic and Technical Concerns and Questions:* Paul DiStefano, Center for Food Safety and Applied Nutrition (HFS–325), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1410.

*For Administrative and Financial Concerns and Questions:* Gladys Melendez-Bohler, Office of Acquisitions and Grants Services (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 1078, Rockville, MD 20857, 301–827–7175.

**SUPPLEMENTARY INFORMATION:**

### I. Funding Opportunity Description

RFA–FD–11–023, 93.103.

*A. Background*

The CFSAN Office of Food Safety is announcing its intent to award, a single source cooperative agreement to the ISSC in the amount of $325,000 for fiscal year 2011, direct and indirect costs combined. Subject to the

availability of Federal funds and successful performance, 4 additional years of support will be available. This effort will enhance FDA's molluscan shellfish sanitation program and provide the public greater assurance of the quality and safety of these products.

Molluscan shellfish have been recognized by FDA as a significant source of seafood-borne illnesses and continue to be the subject of congressional, State, industry, and public concern. FDA has given high priority to enhance the Agency's shellfish safety program and to provide the public greater assurance of the quality and safety of these products. FDA administers the National Shellfish Sanitation Program (NSSP). Under that program the NSSP Model Ordinance serves as guidance for State shellfish sanitation programs and the issuance of State regulations and laws concerning shellfish safety. This cooperative agreement will enhance FDA efforts to help ensure that shellfish is free of harmful pathogens.

*B. Research Objectives*

This proposed cooperative agreement with ISSC will continue to: (1) Address the need to improve information exchange and transfer among States, Federal Agencies, industry, and consumers; (2) strengthen State activities by providing them with procedural and policy guidance, technical training, research, consumer education, and support for States to participate in ISSC biennial meetings and ISSC committee meetings; and (3) promote efforts and projects, including research, that will contribute significantly to the ability of FDA and States to identify and implement scientifically defensible food safety controls to reduce the risk of illness associated with molluscan shellfish consumption, including *Vibrio vulnificus* and *V. parahaemolyticus.* Research efforts will provide information and data that can be used to reduce assumptions and tighten modeling outputs of the *V. vulnificus* and *V. parahaemolyticus* risk assessments developed by the Food and Agriculture Organization of the World Health Organization and FDA. Substantive accomplishments of the ISSC under previous cooperative agreements include:

1. Coordination of annual shellfish safety meetings of Federal regulators, State regulators, and industry members for the purpose of developing improved science based shellfish safety controls in the NSSP Model Ordinance for implementation by State shellfish control agencies and the shellfish industry;

2. Facilitation of the incorporation and implementation of Hazard Analysis and Critical Control Point (HACCP) into the NSSP Model Ordinance;

3. Facilitation of an ISSC Unresolved Issues Process to resolve shellfish safety program discrepancies between FDA and States, ensuring continued compliance with NSSP shellfish safety controls;

4. Coordination of NSSP Model Ordinance revisions and electronic online availability;

5. Coordination with FDA on the development and oversight of a *V. parahaemolyticus* control plan;

6. Development of an educational training video concerning the risks and control of illegal shellfish harvesting;

7. Development of an education training video concerning the public health implications associated with overboard waste discharges from harvest vessels;

8. Development of accredited online training courses for medical professionals concerning *Vibrio* illness and shellfish consumption;

9. Development and maintenance of a World Wide Web site for continuous accessibility to molluscan shellfish safety information, including up-to-date information regarding outbreaks and recalls;

10. Coordination, development and oversight of a *V. vulnificus* control plan;

11. In conjunction with FDA, conduct of retail and processing plant product sampling studies to examine *Vibrios* in molluscan shellfish that have undergone a post harvest process to reduce levels of *Vibrios;* and;

12. In conjunction with FDA, conduct of a retail shellfish study to look at the occurrence of pathogens in molluscan shellfish, including norovirus, Hepatitis A virus, *Salmonella,* and *Vibrios;* and

13. In conjunction with FDA, development of a risk-based approach to evaluating State compliance with NSSP Model Ordinance requirements for controlling the safety of molluscan shellfish.

Other substantive accomplishments of the ISSC include facilitating and coordinating development of shellstock time-temperature controls for *V. vulnificus* and *V. parahaemolyticus;* funding support for *V. vulnificus* virulent strain identification research; funding support to research the effects of ice chilling on *V. vulnificus;* funding support to research the influence of water and air temperature, dissolved oxygen, and nutrients on *V. parahaemolyticus* concentrations in Pacific oysters; funding support to conduct an economic assessment of mandating post-harvest treatment of oysters; funding support to conduct a consumer acceptance study of oysters that have been post-harvest treated to reduce *Vibrio* levels to nondetect; development of a *V. vulnificus* laboratory methodology training video; and development and broadcast of a public service announcement to alert at risk consumers of the dangers associated raw shellfish consumption.

This project will (1) enhance both the effectiveness and uniformity of the national molluscan shellfish safety program by improving the flow of information between Federal and State regulatory agencies, industry, and consumers; (2) strengthen State activities by providing assistance in such areas as procedural and policy guidance, technical training, research, consumer education, and conformity with requirements of the NSSP Model Ordinance; (3) provide for research opportunities related to shellfish safety; and (4) bring to final resolution the development and implementation by States and industry of effective *Vibrio* risk control plans that are consistent with current science, epidemiology, and HACCP based food safety measures.

Substantive involvement by FDA will include:

(1) FDA will monitor the ISSC's overall conduct under this cooperative agreement.

(2) FDA will have representation on the ISSC Executive Board, Committees, and Task Forces.

(3) FDA will collaborate and work closely with the ISSC on *V. vulnificus* and *V. parahaemolyticus* risk reduction efforts. FDA will continue to monitor State activities to ensure illness/risk reduction goals of the ISSC *V. vulnificus* control plan are met and continue to monitor State activities to ensure that the ISSC *V. parahaemolyticus* control plan is fully implemented.

(4) FDA will continue to work with ISSC to develop State program evaluation criteria.

(5) FDA will analyze State shellfish program data and information and work through the ISSC to resolve any State shellfish program problems that may impact public health.

(6) FDA will conduct training courses in growing area classification, plant sanitation, and HACCP and plant standardization for participants of the ISSC, including online training modules.

(7) FDA will work with the ISSC to develop new microbiological and marine biotoxin techniques and to develop and implement early warning systems for toxic algal blooms and new

strategies for managing areas affected by toxic algal blooms.

(8) FDA will continue to work with ISSC to establish improved mechanisms for incorporating new lab methods into the NSSP.

(9) FDA will work with the ISSC to develop NSSP Model Ordinance interpretations.

(10) FDA will take any action that may be necessary to ensure compliance with this cooperative agreement including, but not limited to the pursuit of science-based HACCP controls for managing the risk of *Vibrios,* and developing patrol, growing area classification, and plant inspection criteria.

*C. Eligibility Information*

Competition is limited to ISSC because it has unique capacity found nowhere else. ISSC is the primary voluntary National organization of State shellfish regulatory officials that provides guidance and counsel to the States and industry on matters of sanitary control of molluscan shellfish. ISSC is the only organization that has the established formal structure, procedures, and expertise to direct all components (public health, environmental, resource management, and enforcement) of an effective National shellfish safety program, and has operated satisfactorily in this capacity since 1993. This effort will enhance FDA's molluscan shellfish safety program and provide the public greater assurance of the quality and safety of shellfish products.

**II. Award Information/Funds Available**

*A. Award Amount*

The annual allocation to the ISSC under this cooperative agreement, including support in the amount of $75,000.00 from the National Marine Fisheries Services will be $325,000.00.

Subject to the availability of Federal funds and successful performance, 4 additional years of support will be available. CFSAN intends to fund 1 year of award to begin in September 1, 2011. Subject to annual appropriations and successful performance, 4 additional years of noncompetitive award will be available.

*B. Length of Support*

September 1, 2011, to August 31, 2016.

**III. Paper Application, Registration, and Submission Information**

To submit a paper application in response to the funding opportunity announcement (FOA), applicants should first review the full announcement located at *http://www.fda.gov/Food/NewsEvents/default.htm.* (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.) Persons interested in applying for a grant may obtain an application at *http://grants2.nih.gov/grants/funding/phs398/phs398.html.* For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) Number
- Step 2: Register With Central Contractor Registration
- Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.*

After you have followed these steps, submit paper applications to: Gladys Melendez-Bohler, Office of Acquisition and Grants Services (HFA–500), Food and Drug Administration, 5630 Fishers Lane, rm. 1078, Rockville, MD 20857, 301–827–7175, *e-mail: gladys.bohler@fda.hhs.gov.*

Dated: June 22, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–16119 Filed 6–27–11; 8:45 am]

BILLING CODE 4160–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0010]**

### Cooperative Agreement With the World Health Organization Department of Food Safety and Zoonoses in Support of Strategies That Address Food Safety Problems That Align Domestically and Globally (U01)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of a sole source cooperative agreement with the World Health Organization (WHO). The goal of the Food and Drug Administration, Office of the Commissioner and the Office of International Programs, Center for Food Safety and Nutrition, and the Center for Veterinary Medicine is to contribute to the knowledge base of the current state of food safety globally, including challenges, risks and emerging trends, through an integrated information system based on WHO's existing network efforts.

**DATES:** Important dates are as follows

1. The application due date is July 20, 2011.
2. The anticipated start date is September, 2011.
3. The opening date is the date the notice is published in the **Federal Register**.
4. The expiration date is July 21, 2011.

**FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:** *For programmatic questions and concerns contact:* Katherine Bond, Office of International Programs, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–8318; e-mail: *Katherine.bond@fda.hhs.gov.*

*For financial and administrative questions and concerns contact:* Gladys M. Bohler, Office of Acquistion and Grant Services, Food and Drug Administration, 5630 Fishers Lane, rm. 1078 (HFA 500), Rockville, MD 20857, 301–827–7175; e-mail: *gladys.bohler@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please refer to the full FOA located at *http://www.fda.gov/InternationalPrograms/CapacityBuilding/default.htm.*

**SUPPLEMENTARY INFORMATION:**

**I. Funding Opportunity Description**

RFA–FD–11–021,
93.103: 93.103.

*A. Background*

WHO has responsibility for the provision of technical cooperation to its 193 Member States (national governments) in the area of food safety and zoonotic diseases. Among the focus areas are: Surveillance for food borne disease; identification of food contamination; management of mechanisms for information sharing; and systems for emergency response, including outbreak investigations and governments' food product recalls which may potentially have a global impact or cross national boundaries, and which may fall within the requirements of the International Health Regulations. WHO's technical support complements a paradigm shift that is emerging around the globe; a shift from a focus on food safety interventions at

ports-of-entry toward an approach that emphasizes preventive, risk-based efforts. This shift entails increasing accountability of entities along the supply chain that grow, harvest, manufacture, process, store, transport, distribute, and/or import foods for ensuring the safety of their products, while at the same time strengthening national authorities' capacity and systems to be able to regulate these products efficiently and effectively. Along with the Food and Agriculture Organization of the United Nations (FAO), WHO also has a responsibility in relation to harmonizing international science-based food safety standards (*e.g.,* as one of the founding institutions and technical advisory bodies to the Codex Alimentarius Commission (Codex)). Codex was founded in 1963 to develop food standards, guidelines, and other related texts, such as codes of practice, under the Joint FAO/WHO Food Standards Programme. Currently, 185 Member States, including the United States through FDA and other U.S. Government agency technical and scientific experts, actively participate in Codex.

The goal of the Food and Drug Administration, Office of the Commissioner and the Office of International Programs, Center for Food Safety and Nutrition, and the Center for Veterinary Medicine is to contribute to the knowledge base of the current state of food safety globally, including challenges, risks and emerging trends, through an integrated information system based on WHO's existing network efforts, such as the Global Foodborne Infections Network (GFN), International Food Safety Authorities Network (INFOSAN), Global Environment Monitoring System for Food (GEMS/Food), Global Early Warning Systems for Animal Diseases Including Zoonoses (GLEWS), and the Initiative to Estimate the Global Burden of Foodborne Diseases (FERG), as well as programs currently under development, such as the Global Laboratory Directory (GLaD); enable the sharing of scientific findings and data through expert meetings and technical consultations; enhance capacity at international and national levels in such areas of laboratory analyses, surveillance, and risk assessment/risk management, including through the Advisory Group on Integrated Surveillance of Antimicrobial Resistance (AGISAR); contribute to the scientific, standard-setting work of the Codex Alimentarius Commission (Codex) through scientific advisory groups including the Joint FAO/WHO Expert Committee on Food Additives (JECFA), the Joint FAO/WHO Meetings on Pesticide Residues (JMPR), the FAO/WHO Joint Meetings on Microbiological Risk Assessment (JEMRA), and the Joint FAO/WHO Expert Meetings on Nutrition (JEMNU) currently in development phase; and enable participation of Member States through the Codex Trust Fund.

A significant outcome of the 63rd World Health Assembly in May 2010 was a consensus resolution on advancing food safety initiatives, which, among other items, acknowledged the continuing need for closer collaboration between the health sector and other sectors, and increased action on food safety at the international and national levels, across the full length of the food-production chain, in order to reduce significantly the incidence of food borne disease. This resolution also closed a ten year gap in WHO governance dialogue on global food safety challenges, providing all Member States with a general pathway for global collaboration and enforcing the Secretariat's role in technical cooperation.

In support of the resolution's implementation, FDA awarded two cooperative agreements in fiscal year (FY) 2010 to WHO's Department of Food Safety and Zooonses (FOS) to: (1) support the development of a plan that delineates a global integrated information system to better report and utilize information and data that are timely, accurate, and comparable; and, through such data, increase understanding of risk factors and safety standards relative to public health outcomes; and (2) support WHO's Advisory Group on Integrated Surveillance for Antimicrobial Resistance (AGISAR), which is part of WHO's effort to minimize the public health impact of antimicrobial resistance associated with the use of antimicrobials in food animals.

For nearly 30 years, FDA, through the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM), has participated with WHO's International Programme on Chemical Safety (IPCS) in a Cooperative Agreement that supported WHO's work in international risk assessment and its standard-setting activities for food ingredients, contaminants, and veterinary drug residues in food, including the Joint FAO/WHO Expert Committee on Food Additives (JECFA). JECFA contributes internationally-recognized science-based risk assessments of food additives, contaminants, and residues of veterinary drug reside in food. This Cooperative Agreement has also supported Joint FAO/WHO Expert Consultations on risk assessments for emerging or cross-cutting issues (*e.g.,* the use of active chlorine species in food processing, bisphenol-A). The evaluations that are produced by JECFA and the Expert Consultations provide a sound scientific basis for Codex's standard-setting activities that contribute to improved public health and food safety worldwide.

The 63rd Health Assembly also called the continuation of sustainable preventive measures through food safety education programs such as the FIVE KEYS to safer food developed by WHO in collaboration with FDA. The WHO Five Keys to Safer Food global message and training materials for consumers in the home are now recognized as an international source for conducting national food safety education programs. In 2008, a joint Food and Agriculture Organization (FAO)/WHO Expert Meeting on the microbiological hazards in fresh leafy vegetables and herbs also acknowledged the success of the FIVE KEYS to safe food as it reviewed the scientific data and made recommendations for limiting the risks associated with microbial contamination of these products. An important recommendation from the meeting was the suggestion that WHO develop training and educational materials based on the FIVE KEYS TO SAFER FOOD concept. As a result, WHO, working together with FDA, developed FIVE KEYS to Growing Safer Fruits and Vegetables: Promoting Health by Decreasing Microbial Contamination, a training program designed for educating rural workers who grow fresh fruits and vegetables for themselves, their families and for sale in local markets.

Many of the network ''building blocks'' to address elements of preventive risk-base approaches to food safety reside within WHO. For example:

- The International Networks of Food Safety Authorities (INFOSAN), a joint FAO/WHO program consisting of 177 Member States, which aims to promote the rapid exchange of information during food safety related events, promote partnership and collaboration between countries, and help countries to strengthen their capacity to manage food safety risks;
- The Global Foodborne Infections Network (GFN), a network of over 1,500 individuals from 700 institutions in 177 countries, that provide human resource expertise to promote integrated, laboratory-based surveillance and intersectoral collaboration in human

health, veterinary, and food-related disciplines;

• The Global Early Warning Systems for Animal Diseases Including Zoonoses (GLEWS), a joint system that coordinates alert mechanisms of the WHO, the FAO, and the World Organization for Animal Health (OIE) to assist in prediction, prevention, and control of zoonotic disease threats;

• The Global Laboratory Directory (GLaD), a support system for building, connecting, and sustaining laboratory and surveillance networks (currently in development phase);

• The Global Environment Monitoring System for Food (GEMS/Food), a program, which focuses on data collection and training related to dietary exposure of chemical hazards and involves a network of WHO Collaborating Center and national institutions from around the globe;

• The Foodborne Disease Burden Epidemiology Reference Group (FERG), established to provide guidance to WHO on the burden of foodborne disease to countries, with an anticipated publication of Global Report within the next several years;

• JECFA, the Joint FAO/WHO Meetings on Pesticide Residues (JMPR), the Joint FAO/WHO Meetings on Microbiological Risk Assessment (JEMRA), and the Joint FAO/WHO Expert Meetings on Nutrition (JEMNU) currently in development phase, that serve as technical advisory bodies to Codex;

• The management of the Codex Trust Fund; and

• The FIVE KEYS to safer food training materials developed to educate food handlers in safe food handling practices.

*B. Research Objectives*

The Funding Opportunity

The Cooperative Agreement announced in this FOA represents the continuation of a long-standing collaboration between WHO and FDA in support of strategies and approaches that align well domestically and globally to address food safety problems. Relevant strategies include: (1) Efforts to strengthen data and information systems so they are comparable, comprehensive, and robust, thereby allowing for better decision-making for all Member States; (2) enhanced capacity around the globe to improve detection of and response to food safety threats through preventive controls, data, information, surveillance systems, and risk-based approaches; and (3) global harmonization of science-based standards and adoption or adaption of international standards by national authorities.

This Cooperative Agreement is expected to support the following types of collaboration:

• Contribute to the knowledge base of the current state of food safety globally, including challenges, risks, and emerging trends, through an integrated information system based on WHO's existing network efforts, such as the GFN, INFOSAN, GEMS/Food, GLEWS, and FERG, as well as programs currently under development, such as GLaD;

• Enable the sharing of scientific findings and data through expert meetings and technical consultations;

• Enhance capacity at international and national levels in such areas of laboratory analyses, surveillance, and risk assessment/risk management, including through AGISAR;

• Contribute to the scientific, standard-setting work of Codex through scientific advisory groups including JECFA, JMPR, JEMRA, and JEMNU currently in development phase; and

• Enable participation of Member States through the Codex Trust Fund.

Inherent in the cooperative agreement award is substantive involvement by the awarding agency. Accordingly, FDA will be actively engaged in the programmatic activities of the entire project funded by this cooperative agreement, including but not limited, to the following items:

• FDA will appoint a project officer who will actively monitor the FDA-supported program under this award and work closely and collaboratively with a core group of experts. This core group of technical experts (CG/TE) from CFSAN, CVM, the Office of Regulatory Affairs (ORA) and relevant offices of the Office of the Commissioner (OC) will provide technical guidance and advice, as appropriate, to WHO in the implementation of this cooperative agreement. Support can be from various sources including in-kind participation.

• Appropriate participation of FDA in multinational advisory group(s) that are working to address food safety regulatory systems, the development and implementation of science-based standards and norms, and strengthening the existing capacity of Member States in the area of food safety and preventive controls.

*C. Eligibility Information*

The World Health Organization (WHO) Department of Food Safety and Zoonoses (FOS). Competition is limited to WHO because, as the only global health organization with a well-established trusted presence and high-level access to appropriate regulatory authorities in its 193 Member Countries and Territories and with its ability to coordinate programs at both the regional and international levels, it is uniquely qualified to further the food safety objectives of this cooperative agreement. This ability to advance the objectives of this cooperative agreement through Member-State participation and intersectoral action is requisite for the success of this program.

## II. Award Information/Funds Available

*A. Award Amount*

The total funding available is up to $260,000 (total costs including indirect costs) in fiscal year 2011 in support of this project. One award will be made.

*B. Length of Support*

Funding will be provided for 1 year, with the possibility of up to 4 additional years of support, contingent upon successful performance and the availability of funds.

## III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gov/InternationalPrograms/CapacityBuilding/default.htm*. Persons interested in applying for a grant may obtain an application *http://grants2.nih.gov/grants/funding/phs398/phs398.html*.

For all paper application submissions, the following steps are required:

• Step 1: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) Number.

• Step 2: Register With Central Contractor Registration.

• Step 3: Register With Electronic Research Administration (eRA) Commons.

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp*. After you have followed these steps, submit paper applications to: Gladys M. Bohler (See the **FOR INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT** section of this document.).

Dated: June 22, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–16120 Filed 6–27–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0012]**

## Proyecto Informar: Food and Drug Administration Hispanic Outreach Initiative (U01)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of a cooperative agreement for the National Alliance for Hispanic Health. The goal of the Food and Drug Administration, Office of the Commissioner, is to support initiatives that will communicate risk and emergency public health information to millions of Spanish-speaking consumers within the targeted populations (socially disadvantaged, underserved populations, ethnic and racial populations, health professionals, patients and caregivers, pediatrics, adolescents, and disabled and older Americans).

**DATES:** Important dates are as follows:

1. The application due date is July 15, 2011.
2. The anticipated start date is in September 2011.
3. The opening date is June 28, 2011.
4. The expiration date is July 16, 2011.

**FOR FURTHER INFORMATION AND ADDITIONAL REQUIREMENTS CONTACT:**

*For programmatic questions and concerns:* Mary Hitch, Office of External Relations, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5320, Silver Spring, MD 20993–0002, 301–796–8639, e-mail: *mary.hitch@fda.hhs.gov.*

*For financial and administrative questions or concerns:* Gladys M. Melendez, Office of Acquisition and Grant Services, Food and Drug Administration, 5630 Fishers Lane (HFA–500), Rockville, MD 20857, 301–827–7175, e-mail: *gladys.bohler@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, and a copy of the full FOA, please contact the programmatic or grants contact noted in this section.

**SUPPLEMENTARY INFORMATION:**

### I. Funding Opportunity Description

*A. Background*

FDA announces its intent to accept a single source application for awarding of a Cooperative Agreement to the National Alliance for Hispanic Health (The Alliance). The purpose of this agreement is to support initiatives that will communicate risk and emergency public health information to millions of Spanish-speaking consumers within the targeted populations (socially disadvantaged, underserved populations, ethnic and racial populations, health professionals, patients and caregivers, pediatrics, adolescents, and disabled and older Americans). FDA authority to enter grants and cooperative agreements is set out in section 1704 of the Public Health Service Act (42 U.S.C. 300u–3).

FDA relies on community partnerships to enhance its efforts in risk and emergency communications about the appropriate use of FDA-regulated products and to assure targeted communities understand their roles in managing the risks of using FDA-regulated products. Through this initiative, FDA also seeks to share risk and benefit information to enable people to decide how to use FDA-regulated products, to provide access to critical risk and benefit information that is adapted to their specific needs—when, where, and in the form they need to best understand and apply this information, regarding literacy, language, culture, race and ethnicity, and disability.

This program may support a wide range of appropriate innovative education and outreach activities and tools in risk communications. FDA must work with partners to continuously develop and disseminate communications rapidly and to develop and test messages on the appropriate use of FDA-regulated products.

*B. Research Objectives*

The goal of the program is to assure effective and efficient communications to meet the need for adapted risk communications based on literacy, Spanish language, culture, race/ethnicity, disability, and other factors during emergency events, such as recalls of FDA-regulated products such as food, drugs, cosmetics, and medical devices. The applicant must identify specific ways in which FDA could have substantial involvement in the proposed program. The applicant must suggest activities that would contribute directly to the purpose of the program. For any additional initiatives suggested, the applicant should identify the objective of the activity, the specific tasks required to meet the objective, specific timelines for performing the tasks, and specific initiatives to achieve the purpose and goal of this program. The recipient will be required to perform the following initiatives:

Develop and finalize a risk communication and public heath alert delivery plan that will contain the tasks needed to accomplish the purpose of this program, including a description of the various tasks for the project that will be completed, the dates by which each task be completed, and who will have responsibility for each task. Task milestones must be listed to assure that progress can be measured at various dates through the life of the project and document all risk communications and public health alert activities to be conducted under the agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program.

The plan must delineate the substantial involvement of FDA.

*C. Eligibility Information*

- National Alliance for Hispanic Health.

Before entering cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. The Alliance, a nonprofit entity as described in section 501(c) 3 of the Internal Revenue Code of 1968, is the oldest and largest network of Hispanic health and human service providers for the target population. The Alliance is an umbrella organization that serves more than 400 national and community-based organizations and other health professionals who provide access and delivery of quality health and human services to some 46.9 million Hispanic health consumers.

The Alliance is a recognized leader within Hispanic communities and works with foundations, corporations, Government Agencies, universities, and private industry in carrying out its mission, with the objective of improving the health status of Hispanic and minority populations.

### II. Award Information/Funds Available

*A. Award Amount*

Only one grant will be awarded. FDA will award $35,000. Partnering Federal Agencies may commit up to an estimated total of $500,000 in cofunding or supplemental funds for program expansion, pending the availability of funds.

*B. Length of Support*

The project will be funded for up to 3 years from the starting date for

activities described in this announcement. Continuation of support beyond the first year will be based on satisfactory performance during the preceding year, receipt of a noncompeting continuation application, and available Federal fiscal year funds.

**III. Paper Application, Registration, and Submission Information**

To submit a paper application in response to this FOA, applicants should first review the full announcement available through the programmatic or grants contact noted earlier in this document. (See *For Further Information and Additional Requirements Contact*). Persons interested in applying for a grant may obtain an application at *http://grants2.nih.gov/grants/funding/phs398/phs398.html.* For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) Number.
- Step 2: Register With Central Contractor Registration.
- Step 3: Register With Electronic Research Administration (eRA) Commons.

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit paper applications to: Gladys M. Melendez, Grants Management Officer/Specialist at the address noted earlier in this document (See *For Further Information and Additional Requirements Contact*).

Dated: June 22, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–16091 Filed 6–27–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Poison Help General Population Survey (OMB No. 0915–XXXX)—[NEW]**

Annually, in the U.S., poison control centers (PCCs) manage over 4.2 million calls, providing ready and direct access to vital public health emergency information and response. In 2001, the Poison Help line, a single, national toll-free number (800–222–1222) was established to ensure universal access to PCC services, 24 hours a day, seven days a week. The Poison Help campaign is the only national media effort to promote awareness and use of the national toll-free number. The Poison Help campaign aims to reach a wide audience, as individuals of all ages are at risk for poisoning and may need to access PCC services. The Poison Help General Population Survey will be conducted with 2,000 households in the United States to evaluate the campaign's current performance. The survey supplies unique and essential information that provides HRSA with data related to national toll-free number. The survey will address topics related to the types of individuals and/or organizations respondents would contact for information, advice, and treatment related to poisoning, as well as poison prevention. Survey results will be used to guide future communication, education, and outreach efforts. There is no cost to respondents.

The annual estimate of burden is as follows:

| Respondents | Number of respondents | Number of responses/respondent | Average hours per response | Total burden hours |
|---|---|---|---|---|
| Survey respondents | 2000 | 1 | .166 | 332 |
| Screened households | 2353 | 1 | .016 | 38 |
| Total | 4353 | | | 370 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: June 21, 2011.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2011–16127 Filed 6–27–11; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 meetings.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development, Special Emphasis Panel, ''PED/PHARM''.

*Date:* July 12–13, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Legacy Hotel and Meeting Center, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Rita Anand, Ph.D., Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–496–1487, *anandr@mail.nih.gov.*

(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: June 20, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–16130 Filed 6–27–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Advisory Committee for Women's Services; Amendment of Meeting Notice

Pursuant to Public Law 92–463, notice is hereby given of a change to the Web-based meeting of the Substance Abuse and Mental Health Services Administration's (SAMHSA) Advisory Committee for Women's Services (ACWS). The meeting was originally noticed to be convened on June 24 from 3 p.m. to 5 p.m. Eastern Time in the **Federal Register** dated June 13, 2011, Volume 76, Number 113, page 34231. This notice amends the time of the Web-based meeting to June 24 from 4 p.m. to 5 p.m. Eastern Time. There are no other changes. The meeting is open to the public.

For additional information, please contact Ms. Nevine Gahed, Designated Federal Official for SAMHSA's ACWS, 1 Choke Cherry Road, Room 8–1058, Rockville, Maryland 20857. *Telephone:* (240) 276–2331; *Fax:* (240) 276–2010; *E-mail: nevine.gahed@samhsa.hhs.gov.*

Dated: *June 22, 2011.*

**Kana Enomoto,**

*Director, Office of Policy, Planning, and Innovation, Substance Abuse and Mental Health, Services Administration.*

[FR Doc. 2011–16200 Filed 6–27–11; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

**[Docket No. DHS–2010–0023]**

### General Meeting Registration and Evaluation

**AGENCY:** National Protection and Programs Directorate, DHS.

**ACTION:** 30-Day notice and request for comments; New Information collection request, 1670—new.

**SUMMARY:** The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD, Office of Cybersecurity and Communications (CS&C), Office of Emergency Communications (OEC), will submit the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). NPPD is soliciting comments concerning New Information Collection Request, General Meeting Registration and Evaluation. DHS previously published this ICR in the **Federal Register** on March 17, 2011 at 76 FR 52, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until July 28, 2011. This process is conducted in accordance with 5 CFR 1320.10.

**ADDRESSES:** Interested persons are invited to submit written comments on the proposed information collection to the OMB Office of Information and Regulatory Affairs. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by ''DHS–2010–0023'' and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *E-mail: oira_submission@omb.eop.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806.

*Instructions:* All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

**SUPPLEMENTARY INFORMATION:** OEC was formed under Title XVIII of the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.,* as amended, to fulfill its statutory responsibility of conducting nationwide outreach through hosted events, including conferences, meetings, workshops, *etc.* The general registration form, general pre-meeting form, and general evaluation form will be used to gather information to support these events and for follow-up with stakeholders that attend such events. The registration, pre-meeting, and evaluation forms may be submitted electronically or in paper form.

**Analysis**

*Agency:* Department of Homeland Security, National Protection and Programs Directorate, Office of Cybersecurity and Communications, Office of Emergency Communications.

*Title:* General Meeting Registration and Evaluation.

*OMB Number:* 1670–New.

**General Registration Form**

*Frequency:* On occasion.

*Affected Public:* State, local, or Tribal government.

*Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 10 minutes.

*Total Burden Hours:* 850 annual burden hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $20,757.

**Pre-Meeting Survey**

*Frequency:* On occasion.

*Affected Public:* State, local, or Tribal government.

*Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 10 minutes.

*Total Burden Hours:* 850 annual burden hours.

*Total Burden Cost (capital/startup):* $0 .

*Total Burden Cost (operating/maintaining):* $20,757.

**Post-Meeting/Workshop/Training Evaluation**

*Frequency:* On occasion.

*Affected Public:* State, local, or Tribal government.

*Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 15 minutes.

*Total Burden Hours:* 1,250 annual burden hours.

*Total Burden Cost (capital/startup):* $0 .

*Total Burden Cost (operating/maintaining):* $30,525.

Dated: June 17, 2011.

**David Epperson,**

*Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.*

[FR Doc. 2011–16064 Filed 6–27–11; 8:45 am]

BILLING CODE P

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### Published Privacy Impact Assessments on the Web

**AGENCY:** Privacy Office, DHS.

**ACTION:** Notice of Publication of Privacy Impact Assessments (PIA).

**SUMMARY:** The Privacy Office of the DHS is making available ten PIAs on various programs and systems in the Department. These assessments were approved and published on the Privacy Office's Web site between March 31, 2011 and May 31, 2011.

**DATES:** The PIAs will be available on the DHS Web site until August 29, 2011, after which they may be obtained by contacting the DHS Privacy Office (contact information below).

**FOR FURTHER INFORMATION CONTACT:** Mary Ellen Callahan, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528, or *e-mail: pia@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** Between March 31, 2011 and May 31, 2011, the Chief Privacy Officer of the DHS approved and published ten Privacy Impact Assessments (PIAs) on the DHS Privacy Office Web site, *http://www.dhs.gov/privacy,* under the link for ''Privacy Impact Assessments.'' These PIAs cover ten separate DHS programs. Below is a short summary of those programs, indicating the DHS component responsible for the system, and the date on which the PIA was approved. Additional information can be found on the Web site or by contacting the Privacy Office.

*System:* DHS/USCG/PIA–016 College Board Requirement Plus (CBRP).

*Component:* United States Coast Guard (USCG).

*Date of approval:* April 1, 2011.

DHS United States Coast Guard Academy (USCGA or Academy) uses College Board's *Recruitment PLUS*™ (Recruitment PLUS) software application for college admissions and enrollment activities. The Recruitment PLUS system does the following things:

1. Collects and stores prospective applicants' biographic and educational data,
2. Collects USCGA admissions staff's and volunteers' biographical data,
3. Facilitates and tracks the application process, and
4. Aligns admissions staff and volunteers to prospective applicants.

The purpose of this PIA is to document how Recruitment Plus collects and uses personally identifiable information (PII).

*System:* DHS/NPPD/PIA–012 Critical Infrastructure Warning Information Network (CWIN).

*Component:* National Protection & Programs Directorate (NPPD).

*Date of approval:* April 11, 2011.

The CWIN system has undergone a PIA 3-Year Review requiring no changes and continues to accurately relate to its stated mission. DHS NPPD examined the privacy implications for CWIN. DHS is responsible for protecting the national infrastructures and responsible for ensuring that in the event cyber or physical infrastructures are compromised, there is a means to collaborate and coordinate the necessary resources to restore impacted infrastructures. The mission of CWIN is to facilitate immediate alert, notification, sharing and collaboration of critical infrastructure and cyber information within and between Government and industry partners. CWIN provides a technologically advanced, secure network for communication and collaboration, and alert and notification. CWIN is DHS' only survivable, critical communications tool not dependent on the Public Switch Network or the public Internet that can communicate both data and voice information in a collaborative environment in support of infrastructure restoration. CWIN provides a survivable, dependable method of communication allowing DHS to communicate with other Federal agencies, state and local government, the private sector, and international organizations in the event that primary methods of communication are unavailable.

CWIN members belong to one of the vital sectors of the national infrastructure as named in the National Response Plan, appears in the Interim National Infrastructure Protection Plan, or are a state Homeland Security Advisor. Only CWIN members have access to CWIN. CWIN membership is by invitation only, with invitations issued from the Infrastructure Coordination Division Director through a contractor. The CWIN operation consists of the collection of point of contact information for administrative purposes, and the placement of a CWIN terminal at member locations. Should an event occur where traditional communication methods are not operable, CWIN provides a communication method between key infrastructure sites across the country.

*System:* DHS/NPPD/PIA–009 Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

*Component:* NPPD.

*Date of approval:* May 4, 2011.

The DHS/NPPD/Office of Infrastructure Protection (IP)/Infrastructure Security Compliance Division (ISCD) is conducting this PIA to detail the privacy impact associated with the CFATS Personnel Surety Program and the required security assessments performed by high-risk chemical facilities in fulfillment of Risk-Based Performance Standard # 12 (6 CFR 27.230(a)(12)). This PIA describes the procedures for submitting PII on individuals impacted by this program to NPPD, and also describes NPPD's uses of that PII.

*System:* DHS/S&T/PIA–022 Biodefense Knowledge Management System v. 2.0 (BKMS).

*Component:* Science & Technology (S&T).

*Date of approval:* May 4, 2011.

DHS S&T Biodefense Knowledge Center (BKC) developed and operates the BKMS. The current generation of the BKMS, version 1.0, enables approved users to access and analyze biological sciences topics and related biodefense information to assist with their efforts to better understand or characterize biological threats, by offering an integrated suite of tools for managing and indexing scientific documents and information. In BKMS 2.0, S&T intends to add a component to the system to include data derived from the intelligence community (IC) and law enforcement (LE)-sensitive data. S&T is conducting this PIA because such an

addition will allow for a new function of the system for selected BKMS users, who are authorized to explore IC/LE data (which may contain PII).

*System:* DHS/TSA/PIA–033 Enterprise Search Portal (ESP).

*Component:* Transportation Security Administration (TSA).

*Date of approval:* May 5, 2011.

DHS TSA is implementing a search capability to enable authorized users to search or discover data held by separate databases within TSA. The search function will be known as the ESP. TSA is conducting this PIA to assess privacy impacts associated with this capability to search across multiple databases. The systems being searched are covered by other PIAs or are otherwise compliant with the E–Government Act of 2002.

*System:* DHS/USCIS/PIA–030(b) E–Verify RIDE Update.

*Component:* United States Citizenship and Immigration Services (USCIS).

*Date of approval:* May 6, 2011.

USCIS Verification Division has developed a new enhancement to the E–Verify Program entitled Records and Information from Department of Motor Vehicles for E–Verify (RIDE). RIDE enhances the integrity of the E–Verify Program by verifying information from the most commonly presented identity documents (*e.g.* employee's driver's license, driver's permit, or state-issued identification card) for employment authorization, when the issuing state or jurisdiction of those documents has established a Memorandum of Agreement with the DHS to participate in RIDE. USCIS is conducting this PIA update to assess the privacy risks and mitigation strategies for this new enhancement.

*System:* DHS/TSA/PIA–034 Enterprise Performance Management Platform (EPMP).

*Component:* TSA.

*Date of approval:* May 10, 2011.

TSA EPMP is designed to assist in performing security management functions using a wide variety of data associated with security, equipment, and screening processes from TSA's security activities. EPMP will now maintain PII about members of the public in excess of basic contact information, which requires TSA to conduct a new PIA. This PIA focuses on the portions of EPMP using PII.

*System:* DHS/USCG/PIA–004 Law Enforcement Information Data Base (LEIDB)/Pathfinder.

*Component:* USCG.

*Date of approval:* May 11, 2011.

The LEIDB/Pathfinder system has undergone a PIA 3-Year Review requiring no changes and continues to accurately relate to its stated mission. USCG, a component of DHS established the LEIDB/Pathfinder. LEIDB/Pathfinder archives text messages prepared by individuals engaged in USCG law enforcement, counter terrorism, maritime security, maritime safety and other USCG missions enabling intelligence analysis of field reporting. USCG has conducted this PIA because the LEIDB/Pathfinder system collects and uses PII.

*System:* DHS/TSA/PIA–001 Vetting and Credentialing Screening Gateway System (CSG) .

*Component:* TSA.

*Date of approval:* May 18, 2011.

The CSG system has undergone a PIA 3-Year Review and requires an update to accurately relate to its stated mission. The Consolidated Screening Gateway is the system of hardware, software and communications infrastructure used by the Transportation Security Administration to conduct security threat assessments on various transportation workers and other populations related to transportation.

*System:* DHS/ICE/PIA–015(b) Enforcement Integrated Database (EID) ENFORCE Alien Removal Module (EARM 3.0) Update.

*Component:* Immigration and Customs Enforcement (ICE).

*Date of approval:* May 20, 2011.

The EID is a DHS shared common database repository for several DHS law enforcement and homeland security applications. EID, which is owned and operated by U.S. ICE, captures and maintains information related to the investigation, arrest, booking, detention, and removal of persons encountered during immigration and criminal law enforcement investigations and operations conducted by ICE, U.S. Customs and Border Protection (CBP), and USCIS, agencies within DHS. DHS personnel access the data in EID using the ENFORCE suite of software applications: ENFORCE Apprehension Booking Module (EABM), ENFORCE Alien Detention Module (EADM), and ENFORCE Alien Removal Module (EARM). The PIA for EID was published in January 2010 and last updated in September 2010. ICE is now deploying an upgrade to the ENFORCE applications, referred to as EARM version 3.0 (EARM 3.0), to merge two of the ENFORCE applications, and to modify the data collected by DHS, the capabilities of the software, and certain system interfaces. These changes require an update to the EID PIA.

Dated: June 20,2011.

**Mary Ellen Callahan,**

*Chief Privacy Officer, Department of Homeland Security.*

[FR Doc. 2011–16160 Filed 6–27–11; 8:45 am]

**BILLING CODE 9110–9L–P**

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID FEMA–2011–0009]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–0039; FEMA Form 078–0–2A, National Fire Academy (NFA) Long-Term Evaluation Student/Trainee; FEMA Form 078–0–2, NFA Long-Term Evaluation Supervisors

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

**ACTION:** Notice; 30-day notice and request for comments; extension, without change, of a currently approved information collection; OMB No. 1660–0039; FEMA Form 078–0–2A (Presently FEMA Form 95–59), NFA Long-Term Evaluation Student/Trainee; FEMA Form 078–0–2 (Presently FEMA Form 95–58), NFA Long-Term Evaluation Supervisors.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) will submit the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission will describe the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

**DATES:** Comments must be submitted on or before July 28, 2011.

**ADDRESSES:** Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections-Management@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Collection of Information**

*Title:* National Fire Academy Long-term Evaluation Form for Supervisors and National Fire Academy Long-term Evaluation Form for Students/Trainees.

*Type of Information Collection:* Extension, without change, of a currently approved information collection.

*OMB Number:* OMB No. 1660–0039.

*Form Titles and Numbers:* FEMA Form 078–0–2A, NFA Long-Term Evaluation Student/Trainee; FEMA Form 078–0–2, NFA Long-Term Evaluation Supervisors.

*Abstract:* The National Fire Academy Long-Term Evaluation Form will be used to evaluate all National Fire Academy (NFA) on-campus resident training courses. Course graduates and their supervisors will be asked to evaluate the impact of the training on both individual job performance and the fire and emergency response department/community where the student works. The data provided by students and supervisors is used to update existing NFA course materials and to develop new courses that reflect the emerging issues/needs of the Nation's fire service.

*Affected Public:* State, local or Tribal Government.

*Estimated Number of Respondents:* 4,500.

*Frequency of Response:* Once.

*Estimated Average Hour Burden per Respondent:* .16 burden hours.

*Estimated Total Annual Burden Hours:* 697.5 burden hours.

*Estimated Cost:* There are no annual start-up or capital costs.

Dated: June 22, 2011.

**Lesia M. Banks,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2011–16122 Filed 6–27–11; 8:45 am]

BILLING CODE 9110–45–P

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Agency Information Collection Activities; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** 30-Day notice and request for comments; Establishment of a new information collection.

**SUMMARY:** As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, U.S. Customs and Border Protection has submitted a Generic Information Collection Request (Generic ICR): ''Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery '' to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) 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 80542) on December 22, 2010, allowing for a 60-day comment period.

**DATES:** Written comments should be received on or before July 28, 2011.

**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:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

Feedback collected under this generic clearance will provide useful information, but it will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: the target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic

mechanisms that are designed to yield quantitative results.

*Current Actions:* Request for new collection of information.

*Type of Review:* New Collection.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

*Estimated Number of Respondents:* 60,000.

*Frequency of Response:* Once per request.

*Estimated Time per Response:* 13 minutes.

*Estimated Total Annual Burden Hours:* 13,000 hours.

*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: June 23, 2011.

**Tracey Denning,**

*Agency Clearance Officer, U.S. Customs and Border Protection.*

[FR Doc. 2011–16131 Filed 6–27–11; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZ910000 L14300000.ET0000 LXSIURAM0000]**

### Public Land Order No. 7773; Emergency Withdrawal of Public and National Forest System Lands, Coconino and Mohave Counties; AZ

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This Order withdraws, subject to valid existing rights, approximately 1,010,776 acres of public and National Forest System lands from location and entry under the 1872 Mining Law for a period of 6 months under the Secretary's emergency withdrawal authority in section 204(e) of the Federal Land Policy and Management Act of 1976.

**DATES:** Effective date is July 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Florence, District Manager, BLM Arizona Strip District, 435–688–3200.

### Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, and in accordance with subsection 204(e) of that Act, it is determined that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost. It is therefore ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from location and entry under the 1872 Mining Law (30 U.S.C. 22 *et seq.*), to protect the Grand Canyon Watershed from adverse effects of locatable hardrock mineral exploration and mining:

**Gila and Salt River Meridian**

Tps. 28 to 31 N., R. 1 E.,
Tps. 40 and 41 N., R. 1 E.,
Tps. 28 to 30 N., R. 2 E.,
Tps. 27 to 30 N., Rs. 3 to 6 E.,
Tps. 37 to 40 N., R. 3 E.,
Tps. 36 and 37 N., Rs. 4 and 5 E.,
T. 38 N., Rs. 3 to 5 E.,
T. 37 N., R. 6 E.,
Tps. 38 and 39 N., R. 6 E.,
Tps. 39 and 40 N., R. 7 E.,
T. 31 N., R. 1 W.,
Tps. 38 to 41 N., R. 1 W.,
Tps. 38 to 40 N., R. 2 W.,
Tps. 36 to 40 N., R. 3 W.,
Tps. 35 to 40 N., Rs. 4 and 5 W.,
Tps. 35 to 39 N., Rs. 6 and 7 W.

The areas described above aggregate approximately 1,010,776 acres public and National Forest System lands in Coconino and Mohave Counties.

2. The withdrawal made by this Order does not alter the applicability of the public land laws other than the 1872 Mining Law (30 U.S.C. 22 *et seq.*).

3. This withdrawal will expire 6 months from the effective date of this Order.

Dated: June 21 2011.

**Ken Salazar,**

*Secretary of the Interior.*

[FR Doc. 2011–16056 Filed 6–27–11; 8:45 am]

**BILLING CODE 4310–32–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCO–921000–L51100000–GA0000–LVEMC10CC770; COC–74219]**

### Notice of Availability of the Environmental Assessment and Notice of Public Hearing for the Sage Creek Holdings, LLC, Federal Coal Lease Application, COC–74219

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Federal coal management regulations, the Sage Creek Holdings, LLC, Federal Coal Lease-By-Application (LBA) Environmental Assessment (EA) is available for public review and comment. The Department of the Interior, Bureau of Land Management (BLM) Colorado State Office, will hold a public hearing to receive comments on the EA, Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources for Sage Creek Holdings, LLC, COC–74219.

**DATES:** The public hearing will be held at 6 p.m, on August 17, 2011. Written comments should be received no later than September 16, 2011.

**ADDRESSES:** The public hearing will be held at the BLM Little Snake Field Office (BLM/LSFO) 455 Emerson St., Craig, Colorado 81625. Written comments should be sent to Jennifer Maiolo at the same address. You may also send Jennifer Maiolo a fax at 970–826–5002. Copies of the Draft EA, unsigned Finding of No Significant Impact (FONSI) and MER report are available at the field office address above.

**FOR FURTHER INFORMATION CONTACT:** Kurt M. Barton at 303–239–3714, *kbarton@blm.gov,* or Jennifer Maiolo at 970–826–5077, *jmaiolo@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** An LBA was filed by Sage Creek Holdings, LLC. The coal resource to be offered is limited to coal recoverable by underground mining methods. The Federal coal is located in the lands outside established coal production regions and may supplement the reserves at the Sage Creek Mine. The Federal coal resources are located in Routt County, Colorado.

**Sixth Principal Meridian,**

T. 5 N., R. 87 W.,
Sec. 21, NE¼NE¼;
Sec. 22, N½, NW¼SW¼.

These lands contain 400 acres, more or less.

The EA addresses the cultural, socioeconomic, environmental, and cumulative impacts that would likely result from leasing these coal lands. Two alternatives are addressed in the EA:

*Alternative 1:* (Proposed Action) The tracts would be leased as requested in the application; and

*Alternative 2:* (No Action) The application would be rejected or denied. The Federal coal reserves would be bypassed.

Proprietary data marked as confidential may be submitted to the BLM in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on the EA, FONSI, FMV, and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the BLM Colorado State Office, 2850 Youngfield, Lakewood, Colorado 80215, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday, excluding Federal holidays. Comments on the EA, FMV, and MER should address, but not necessarily be limited to, the following:

1. The quality and quantity of the coal resources;

2. The method of mining to be employed to obtain MER of the coal, including specifications of the seams to be mined, timing and rate of production, restriction to mining, and the inclusion of the tracts in an existing mining operation;

3. The FMV appraisal including, but not limited to, the evaluation of the tract as an incremental unit of an existing mine, quality and quantity of the coal resource, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, the mining method or methods, and any comparable sales data on similar coal lands. The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Written comments on the EA, MER, and FMV should be sent to Jennifer Maiolo at the above address prior to close of business on September 16, 2011. Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3422 and 3425.

Dated: February 11, 2011.

**Helen M. Hankins,**

*State Director.*

[FR Doc. 2011–16052 Filed 6–27–11; 8:45 am]

BILLING CODE 4310–JB–P

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

**[Docket No. ONRR–2011–0018]**

### Notice of Proposed Audit Delegation Renewals for the States of Oklahoma and Montana

**AGENCY:** Office of Natural Resources Revenue (ONRR), Interior.

**ACTION:** Notice of States' proposals for audit delegation renewals.

**SUMMARY:** The States of Oklahoma and Montana (States) are requesting that the Office of Natural Resources Revenue (ONRR) renew current delegations of audit and investigation authority. This notice gives members of the public an opportunity to review and comment on the States' proposals.

**DATES:** Submit written comments on or before *July 28, 2011.*

**ADDRESSES:** You may submit comments on this notice to ONRR by any of the following methods:

- Electronically go to *http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter ONRR–2011–0018, and then click search. Follow the instructions to submit public comments. The ONRR will post all comments.
- Mail comments to Armand Southall, Regulatory Specialist, ONRR, P.O. Box 25165, MS 61013C, Denver, Colorado 80225. Please reference the Docket No. ONRR–2011–0018 in your comments.
- Hand-carry comments or use an overnight courier service. Our courier address is Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225. Please reference the Docket No. ONRR–2011–0018 in your comments.

**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues, contact Heidi Badaracco, State and Indian Coordination, Financial and Program Management, ONRR, telephone (303) 231–3434. For comments or questions on procedural issues, contact Armand Southall, Regulatory Specialist, ONRR, telephone (303) 231–3221. You may obtain a paper copy of the proposals by contacting Mr. Southall by phone or at the address listed above for mailing comments.

**SUPPLEMENTARY INFORMATION:** The following officials are the States' contacts for these proposals:

| State | Department | Contact information |
|---|---|---|
| Montana ..... | Montana Department of Revenue, Business, & Income Taxes | Van Charlton, 125 North Roberts, Helena, MT 59601–4558, *vcharlton@mt.gov*, 406–444–3584. |
| Oklahoma ..... | Oklahoma State Auditor & Inspector's Office ..... | Mark Hudson, Director, Minerals Management Division, 2401 NW. 23rd Street, Suite 39, Oklahoma City, OK 73107. |

The ONRR received the States' proposals January through March 2010. Under 30 CFR 1227.101(b)(1) (2010), the States request that ONRR delegate the royalty management functions of conducting audits and investigations. The States request delegation of these functions for producing Federal oil and gas leases within the States' boundaries, as applicable, and for other producing solid mineral or geothermal Federal leases within the States. The States do not request delegation of royalty and production reporting functions.

The States of Oklahoma and Montana request 100-percent funding of the delegated functions for a 3-year period beginning October 1, 2011, with the opportunity to extend for an additional 3-year period. These States have current audit delegation agreements with ONRR, as shown in the table below. Therefore, ONRR has determined that a formal hearing for comments will not be held under 30 CFR 1227.105.

| State | Agreement No. | Term |
|---|---|---|
| Oklahoma | 0206CA25938 | 10/1/2005—09–30–2011 |
| Montana | 0206CA25939 | 10/1/2005—09–30–2011 |

Dated: June 23, 2011.

**Gregory J. Gould,**

*Director for Office of Natural Resources Revenue.*

[FR Doc. 2011–16116 Filed 6–27–11; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Office of Natural Resources Revenue

**[Docket No. ONRR–2011–0014]**

### Update to Indian Index Zone Price Points

**AGENCY:** Office of Natural Resources Revenue, Interior.

**ACTION:** Notice.

**SUMMARY:** The Office of Natural Resources Revenue (ONRR, formerly Minerals Management Service's (MMS) Minerals Revenue Management) is announcing an update to Indian index zone price points that will remove certain natural gas index prices from the Indian Index Zone calculation. These changes will impact Oklahoma-Zone 1, Oklahoma-Zone 2, and the Central Rocky Mountain Zone. The ONRR State and Indian Outreach Program held three Indian Tribal Consultation meetings seeking input and comments on several changes that could affect the valuation of mineral production on Indian lands, including this **Federal Register** Notice. The meetings took place in Albuquerque, NM on May 19; Denver, CO on May 26; and Oklahoma City, OK on June 9, 2011. The ONRR did not receive any negative comments from the various Indian Tribes on this **Federal Register** Notice.

**DATES:** Effective August 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** For questions on technical issues, contact Jason Boroos, Economic and Market Analysis, ONRR, telephone (303) 231–3048; e-mail *Jason.Boroos@onrr.gov.* For other questions, contact Armand Southall, Project Management Office-Regulations, ONRR, telephone (303) 231–3221, or e-mail *Armand.Southall@onrr.gov.*

**SUPPLEMENTARY INFORMATION:** The ONRR (formerly MMS) published a final rule, regarding amendments to gas valuation regulations for Indian leases, in the **Federal Register** on August 10, 1999 (64 FR 43506). The ONRR also published additional information in the **Federal Register** on November 30, 1999 (64 FR 66771) and March 8, 2007 (72 FR 10522), which listed the Index Zones Eligible for the Index-Based Valuation Method and the acceptable publications and indices. The ONRR has recently completed an analysis to examine the designated indices contained in each Index Zone from the standpoint of market liquidity, transparency, and value and has concluded three index zones need to be revised pursuant to section 1206.172 (d)(6) of title 30 of the Code of Federal Register. This document lists those revisions.

The ONRR analyzed the trading volume and number of deals from January 2005 through August 2010 for indices in all the Index Zones. As a result, ONRR determined that two indices, CenterPoint West in Oklahoma-Zones 1 and 2, and Questar in the Central Rocky Mountain Zone were very thinly traded and unrepresentative of the market. Beginning with production on the first day of the second month following the publication date, ONRR will no longer use these indices in the Index Zone calculation. Additionally, we have removed Northern NG TX, OK, KS, CenterPointWest (Platts), Enogex, and Northern Natural Mid 10–13, which are no longer published by either the Platts or Natural Gas Intelligence. Lessees must value gas production for Oklahoma-Zone 1, Oklahoma-Zone 2, and the Central Rocky Mountain Zone on the index-based valuation formula at § 1206.172(d) using the updated list of ONRR approved publications and indices for the affected Index Zones to determine the Index Zone price; or lessees may obtain the index-based values from the ONRR Web site at: *http://onrr.gov/SIC/allzones.htm.*

The approved publications and index pricing points for the Index Zones are shown in the following table:

APPROVED PUBLICATIONS AND INDEX PRICING POINTS

| Index zone | ONRR approved publications | | Index-pricing points |
|---|---|---|---|
| | Platts Inside FERC | NGI bidweek survey | |
| Oklahoma-Zone 1 | X | ..... | ANR Pipeline Co. for Oklahoma. |
| | X | ..... | Natural Gas Pipeline Co. of America for Mid-continent. |
| | X | ..... | Panhandle Eastern Pipe Line Co. for Texas, Oklahoma (mainline). |
| | X | ..... | Southern Star Natural Gas Pipeline Inc. for Texas, Oklahoma, Kansas (*formerly Williams Gas Pipelines Central Inc. Texas, Oklahoma, Kansas*). |
| | ..... | X | ANR SW. |
| | ..... | X | NGPL Midcontinent. |
| | ..... | X | Panhandle Eastern. |
| | ..... | X | Southern Star. |
| Oklahoma-Zone 2 | X | ..... | ANR Pipeline Co. for Oklahoma. |
| | X | ..... | Natural Gas Pipeline Co. of America for Mid-continent. |
| | X | ..... | Panhandle Eastern Pipe Line Co. for Texas, Oklahoma (mainline). |
| | X | ..... | Southern Star Natural Gas Pipeline Inc. for Texas, Oklahoma, Kansas. |
| | ..... | X | ANR SW. |
| | ..... | X | NGPL Midcontinent. |
| | ..... | X | Panhandle Eastern. |
| | ..... | X | Southern Star. |
| Oklahoma-Zone 3 | X | ..... | Natural Gas Pipeline Co. of America Texok. |

APPROVED PUBLICATIONS AND INDEX PRICING POINTS—Continued

| Index zone | ONRR approved publications | | Index-pricing points |
|---|---|---|---|
| | Platts Inside FERC | NGI bidweek survey | |
| | X | ..... | Southern Star Natural Gas Pipeline Inc. for Texas, Oklahoma, Kansas. |
| | X | ..... | CenterPoint Energy Gas Transmission East (*formerly Reliant Energy Gas Transmission Co. East*). |
| | ..... | X | NGPL Texok. |
| | ..... | X | CenterPoint East. |
| | ..... | X | Southern Star. |
| Central Rocky Mountains | X | ..... | Kern River Gas Transmission for Wyoming. |
| | X | ..... | Northwest Pipeline Corp. for Rocky Mountains. |
| | X | ..... | Colorado Interstate Gas for Rocky Mountains. |
| | ..... | X | CIG. |
| | ..... | X | Kern River. |
| | ..... | X | Northwest Domestic. |
| Northern Rocky Mountains | X | ..... | Colorado Interstate Gas for Rocky Mountains. |
| | ..... | X | CIG. |
| San Juan Basin | X | ..... | El Paso Natural Gas Co. San Juan. |
| | X | ..... | Transwestern Pipeline Co. San Juan (*effective August 1st, 2010*). |
| | ..... | X | El Paso Non-bondad. |
| | ..... | X | Transwestern San Juan. |

The ONRR State and Indian Outreach Program completed the three Indian Tribal Consultation meetings in Albuquerque, NM; Denver, CO; and Oklahoma City, OK, required under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 9, 2000. The ONRR did not receive any negative comments from the Indian Tribes.

Dated: June 23, 2011.

**Gregory J. Gould,**

*Director for Office of Natural Resources Revenue.*

[FR Doc. 2011–16125 Filed 6–27–11; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection for 1029–0083

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed authority for the Certification of Blasters in Federal program states and on Indian lands, and the related form.

**DATES:** Comments on the proposed information collection must be received by August 29, 2011, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 203—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

**FOR FURTHER INFORMATION CONTACT:** To receive a copy of the information collection request contact John Trelease at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies an information collection that OSM will be submitting to OMB for approval. This collection is contained in 30 CFR 955—Certification of Blasters in Federal program states and on Indian lands, and Form OSM–74. OSM will request a 3-year term of approval for each information collection activity.

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 number for 30 CFR 955 and Form OSM–74 is 1029–0083, and is codified at 30 CFR 955.10.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* 30 CFR 955—Certification of blasters in Federal program states and on Indian lands.

*OMB Control Number:* 1029–0083.

**SUMMARY:** This information is being collected to ensure that the applicants for blaster certification are qualified. This information, with blasting tests, will be used to determine the eligibility of the applicant.

*Bureau Form Number:* OSM–74.

*Frequency of Collection:* On occasion.

*Description of Respondents:* Individuals intent on being certified as

blasters in Federal program states and on Indian lands.

*Total Annual Responses:* 8.

*Total Annual Burden Hours:* 18.

*Total Annual Non-Wage Burden Cost:* $549.

Dated: June 21, 2011.

**John A. Trelease,**

*Acting Chief, Division of Regulatory Support.*

[FR Doc. 2011–16011 Filed 6–27–11; 8:45 am]

**BILLING CODE 4310–05–M**

## INTERNATIONAL TRADE COMMISSION

**[Investigation Nos. 731–TA–825 and 826 (Second Review)]**

## Polyester Staple Fiber From Korea and Taiwan; Scheduling of Expedited Five-Year Reviews Concerning the Antidumping Duty Orders on Polyester Staple Fiber From Korea and Taiwan

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on polyester staple fiber from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR Part 201), and part 207, subparts A, D, E, and F (19 CFR Part 207).

**DATES:** *Effective Date:* June 6, 2011.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On June 6, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 11268, March 1, 2011) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

*Staff report.*—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on July 28, 2011, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before August 2, 2011, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by August 2, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Determination.*—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: June 23, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

## Proposed Work Schedule

**Investigation No. 731–TA–825 and 826 (Second Review)**

*Polyester Staple Fiber from Korea and Taiwan*

STAFF ASSIGNED

| | |
|---|---|
| Investigator | Elizabeth Haines (205–3200). |
| Commodity-Industry Analyst | Jackie Jones (205–3466). |
| Attorney | Karl von Schriltz (205–3096). |
| Acting Supervisory Investigator | Elizabeth Haines (205–3200). |

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by DAK Americas, LLC, Palmetto Synthetics, LLC, U.S. Fibers, and Wellman Plastics Recycling, LLC, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

| | Date |
|---|---|
| Institution | March 1, 2011. |
| Report to the Commission:: | |
| Draft to Supervisory Investigator | July 13. |
| Draft to Senior Review | July 20. |
| To the Commission | July 28. |
| Comments of Parties due [1] | August 2. |
| Legal issues memorandum to the Commission | August 9. |
| Briefing and vote (suggested date) | August 30. |
| Determination and views to Commerce | September 13. |

[1] If comments contain business proprietary information, a nonbusiness proprietary version is due the following business day.

[FR Doc. 2011–16110 Filed 6–27–11; 8:45 am]

BILLING CODE 7020–02–P

## FOREIGN CLAIMS SETTLEMENT COMMISSION

**[F.C.S.C. Meeting Notice No. 4–11]**

### Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503) 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 Commission business and other matters specified, as follows:

**DATE AND TIME:** Tuesday, July 12, 2011, at 11 a.m.

**SUBJECT MATTER:** Issuance of Proposed Decisions in claims against Albania and Libya.

**STATUS:** Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street, NW.; Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

**Judith H. Lock,**

*Executive Officer.*

[FR Doc. 2011–16322 Filed 6–24–11; 4:15 pm]

BILLING CODE 4410–BA–P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before July 28, 2011.

**ADDRESSES:** You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

### II. Petitions for Modification

*Docket Number:* M–2011–004–M.

*Petitioner:* Troy Mine, Inc., P.O. Box 1660, Highway 56 South Mine Road, Troy, Montana 59935.

*Mine:* Troy Mine, MSHA Mine I.D No. 24–01467, located in Lincoln County, Montana.

*Regulation Affected:* 30 CFR 57.11052(d) (Refuge areas).

*Modification Request:* The petitioner requests a modification of the existing standard to not use compressed air lines as the means of providing air for the underground refuge chamber, and not to use waterlines as the means of providing water for the underground refuge chamber. The petitioner states that: (1) The Troy Mine is an underground room and pillar mine with five stratabound copper/silver ore horizons dipping at approximately four (4) degrees (7% grade) and is accessed through adits from the surface. (2) The refuge chamber is designed to sustain 12 miners for 36 hours during a mine emergency. The refuge chamber is presently located in the ''C'' Bed 59 I crosscut. The unit is portable and future

plans are to relocate the chamber. The refuge chamber has a battery back-up system in the event of a power failure in the mine. The refuge chamber will be inspected monthly and documented by the Safety Department. A flashing light was installed and is activated when the outer air lock door is initially opened ensuring that the refuge chamber has not been tampered with. All miners affected have received training in the operation of the refuge chamber and will receive refresher training annually and/or when the refuge chamber has been relocated. (3) Compressed air is not in use underground with the exception of a Speed Air 49 CFM air compressor at the underground Shop Pad and integral air compressors on mobile equipment. A Cambel Hausfield-1 CFM pancake air compressor was installed on the refuge chamber. The air compressors are vulnerable to power failure and damage. (4) Two ''T'' size compressed medical grade oxygen cylinders are provided with the carbon dioxide ($CO_2$) scrubber system. In addition, four ''T'' size compressed breathing quality air cylinders are available in the air-locked area. The compressed medical oxygen and compressed air cylinders are secured within the refuge chamber and would not be vulnerable to damage or power failure. The medical grade oxygen cylinders and $CO_2$ scrubber system will at all times guarantee the miners affected no less than the same measure of protection afforded by the standard. (5) For waterlines, two groundwater wells feed a water tank at an elevation of 3,830 feet located on the surface. Chlorination of the mine site potable water is not necessary due to the purity of the groundwater. The surface buildings of the mine site are supplied with potable water from the gravity feed water tank. Due to the positive elevation difference between the water tank and the top of the service adit, a water line would not lend itself to gravity feed. The shortage haulage route from the water tank located on the surface to the refuge chamber presently located in the ''C'' Bed 59 I crosscut is 11,495 feet. Waterlines provided to the refuge chamber from the surface are vulnerable to damage. There can be no guarantee of bacteria-free potable water in the 11,495 foot long waterline, posing a credible threat of disease to miners. (6) Abundant quantities of individually portioned 16.9 fluid ounce bottled water have been provided in the refuge chamber for the miner's use in an emergency. According to MSHA's underground coal mine standards, a minimum 2.25 quarts (72 fluid ounces) of water is required per miner per day. This is equivalent to 1,296 fluid ounces for 12 miners for 36 hours. The bottled water is not vulnerable to damage or power failure. The bottled water will at all times guarantee the miners affected no less than the same measure of protection afforded by the standard. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard with no diminution of safety to the miners.

*Docket Number:* M–2011–019–C.

*Petitioner:* Tunnel Ridge, LLC, 2596 Battle Run Road, Triadelphia, West Virginia 26059.

*Mine:* Tunnel Ridge Mine, MSHA Mine I.D No. 46–08864, located in Ohio County, West Virginia.

*Regulation Affected:* 30 CFR 75.1700 (Oil and gas wells).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance for leaving barrier pillars around oil and gas wells. The petitioner proposes to mine through oil and gas wells in the Pittsburg 8 coal bed. As an alternative to leaving 300-foot diameter coal barriers, the petitioner proposes to use the following procedures when plugging oil and gas wells: (1) Prior to plugging an oil or gas well, a diligent effort will be made to clean the borehole to the original total depth. If this depth cannot be reached, the borehole will be cleaned out to a depth which would permit the placement of at least 200 feet of expanding cement below the base of the lowest economically feasible mineable coal bed; (2) when cleaning the borehole, a diligent effort will be made to remove all the casing in the borehole. If it is not possible to remove all casing, the casing that remains will be perforated or ripped at intervals spaced close enough to permit expanding cement slurry to infiltrate the annulus between the casing and the borehole wall for a distance of at least 200 feet below the base of the lowest economically feasible mineable coal bed; (3) if the cleaned-out borehole produces gas, a mechanical bridge plug will be placed in the borehole in a competent stratum at least 200 feet below the base of the lowest economically feasible mineable coal bed, but above the top of the uppermost hydrocarbon-producing stratum. If it is not possible to set a mechanical bridge plug, a substantial brush plug may be used in place of the mechanical bridge plug; (4) a suite of logs will be made consisting of a caliper survey, directional deviation survey, and log(s) suitable for determining the top and bottom of the lowest economically feasible mineable coal bed and potential hydrocarbon-producing strata and the location for the bridge plug; (5) if the uppermost hydrocarbon-producing stratum is within 200 feet of the base of the lowest economically feasible mineable coal bed, properly placed mechanical bridge plugs or a suitable brush plug will be used to isolate the hydrocarbon-producing stratum from the expanding cement plug. Nevertheless, a minimum of 200 feet of expanding cement will be placed below the lowest economically feasible mineable coal bed; and (6) the wellbore will be completely filled and circulated with a gel that inhibits any flow of gas, supports the walls of the borehole, and increases the density of the expanding cement. This gel will be pumped through open-end tubing that will run to a point approximately 20 feet above the bottom of the cleaned out area of the borehole or bridge plug. In addition, the petitioner proposes to use the following procedures when plugging gas or oil wells to the surface: (1) A cement plug will be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface. As an alternative, the cement slurry may be pumped down the tubing so that the borehole is filled with Portland cement or a Portland cement-fly ash mixture from a point approximately 100 feet above the top of the lowest economically feasible mineable coal bed to the surface with an expanding cement plug extending from at least 200 feet below the lowest economically feasible mineable coal bed to the bottom of the Portland cement. There will be at least 200 feet of expanding cement below the base of the lowest economically feasible mineable coal bed; and (2) a small quantity of steel turnings or other small magnetic particles will be embedded in the top of the cement near the surface to serve as a permanent magnetic monument of the borehole. The petitioner also proposes to use the following procedures when using the vent pipe method for plugging oil and gas wells: (1) A 4½ inch or larger vent pipe will run into the wellbore to a depth of 100 feet below the lowest economically feasible mineable coal bed and swedged to a smaller diameter pipe, if desired, which will extend to a point approximately 20 feet above the bottom of the cleaned out area of the borehole or bridge plug; (2) a cement plug will be set in the wellbore by pumping expanding cement slurry, Portland cement, or a Portland cement-fly ash mixture down the tubing to displace the

gel so that the borehole is filled with cement. The borehole and the vent pipe will be filled with expanding cement for a minimum of 200 feet below the base of the lowest economically feasible mineable coal bed. The top of the expanding cement will extend upward to a point approximately 100 feet above the top of the lowest economically feasible mineable coal bed; (3) all fluid will be evacuated from the vent pipe to facilitate testing for gases. During the evacuation of fluid, the expanding cement will not be disturbed; (4) the top of the vent pipe will be protected to prevent liquids or solids from entering the wellbore, but permit ready access to the full internal diameter of the vent pipe when necessary. Furthermore, the petitioner proposes to use the following procedures when plugging oil or gas wells for subsequent use as degasification boreholes: (1) A cement plug will be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and provide at least 200 feet of expanding cement below the lowest economically feasible mineable coal bed. The top of the expanding cement will extend upward to a point above the top of the coal bed being mined. This distance will be based on the average height of the roof strata breakage for the mine; (2) to facilitate methane drainage, degasification casing of suitable diameter, slotted or perforated throughout its lower 150 to 200 feet, will be set in the borehole to a point 10 to 30 feet above the top of the expanding cement; (3) the annulus between the degasification casing and the borehole wall will be cemented from a point immediately above the slots or perforations to the surface; (4) the degasification casing will be cleaned out for its total length; (5) the top of the degasification casing will be fitted with a wellhead equipped as required by the District Manager (DM). Such equipment may include check valves, shut-in valves, sampling ports, flame arrestor equipment and security fencing. The petitioner proposes that: (1) Prior to reducing the safety barrier to a distance less than the DM would approve or proceeding with an intent to cut through a plugged well, the operator will notify the DM or his designee. (2) Mining in close proximity or through a plugged well will be done on a shift approved by the DM or designee. The DM or designee and the representative of miners' and the appropriate State agency will be notified by the operator in sufficient time prior to the mining-through operation in order to provide an opportunity to have representatives present. (3) When using continuous mining equipment, drivage sights will be installed at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sights will not be more than 50 feet from the well. When using longwall mining methods, drivage sights will be installed on 10-foot centers for a distance of 50 feet in advance of the wellbore. The drivage sights will be installed in the headgate and/or tailgate. (4) Firefighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mining-through will be available when either the conventional or continuous mining method is used. The fire hose will be located in the last open crosscut of the entry or room. All fire hoses will be ready for operation during the mining-through. (5) Sufficient supplies of roof support and ventilation materials will be available and located at the last open crosscut. In addition, an emergency plug and/or plugs will be available in the immediate area of the cut-through. (6) The quantity of air required by the approved mine ventilation plan, but not less than 6,000 cubic feet per minute for scrubber equipped continuous miners or not less than 9,000 cubic feet per minute for continuous miner sections using auxiliary fans or line brattice only, will be used to ventilate the working face during the mining-through operation. The quantity of air required by the ventilation plan, but not less than 30,000 cubic feet per minute, will reach the working face of each future longwall during the mine-through operation. (7) Equipment will be checked for permissibility and serviced on the shift prior to mining through the well. The methane monitor(s) on the continuous mining machine or the longwall shear and face will be calibrated on the shift prior to mining through the well. (8) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes from the time mining with the continuous mining machine is within 30 feet of the well until the well is intersected and immediately prior to mining-through. When mining with longwall mining equipment, the tests for methane will be made at least every 10 minutes when the longwall face is within 10 feet of the well. During the actual cutting through process no individual will be allowed on the return side until mining through has been completed and the area has been examined and declared safe. (9) When using continuous mining methods, the working place will be free from accumulations of coal dust and coal spillages. Rock dust will be placed on the roof, rib and floor to within 20 feet of the face when mining through or near the well on the shift or shifts during which the cut-through will occur. On longwall sections, rock dusting will be conducted and placed on the roof, rib, and floor up to both headgate and tailgate gob. (10) When the wellbore is intersected, all equipment will be deenergized and the place thoroughly examined and determined safe before mining is resumed. Any well casing will be removed and no open flame will be permitted in the area until adequate ventilation has been established around the wellbore. (11) After a well has been intersected and the working place determined safe, mining will continue inby the well at a sufficient distance to permit adequate ventilation around the area of the wellbore. (12) No person will be permitted in the mining-through area except those actually engaged in the operation, company personnel, personnel from MSHA, and personnel from the appropriate State agency. (13) The mining-through operation will be under the direct supervision of a certified official. Instructions concerning the mining-through operation will be issued only by the certified official in charge. (14) A copy of the proposed decision and order will be maintained at the mine and available to the miners. (15) The petitioner will file a plugging affidavit setting forth the persons who participated in the work, a description of the plugging work, and a certification by the petitioner that the well has been plugged as described. (16) Within 60 days after the proposed decision and order (PDO) becomes final, proposed revisions for the approved part 48 training plans will be submitted to the DM. The proposed revisions will include initial and refresher training regarding compliance with the terms and conditions in the PDO. The petitioner asserts that the proposed alternative method will at all times provide no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M–2011–020–C.

*Petitioner:* Luminant Mining Company, 500 N. Akard St., Dallas, Texas 75201.

*Mine:* Kosse Strip Mine, MSHA I.D. No. 41–04586, located in Limestone County, Texas; Three Oaks Strip Mine, MSHA I.D. No. 41–04085, located in Lee County, Texas; Turlington Strip Mine, MSHA I.D. No. 41–04802, located in Freestone County, Texas; Leesburg Strip Mine, MSHA I.D. No. 41–04444, located in Titus County, Texas; and Bremond

Strip Mine, MSHA I.D. No. 41–02788, located in Robertson County, Texas.

*Regulation Affected:* 30 CFR 77.803 (Fail safe ground check circuits on high-voltage resistance grounded systems).

*Modification Request:* The petitioner requests a modification of the existing standard to permit an alternative method of compliance when the boom/mast is raised or lowered during necessary repairs. The petitioner state that it realizes that some stages of assembly/disassembly of draglines require special consideration when the boom/mast is raising/lowering into position. The boom is raised/lowered utilizing the on-board motor generator sets, which is critical because during this time power to the machine, as much as possible, must not be interrupted. Power loss may result in the boom becoming uncontrolled and falling, and could injure workers. To address this condition, the following guidelines are proposed to be used to help prevent loss of power to the machine. This procedure only addresses raising/lowering the boom of draglines utilizing the machine's electrical onboard motor generator sets. It does not replace other mechanical precautions or the requirements of 30 CFR 77.405(b) that are necessary to safely secure booms/masts during construction or maintenance procedures. (1) The petitioner proposes to develop and implement written procedures that will: (a) Limit the number of persons needed on board the machine during the boom/mast raising/lowering. Only those persons critical to performing necessary functions will be permitted on board the machine. (b) Explain the methods to be used to prevent off-board persons from contacting the frame cable of the machine. The area around the machine would be roped off or guarded. (c) Prohibit other work activities in close proximity to the machine during the boom/mast operation. (d) Establish a responsible person(s) at the work site familiar with all the requirements and able to communicate at all times with the qualified person(s) at the substation. The responsible person(s) must remain at the work site during the boom/mast raising/lowering. (e) Ensure that all persons involved with the boom/mast raising/lowering are familiar with the safety precautions. (2) An MSHA-qualified electrician must complete an examination of all electrical components that will be energized during the boom raising/lowering process. The examination must be done within 2 hours prior to the boom raising/lowering process. A record of the examination must be made available for review. The machine must be deenergized to perform this examination. (3) After the examination has been completed, electrical components necessary to complete the boom raising/lowering process must be energized to assure they are operating properly as determined by the MSHA-qualified electrician. (4) The ground fault and ground check circuits may be disabled provided: (a) the internal ground conductor of the trailing cable has been tested and is continuous from the frame of the dragline to the grounding resistor located at the substation. Utilizing the ground check circuit and disconnecting the pilot circuit and the machine frame and verifying the circuit breaker cannot be closed will be an acceptable test. Resistance measurements can also be used to assure the ground conductor is continuous. The ground resistor must be tested to assure it is properly connected and is not open or shorted; (b) normal short circuit protection must be provided at all times. The overcurrent relay setting may be increased up to 100% above its normal setting. (5) During the boom raising/lowering procedure an MSHA-qualified electrician will be positioned at the substation and dedicated to monitoring the grounding circuit. The qualified person(s) will be able to detect a grounded phase condition or an open ground conductor without being exposed to shock hazards. The person(s) at the substation will at all times maintain communications with a responsible person at the dragline. If a grounded phase condition or an open ground wire should occur during the process, the person at the substation will notify the responsible person at the dragline. All persons on board the machine must be aware of the condition and must remain on board the machine. The boom must be controlled and the electrical circuit deenergized until the condition is corrected. The ground fault and ground check circuits must be reinstalled prior to reenergizing and testing. Once the circuits have been tested and no adverse conditions are present, the boom raising/lowering procedure may be resumed. (6) During the boom raising/lowering procedure, persons are not permitted to get on/off the dragline while the ground check and ground fault circuits are disabled unless the circuit to the dragline is de-energized, locked and tagged out as verified by the qualified person at the substation. (7) After the boom raising/lowering is completed the responsible person at the dragline will notify the qualified person(s) at the substation. The qualified person(s) will deenergized the circuit and restore the protective relays to their normal setting. Prior to reenergizing the circuit for normal operation, the circuit and its protective relays will be tested and examined as described in 30 CFR 77.800–1. The ground check will be tested by opening the ground check circuit at the machine to verify the circuit breaker cannot be closed. A record of the test and examination will be recorded as described in 30 CFR 77.800–1. Following completion of the test and examination, normal work can begin. The petitioner asserts that the proposed alternative method will provide the same degree of safety for the miners as the existing standard.

*Docket Number:* M–2011–021–C.

*Petitioner:* Buckskin Mining Company (Previously Triton Coal Company), P.O. Box 3027, Gillette, Wyoming 82717–3027.

*Mine:* Buckskin Mine, MSHA I.D. No. 48–01200, located in Campbell County, Wyoming.

*Regulation Affected:* 30 CFR 77.1607(u) (Loading and haulage equipment; operation).

*Modification Request:* The petitioner requests a variance from the existing standard for towing of haul trucks (presently 140–190 tons), and other large off-highway surface mine equipment. The petitioner states that the tow bar presently used for towing weighs 1,500 pounds and requires some type of crane and two or three miners to install. The miners must be close to this suspended load and between two large mobile units to correctly position and pin the tow bar. The petitioner proposes to use a portable hydraulic unit that will supply power to the necessary functions of the disabled equipment to move it safely. The petitioner proposes to provide proper task training to every miner who will have the responsibility of using the equipment, which include training in the steering and braking systems of the equipment and in the towing procedures that will be used. The petitioner states that: (1) During the towing process, if anything should fail, the disabled equipment's brakes will automatically engage, stopping all towing procedures; (2) one miner only will be needed to attach a choker cable from the towing equipment to the disabled equipment, and the miner will have limited exposure between the equipment; (3) wheel chocks will be used when necessary and radio communication will be maintained between all the miners involved; (4) the maximum grade that would be encountered while towing a piece of

equipment is 10 percent, which could be either up or down. The typical rolling resistance varies widely throughout the mine site, as do the grades; and (5) the maximum towing distance anticipated in the foreseeable future is 2.2 miles. The maximum towing distance anticipated during life of the mine is approximately 3 miles (all on mine property). The petitioner provided a complete list of procedures that will be utilizing when towing disabled heavy equipment, and a complete description of the steering and braking systems of the equipment. Persons may review these procedures at the MSHA address listed in this notice. The petitioner asserts that this variance from the existing standards will enhance the safety of the employees at the Buckskin Mine.

Dated: June 22, 2011.

**Patricia W. Silvey,**

*Certifying Officer.*

[FR Doc. 2011–16083 Filed 6–27–11; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR Part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards published in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before July 28, 2011.

**ADDRESSES:** You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

### II. Petitions for Modification

*Docket Number:* M–2011–016–C.

*Petitioner:* Midland Trail Energy, LLC, 3301 Point Lick Drive, Charleston, West Virginia 25306.

*Mine:* Campbells Creek No. 4 Deep Mine, MSHA Mine I.D No. 46–08437, located in Kanawha County, West Virginia.

*Regulation Affected:* 30 CFR 77.214(b) (Refuse piles; general).

*Modification Request:* The petitioner requests a modification of the existing standard to permit existing mine openings to be covered with coarse coal refuse during construction of the subject facility. The petitioner states that: (1) There are four mine openings located within the proposed embankment. The openings are associated with the abandoned Campbells Creek No. 4 Deep Mine in the Stockton coal seam, operated by Point Mining, Inc. The mine dips in the direction of the mine openings. The openings have been sealed and backfilled and underdrains have been installed. The underdrains are 16 square feet in cross-sectional area and consist of rock cobbles with a D50 of 8 inches wrapped in filter fabric. The underdrain flow will discharge beyond the limit of the proposed embankment. Three of the mine openings contain dry seals and the fourth contains a wet seal with a 6-inch diameter PVC pipe. The wet weal is located in the lowest elevation opening. The petitioner asserts that the proposed alternative method will provide the same measure of protection for the miners as the standard.

*Docket Number:* M–2011–017–C.

*Petitioner:* Rosebud Mining Company, 301 Market Street, Kittanning, Pennsylvania 16201.

*Mine:* Starford Mine, MSHA Mine I.D No. 36–09637, located in Indiana County, Pennsylvania.

*Regulation Affected:* 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35(a)(2) (Portable trailing cables and cords).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of MSHA approved 5 conductor 10 American Gauge Wire (AWG) (SO Cable) with a diameter of .77 with a tolerance of +/− 0.03. The petitioner states that: (1) The cable will hang on insulated hangers for the entire length at all times; (2) within 60 days after the proposed decision and order becomes final, proposed revisions of 30 CFR Part 48 will be submitted to the District Manager. The provisions will specify initial and refresher training regarding the terms and conditions stated in the proposed decision and order. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the standard.

*Docket Number:* M–2011–018–C.

*Petitioner:* Dominion Coal Corporation, P.O. Box 70, Vansant, Virginia 24656.

*Mine:* Mine No. 36, MSHA Mine I.D No. 44–06759, located in Buchanan County, Virginia.

*Regulation Affected:* 30 CFR 75.1700 (Oil and gas wells).

*Modification Request:* The petitioner requests a modification of the existing

standard to permit mine through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manger would approved pursuant to 30 CFR 75.1700) a plugged gas well penetrating the Jawbone Coal Seam and other mineable coal seams using continuous miners or conventional mining methods. The petitioner proposes to use the following procedures when plugging gas wells: (1) Prior to cleaning out and preparing gas wells, a diligent effort will be made to clean the borehole to the original total depth. If this depth cannot not be reached, the borehole will be cleaned out to a depth that would permit the placement of at least 200 feet of expanding cement below the base of the lowest mineable coalbed; (2) when cleaning the borehole, a diligent effort will be made to remove all the casing in the borehole. If it is not possible to remove all casing, the casing that remains will be perforated or ripped at intervals spaced close enough to permit expanding cement slurry to infiltrate the annulus between the casing and the borehole wall for a distance of at least 200 feet below the base of the lowest mineable coalbed; (3) if the cleaned-out borehole produces gas, a mechanical bridge plug will be placed in the borehole in a competent stratum at least 200 feet below the base of the lowest mineable coalbed, but above the top of the uppermost hydrocarbon-producing stratum. If a mechanical bridge plug cannot be set, an appropriately sized packer or a substantial brush plug may be used in place of the mechanical bridge plug; (4) a suite of logs will be made consisting of a caliper survey, directional deviation survey, and log(s) suitable for determining the top and bottom of the mineable coalbeds and potential hydrocarbon-producing strata and the location for the bridge plug; (5) if the uppermost hydrocarbon-producing stratum is within 200 feet of the base of the lowest mineable coalbed, properly placed mechanical bridge plugs or a suitable brush plug will be used to isolate the hydrocarbon-producing stratum from the expanding cement plug. A minimum of 200 feet of expanding cement will be placed below the lowest mineable coalbed; (6) the wellbore will be completely filled and circulated with a gel that inhibits any flow of gas, supports the walls of the borehole, and increases the density of the expanding cement. This gel will be pumped through open-end tubing and run to a point approximately 20 feet above the bottom of the cleaned-out area of the borehole or bridge plug. In addition, the petitioner proposes to use the following procedures when plugging gas wells to the surface: (1) A cement plug will be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and fill the borehole to the surface. (As an alternative, the cement slurry may be pumped down the tubing so that the borehole is filled with Portland cement or a Portland cement-fly ash mixture from a point approximately 100 feet above the top of the lowest mineable coalbed to the surface with an expanding cement plug extending from at least 200 feet below the lowest mineable coalbed to the bottom of the Portland cement.) There will be at least 200 feet of expanding cement below the base of the lowest mineable coalbed; (2) a small quantity of steel turnings, or other small magnetic particles, will be embedded in the top of the cement near the surface to serve as a permanent magnetic monument of the borehole. The petitioner also proposes to use the following procedures when the vent pipe method is used for plugging gas wells: (1) A 4½ inch or larger vent pipe will be run into the wellbore to a depth of 100 feet below the lowest mineable coalbed and swedged to a smaller diameter pipe, if desired, that will extend to a point approximately 20 feet above the bottom of the cleaned-out area of the borehole or bridge plug; (2) a cement plug will be set in the wellbore by pumping an expanding cement slurry, Portland cement, or a Portland cement-fly ash mixture down the tubing to displace the gel so that the borehole is filled with cement. The borehole and the vent pipe will be filled with expanding cement for a minimum of 200 feet below the base of the lowest mineable coalbed. The top of the expanding cement will extend upward to a point approximately 100 feet above the top of the highest mineable coalbed; (3) all fluid will be evacuated from the vent pipe to facilitate testing for gases. During the evacuation of fluid, the expanding cement will not be disturbed; (4) the top of the vent pipe will be protected to prevent liquids or solids from entering the wellbore, but permit ready access to the full internal diameter of the vent pipe when necessary. The petitioner further proposes to use the following procedures when plugging gas wells for subsequent use as degasification boreholes: (1) A cement plug will be set in the wellbore by pumping an expanding cement slurry down the tubing to displace the gel and provide at least 200 feet of expanding cement below the lowest mineable coalbed. The top of the expanding cement will extend upward to a point above the top of the coalbed being mined. This distance will be based on the average height of the roof strata breakage for the mine; (2) to facilitate methane drainage, degasification casing of suitable diameter, slotted or perforated throughout its lower 150 to 200 feet, will be set in the borehole to a point 10 to 30 feet above the top of the expanding cement; (3) the annulus between the degasification casing and the borehole wall will be cemented from a point immediately above the slots or perforations to the surface; (4) the degasification casing will be cleaned out for its total length; and (5) the top of the degasification casing will be fitted with wellhead equipped as required by the District Manager (DM). Such equipment may include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing. The petitioner proposes that: (1) Prior to reducing the safety barrier to a distance less than the DM would approve or proceed with an intent to cut through a plugged well, the petitioner will notify the DM or his designee. (2) Mining through a plugged well will be done on a shift approved by the DM or designee. The DM or designee and the miners' representative will be notified by the petitioner in sufficient time prior to the mining-through operation to provide an opportunity to have representative present. (3) When using continuous mining methods, drivage sights, not more that 50 feet from the well, will be installed at the last open crosscut near the place to be mined to ensure intersection of the well. (4) Firefighting equipment will include fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mining-through when either the conventional or continuous mining method is used. The fire hose will be located in the last open crosscut of the entry or room. All fire hoses will be ready for operation during the mining-through. (5) Sufficient supplies of roof support and ventilation materials will be available and located at the last open crosscut, and an emergency plug and/or plugs will be available in the immediate area of the mine-through. (6) The quantity of air required by the approved mine ventilation plan, but not less than 9,000 cubic feet per minute (cfm) of air, will be used to ventilate the working face during the mining-through operation using continuous mining or conventional mining methods. (7) Equipment will be checked for permissibility and serviced on the shift prior to mining through the well. (8) The methane monitor(s) on the

continuous mining machine, cutting machine and loading machine will be calibrated on the shift prior to mining through the well. (9) When mining is in progress, tests for methane will be made with a hand-held methane detector at least every 10 minutes from the time mining with the continuous mining machine is within 30 feet of the well until the well is intersected and immediately prior to mining-through. No individual will be allowed on the return side during the actual cutting-through process, until mining-through has been completed and the area has been examined and declared safe. (10) When using continuous or conventional mining methods, the working place will be free from accumulations of coal dust and coal spillages. Rock dust will be placed on the roof, rib and floor to within 20 feet of the face when mining through the well. (11) When the wellbore is intersected, all equipment will be deenergized and the place thoroughly examined and determined safe before mining is resumed. Any well casing will be removed and no open flame will be permitted in the area until adequate ventilation has been established around the wellbore. (12) After a well has been intersected and the working place determined safe, mining will continue inby the well at a sufficient distance to permit adequate ventilation around the area of the wellbore. (13) No person will be permitted in the area of the mining-through operation except those actually engaged in the operation, company personnel, MSHA personnel, and appropriate State agency personnel. (14) The mining-through operation will be under the direct supervision of a certified foreman. Instructions concerning the mining-through operation will be issued only by the certified foreman in charge. (15) A copy of the proposed decision and order will be maintained at the mine and be available to the miners. (16) The petitioner will file a plugging affidavit setting forth the persons who participated in the work, a description of the plugging work, and a certification by the petitioner that the well has been plugged as described. (17) Within 60 days after the proposed decision and order becomes final, proposed revisions for the approved Part 48 training plans will be submitted to the DM. The proposed revisions will include initial and refresher training regarding compliance with the terms and conditions in the proposed decision and order.

*Docket Number:* M–2011–003–M.

*Petitioner:* Resolution Copper Mining, LLC, 102 Magma Heights, P.O. Box 1944, Superior, Arizona 85273.

*Mine:* Resolution Mine, MSHA Mine I.D. No. 02–00152, located in Pinal County, Arizona.

*Regulation Affected:* 30 CFR 57.19076 (Maximum speeds for hoisting persons in buckets).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of an enclosed capsule designed for the transport of personnel. This petition applies to a single conveyance currently used to transport workers in the petitioner's Number 10 Shaft. The 500 feet per minute standard would remain in effect for all ''buckets'' currently used on this project when and if they are used for man-hoisting. The principal reason for this request is that the personnel conveyance, conditions, and features of the equipment discussed provides at all times the equivalent protections of that contemplated by the standard and will reduce the time the shaft miners are exposed to the restricting ergonomic impact of shaft travel while standing in the restricted area of the enclosed conveyance. The petitioner states that: (1) The 28-foot-diameter Number 10 Shaft is in the development stage and is approximately 4,100 feet deep currently. The shaft is progressing at approximately 9.2 feet per day. The main hoist used for sinking a 15-foot-diameter double drum Nordberg hoist, capable of speeds up to 2,300 feet per minute. For mucking operations, traditional shaft buckets are used. Concrete is transported in design for purpose buckets for that application only. Over 95 percent of personnel transport is made using a single conveyance specifically designed for worker transport. The personnel conveyance travels in the No. 1 bucket compartment only (non-clutched side) and utilizes the same crosshead arrangements as the other buckets. MSHA has directed the petitioner and its contractor, Cementation USA, to apply the 500 feet per minute requirement to the man-riding conveyance as well as the buckets when transporting personnel. This petition seeks to have the man-conveyance travel at 1,200 feet per minute in the unobstructed open shaft below the Never Sweat Level. For this request, the petitioner defines unobstructed shaft as the normal open shaft, free of doors, dump stations, pumps, etc. The minimum distance between the conveyance and any shaft wall attachment in this area is 3 feet 6 inches; (2) the 500 feet per minute requirement would continue to apply to those areas of the shaft where shaft furnishings are closer than the open shaft clearance. The doors at the Never Sweat Level and the dump station at the 800-foot level fall into this category. In no case are any clearances less than the 16-inch minimum considered to be prudent engineering practice for shaft sinking; (3) all buckets and clearances are stabilized in their horizontal position during hoisting by a crosshead attached directly above the bucket or conveyance. The crosshead travels on rope guides fixed at the head-frame and connected to a 168-ton stabilized work stage at the shaft bottom. This results in centralizing the conveyance position in the designed travel way with little or not sideways movement regardless of the speed. The attachment to the crosshead is monitored by a sensor linked to the hoist controls. As the conveyance or bucket travels, multiple sensors monitor position in the shaft as a secondary check for the master hoist Programmed Logic Controller (PLC). Any variance from minimums or conflicting readings will stop the hoist in a controlled manner until the fault is checked and corrected. The resulting redundant systems provide that correct shaft position is maintained at all times. These engineered safeguards combined with minimum designed clearances provide for a stable, upright movement free of any obstruction in the shaft at any designed speed; (4) deceleration tests during stopping conditions have been conducted and fall within MSHA standards for worker travel at 1,200 feet per minute with the hoist. The hoist's normal speed approach profile currently limits the hoist to 200 feet per minute on approach to the work platform and limits the speed to 150 feet per minute below the top deck of the work platform to the bottom of the shaft. This hoist controller would also be set so that the speed of upward man travel would be reduced to 500 feet per minute on approach to the safety door, at Never Sweat Level, from below; (5) the 1,200 feet per minute speed will apply while all workers are riding in the lower, fully enclosed and latched compartment of the conveyance. If any person must ride above on the observation deck for shaft inspection, the speed will be reduced to 500 feet per minute. Additionally, full fall protection, including approved body harnesses, will be employed in the inspection process; and (6) with the conditions in place as proposed here the safety of worker travel will be maintained at the same level or greater as that intended by the standard. In addition, traveling at a speed exceeding the 500 feet per minute will minimize

discomfort of the miners traveling in the man-conveyance by making the descent and ascent quicker.

Dated: June 22, 2011.

**Patricia W. Silvey,**

*Certifying Officer.*

[FR Doc. 2011–16082 Filed 6–27–11; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification of Application of Existing Mandatory Safety Standards

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** Section 101(c) of the Federal Mine Safety and Health Act of 1977 and 30 CFR part 44 govern the application, processing, and disposition of petitions for modification. This notice is a summary of petitions for modification submitted to the Mine Safety and Health Administration (MSHA) by the parties listed below to modify the application of existing mandatory safety standards codified in Title 30 of the Code of Federal Regulations.

**DATES:** All comments on the petitions must be received by the Office of Standards, Regulations and Variances on or before July 28, 2011.

**ADDRESSES:** You may submit your comments, identified by ''docket number'' on the subject line, by any of the following methods:

1. *Electronic Mail: zzMSHA-comments@dol.gov.* Include the docket number of the petition in the subject line of the message.
2. *Facsimile:* 1–202–693–9441.
3. *Regular Mail:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.
4. *Hand-Delivery or Courier:* MSHA, Office of Standards, Regulations and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209–3939, Attention: Roslyn B. Fontaine, Acting Director, Office of Standards, Regulations and Variances.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments. Individuals who submit comments by hand-delivery are required to check in at the receptionist desk on the 21st floor.

Individuals may inspect copies of the petitions and comments during normal business hours at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Barbara Barron, Office of Standards, Regulations and Variances at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers.]

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary determines that: (1) An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or (2) that the application of such standard to such mine will result in a diminution of safety to the miners in such mine. In addition, the regulations at 30 CFR 44.10 and 44.11 establish the requirements and procedures for filing petitions for modification.

### II. Petitions for Modification

*Docket Number:* M–2011–012–C.

*Petitioner:* Patton Mining, LLC, 925 South Main Street, Hillsboro, Illinois 62049.

*Mine:* Deer Run Mine, MSHA Mine I.D. No. 11–03182, located in Montgomery County, Illinois.

*Regulation Affected:* 30 CFR 75.1700 (Oil and gas wells).

*Modification Request:* The petitioner requests a modification of the existing standard to permit mining through (or intersecting) of certain oil and gas wells located within the projected workings of the Deer Run Mine. The following procedures are proposed to be used for cleaning out and preparing vertical oil and gas wells prior to plugging or replugging: (1) The petitioner will completely clean out the well from the surface to at least 200 feet below the base of the lowest mineable coal seam, unless MSHA requires cleaning to a greater depth. All material will be removed from the entire diameter of the well, wall to wall. (2) The petitioner will prepare down-hole logs for each well. They will consist of a caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon-producing strata and the location for a bridge plug. In addition, a journal will be maintained describing the depth and nature of each material encountered, bit size and type used to drill each portion of the hole, length and type of each material used to plug the well, length of casing(s) removed, perforated or ripped or left in place, any sections where casing was cut or milled, and other pertinent information concerning cleaning and sealing the well. Invoices, work-orders, and other records relating to all work on the well will be maintained as part of this journal and provided to MSHA upon request. (3) When cleaning out the well, the petitioner will make a diligent effort to remove all of the casing in the well. If it is not possible to remove all of the casing, then appropriate steps will be taken to ensure that the annulus between the casing and the casings and the well walls are filled with expanding (minimum 0.5 percent expansion upon setting) cement and contain no voids. If the casing cannot be removed, it will be cut or milled at all mineable coal seam levels, and any casing that remains will be perforated or ripped. Perforations or rips are required at least every 50 feet from 200 feet below the base of the lowest mineable coal seam up to 100 feet above the uppermost mineable coal seam. When multiple casing and tubing strings are present in the coal horizon(s), any casing that remains will be ripped or perforated and filled with expanding cement. An acceptable casing bond log for each casing and tubing string is needed if used in lieu of ripping or perforating multiple strings. (4) If the completely cleaned-out well emits excessive amounts of gas, a mechanical bridge plug will be placed in the well. The bridge plug will be placed in a competent stratum at least 200 feet below the base of the lowest mineable coal seam, but above the top of the uppermost hydrocarbon-producing stratum, unless the DM requires a greater distance. If it is not possible to set a mechanical bridge plug, an appropriately sized packer may be used. (5) If the uppermost hydrocarbon-producing stratum is within 300 feet of the base of the lowest mineable coal seam, the petitioner will properly place mechanical bridge plugs to isolate the hydrocarbon-producing stratum from the expanding cement plug. The petitioner will place a minimum of 200 feet of expanding cement below the lowest mineable coal seam, unless MSHA requires a greater distance. The following procedures will be used for plugging and replugging vertical oil or gas wells to the surface: (1) After

completely cleaning out the well, the petitioner will pump expanding cement slurry down the well to form a plug that runs from at least 200 feet below the base of the lowest mineable coal seam to the surface (or lower if required by MSHA). The expanding cement will be placed in the well under a pressure of at least 200 pounds per square inch. Portland cement or a lightweight cement mixture may be used to fill the area from 100 feet above the top of the uppermost mineable coal seam to the surface (or higher if required by MSHA). (2) The petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, a 4½-inch or larger casing, set in cement, will extend at least 36 inches above the ground level with the API well number engraved or welded on the casing. When the hole cannot be marked with a physical monument (*i.e.,* prime farmland), high-resolution GPS coordinates (half-meter resolution) will be required. The following procedures will be used for plugging or replugging oil and gas wells for use as degasification boreholes: (1) After completely cleaning out the well, the petitioner will set a cement plug in the well by pumping an expanding cement slurry down the tubing to provide at least 200 feet of expanding cement below the lowest mineable coal seam unless MSHA requires a greater depth. The expanding cement will be placed in the well under a pressure of at least 200 pounds per square inch. The top of the expanding cement will extend at least 30 feet above the top of the coal seam being mined unless MSHA requires a greater distance. (2) The petitioner will securely grout into the bedrock of the upper portion of the degasification well a suitable casing to protect it. The remainder of this well may be cased or uncased. (3) The petitioner will fit the top of the degasification casing with a wellhead, equipped as required by the DM in the approved ventilation plan. Such equipment may include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing. (4) Operation of the degasification well will be addressed in the approved ventilation plan. This may include periodic tests of methane levels and limits on the minimum methane concentrations that may be extracted. (5) After the area of the coal mine that is degassed by a well is sealed or the coal mine is abandoned, the petitioner will seal degas holes as follows: (i) The petitioner will insert a tube to the bottom of the drill hole or if not possible, to no greater than 100 feet above the coal seam. Any blockage will be removed to ensure that the tube can be inserted to this depth; (ii) the petitioner will set a cement plug in the well by pumping Portland cement or a lightweight cement mixture down the tubing until the well is filled to the surface; and (iii) the petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, a 4½-inch or larger casing set in cement will extend at least 36 inches above the ground level with the API well number engraved or welded on the casing. The following procedures will be used for preparing and plugging or replugging vertical oil and gas wells. This will apply to all wells that the petitioner determines and MSHA agrees cannot be completely cleaned out due to damage to the well caused by subsidence, caving, or other factors: (1) The petitioner will drill a hole adjacent and parallel to the well to a depth of at least 200 feet below the lowest mineable coal seam, unless MSHA requires a greater depth. (2) The petitioner will use a geophysical sensing device to locate any casing that may remain in the well. (3) If the well contains casing(s), the petitioner will drill into the well from the parallel hole. From 10 feet below the coal seam to 10 feet above the coal seam, all casings will be perforated or ripped at intervals of at least 5 feet. Beyond this distance, the petitioner will perforate or rip at least every 50 feet from at least 200 feet below the base of the lowest mineable coal seam up to 100 feet above the seam being mined, unless MSHA requires a greater distance. The petitioner will fill the annulus between the casing and between the casings and the well wall with expanding (minimum 0.5 percent expansion upon setting) cement and contain no voids. If the petitioner, using a casing bond log can demonstrate to the satisfaction of the DM that all annuli in the well are already adequately sealed with cement, then the petitioner will not be required to perforate or rip the casing for that particular well or fill these areas with cement. When multiple casing and tubing strings are present in the coal horizon(s), any casing that remains will be ripped or perforated and filled with expanding cement as indicated above. An acceptable casing bond log for each casing and tubing string is needed if used in lieu of ripping or perforating multiple strings. (4) Where the petitioner determines and MSHA agrees that there is insufficient casing in the well to allow the method outlined above to be used, then the petitioner will use a horizontal hydraulic fracturing technique to intercept the original well. From at least 200 feet below the base of the lowest mineable coal seam to a point at least 50 feet above the seam being mined, the petitioner will fracture at least six places at intervals to be agreed upon by the petitioner and the DM after considering the geological strata and the pressure within the well. The petitioner will then pump expanding cement into the fractured well in sufficient quantities and in a manner that fills all intercepted voids. (5) The petitioner will prepare down-hole logs for each well. They will consist of a caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams and potential hydrocarbon-producing strata and the location for a bridge plug. In addition, a journal will be maintained describing the depth of each material encountered, the nature of each material encountered, bit size and type used to plug the well, length of casing(s) removed, perforated or ripped or left in place, any sections where casing was cut or milled, and other pertinent information concerning cleaning and sealing the well. Invoices, work-orders, and other records relating to all work on the well will be maintained as part of this journal and provided to MSHA upon request. (6) After the petitioner has plugged the well, the petitioner will plug the open portions of both holes from the bottom to the surface with Portland cement or a lightweight cement mixture. The petitioner will embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, a 4½-inch or larger casing set in cement will extend at least 36 inches above the ground level. After approval has been granted by the DM to mine within the safety barrier (50 feet from any well), or mine through a plugged or replugged well, the following procedures will apply: (1) The petitioner will mine through a well on a shift approved by the DM. The petitioner will notify the DM and the miner's representative in sufficient time prior to mining through a well to provide an opportunity to have a representative present. (2) When using continuous mining methods, the petitioner will install drivage sights at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sights will not be more than 50 feet from the well. When using longwall mining methods, drivage sights will be installed on 10-foot

centers for a distance of 50 feet in advance of the well. The drivage sights will be installed in the headgate and tailgate. (3) The petitioner will ensure that fire-fighting equipment, including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the mine-through (when either the conventional or the continuous mining method is used) is available and operable during all well mine-throughs. The fire hose shall be located in the last open crosscut of the entry or room. The petitioner will maintain the water line to the belt conveyor tailpiece along with a sufficient amount of fire hose to reach the farthest point of penetration of the section. When the longwall mining method is used, a hose to the longwall water supply is sufficient. All fire hoses will be connected and ready for use, but do not have to be charged with water, during the cut-through. (4) The petitioner will ensure that sufficient supplies of roof support and ventilation materials are available and are located at the last open crosscut. In addition, emergency plugs and suitable sealing materials will be available in the immediate area of the well intersection. (5) Minimum ventilation air quantities to be maintained in the working face during the period from when mining is within 50 feet of the well location until the post-cut-through inspection or mining progresses at least 50 feet past the well location will be specified in the approved ventilation plan. (6) All equipment will be serviced and checked for permissibility on the shift prior to mining through the well. (7) Methane monitor(s) will be calibrated on the longwall, continuous mining machine, or cutting machine and loading machine on the shift prior to mining through the well. (8) When mining is in progress, the petitioner will test for methane with a hand-held methane detector at least every 10 minutes from the time mining with the continuous mining machine or longwall face is within 30 feet of the well until the well is intersected and immediately prior to mine-through. During the actual cutting process, no individual will be allowed on the return side until the mine-through is complete and the area has been examined and declared safe. Workplace examinations will be conducted on the return side of the shearer while the shearer is idle. (9) When using continuous or conventional mining methods, the working place will be free from accumulations of coal dust and coal spillages and rock dust will be placed on the roof, rib and floor to within 20 feet of the face when mining through the well. On longwall sections, rock dusting will be conducted and placed on the roof, rib, and floor up to the headgate and the tailgate gob. (10) When the well is intersected, the petitioner will de-energize all equipment, thoroughly examine it, and determine the area safe before mining is resumed. (11) After a well has been intersected and the working place determined safe, mining will continue inby the well at a sufficient distance to permit adequate ventilation around the area of the well. (12) If the casing is cut or milled at the coal seam level, the use of torches should not be necessary. However, in rare instances torches may be used for inadequately or inaccurately cut or milled casings. No open flame will be permitted in the area until adequate ventilation has been established around the well bore and methane levels of less than 1.0 percent are present in all areas that will be exposed to flames and sparks from the torch. The petitioner will apply a thick layer of rock dust to the roof, face, floor, ribs, and any exposed coal within 20 feet of the casing prior to any use of torches. (13) Non-sparking (brass) tools will be located on the working section and will be used to expose and examine cased wells. (14) No person will be permitted in the area of the mine-through operation except those actually engaged in the operation, including company personnel, representatives of the miners, personnel from MSHA, and personnel from the appropriate State agency. (15) The petitioner will alert all personnel in the mine to the planned intersection of the well prior to their going underground if the planned intersection is to occur during their shift. This warning will be repeated for all shifts until the well has been mined through. (16) The mine-through operation will be under the direct supervision of a certified individual. Instructions concerning the mine-through operation will be issued only by the certified individual in charge. The petitioner states that: (1) Within 30 days after this petition becomes final, the petitioner will submit proposed revisions for its approved 30 CFR part 48 training plan to the district manager. These proposed revisions will include initial and refresher training regarding compliance with the terms and condition stated in the petition. All miners involved in the mine-through of a well will be trained regarding the requirements of this petition prior to mining within 150 feet of the next well intended to be mined through; (2) the person responsible for well intersection emergencies will review the well intersection procedures prior to any planned intersection; and (3) within 30 days after this petition becomes final, the petitioner will submit proposed revisions for its approved mine emergency and firefighting plan. The petitioner will revise the plans to include the hazards and evacuation procedures to be used for well intersections. All underground miners will be trained in this revised plan within 30 days of the submittal of the revised evacuation plan. Persons may review a complete description of petitioner's alternative method and procedures at the MSHA address listed in this petition. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded miners under the existing standard.

*Docket Number:* M–2011–013–C.

*Petitioner:* Lone Mountain Processing, Inc., Drawer C, St. Charles, Virginia 24282.

*Mine:* Darby Fork No. 1 Mine, MSHA I.D. No. 15–02263, located in Harlan County, Kentucky.

*Regulation Affected:* 30 CFR 75.364(b)(2) (Weekly examination).

*Modification Request:* The petitioner requests a modification of the existing standard to permit two evaluation points to be established for weekly evaluation of a return entry in the Lower 7-Right panel of the return entry air course due to a rock fall. The petitioner states that: (1) Two evaluation points will be located at break 39 and break 36 in the Lower 7-Right panel to monitor air quality and quantity entering and exiting the hazardous area. (2) A certified person will examine each of the evaluation points at least every 7 days to include the following: (a) Examine for hazards on the approaches to and at the evaluation points; (b) evaluate and measure the quality and quantity of air flowing past the evaluation points; (c) air quality measurements will determine the methane, oxygen, and carbon monoxide concentrations using a MSHA-approved hand-held device; (d) air quantity measurements will be made using an appropriately calibrated anemometer; (e) methane gas or other harmful, noxious, or poisonous gases will not be permitted to accumulate in excess of legal limits for a return air course; (f) at these evaluation points, an increase of 0.5 percent methane above the previous reading or a 10 percent unplanned change in the airflow quantity from the previous reading will cause an immediate examination and evaluation of the cause; (g) appropriate corrective action will be taken and a new initial airflow will be determined and serve as the basis for subsequent evaluations; (h)

at each evaluation point, a date board will be provided where the certified examiner will record the date, time, his or her initials, and the measured quantity and quality of the air entering the affected area; and (i) record the results of each weekly examination in a book maintained on the surface. (3) The permanent ventilation controls and evaluation points will be shown on the annual mine ventilation map. (4) All evaluation points and approaches to evaluation points will be maintained in a safe condition at all times. The roof will be adequately supported by suitable means to prevent deterioration of the roof in the vicinity of the evaluation points. The petitioner asserts that the proposed alternative method will at all times guarantee no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M–2011–014–C.

*Petitioner:* Tunnel Ridge, LLC, 2596 Battle Run Road, Triadelphia, West Virginia 26059.

*Mine:* Tunnel Ridge Mine, MSHA Mine I.D No. 46–08864, located in Ohio County, West Virginia.

*Regulation Affected:* 30 CFR 75.503 (Permissible electric face equipment; maintenance).

*Modification Request:* The petitioner requests a modification of the existing standard to permit the length of trailing cable(s) used within the Tunnel Ridge Mine to be increased. The petitioner states that: (1) This petition will apply only to trailing cables that supply 995-volt three-phase, alternating current (''AC'') to continuous mining machine(s), trailing cables that supply 600-volt, three-phase AC to loading machines, roof bolting machines, shuttle cars, and section ventilation fans, and trailing cables that supply 600-volt direct current (''DC'') to shuttle cars; the trailing cables will have a 90-degree insulation rating. (2) Extended length trailing cable(s) used on AC shuttle cars will be three-conductor cable, either Type G–GC, Type G, or Type G+GC; when a Type G–GC or Type G+GC trailing cable is used with wireless ground-wire monitoring, the ground-check conductor will be connected as a ground conductor. (3) The maximum length of the continuous mining machine(s) trailing cable when using #2/0 American Wire Gauge (AWG) will not exceed 950 feet. The maximum length of the loader(s), shuttle car(s), roof bolter(s), and section ventilation fan(s) trailing cables will not exceed 950 feet. However, 1,000 feet of cable may be used when using #4/0 AWG on continuous mining machine(s). (4) The trailing cable(s) for the 995-volt continuous mining machine(s) and 600 volt section ventilation fan(s) will not be smaller than #2/0 AWG. (5) The trailing cable(s) for the 600 volt AC loading machine(s) and 600 volt AC shuttle car(s) will not be smaller than #2 AWG. (6) The trailing cable(s) for the 600 volt roof bolter(s) will not be smaller than #4 AWG. (7) The trailing cables for the 600 volt DC shuttle cares will not be smaller than 2/0 AWG. (8) All circuit breakers used to protect #4 AWG trailing cables exceeding 600 feet in length will have instantaneous trip units calibrated to trip at 500 amperes. The trip setting of these circuit breakers will be sealed or locked, and will have permanent, legible labels. The label will identify the circuit breaker as being suitable for protecting #4 AWG cables. The label will be maintained in legible condition. (9) Replacement circuit breakers and/or instantaneous trip units used to protect #4 AWG trailing cables will be calibrated to trip at 500 amperes and this setting will be sealed or locked. (10) All circuit breakers used to protect #2 AWG trailing cables exceeding 700 feet in length will have instantaneous trip units calibrated to trip at 800 amperes. The trip setting of these circuit breakers will be sealed or locked, and will have permanent, legible labels. The label will identify the circuit breaker as being suitable for protecting #2 AWG cables. The label will be maintained in legible condition. (11) Replacement circuit breakers and/or instantaneous trip units, used to protect #2 AWG trailing cables will be calibrated to trip at 800 amperes and this setting will be sealed or locked. (12) All circuit breakers used to protect #2/0 AWG trailing cables exceeding 850 feet in length will have instantaneous trip units calibrated to trip at 1,500 amperes. The trip setting of these circuit breakers will be sealed or locked, and these circuit breakers will have permanent, legible labels. The label will identify the circuit breaker as being suitable for protecting #2/0 AWG cables. The label will be maintained in legible condition. (13) Replacement circuit breakers and/or instantaneous trip units used to protect #2/0 AWG trailing cables will be calibrated to trip at 1,500 amperes and this setting will be sealed or locked. (14) All components that provide short-circuit protection will have sufficient interruption rating in accordance with the maximum calculated fault currents available. (15) During each production day, persons designated by the operator will visually examine the trailing cables to ensure that the cables are in safe operating condition and that the instantaneous settings of the specially calibrated breakers do no have seals removed or tampered with and that they do not exceed the settings stipulated in this petition. (16) Any trailing cable that is not in a safe operating condition will be removed from service immediately and repaired or replaced. (17) Each splice or repair in the trailing cables of a continuous miner(s), loader(s), shuttle car(s), roof bolter(s), and ventilation fan(s) will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair materials. The splice or repair will comply with 30 CFR 75.603 and 75.604. The outer jacket of each splice or repair will be vulcanized with flame-resistant material or made with material that has been accepted by MSHA as flame-resistant. (18) Permanent warning labels will be installed and maintained on the cover(s) of the power center identifying the location of each sealed short-circuit protective device. These labels will warn miners not to change or alter these sealed short-circuit settings, and any sign of tampering with the specially calibrated breaker or trip unit will require the replacement of the circuit breaker with another calibrated, sealed and/or locked trip unit. (19) In the event the mining methods or operating procedures cause or contribute to the damage of any trailing cable, the cable will be removed from service immediately and repaired or replaced. Additional precautions will be taken to ensure that haulage roads and trailing cable storage areas are situated to minimize contact of the trailing cable with continuous miner(s), loading machine(s), shuttle car(s), roof bolter(s), and section ventilation fan(s). Trailing cable anchors on cable reel equipment will be of the permanent type that minimizes the tensile forces on the trailing cables. (20) Where the method of mining would require that trailing cables cross roadways or haulageways, the cables will be securely supported from the mine roof or a substantial bridge for equipment to pass over the cables will be used. (21) Excessive cable will be stored behind the anchor(s) on equipment that use cable reels to prevent cable(s) from overheating. (22) The proposed alternative method will not be implemented until all miners designated to examine the integrity of the seals, verify the short-circuit settings, and examine trailing cables for defects have received training in: (a) The hazards of setting the short-circuit device(s) too high to adequately protect the trailing cables; (b) how to verify that the circuit interrupting device(s) protecting the trailing cable(s) are properly set and maintained; (c) mining

methods and training to protect the trailing cable(s) against damage caused by overheating cable(s) due to excessive cable stored on the cable reel(s) and adjusting stored cable behind the cable anchor(s) as tramming distances change; and (d) proper procedures for examining the trailing cable(s) to ensure that the cable(s) are in safe operating condition by a visual inspection of the entirety of the cable(s), observing the insulation, the integrity of the splices, and observing for nicks and abrasions. (23) Within 60 days after this proposed decision and order becomes final, proposed revisions for the approved Part 48 training plan will be submitted to the District Manager. The petitioner asserts that the proposed alternative method will at all times provide no less than the same measure of protection afforded by the existing standard.

*Docket Number:* M–2011–015–C.

*Petitioner:* TK Mining Services, LLC, 12250 Hwy 12, Weston, Colorado 81091.

*Mine:* New Elk Mine, MSHA Mine I.D No. 05–00296, located in Las Animas County, Colorado.

*Regulation Affected:* 30 CFR 75.503 (Permissible electric face equipment; maintenance)

*Modification Request:* The petitioner requests a modification of the existing standard to permit the use of non-permissible survey, diagnostic, photographic and programming equipment throughout the entire mine. The petitioner proposes to use the non-permissible equipment to help with development, exploration of entries, and maintenance of mining equipment. The petitioner states that: (1) The equipment is very vital in keeping the entries going in the proper direction and maintaining equipment for the safety of the miners; (2) the equipment will be examined by a qualified person for defects prior to usage underground; (3) a qualified person will thoroughly examine for methane and other hazardous conditions prior to use and every 20 minutes or sooner if needed; and (4) all equipment and activity will stop immediately if the surrounding mine's atmosphere contains 1.0 percent or greater of methane, or if hazardous concentrations of coal dust or other hazards are observed. The petitioner asserts that every precaution will be taken to guarantee the safety of every miner working at the New Elk Mine. If the situation is not safe this equipment will not be used until the area is safe or made safe, and at no time will a miner be in danger.

Dated: June 22, 2011.

**Patricia W. Silvey,**

*Certifying Officer .*

[FR Doc. 2011–16084 Filed 6–27–11; 8:45 am]

**BILLING CODE 4510–43–P**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, July 12, 2011.

**PLACE:** NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** The two items are open to the public.

**MATTERS TO BE CONSIDERED:**

8193A Marine Accident Report—Collision Between U.S. Coast Guard Vessel CG 33118 and Sea Ray Recreational Vessel CF 2607 PZ, San Diego Harbor, California, December 20, 2009.

8102A Aircraft Accident Report—Loss of Control While Maneuvering, Pilatus PC–12, N128CM, Butte, Montana, March 22, 2009.

*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, July 8, 2011.

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 or by e-mail at *bingc@ntsb.gov.*

Dated: June 24, 2010.

**Candi R. Bing,**

*Federal Register Liaison Officer.*

[FR Doc. 2011–16297 Filed 6–24–11; 4:15 pm]

**BILLING CODE 7533–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0141; Docket No. 50–171]**

### Environmental Assessment and Finding of No Significant Impact Related to Exemption for the Peach Bottom Atomic Power Station, Unit 1 License DPR–012, York and Lancaster Counties, PA

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment and finding of no significant Impact.

**FOR FURTHER INFORMATION CONTACT:** John Hickman, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Mail Stop T8F5, Washington, DC 20555–00001. Telephone: 301–415–3017; e-mail: *john.hickman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) staff is considering a request dated November 18, 2010, by Exelon Nuclear (Exelon, the licensee) requesting exemptions from the security requirements in 10 CFR part 73 and 10 CFR 50.54(p) for the Peach Bottom Atomic Power Station (PBAPS) Unit 1.

This Environmental Assessment (EA) has been developed in accordance with the requirements of 10 CFR 51.21.

#### II. Environmental Assessment

*Identification of Proposed Action*

The proposed action would eliminate the security plan requirements from the 10 CFR part 50 licensed site because the PBAPS Unit 1 spent nuclear fuel has been removed from the site and the spent fuel pool is drained and decontaminated. There is no longer any special nuclear material (SNM) located within PBAPS Unit 1 other than that contained in plant systems as residual contamination.

Part of this proposed action meets the categorical exclusion provision in 10 CFR 51.22(c)(25), as part of this action is an exemption from the requirements of the Commission's regulations and (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve safeguard plans. Therefore, this part of the action does not require either an environmental assessment or an environmental impact statement. This environmental assessment was prepared for the part of the proposed action not involving safeguards plans.

*Need for Proposed Action*

Sections 50.54 and 73.55 of Title 10 of the Code of Federal Regulations require that licensees establish and maintain physical protection and security for activities involving SNM within the 10 CFR part 50 licensed area of a facility. The proposed action is needed because there is no longer any nuclear fuel in the 10 CFR part 50 licensed facility that requires protection against radiological sabotage or diversion. The proposed action will allow the licensee to conserve resources for decommissioning activities.

*Environmental Impacts of the Proposed Action*

The NRC has completed its evaluation of the proposed action and concludes that exempting the facility from physical protection security requirements will not have any adverse environmental impacts. There will be minor savings of energy and vehicular use associated with the security force no longer performing patrols, checks, and normal security functions.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action*

The alternative is the no-action alternative, under which the staff would deny the exemption request. This denial of the request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are similar, therefore the no-action alternative is not further considered.

*Conclusion*

The NRC staff has concluded that the proposed action will not significantly impact the quality of the human environment, and that the proposed action is the preferred alternative.

*Agencies and Persons Consulted*

In accordance with its stated policy, on May 12, 2011, the staff consulted the Pennsylvania State Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

## III. Finding of No Significant Impact

The NRC staff has prepared this EA as part of its review of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

## IV. Further Information

For further details with respect to the proposed action, see the licensee's letter dated November 18, 2010, [ADAMS Accession Number ML103230031]. Documents related to this action, including the application and supporting documentation, are available electronically at the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland this 20th day of June, 2011.

For the Nuclear Regulatory Commission.

**Keith I. McConnell,**

*Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2011–16150 Filed 6–27–11; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

**[NRC–2010–0059; Docket Nos. 50–275 and 50–323]**

## Pacific Gas and Electric Company, Diablo Canyon Power Plant, Unit 1 and 2; Exemption

### 1.0 Background

Pacific Gas and Electric Company (PG&E, the licensee) is the holder of Facility Operating License Nos. DPR–80 and DPR–82, which authorize operation of the Diablo Canyon Power Plant, Unit 1 and 2 (DCPP). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in San Luis Obispo County, California.

### 2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 73, ''Physical protection of plants and materials,'' Section 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published in the **Federal Register** on March 27, 2009 (74 FR 13926), establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks on September 11, 2001, and implemented by the licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post September 11, 2001, security orders. It is from one of these additional requirements that PG&E now seeks an exemption from the implementation date. All other physical

security requirements established by this recent rulemaking have been implemented by the licensee.

By letter dated April 13, 2011, the licensee requested an exemption in accordance with 10 CFR 73.5, ''Specific exemptions.'' The licensee submitted two letters on April 13, 2011, a version containing sensitive unclassified non-safeguards information (security-related) and a redacted version, which is publicly available in the Agencywide Documents Access and Management System (ADAMS) under Accession No. ML11112A022. By letter dated March 2, 2010 (ADAMS Accession No. ML100210207), the NRC granted a previous exemption to PG&E for specific items subject to the revised rule in 10 CFR 73.55, allowing the implementation to be deferred until June 30, 2011. The licensee has requested an additional exemption from the current implementation date established in the prior exemption, based on a significant change in scope of the project for one specific item needed to meet the requirements of the new rule. Specifically, the request is to extend the compliance date from the June 30, 2011, deadline to March 31, 2012, for one item. Granting this exemption for extending the implementation date for the one remaining item would allow the licensee to complete the modifications for a more conservative approach for achieving full compliance.

## 3.0 Discussion of Part 73 Schedule Exemption From the June 30, 2011, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), ''By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.''' Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

NRC approval of this exemption, as noted above, will allow an extension from June 30, 2011, until March 31, 2012, for the implementation date for one specific item in two specified areas of the new rule. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR 73. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

In the draft final rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual licensees, with good cause, to apply for relief from the compliance date (Reference: letter dated June 4, 2009, from R. W. Borchardt, NRC, to M. S. Fertel, Nuclear Energy Institute). The licensee's request for an exemption is therefore consistent with the approach set forth by the Commission and discussed in the letter dated June 4, 2009.

*DCPP Schedule Exemption Request*

The licensee provided detailed information in Enclosure 1 of its letter dated April 13, 2011, requesting an exemption. Enclosure 1 describes a comprehensive plan for the implementation of one item regarding the construction, testing, and turnover of the new equipment to enhance the security capabilities at the DCPP site and provides a timeline for achieving full compliance with the new regulation. Enclosure 1 of the letter dated April 13, 2011, contains security-related information regarding the site security plan, details of the specific requirements of the regulation and why the site cannot be in compliance by the June 30, 2011, deadline, the required changes to the site's security configuration, and a timeline with critical path activities that will bring the licensee into full compliance by March 31, 2012. The timeline provides dates indicating when construction will begin on various phases of the project (*i.e.,* buildings, and fences) and critical equipment will be installed, tested and become operational.

As described in its submittal dated April 13, 2011, the licensee stated that all parts of the new 10 CFR part 73 security measures will be implemented by June 30, 2011, except for the one specified item, for which the current security system will be maintained until the licensee is in full compliance. This will continue to provide acceptable physical protection of the DCPP.

## 4.0 Conclusion for Part 73 Schedule Exemption Request

The NRC staff has reviewed the licensee's submittal and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to March 31, 2012 with regard to one item for two specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, ''Specific exemptions,'' an exemption from the June 30, 2011, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest.

The NRC staff has determined that the long-term benefits that will be realized when the DCPP security modifications are complete justifies exceeding the full compliance date with regard to the specified requirements of 10 CFR 73.55. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request, and consistent with the NRC's regulatory authority to grant an exemption from the June 30, 2011, deadline for the one item specified in Enclosure 1 of the PG&E letter dated April 13, 2011, the licensee is required to be in full compliance by March 31, 2012. In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, ''Finding of no significant impact,'' the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (January 3, 2011; 76 FR 187).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 17th day of June 2011.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–16196 Filed 6–27–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0139]**

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

### Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from June 2, 2011, to June 15, 2011. The last biweekly notice was published on June 14, 2011 (75 FR 34763).

**ADDRESSES:** Please include Docket ID NRC–2011–0139 in the subject line of your comments. 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 may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0139. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0139.

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least ten (10) days prior to the filing deadline, the participant 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's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an 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 hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-*

*submittals.html,* by 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: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

*Entergy Gulf States Louisiana, LLC, and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* April 11, 2011.

*Description of amendment request:* The proposed amendment would revise the Technical Specifications (TSs) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; make a minor editorial change to correct a formatting issue to be consistent with the Technical Specifications Task Force (TSTF), ''Writer's Guide for Plant-Specific Improved Technical Specifications,'' and the [Boiling-Water Reactor] BWR6 TS format and does not affect the intent of the TSTF or the NRC safety evaluation; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with NRC-approved Revision 3 to TSTF Improved Standard Technical Specification (STS) Change Traveler TSTF–514, ''Revise BWR Operability Requirements and Actions for RCS Leakage Instrumentation.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radiation monitor operable increase the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

*NRC Branch Chief:* Michael T. Markley.

*Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois*

*Date of amendment request:* May 6, 2011.

*Description of amendment request:* The proposed amendments would

revise Technical Specification 3.7.3, ''Ultimate Heat Sink,'' to reduce the allowed sedimentation in the Core Standby Cooling System (CSCS) pond from ≤ 1.5 feet to ≤ 1.0 feet, which allows the temperature of the cooling water supplied to the plant to be increased from ≤ 101.25 °F to ≤ 101.95 °F resulting in a higher volume of cooling water available in the CSCS pond. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change will reduce the allowed sedimentation in the Core Standby Cooling System (CSCS) pond from ≤ 1.5 feet to ≤ 1.0 feet, which allows the indicated temperature of the cooling water supplied to the plant from the CSCS pond to be increased from ≤ 101.25 °F to ≤ 101.95 °F based on reduction in post-accident heatup from 2.0 °F to 1.3 °F due to a resulting higher volume of cooling water available in the CSCS pond.

Analyzed accidents are assumed to be initiated by the failure of plant structures, systems, or components. An inoperable ultimate heat sink (UHS) is not considered as an initiator of any analyzed events. As such, there is not a significant increase in the probability of a previously evaluated accident. Allowing the UHS to operate with a lower allowance for sedimentation at a higher allowable indicated temperature, will not affect the failure probability of any equipment. The current heat analysis calculations of record for LSCS, Units 1 and 2, assume a UHS post-accident peak inlet temperature of 104 °F. The proposed temperature increase is based on an adjustment to post accident UHS heatup due to restricting the level of sedimentation allowed in the CSCS pond. The current analysis bounds the proposed change. This higher allowable indicated temperature does not impact the loss of coolant accident (LOCA) Peak Clad Temperature Analysis, LOCA Containment Analysis or the non-LOCA analyses; therefore, continued operation with a UHS temperature > 101.25 °F but ≤ 101.95 °F will not increase the consequences of an accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

Based on the information discussed above, the reduction in the allowable CSCS pond sedimentation depth to ≤ 1.0 feet in concert with an allowable UHS temperature of ≤ 101.95 °F, has no effect on the results of the design basis event, and will continue to assure that each required heat exchanger can perform its safety function. The plant heat exchangers will continue to provide sufficient cooling for the heat loads during the most severe 30-day period. Since the proposed change has no impact on any analyzed accident, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change involves reducing the allowable sedimentation of the CSCS pond from ≤ 1.5 feet to ≤ 1.0 feet. This proposed action will not alter the manner in which equipment is operated, nor will the functional demands on credited equipment be changed. Reducing the CSCS pond sedimentation limit does not introduce any new or different modes of plant operation, nor does it affect the operational characteristics of any safety-related equipment or systems; as such, no new failure modes are being introduced. The proposed action does not alter assumptions made in the safety analysis. Increasing the allowable indicated temperature of the cooling water supplied to the plant from the CSCS pond from ≤ 101.25 °F to ≤ 101.95 °F has no impact on safety related systems. The plant is designed such that the residual heat removal (RHR) pumps on the unit undergoing the LOCH/loss of offsite power (LOOP) conditions would start upon the receipt of a signal, and would load onto their respective Emergency Diesel Generators' emergency bus during the LOOP event. The increase in the allowable indicated temperature of the cooling water supplied to the plant from the CSCS pond will not require operation of additional RHR pumps; therefore, system operation is unaffected by the proposed change.

Based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change reduces the allowable sedimentation levels in the CSCS pond to ≤ 1.0 feet and consequently allows an increase in the allowable indicated temperature of the cooling water supplied to the plant from the CSCS pond to ≤ 101.95 °F. The margin of safety is determined by the design and qualification of the plant equipment, the operation of the plant within analyzed limits, and the point at which protective or mitigative actions are initiated. The proposed action does not impact these factors as the analyzed peak post accident inlet temperature of the UHS is unaffected based on the reduced allowable sediment depth in the CSCS pond. This change is supported by an engineering analysis that determined that existing post-accident CSCS pond heatup rates calculations were overly conservative based on observed CSCS pond sedimentation being significantly less than predicted. No setpoints are affected, and no other change is being proposed in the plant operational limits as a result of this change. All accident analysis assumptions and conditions will continue to be met. Adequate design margin is available to ensure that the required margin of safety is not significantly reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

*Attorney for licensee:* Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

*NRC Branch Chief:* Jacob. I. Zimmerman.

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of amendment request:* March 24, 2011.

*Description of amendments request:* The proposed amendment would adopt Technical Specification Task Force (TSTF), Improved Standard Technical Specifications Change Traveler, TSTF–248, Revision 0, ''Revise Shutdown Margin Definition for Stuck Rod Exception,'' which modifies the definition of shutdown margin to include a provision allowing an exception to the highest reactivity worth stuck control rod penalty if there are two independent means of confirming that all control rods are fully inserted in the reactor core.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revision to the Shutdown Margin (SDM) definition will result in analytical flexibility for determining SDM. Changes in the definition will not have an impact on the probability of an accident.

The introduction of this definition change does not change continued compliance with all applicable regulatory requirements and design criteria (*e.g.,* train separation, redundancy, and single failure). Therefore, since all plant systems will continue to function as designed, all plant parameters will remain within their design limits. As a result, the proposed change will not increase the consequences of an accident.

Based on this discussion, the proposed LAR [license amendment request] does not significantly increase the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Revising the definition of SDM in the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) would not require core designers to revise any SDM calculation. Rather, it would afford the analytical flexibility for determining SDM for a particular circumstance.

The proposed change does not involve any change in the design, configuration, or operation of the nuclear plant. The current plant safety analyses, therefore, remain complete and accurate in addressing the design basis events and in analyzing plant response and consequences.

The Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits specified in the CR–3 ITS are not affected by the proposed change. As such, the plant conditions for which the design basis accident analysis were performed remain valid.

The LAR does not introduce a new mode of plant operation or new accident precursors, does not involve any physical alterations to the plant configuration, or make changes to system setpoints that could initiate a new or different kind of accident.

Therefore, the LAR does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their accident mitigation functions. These barriers include the fuel and the fuel cladding, the reactor coolant system and the reactor containment building and containment related systems. The proposed change will not impact the reliability of these barriers to function. Radiological dose to plant operators or to the offsite public will not increase as a result of the proposed change. The change to the CR–3 ITS definition for SDM will not impact the safety barriers of the plant. Adequate SDM will continue to be assured for all operational conditions.

Additionally, the current SDM calculation requires the consideration of the worth of the most reactive control rod to remain out of the core. This provides a margin of safety in that additional boron has to be injected to assure the reactor is shut down and remains shut down. This requirement will remain. However, once all control rods are verified to be fully inserted by two independent means, the conservatism of the additional boron concentration is balanced by the additional reactive worth of the inserted control rod and the additional boron will not be necessary to maintain the required SDM. The independent verification of all rods in will provide a very high confidence that adequate SDM will continue to be assured.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

*NRC Branch Chief:* Douglas A. Broaddus.

*Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP1), Oswego County, New York*

*Date of amendment request:* May 25, 2011.

*Description of amendment request:* The proposed license amendment would delete an outdated reference to a specific date delineated in License Condition 2.B.(2) to be consistent with the wording found in the corresponding license condition at multiple stations including Nine Mile Point Unit 2 and Calvert Cliffs Units 1 and 2. This license condition authorizes NMPNS to ''* * * receive, possess and use at any time special nuclear material as reactor fuel, in accordance with the limitations for storage and amounts required for reactor operation, as described in the Final Safety Analysis Report as supplemented and amended as of February 4, 1976.'' The proposed change will remove the words ''as of February 4, 1976.''

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The NMP1 Technical Specifications (TS) and Updated Final Safety Analysis Report (UFSAR) provide the specific limitations on the number of fuel assemblies in the NMP1 spent fuel pool, fresh fuel storage vault, and the reactor core. Removing the outdated reference to the February 4, 1976 UFSAR from License Condition 2.B.(2) has no effect on these limitations or on the supporting evaluations. The proposed change does not affect a precursor to any accident previously evaluated nor does it affect the ability of any system to mitigate the consequences of any accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The NMP1 TS and UFSAR provide the specific limitations on the number of fuel assemblies in the NMP1 spent fuel pool, fresh fuel storage vault, and the reactor core. Removing the outdated reference to the February 4, 1976 UFSAR from License Condition 2.B.(2) has no effect on these limitations or on the supporting evaluations. The proposed change does not introduce a new mode of plant operation and does not involve a physical modification to the plant. The change will not introduce new accident initiators or impact the assumptions made in a safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

Margin of safety is related to confidence in the ability of the fission product barriers to perform their design functions during and following postulated accidents. The NMP1 TS and UFSAR provide the specific limitations on the number of fuel assemblies in the NMP1 spent fuel pool, fresh fuel storage vault, and the reactor core. Removing the outdated reference to the February 4, 1976, UFSAR from License Condition 2.B.(2) has no effect on these limitations or on the supporting evaluations. Accordingly, no margin of safety is affected.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Carey W. Fleming, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

*NRC Acting Branch Chief:* John P. Boska

*Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP 2), Oswego County, New York*

*Date of amendment request:* March 30, 2011.

*Description of amendment request:* The proposed amendment would revise Technical Specification (TS) Section 3.4.7, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when required

monitors are inoperable. The proposed changes would be consistent with the NRC-approved Revision 3 to Technical Specification Task Force (TSTF), Improved Standard Technical Specification (STS) Change Traveler TSTF–514, ''Revise BWR [boiling-water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.'' The NRC staff issued a Notice of Availability of the models for referencing in license amendment applications in the **Federal Register** on December 17, 2010 (75 FR 79048) as part of the consolidated line item improvement process.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable Reactor Coolant System (RCS) leakage detection instrumentation monitor is the drywell atmospheric gaseous radioactivity monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident previously evaluated?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radioactivity monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

4. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radioactivity monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radioactivity monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Carey W. Fleming, Senior Counsel, Constellation Energy Nuclear Group, LLC, 100 Constellation Way, Suite 200C, Baltimore, MD 21202.

*NRC Acting Branch Chief:* Douglas V. Pickett

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. (See **ADDRESSES** section.)

*Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina*

*Date of application for amendments:* September 16, 2010, as supplemented by letter dated March 31, 2011.

*Brief description of amendments:* The amendments revised Technical Specification 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' to replace the references to the outdated logic per train per doghouse with updated references which reflect License Amendment Nos. 249 and 243 granted by the U.S. Nuclear Regulatory Commission (NRC) staff on April 2, 2009.

*Date of issuance:* June 13, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 264 and 260.

*Renewed Facility Operating License Nos. NPF–35 and NPF–52:* Amendments revised the licenses and the technical specifications.

*Date of initial notice in **Federal Register:*** January 25, 2011 (76 FR 4384). The supplement dated March 31, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 2011.

*No significant hazards consideration comments received:* No.

*Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois*

*Date of application for amendment:* June 30, 2009, as supplemented by letters dated. January 25, July 1, November 8, 2010, and January 31, March 16 and May 4, 2011.

*Brief description of amendment:* The proposed amendments revised Technical Specification (TS) 3.7.9, ''Ultimate Heat Sink (UHS),'' to add additional essential service water (SX) cooling tower fan requirements as a function of SX pump discharge temperature reflective of a revised analysis for the UHS.

*Date of issuance:* June 14, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* 173/173.

*Facility Operating License Nos. NPF–37 and NPF–66:* The amendment revised the Technical Specifications and License.

*Date of initial notice in* ***Federal Register:*** September 8, 2009 (74 FR 46241). The January 25, July 1, November 8, 2010, and January 31, March 16 and May 4, 2011 supplements contained clarifying information and did not change the NRC staff=s initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 14, 2011.

*No significant hazards consideration comments received:* No.

*Indiana Michigan Power Company (IandM), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of application for amendment:* June 22, 2010, supplemented on January 13, 2011.

*Brief description of amendment:* The amendments revised the containment spray nozzles obstruction surveillance frequency specified in Surveillance Requirement 3.6.6.5 from a fixed ''10 years'' to ''Following maintenance that could result in nozzle blockage.''

*Date of issuance:* June 1, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 314 (for Unit 1) and 298 (for Unit 2).

*Facility Operating License Nos. DPR–58 and DPR–74:* Amendment revised the Renewed Operating License and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** August 24, 2010 (75 FR 52042).

The supplemental information dated January 13, 2011, contained clarifying information, did not change the scope of the original application or the initial no significant hazards consideration determination, and does not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 2011.

*No significant hazards consideration comments received:* No.

*NextEra Energy Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin*

*Date of application for amendments:* June 1, 2010, as supplemented by letters dated July 9 and November 22, 2010.

*Brief description of amendments:* The amendments consist of revising the current license basis regarding a postulated reactor vessel head drop (RVHD) event to conform to the NRC-endorsed guidance of Nuclear Energy Institute (NEI) 08–05, ''Industry Initiative on Control of Heavy Loads,'' Revision 0. The proposed change to the license basis will revise Chapter 14.3.6, ''Reactor Vessel Head Drop Event,'' of the Final Safety Analysis Report.

*Date of issuance:* June 1, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 242, 246.

*Renewed Facility Operating License Nos. DPR–24 and DPR–27:* Amendments revise the Final Safety Analysis Report, Chapter 14.3.6, Reactor Vessel Head Drop Event.

*Date of initial notice in* ***Federal Register:*** September 21, 2010 (75 FR 57526). The supplemental letters contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 1, 2011.

*No significant hazards consideration comments received:* No.

*R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York*

*Date of application for amendment:* July 23, 2009, as supplemented by letter dated May 3, 2011.

*Brief description of amendment:* The amendment revises technical specification actions requiring suspension of operations involving positive reactivity addition and revises various notes precluding reduction in boron concentration. The amendment is consistent with TSTF–286, Revision 2, Define ''Operations Involving Positive Reactivity Additions.''

*Date of issuance:* June 8, 2011.

*Effective date:* As of the date of issuance to be implemented within 60 days.

*Amendment No.:* 112.

*Renewed Facility Operating License No. DPR–18:* Amendment revised the License and Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 8, 2011 (76 FR 12765). The letter dated May 3, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the ***Federal Register***.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 2011.

*No significant hazards consideration comments received:* No.

*Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Unit Nos. 1 and 2, Appling County Georgia and Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia*

*Date of application for amendments:* December 16, 2010.

*Brief description of amendments:* The amendments revised the Technical Specifications Section 2.0 ''Safety Limits,'' removing the requirement to report a Safety Limit Violation, that is redundant to existing regulations, Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.36(c)(8) ''Written Reports.''

*Date of issuance:* June 13, 2011.

*Effective date:* As of the date of issuance and shall be implemented within 90 days from the date of issuance.

*Amendment Nos.:* 264, 208 (Hatch) and 161, 143 (Vogtle).

*Facility Operating License Nos. NPF–68 and NPF–81 for Vogtle Units 1 and 2 respectively and DPR–57 and NPF–5 for Hatch Units 1 and 2 respectively:* Amendments revised the licenses and the technical specifications.

*Date of initial notice in* ***Federal Register:*** February 22, 2011 (76 FR 9828).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 13, 2011.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland this 16th day of June 2011.

For the Nuclear Regulatory Commission.

**Joseph G. Giitter,**

*Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–16030 Filed 6–27–11; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Notice of Meeting

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on July 13–15, 2011, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 21, 2010 (74 FR 65038–65039).

**Wednesday, July 13, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Safety Evaluation Report Associated with NEDC–33173, Supplement 2, Parts 1, 2, and 3, ''Analysis of Gamma Scan Data and Removal of Safety Limit Minimum Critical Power Ratio (SLMCPR) Margin''* (Open/Closed)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and General Electric Hitachi (GEH) regarding the safety evaluation report associated with NEDC–33173, Supplement 2, Parts 1, 2, and 3. [*Note:* A portion of this session may be closed in order to discuss and protect information designed as proprietary by GEH pursuant to 5 U.S.C. 552b(c)(4).]

*10:45 a.m.–12:45 p.m.: 10 CFR 50.46(c) Emergency Core Cooling System Rulemaking* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the 10 CFR 50.46(c) Rulemaking: Mechanical Behavior of Ballooned and Ruptured Cladding.

*1:45 p.m.–3:45 p.m.: Technical Basis and Rulemaking Language Associated with Low-Level Waste Disposal Site-Specific Analysis* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical basis and rulemaking language associated with low-level waste disposal site-specific analysis.

*4 p.m.–7 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will discuss proposed ACRS reports on matters discussed during this meeting. [*Note:* A portion of this session may be closed in order to discuss and protect information designed as proprietary by GEH pursuant to 5 U.S.C. 552b(c)(4).]

**Thursday, July 14, 2011, Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10 a.m.: Small Modular Reactor Issue Identification and Ranking Process* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the small modular reactor issue identification and ranking process.

*10:15 a.m.–11:45 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee* (Open/Closed)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS Meetings, and matters related to the conduct of ACRS business, including anticipated workload and member assignments. [*Note:* A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

*11:45 a.m.–12 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations to comments and recommendations included in recent ACRS reports and letters.

*1 p.m.–2 p.m.: Assessment of the Quality of Selected NRC Research Projects* (Open)—The Committee will discuss the quality assessment of the following NRC research projects: NUREG/CR–6969, ''Analysis of Experimental Data for High Burnup PWR Spent Fuel Isotopic Validation—ARIANE and REBUS Programs ($UO_2$ Fuel),'' and NUREG/CR–7027, ''Degradation of LWR Core Internal Materials Due to Neutron Irradiation.''

*2 p.m.–7 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information that is proprietary pursuant to 5 U.S.C. 552b(c)(4).]

**Friday, July 15, 2011 Conference Room T2–B1, 11545 Rockville Pike, Rockville, Maryland**

*8:30 a.m.–1 p.m.: Preparation of ACRS Reports* (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports. [*Note:* A portion of this session may be closed in order to discuss and protect information designated as proprietary by Westinghouse and its contractors pursuant to 5 U.S.C. 552b(c)(4).]

*1 p.m.–1:30 p.m.: Miscellaneous* (Open)—The Committee will continue its discussion related to the conduct of Committee activities and specific issues that were not completed during previous meetings.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Ms. Yoira Diaz-Sanabria, Cognizant ACRS Staff (Telephone: 301–415–8064, E-mail: *Yoira.Diaz-Sanabria@nrc.gov,* five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

Thirty-five hard copies of each presentation or handout should be provided 30 minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the Cognizant ACRS Staff one day before meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the Cognizant ACRS Staff with a CD containing each presentation at least 30 minutes before the meeting.

In accordance with Subsection 10(d) Public Law 92–463, and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agenda, meeting transcripts, and letter reports are

available through the NRC Public Document Room at *pdr.resource@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/ACRS/.*

Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. (ET), at least 10 days before the meeting to ensure the availability of this service.

Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

If attending this meeting please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting.

Dated: June 22, 2011.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 2011–16151 Filed 6–27–11; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Sunshine Federal Register Notice

**AGENCY HOLDING THE MEETINGS:** Nuclear Regulatory Commission [NRC–2011–0006].

**DATE:** Weeks of June 27, July 4, 11, 18, 25, August 1, 2011.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**Week of June 27, 2011**

There are no meetings scheduled for the week of June 27, 2011.

**Week of July 4, 2011—Tentative**

There are no meetings scheduled for the week of July 4, 2011.

**Week of July 11, 2011—Tentative**

*Tuesday, July 12, 2011*

9:30 a.m. Briefing on the NRC Actions for Addressing the Integrated Regulatory Review Service (IRRS) Report (Public Meeting). (Contact: Jon Hopkins, 301–415–3027.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of July 18, 2011—Tentative**

*Tuesday, July 19, 2011*

9:30 a.m. Briefing on the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting). (Contact: Nathan Sanfilippo, 301–415–3951.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of July 25, 2011—Tentative**

*Thursday, July 28, 2011*

9 a.m. Briefing on Severe Accidents and Options for Proceeding with Level 3 Probabilistic Risk Assessment Activities (Public Meeting). (Contact: Daniel Hudson, 301–251–7919.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

**Week of August 1, 2011—Tentative**

There are no meetings scheduled for the week of August 1, 2011.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: June 23, 2011.

**Rochelle C. Bavol,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2011–16257 Filed 6–24–11; 11:15 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[ Docket Nos. STN–50–528, STN–50–529, and STN 50–530; NRC–2011–0142]**

### Arizona Public Service Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request, opportunity to comment, opportunity to request a hearing.

**DATES:** Comments must be filed by July 28, 2011. A request for a hearing must be filed by August 29, 2011.

**ADDRESSES:** Please include Docket ID NRC–2011–0142 in the subject line of your comments. 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 may submit comments by any one of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0142. Address questions about the NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

*NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The application for amendment, dated August 27, 2010, and supplemented by letters dated February 11 and May 25, 2011, is available electronically under ADAMS Accession Nos. ML102510161, ML110550323, and ML11159A029, respectively.

• *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0142.

**FOR FURTHER INFORMATION CONTACT:** Lauren K. Gibson, Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–1056; fax number: 301–415–2102; e-mail: *Lauren.Gibson@nrc.gov.*

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–41, Renewed Facility Operating License No. NPF–51, and Renewed Facility Operating License No. NPF–74 for the Palo Verde Nuclear Generating Station, Units 1, 2, and 3, respectively issued to Arizona Public Service (the licensee) for operation of the Palo Verde Nuclear Generating Station located in Wintersburg, Arizona.

The license amendment request was originally noticed in the **Federal Register** on October 19, 2010 (75 FR 64361). This notice is being reissued in its entirety due to a missing statement from the description of the amendment request. The proposed amendment would revise the feedwater line break with loss of offsite power and single failure (FWLB/LOP/SF) analysis summarized in the Palo Verde Nuclear Generating Station Updated Safety Analysis Report. The revision would change the credited operator action to 20 minutes from 30 minutes to control the pressurizer level. The revision would also revise the rate of reactor coolant pump (RCP) bleed-off to the reactor drain tank from three gallons per minute to zero.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change in the credited operator action time to 20 minutes from 30 minutes does not change the probability of a FWLB/LOP/SF event as the operator actions are credited after the start of the event.

This change in operator action time does not adversely affect accident initiators or precursors, the ability of structures, systems, and components (SSCs) to perform their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits, or radiological release assumptions used in evaluating the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change in the credited operator action time to 20 minutes from 30 minutes does not involve any design or physical changes to the facility or any SSC of that facility. The proposed change does not create any new failure modes or adversely affect the interaction between any structure, system or component.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

*Response:* No.

The proposed change in the credited operator action time to 20 minutes from 30 minutes does not alter the manner in which safety limits or limiting safety system settings are determined. No changes to instrument/system actuation setpoints are involved. The safety analysis acceptance criteria are not impacted by this change and the proposed change will not permit plant operation in a configuration outside the design basis. The assumed 20 minutes for operator action is consistent with Industry and NRC guidance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E–Filing rule (72 FR 49139, August 28, 2007). The E–Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E–Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E–Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E–Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E–Filing system. To be timely, an electronic filing must be submitted to the E–Filing system no later than 11:59

p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an 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 hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically using the agency's adjudicatory E–Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by e-mail at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E–Filing, may require a participant or party to use E–Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E–Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated August 27, 2010, and supplemented by letters dated February 11 and May 25, 2011, which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

Dated at Rockville, Maryland, this 21st day of June 2011.

For the Nuclear Regulatory Commission.

**Lauren K. Gibson,**

*Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–16149 Filed 6–27–11; 8:45 am]

**BILLING CODE 7590–01–P**

## PENSION BENEFIT GUARANTY CORPORATION

### Submission of Information Collection for OMB Review; Comment Request; Disclosure of Termination Information

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of request for OMB approval.

**SUMMARY:** Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) approve, under the Paperwork Reduction Act, a collection of information on the disclosure of termination information under its regulations for distress terminations, 29 CFR part 4041, subpart C, and for PBGC-initiated terminations under 29 CFR part 4042 (OMB control number 1212–0065; expires October 31, 2011). This notice informs the public of PBGC's request and solicits public comment on the collection of information that must be provided by plan administrators and plan sponsors to affected parties upon request.

**DATES:** Comments should be submitted by July 28, 2011.

**ADDRESSES:** Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974.

Copies of the request (including the collection of information) may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel of PBGC at the above address, visiting the Disclosure Division, faxing a request to 202–326–4042, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040). The Disclosure Division will e-mail, fax, or mail the request to you, as you request.

The regulations and instructions relating to this collection of information may be accessed on PBGC's Web site at *http://www.pbgc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jo Amato Burns, Attorney, or Catherine B. Klion, Manager, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY and TDD, call 800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** Sections 4041 and 4042 of the Employee

Retirement Income Security Act of 1974, as amended (ERISA), 29 U.S.C. 1301–1461, govern the termination of single-employer defined benefit pension plans that are subject to Title IV of ERISA. A plan administrator may initiate a distress termination pursuant to section 4041(c), and PBGC may itself initiate proceedings to terminate a pension plan under section 4042 if PBGC determines that certain conditions are present. Sections 4041 and 4042 of ERISA were amended by Section 506 of the Pension Protection Act of 2006 (Pub. L. 109–280) to require that, upon a request by an affected party—

- A plan administrator must disclose information it has submitted to PBGC in connection with a distress termination filing, and
- A plan administrator or plan sponsor must disclose information it has submitted to PBGC in connection with a PBGC-initiated termination.

PBGC is also required to disclose the administrative record relating to a PBGC-initiated termination upon request by an affected party. The above provisions are applicable to terminations initiated on or after August 17, 2006. The applicable regulatory provisions can be found at 29 CFR 4041.51 and 4042.5.

A description of the current disclosure provisions for distress terminations can be found on PBGC's Web site at *http://www.pbgc.gov/Documents/Disclosure_of_Distress_Termination_Information.pdf.*

This collection of information has been approved by OMB under control number 1212–0065 (expires October 31, 2011). PBGC is requesting that OMB extend its approval for three years, without change. 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.

Based on its experience and information from practitioners, PBGC estimates that three participants or other affected parties will annually make requests for termination information. PBGC estimates that the total annual burden for the collection of information will be about 45 hours and $900 (15 hours and $300 per request).

Issued in Washington, DC, this 22nd day of June 2011.

**John H. Hanley,**

*Director, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation.*

[FR Doc. 2011–16157 Filed 6–27–11; 8:45 am]

**BILLING CODE 7709–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 29706; 812–13815]**

## Russell Exchange Traded Funds Trust, et al.; Notice of Application

June 22, 2011.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and (B) of the Act.

**APPLICANTS:** Russell Exchange Traded Funds Trust (formerly, U.S. One Trust, the ''Trust''), Russell Investment Management Company (''Advisor''), and ALPS Distributors, Inc. (''ALPS'').

**SUMMARY OF APPLICATION:** Applicants request an order that permits: (a) Series of certain open-end management investment companies to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

**DATES:** *Filing Dates:* The application was filed on August 18, 2010, and amended on December 21, 2010, April 15, 2011, and May 19, 2011.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 18, 2011, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. *Applicants:* The Advisor and the Trust, 1301 Second Avenue, 18th Floor, Seattle, WA 98101; ALPS, 1290 Broadway, Suite 1100, Denver, CO 80203.

**FOR FURTHER INFORMATION CONTACT:** Barbara T. Heussler, Senior Counsel, at (202) 551–6990 or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

### Applicants' Representations

1. The Trust, a statutory trust established under the laws of Delaware, is registered with the Commission as an open-end management investment company. The Applicants are requesting relief with respect to future series of the Trust or of other open-end management investment companies that may be created in the future (individually, a ''Fund'' and collectively, the ''Funds'').[1] Each Fund will have distinct investment strategies that are different than those of the other Funds, and each Fund will attempt to achieve its investment objective by utilizing an ''active'' management strategy based on investment in individual equity and debt securities.[2] Funds may invest in equity securities or fixed income securities traded in the U.S. or non-U.S. markets or a combination of equity and fixed income securities, including depositary receipts (''Depositary

[1] All entities that currently intend to rely on the order are named as Applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Acquiring Fund (as defined below) may rely on the requested order only to invest in the Funds and not in any other registered investment company.

[2] Each Fund will comply with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009), as well as any other applicable disclosure requirements, before offering Shares.

Receipts'').[3] It is anticipated that the initial Fund will be a domestic equity fund whose investment objective is to seek long-term capital growth. The Funds will not invest in options contracts, futures contracts or swap agreements.

2. Each Fund will (a) be advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (''Advisor Affiliate'') and (b) comply with the terms and conditions stated in the application. The Advisor or an Advisor Affiliate will be the investment adviser to each Fund and will be able to appoint subadvisers (''Sub-Advisors'') to the Fund. The Advisor is a Washington corporation, and is registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 (the ''Advisers Act''). Any investment adviser or Sub-Advisor to a Fund will be registered under the Advisers Act.

3. A broker-dealer registered under the Securities Exchange Act of 1934 (''Exchange Act'') will be the principal underwriter and distributor of the Creation Units of Shares of the Funds (the ''Distributor''). The Distributor will not be affiliated with any Listing Market. ALPS is the principal underwriter and distributor of the shares of the one existing series of the Trust. ALPS is expected to be the principal underwriter and distributor of Shares of the Funds.

4. Applicants anticipate that the price of a Share will range from $20 to $200, and that Creation Units will consist of 25,000 or more Shares. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is a participant in the Depository Trust Company (''DTC,'' and such participants ''DTC Participants'') that has executed a ''Participant Agreement'' with the Distributor. Persons purchasing Creation Units from a Fund must make an in-kind tender of shares of specified securities (''Deposit Securities'') together with an amount of cash specified by the Advisor (the ''Cash Amount''), plus the applicable Transaction Fee, as defined below. The Deposit Securities and the Cash Amount collectively are referred to as the ''Creation Deposit.'' The Cash Amount is equal to the difference between the net asset value (''NAV'') of a Creation Unit and the market value of the Deposit Securities.[4] The Trust may also permit, in its discretion and with respect to one or more Funds, under certain circumstances, an in-kind purchaser to substitute cash in lieu of depositing some or all of the requisite Deposit Securities.

5. An investor purchasing or redeeming a Creation Unit will be charged a fee (''Transaction Fee'') to protect existing shareholders of the Funds from the dilutive costs associated with the purchase and redemption of Creation Units.[5] The Distributor will deliver a confirmation and Fund prospectus (''Prospectus'') to the purchaser. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Shares.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed on the Listing Market and traded in the secondary market in the same manner as other equity securities. It is expected that one or more member firms will be designated to maintain a market for the Shares on the Listing Market.[6] The price of Shares trading on the secondary market will be based on a current bid-offer market. Transactions involving the sale of Shares on the Listing Market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs (which could include institutional investors). Applicants expect that secondary market purchasers of Shares will include both institutional investors and retail investors.[7] Applicants state that the price at which Shares trade will be disciplined by arbitrage opportunities created by the ability to purchase or redeem Creation Units at NAV, which should ensure that Shares will not trade at a material premium or discount in relation to NAV per Share.

8. Shares may be redeemed only if tendered in Creation Units. Redemption requests must be placed by or through an Authorized Participant. Shares in Creation Units will be redeemable in exchange for a basket of securities (''Redemption Securities'') that will be the same as the Deposit Securities required of investors purchasing Creation Units on the same day, except to the extent an investor is permitted to substitute cash-in-lieu of Deposit Securities or Redemption Securities (or as provided below).[8] Depending on whether the NAV of a Creation Unit is higher or lower than the market value of the Redemption Securities, the redeemer of a Creation Unit will either receive from or pay to the Fund a Cash Amount.

[3] Depositary Receipts include American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs''). With respect to ADRs, the depository is typically a U.S. financial institution and the underlying securities are issued by a foreign issuer. The ADR is registered under the Securities Act of 1933 (''Securities Act'') on Form F–6. ADR trades occur either on a national securities exchange or off-exchange. Financial Industry Regulatory Authority (''FINRA'') Rule 6620 requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depository may be a foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. A Fund will not invest in any Depositary Receipts that the Advisor or any Sub-Advisor deems to be illiquid or for which pricing information is not readily available. No affiliated persons of Applicants will serve as the depository for any Depositary Receipts held by a Fund.

[4] On each day that the Trust is open, including as required by section 22(e) of the Act (''Business Day''), the Advisor will make available prior to the opening of trading on the Listing Market (as defined below), the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund, along with the prior day's Cash Amount. The national securities exchange, as defined in section 2(a)(26) of the Act, on which the Shares are listed (a ''Listing Market'') will disseminate, every 15 seconds during the Listing Market's regular trading hours, through the facilities of the Consolidated Tape Association, the estimated NAV per Share, which is an amount per Share representing the sum of the estimated Cash Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Share basis.

[5] Where a Fund permits an in-kind purchaser to deposit cash in lieu of depositing a one or more Deposit Securities, the purchaser may be assessed a higher Transaction Fee to offset the cost to the Fund of buying those particular Deposit Securities.

[6] If Shares are listed on Nasdaq or a similar electronic Listing Market (including NYSE Arca), one or more member firms of that Listing Market will act as market maker (''Market Maker'') and maintain a market for Shares trading on the Listing Market. On Nasdaq, no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq, for example, stipulate that at least two Market Makers must be registered in Shares to maintain a listing. In addition, on Nasdaq and NYSE Arca, registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within section 2(a)(3)(A) or (C) of the Act due to ownership of Shares.

[7] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. DTC or DTC Participants will maintain records reflecting owners of Shares (''Beneficial Owners'').

[8] Funds that invest in fixed income securities (''Fixed Income Funds'') may substitute a cash-in-lieu amount to replace any Deposit Security or Redemption Security that is a to-be-announced transaction (''TBA Transaction''). A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Security or Redemption Security.

9. Applicants state that the Funds must comply with the Federal securities laws in accepting Deposit Securities and satisfying redemptions with Redemption Securities, including that the Deposit Securities and Redemption Securities are sold in transactions that would be exempt from registration under the Securities Act.[9] For each Fund utilizing an in-kind process, the Deposit Securities and Redemption Securities will correspond pro rata to the Fund's portfolio (''Portfolio Securities'').[10]

10. The Trust will not be advertised or marketed or otherwise held out as a traditional open-end investment company or a mutual fund. Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying or selling Creation Units, or Shares traded on the Listing Market, or refer to redeemability, will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of Shares may acquire those Shares from the Fund, or tender those Shares for redemption to the Fund in Creation Units only.

11. The Trust (or the Listing Market) intends to maintain a Web site that will include each Fund's Prospectus, statement of additional information (''SAI''), and summary prospectus, if used, and additional quantitative information that is updated on a daily basis, including, for each Fund, the prior Business Day's NAV per Share and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV per Share (the ''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV per Share. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV per Share at the end of the Business Day.[11]

**Applicants' Legal Analysis**

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) of the Act for an exemption from sections 12(d)(1)(A) and 12(d)(1)(B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

**Sections 5(a)(1) and 2(a)(32) of the Act**

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Applicants request an order to permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that each investor is entitled to purchase or redeem Creation Units rather than trade the individual Shares in the secondary market. Applicants further state that because of the arbitrage possibilities created by the redeemability of Creation Units, it is expected that the market price of an individual Share will not vary much from its NAV per Share.

**Section 22(d) of the Act and Rule 22c–1 Under the Act**

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, rather than at the current offering price described in the Fund's Prospectus. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been intended (a) to prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) to prevent unjust discrimination or preferential treatment among buyers, and (c) to ensure an orderly distribution system of shares by contract dealers by eliminating price competition from non-contract dealers who could offer investors shares at less than the published sales price and who could pay investors a little more than the published redemption price.

6. Applicants state that (a) Secondary market transactions in Shares would not cause dilution for owners of such Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and

[9] In accepting Deposit Securities and satisfying redemptions with Redemption Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A, including in satisfying redemptions with such rule 144A eligible restricted Redemption Securities.

[10] There may be minor differences between a basket of Deposit Securities or Redemption Securities and a true pro rata slice of a Fund's portfolio solely when (A) it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement or, (B) in the case of equity securities, rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots. A tradeable round lot for an equity security will be the standard unit of trading in that particular type of security in its primary market.

[11] Under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

**Section 22(e)**

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of Funds that invest solely in foreign equity and/or fixed income securities (''Foreign Funds'') and Funds that invest in foreign and domestic equity and/or fixed income securities (''Global Funds'') is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to 14 calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within the maximum number of calendar days required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Securities of each Foreign Fund or Global Fund customarily clear and settle, but in all cases no later than 14 days following the tender of a Creation Unit.[12] With respect to Funds that are Foreign Funds or Global Funds, applicants seek the relief from section 22(e) only to the extent that circumstances exist similar to those described in the application.

8. Applicants submit that Congress adopted section 22(e) to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants state that allowing redemption payments for Creation Units of a Fund to be made within 14 calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days and the maximum number of days, up to 14 calendar days, needed to deliver the proceeds for each affected Foreign Fund or Global Fund. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds and Global Funds that do not effect creations or redemptions in-kind.

**Section 12(d)(1)**

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request that the order permit registered management investment companies and unit investment trusts (''UITs'') that are not advised or sponsored by the Advisor or an entity controlling, controlled by or under common control with the Advisor, and not part of the same ''group of investment companies'' as defined in section 12(d)(l)(G)(ii) of the Act as the Funds, to acquire Shares beyond the limits of section 12(d)(l)(A) of the Act (such management companies, ''Acquiring Management Companies,'' such UITs, ''Acquiring Trusts,'' and Acquiring Management Companies and Acquiring Trusts collectively, ''Acquiring Funds''). The requested exemptions would also permit each Fund, its principal underwriter and any broker or dealer registered under the Exchange Act to sell Shares to an Acquiring Fund beyond the limits of section 12(d)(l)(B).

11. Each investment adviser to an Acquiring Management Company within the meaning of section 2(a)(20)(A) of the Act (''Acquiring Fund Advisor'') will be registered as an investment adviser under the Advisers Act. No Acquiring Fund Advisor or sponsor of an Acquiring Trust (''Sponsor'') will control, be controlled by or be under common control with the Advisor. Each Acquiring Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, an ''Acquiring Fund Sub-Advisor''). Any Acquiring Fund Sub-Advisor will be registered under the Advisers Act. No Acquiring Fund will be in the same group of investment companies as the Funds. Pursuant to the terms and conditions of the requested order, each Acquiring Fund will enter into an Acquiring Fund Agreement, as defined below, with the relevant Fund(s).

12. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. An Acquiring Fund or Acquiring Fund Affiliate[13] will not cause any existing or potential investment in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.[14] No Acquiring Fund's Advisory Group or member of it, nor any Acquiring Fund's Sub-Advisory Group or any member of it will control a Fund within the meaning of section 2(a)(9) of the Act. An ''Acquiring Fund's Advisory Group'' is the Acquiring Fund Advisor, Sponsor, any person controlling, controlled by or under common control with the Acquiring Fund Advisor or Sponsor, and any investment company or issuer that would be an investment company but for section 3(c)(l) or 3(c)(7) of the Act, that is advised or sponsored by the Acquiring Fund Advisor, Sponsor or any person controlling, controlled by or under common control with the

[12] Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations that it may otherwise have under rule 15c6–1 under the Exchange Act. Rule 15c6–1 requires that most securities transactions be settled within three business days of the trade date.

[13] An ''Acquiring Fund Affiliate'' is defined as the Acquiring Fund Advisor, Acquiring Fund Sub-Advisor(s), any Sponsor, promoter or principal underwriter of an Acquiring Fund and any person controlling, controlled by or under common control with any of these entities.

[14] A ''Fund Affiliate'' is defined as an investment adviser, promoter or principal underwriter of a Fund and any person controlling, controlled by or under common control with any of these entities.

Acquiring Fund Advisor or Sponsor. An ''Acquiring Fund's Sub-Advisory Group'' is any Acquiring Fund Sub-Advisor, any person controlling, controlled by, or under common control with the Acquiring Fund Sub-Advisor, and any investment company or issuer that would be an investment company but for section 3(c)(l) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Acquiring Fund Sub-Advisor or any person controlling, controlled by or under common control with the Acquiring Fund Sub-Advisor.

14. Applicants also propose a condition to ensure that no Acquiring Fund or Acquiring Fund Affiliate will cause a Fund to purchase a security from an Affiliated Underwriting. An ''Affiliated Underwriting'' is an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate. An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, Sponsor, or employee of the Acquiring Fund, or a person of which any such officer, director, member of an advisory board, Acquiring Fund Advisor, Acquiring Fund Sub-Advisor, Sponsor, or employee is an affiliated person, except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate.

15. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees of an Acquiring Management Company, including a majority of the independent directors or trustees, will be required to find that any fees charged under the Acquiring Management Company's advisory contract(s) are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. Applicants state that any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds set forth in NASD Conduct Rule 2830.[15]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

17. To ensure that an Acquiring Fund is aware of the terms and conditions of the requested order, the Acquiring Fund must enter into an agreement with the respective Fund (''Acquiring Fund Agreement''). The Acquiring Fund Agreement will include an acknowledgment from the Acquiring Fund that it may rely on the order only to invest in the Fund and not in any other investment company.

**Sections 17(a)(1) and (2) of the Act**

18. Section 17(a)(1) and (2) of the Act generally prohibit an affiliated person of a registered investment company, or an affiliated person of such a person (''second tier affiliate''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act defines ''control'' of a fund as ''the power to exercise a controlling influence over the management or policies'' of the fund and provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Advisor or an entity controlling, controlled by or under common control with the Advisor and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Advisor or an entity controlling, controlled by or under common control with the Advisor (an ''Affiliated Fund'').

19. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (1) Holding 5% or more, or more than 25%, of the outstanding Shares of the Trust or one or more Funds; (2) an affiliation with a person with an ownership interest described in (1); or (3) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.[16] Applicants also request an exemption in order to permit a Fund to sell its Shares to and redeem its Shares from an Acquiring Fund of which the Fund is an affiliated person or an affiliated person of an affiliated person.[17]

20. Applicants assert that no useful purpose would be served by prohibiting the affiliated persons described above from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be effected in exactly the same manner for all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as those Portfolio Securities currently held by the relevant Funds and without regard to the identity of the purchaser or redeemer. Further, the Deposit Securities and Redemption Securities (except for permitted cash-in-lieu amounts) for a Fund will be the same, and in-kind purchases and redemptions will be on the same terms, for all persons regardless of the identity of the purchaser or redeemer. Therefore, applicants state that the in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to other holders of Shares of that Fund. Applicants do not believe that in-kind purchases and redemptions will result in abusive self-dealing or overreaching of the Fund.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Acquiring Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV per

[15] Any references to NASD Conduct Rule 2830 include any successor or replacement rule that may be adopted by FINRA.

[16] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person or an affiliated person of an affiliated person, of an Acquiring Fund because an investment adviser to the Funds is also an investment adviser to the Acquiring Fund.

[17] To the extent that purchases and sales of Shares occur in the secondary market and not through principal transactions directly between an Acquiring Fund and a Fund, relief from section 17(a) would not be necessary. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Acquiring Fund and redemptions of those Shares. The requested relief is intended to cover the in-kind transactions that would accompany such sales and redemptions.

Share of the Fund.[18] The Acquiring Fund Agreement will require any Acquiring Fund that purchases Creation Units directly from a Fund to represent that the purchase will be accomplished in compliance with the investment restrictions of the Acquiring Fund and will be consistent with the investment policies set forth in the Acquiring Fund's registration statement. Applicants believe that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

**Applicant's Conditions**

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

*Actively-Managed Exchange-Traded Fund Relief*

1. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

2. The Web site for the Funds, which is and will be publicly accessible at no charge, will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium or discount of the market closing price or Bid/Ask Price against such NAV.

3. As long as a Fund operates in reliance on the requested order, its Shares will be listed on a Listing Market.

4. On each Business Day, before commencement of trading in Shares on a Fund's Listing Market, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV per Share at the end of the Business Day.

5. The Advisor or any Sub-Advisors, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for a Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively-managed exchange-traded funds.

*Section 12(d)(1) Relief*

7. The members of an Acquiring Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of an Acquiring Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Acquiring Fund's Advisory Group or the Acquiring Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of that Fund's Shares. This condition does not apply to the Acquiring Fund's Sub-Advisory Group with respect to a Fund for which the Acquiring Fund Sub-Advisor or a person controlling, controlled by, or under common control with the Acquiring Fund Sub-Advisor acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

8. No Acquiring Fund or Acquiring Fund Affiliate will cause any existing or potential investment by the Acquiring Fund in a Fund to influence the terms of any services or transactions between the Acquiring Fund or an Acquiring Fund Affiliate and the Fund or a Fund Affiliate.

9. The board of directors or trustees of an Acquiring Management Company, including a majority of the independent directors or trustees, will adopt procedures reasonably designed to ensure that the Acquiring Fund Advisor and any Acquiring Fund Sub-Advisor are conducting the investment program of the Acquiring Management Company without taking into account any consideration received by the Acquiring Management Company or an Acquiring Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

10. Once an investment by an Acquiring Fund in Shares exceeds the limits in section 12(d)(1)(A)(i) of the Act, the board of trustees of the Trust (''Board''), including a majority of the independent trustees, will determine that any consideration paid by the Fund to an Acquiring Fund or an Acquiring Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

11. No Acquiring Fund or Acquiring Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause the Fund to purchase a security in any Affiliated Underwriting.

12. The Board, including a majority of the independent trustees, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Acquiring Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders of the Fund.

13. Each Fund will maintain and preserve permanently in an easily

[18] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Acquiring Fund, or an affiliated person of such person, for the purchase by the Acquiring Fund of Shares or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Acquiring Fund, may be prohibited by section 17(e)(1) of the Act. The Acquiring Fund Agreement also will include this acknowledgment.

accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by an Acquiring Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the determinations of the Board were made.

14. Before investing in Shares of a Fund in excess of the limits in section 12(d)(1)(A), each Acquiring Fund and the Fund will execute an Acquiring Fund Agreement stating, without limitation, that their boards of directors or boards of trustees and their investment adviser(s), or their Sponsors or trustees (''Trustee''), as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in Shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Acquiring Fund will notify the Fund of the investment. At such time, the Acquiring Fund will also transmit to the Fund a list of the names of each Acquiring Fund Affiliate and Underwriting Affiliate. The Acquiring Fund will notify the Fund of any changes to the list of the names as soon as reasonably practicable after a change occurs. The Fund and the Acquiring Fund will maintain and preserve a copy of the order, the Acquiring Fund Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

15. The Acquiring Fund Advisor, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Acquiring Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted under rule 12b–1 under the Act) received from the Fund by the Acquiring Fund Advisor, Trustee or Sponsor, or an affiliated person of the Acquiring Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Acquiring Fund Advisor, Trustee, or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Acquiring Fund in the Fund. Any Acquiring Fund Sub-Advisor will waive fees otherwise payable to the Acquiring Fund Sub-Advisor, directly or indirectly, by the Acquiring Management Company in an amount at least equal to any compensation received from a Fund by the Acquiring Fund Sub-Advisor, or an affiliated person of the Acquiring Fund Sub-Advisor, other than any advisory fees paid to the Acquiring Fund Sub-Advisor or its affiliated person by the Fund, in connection with any investment by the Acquiring Management Company in the Fund made at the direction of the Acquiring Fund Sub-Advisor. In the event that the Acquiring Fund Sub-Advisor waives fees, the benefit of the waiver will be passed through to the Acquiring Management Company.

16. Any sales charges and/or service fees charged with respect to shares of an Acquiring Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

17. No Fund will acquire securities of any other investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Acquiring Management Company, including a majority of the independent directors or trustees, will find that the advisory fees charged under such advisory contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Acquiring Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Acquiring Management Company.

For the Commission, by the Division of Investment Management, under delegated authority.

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16142 Filed 6–27–11; 8:45 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, June 30, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, June 30, 2011 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
A litigation matter;
An opinion; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: June 23, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–16230 Filed 6–24–11; 11:15 am]

BILLING CODE 8011–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64719; File No. SR–ISE–2011–33]**

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Appointments to Competitive Market Makers

June 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on June 10, 2011, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to revise the manner in which Competitive Market Makers are appointed to options classes. 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

The ISE's membership is divided into three categories, Primary Market Makers (''PMMs''), Competitive Market Makers (''CMMs'') and Electronic Access Members. There are 10 PMM trading rights and 160 CMM trading rights (collectively ''market maker rights''). In order to access the Exchange as a market maker, a member must own or lease one or more market maker rights. EAMs are not required to purchase a membership right in order to access the Exchange. Under the current structure, options traded on the Exchange are divided into 10 groups, with one of the 10 PMM trading right and 16 of the 160 CMM trading rights appointed to each group. Thus, each PMM and CMM trading right is associated with a specific group of options. This structure has been in place since ISE began operations in 2000. The purpose of this proposed rule change is to change the manner in which the Exchange appoints options classes with respect to CMM trading rights.

The Exchange proposes to change the structure of CMM appointments to give market makers more flexibility to choose the options classes to which they are appointed. Under the current structure that associates each membership with a particular group of options, a member generally must own or lease multiple CMM trading rights in order to gain access to the options classes in which it seeks to make markets. Moreover, the structure requires market makers to provide continuous quotations in a minimum number of options classed in each group, which results in some market makers entering in some options classes continuous quotations that are away from the national best bid and offer solely to satisfy the minimum requirement. While such quotations do not add to the quality of the ISE's market or the national market system, they place a burden on the Exchange and its members with respect to the need to maintain additional systems capacity to handle the quotation traffic.

To address the issues created by the current CMM structure, the Exchange proposes to allow CMMs to seek appointment in the options classes listed on the Exchange across the groups of options assigned to particular PMMs. Under the proposal, the Exchange will assign points to each options class equal to its percentage of overall industry volume (not including exclusively-traded index options), rounded down to the nearest tenth of a percentage. A CMM will be able to seek appointments to options classes that total: (i) 20 points for the first CMM trading right it owns or leases; and (ii) 10 points for the second and each subsequent CMM trading right it owns or leases.[3] CMMs will be able to change their appointments at any time upon advance notification to the Exchange.[4] This structure is similar to the way in which the Chicago Board Options Exchange allows its market makers to choose options to which they are appointed.[5]

The Exchange believes that this proposal strikes an appropriate balance between the Exchange's goal of attracting additional market makers to the Exchange and the interests of the current CMMs on the Exchange. Under the existing structure, a member is required to own and/or lease 10 CMM trading rights (one in each of the 10 options groups) in order to have the ability to make markets in all of the options classes traded on the Exchange. Moreover, because the number of options classes contained in each group varies, CMM trading rights currently represent 10 different levels of participation. Under the proposal, the level of access gained by owning or leasing a CMM trading right will be standardized. Finally, the proposal will make additional memberships available, which will provide greater opportunity for more market makers to join the Exchange.

Specifically, by assigning 20 points to the first CMM trading right owned or leased by a member and 10 points to each subsequent CMM trading right owned or leased by the same member, only 9 CMM trading rights will be required to cover the entire ISE market. Accordingly, members that currently own or lease 10 CMM trading rights will be able to sell or discontinue leasing one of their CMM trading rights. Similarly, other market markers on the ISE also will be able to reduce the number of CMM trading rights they need to gain access to the options classes in which they want to make markets. Thus, the proposal will reduce the cost of market making on the ISE and increase the supply of available CMM trading rights, which will provide the opportunity for more market makers to join the ISE. Moreover, assigning the first CMM trading right that is owned or leased by a market maker 20 points and subsequent CMM trading rights 10 points takes into consideration that the CMM trading rights currently are assigned to groups with a varying number of options classes. This structure makes it less likely that current market makers with CMM trading rights primarily in the larger

[3] Under the proposal, CMMs can select the options classes to which they seek appointment, but the Exchange retains the authority to make such appointments and to remove appointments from CMMs based on their performance. In this respect, under the current rule, the Board or a committee designated by the Board makes appointments to market makers. In consideration of the new process for making CMM appointments, the Exchange is proposing to allow the Exchange to make appointments to market makers. Under the proposal, either the Exchange or a committee designated by the Board will be permitted to make appointments. The Board itself has never made market makers appointments, and the Exchange does not believe such determinations require Board-level consideration.

[4] The Exchange will notify CMMs of the procedure for requesting changes to their appointments, including the length of advance notification required. The Exchange will establish the shortest advance notification period that is operationally feasible, such as a specific time on the day prior to the intended effectiveness of a change in a CMM's appointments, or by a specified time prior to the opening on the same trading day.

[5] CBOE Rule 8.3 (Appointment of Market Makers).

groups will be negatively impacted by the proposed change.[6]

The Exchange also proposes to adjust its CMM quotation requirements to reflect the proposed elimination of specified groups of options associated with CMM trading rights. Specifically, under the current structure, CMMs are required to participate in the opening and provide continuous quotations in a minimum number of options classes in each of their assigned groups. Since CMMs will have the flexibility to choose the options classes to which they are appointed rather than being appointed to a pre-determined group of options, the Exchange proposes to modify this requirement to limit the number of appointed options classes in which a CMM can initiate intraday quoting to the number of options classes in which it participates in the opening rotation.

Under the current rules, a CMM is required to participate in the opening in 60% of the options classes in its appointed group of options or 40 options classes, whichever is lesser. If, for example, a CMM is appointed to a group with 100 options classes, then it must participate in the opening for 40 options classes and may initiate intra-day quoting in 60 options classes. Under the proposed structure, a CMM appointed to 100 options classes that participates in the opening in 40 options classes may only initiate intra-day quoting in 40 additional classes. There is no minimum number of options classes in which a CMM must quote because under the new structure, CMMs presumably will not seek appointment to options classes unless they want to quote them. Thus, the Exchange believes it is reasonable to adopt a structure that is more restrictive with respect to entering quotes after the opening. In addition, this requirement currently is in place for options classes traded in the Exchange's Second Market,[7] and the Exchange believes it effectively encourages market makers to provide added liquidity during the opening.

Additionally, under the proposal the Exchange will retain the current requirement that once a CMM enters a quotation in an appointed options class, it must maintain continuous quotations for that series and at least 60% of the series of the options class until the close of trading that day.[8] If a CMM receives Preferenced Orders in an options class, it will continue to be required to maintain continuous quotations in at least 90% of the series in that class. Finally, the Exchange will continue to have the ability under its rules to call upon a CMM to submit quotations in one or more series of an options class to which the CMM is appointed.[9]

Finally, the Exchange proposes to terminate its current CMM inactivity fee. That fee currently imposes a charge of $25,000 a month for CMM trading rights that are not active. The purpose of the fee is to help recoup a portion of the income that the Exchange loses when market makers do not operate their trading rights and generate transaction-based revenue. Under the proposed CMM trading rights structure, the Exchange does not believe that the inactivity fee is appropriate or necessary, as CMMs will now be able to manage the number of options classes to which they are appointed.[10] Moreover, we believe that there will be increased demand for CMM trading rights, and that owners of such rights will have a financial incentive to sell or lease any unused trading rights. If this does not turn out to be the case, the Exchange will consider reinstituting some form of inactivity fee that is appropriate for the new structure.

2. Basis

The basis under the Act for this proposed rule change is found in Section 6(b)(5),[11] in that the proposed change is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposal will provide more open access to the Exchange for market makers. It will also permit broker-dealer members of the ISE to use their CMM trading rights more efficiently, lowering their costs of providing liquidity on the Exchange. At the same time, because a PMM will continue to be appointed to each options class, there will continue to be continuous, two-sided quotations in all options listed on the Exchange.[12] As further required under Section 6(b)(5) of the Exchange Act, the proposal will not result in unfair discrimination between customers, issues, brokers or dealers. Indeed, any and all potential market makers will be able to purchase or lease newly available CMM trading rights.

Pursuant to Section 6(b)(8) of the Exchange Act,[13] the proposed rule change is designed to foster competition, both with respect to exchange competition and broker-dealer competition, as it will encourage additional market maker participation. The additional market making interest that this will attract to the ISE will make the ISE more competitive with other exchanges that have a market making structure which is less limited as the ISE's current structure. As to broker-dealers, this proposal will permit more broker-dealers to join the ISE and disseminate competitive quotations, which will enhance competition among market makers.

Finally, the proposal to eliminate the CMM inactivity furthers Section 6(b)(4) of the Exchange Act[14] in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities. The Exchange believes that eliminating the inactivity will potentially lower costs for members providing liquidity on the Exchange. Furthermore, it will apply equally to all CMMs and thus is not discriminatory.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

[6] The Exchange will provide members with a transition period of 30 to 60 days following approval of the proposed rule change. During the transition period, the Exchange will work with existing market makers to restructure their appointments within the new point-based structure.

[7] ISE Rule 904(a).

[8] CMMs will continue to be subject to the quotation requirements contained in Rule 803 and 804.

[9] The proposal also amends Rule 805 to correct a cross-reference to Rule 804, and amends rule 810 to replace a reference to appointment to groups with a reference to appointed options.

[10] For example, under the current structure, a CMM that owns or leases three CMM trading rights is obligated to continuously quote a minimum of 120 options classes. Under the new structure, a CMM with three trading rights could seek appointment for only three options classes (one for each trading right), thus making the inactivity fee ineffective.

[11] 15 U.S.C. 78f(b)(5).

[12] Pursuant to Rule 804(a)(2), PMMs have the obligation to provide continuous quotations in all of the series of all of the options to which they are appointed.

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78f(b)(4).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2011–33 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2011–33. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2011–33 and should be submitted by July 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16033 Filed 6–27–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64733; File No. SR–Phlx–2011–85]**

## Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and Removing Liquidity in Select Symbols

June 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section I of the Exchange's Fee Schedule titled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' specifically to amend the Select Symbols.[3] While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 1, 2011. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the list of Select Symbols in Section I of the Exchange's Fee Schedule, entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' in order to attract additional order flow to the Exchange.

The Exchange displays a list of Select Symbols in its Fee Schedule at Section I, ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols,'' that are subject to the rebates and fees in that section. Among those symbols is Dendreon Corporation (''DNDN''), Motorola Solutions, Inc. (''MSI'') and SPDR S&P Homebuilders (''XHB''), which the Exchange is proposing to remove from the list of Select Symbols. The Exchange is also proposing to add iPath S&P 500 VIX Short-Term Futures ETN (''VXX'') to the list of Select Symbols in Section I.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on July 1, 2011.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(4) of the Act[5] in particular, in that it is an equitable allocation of

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Select Symbols'' refers to the symbols which are subject to the Rebates and Fees for Adding and Removing Liquidity in Section I of the Exchange's Fee Schedule.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that it is reasonable to remove DNDN, MSI and XHB from its list of Select Symbols and add VXX to its list of Select Symbols to attract additional order flow to the Exchange. The Exchange anticipates that the addition of VXX to Section I of the Fee Schedule would attract market participants to transact equity options at the Exchange because of the available rebates. In addition, the Exchange believes that applying the fees in Section II, entitled ''Equity Options Fees'' [6] to DNDN, MSI and XHB, including the opportunity to receive payment for order flow, would also attract order flow to the Exchange.

The Exchange believes that it is equitable to amend the list of Select Symbols by removing DNDN, MSI and XHB and adding VXX because the list of Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be subject to the rebates and fees in Section I of the Fee Schedule. Also, all market participants would be uniformly subject to the fees in Section II.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–85 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–85. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–85 and should be submitted on or before July 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16148 Filed 6–27–11; 8:45 am]

**BILLING CODE 8011–01–P**

[6] Section II includes options overlying equities, ETFs, ETNs, indexes and HOLDRS which are Multiply Listed.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64725; File No. SR–CBOE–2011–044]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, to Reduce the Minimum Size of the Nominating and Governance Committee

June 22, 2011.

## I. Introduction

On April 27, 2011, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to reduce the minimum size of the Nominating and Governance Committee (''NGC'') from seven to five. On May 18, 2011, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change was published for comment in the **Federal Register** on May 10, 2011.[4] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

## II. Description of the Proposal

CBOE is proposing to reduce the minimum size of its NGC from seven to five directors. Section 4.4 of the Second Amended and Restated Bylaws of CBOE (''Bylaws'') currently provides, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the time CBOE submitted the original proposed rule change, it had not yet obtained formal approval from its Board of Directors for the specific Bylaw changes set forth in this proposed rule change. CBOE stated that once that approval was obtained, it would file a technical amendment to its proposed rule change to reflect that approval. In Amendment No. 1, the Exchange notes that the CBOE Board of Directors approved the specific Bylaw changes set forth in SR–CBOE–2011–044 on May 17, 2011 and stated that no further action was necessary in connection with its proposal. Because Amendment No. 1 is technical in nature, the Commission is not required to publish it for public comment.

[4] *See* Securities Exchange Act Release No. 64395 (May 4, 2011), 76 FR 27125 (''Notice'').

pertinent part, that the NGC shall consist of at least seven directors, including both Industry and Non-Industry Directors; that a majority of the directors on the Committee shall be Non-Industry Directors; and that the exact number of members on the Committee shall be determined from time to time by CBOE's Board of Directors (the ''Board'' or ''CBOE Board''). Pursuant to the proposed rule change, Section 4.4 of the Bylaws would be amended to provide that the NGC shall consist of at least five directors. The other provisions of Section 4.4 of the Bylaws would remain unchanged.[5]

In outlining the purpose behind its proposal, the Exchange noted that the size of its Board declined from its initial size of twenty-three to nineteen directors in 2009 and again to sixteen directors in 2011.[6] As the size of its Board has declined, the Exchange noted that it has become more challenging to populate larger-size Board committees since there are fewer directors to serve on a multitude of committees.[7] The Exchange's proposal to reduce the minimum size of the NGC is intended to help address this issue.

## III. Discussion

After careful review of the proposal, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(1) of the Act,[9] which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, as well as Section 6(b)(5) of the Act,[10] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. While the Exchange has proposed to reduce the minimum size of the NGC, it has not proposed any other changes to the composition of the committee or the scope or exercise of its responsibilities. In its filing, the Exchange affirmatively represented that the NGC ''will continue to be able to appropriately perform its functions'' despite the reduction in minimum required size.[11] The Commission further finds that the proposal, as modified by Amendment No. 1, is consistent with the requirements of Section 6(b)(3) of the Act,[12] which requires that one or more directors of an exchange shall be representative of issuers and investors and not be associated with a member of the exchange, broker or dealer.

In particular, the Commission notes that the Exchange will continue to provide for the fair representation of CBOE Trading Permit Holders in the selection of directors and the administration of the Exchange consistent with Section 6(b)(3) of the Act[13] following this rule change. Specifically, the CBOE Bylaws will continue to require that at least thirty percent of the directors on the Board be Industry Directors and that at least twenty percent of CBOE's directors be Representative Directors elected by permit holders.[14] Further, the NGC will continue to include both Industry and Non-Industry Directors (including a majority Non-Industry Directors) and have an Industry-Director Subcommittee that is composed of all of the Industry Directors serving on the Committee. Representative Directors will continue to be nominated (or otherwise selected through a petition process) by the Industry-Director Subcommittee. Additionally, CBOE Trading Permit Holders will continue to be able to nominate alternative Representative Director candidates to those nominated by the Industry Director Subcommittee, in which case a Run-off Election will be held in which CBOE's Trading Permit Holders vote to determine which candidates will be elected to the Board to serve as Representative Directors. Furthermore, the Commission notes that the Exchange's proposal to reduce the minimum size of its NGC is consistent with a proposal that the Commission previously approved for another self-regulatory organization in which that self-regulatory organization reduced the minimum size of its nominating and governance committee from six to four members.[15]

Finally, the Exchange has represented that, although the proposed rule change would permit the Exchange to appoint a five-person NGC and the Exchange may elect to do so in the future, it is the current intention of the Exchange to appoint a six-person NGC.[16]

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[17] that the proposed rule change (SR–CBOE–2011–044), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16133 Filed 6–27–11; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64722; File No. SR–CBOE–2011–055]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Trade Options on the CBOE Silver ETF Volatility Index

June 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 15, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[5] Additionally, the title of the Bylaws would be changed to the Third Amended and Restated Bylaws of CBOE.

[6] Section 3.1 of the Bylaws provides that the CBOE Board shall consist of not less than eleven and not more than twenty-three directors, with the exact size determined by the Board.

[7] *See* Notice, *supra* note 4, at 27125–26.

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(1).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Notice, *supra* note 4, at 27126.

[12] 15 U.S.C. 78f(b)(3).

[13] 15 U.S.C. 78f(b)(3).

[14] *See* Section 3.2 of the CBOE Bylaws (defining ''Representative Director'').

[15] *See* Securities Exchange Act Release No. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006) (SR–CHX–2006–23) (approving reduction of the Chicago Stock Exchange's Nominating and Governance Committee from six directors to four directors). *See also* Article II, Section 3 of the Bylaws of the Chicago Stock Exchange, Inc. (providing for a Nominating and Governance Committee with four directors).

[16] *See* Notice, *supra* note 4, at 27126.

[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to amend certain of its rules to provide for the listing and trading of options that overlie the CBOE Silver ETF Volatility Index (''VXSLV''), which will be cash-settled and will have European-style exercise. The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the CBOE Silver ETF Volatility Index (''VXSLV'').

The Exchange has previously received approval orders to trade options on other volatility indexes that are calculated using certain individual stock and exchange-traded fund (''ETF'') options listed on CBOE.[3] In the most recent approval order, the Exchange genericized certain of its rules to collectively refer to these indexes as ''Individual Stock Based Volatility Indexes,'' ''ETF Based Volatility Indexes,'' and ''Volatility Indexes,'' as applicable.[4] The specific Individual Stock Based Volatility Indexes and ETF Based Volatility Indexes that have been approved for options trading are listed in Rule 24.1(bb). This filing layers VXSLV into CBOE's existing rule framework for ''ETF Based Volatility Indexes'' and ''Volatility Indexes,'' since VXSLV is comprised of ETF options.

*Index Design and Calculation*

The calculation of VXSLV is based on the VIX methodology applied to options on the iShares Silver Trust (''SLV''). The VXSLV index was introduced by CBOE on March 16, 2011 and has been disseminated in real-time on every trading day since that time.[5]

VXSLV is an up-to-the-minute market estimate of the expected volatility of SLV calculated by using real-time bid/ask quotes of CBOE listed SLV options. VXSLV uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.[6]

CBOE will compute values for VXSLV underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (CT).[7] VXSLV levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

*Options Trading*

VXSLV options will trade pursuant to the existing trading rules for other Volatility Index options. VXSLV options will be quoted in index points and fractions and one point will equal $100. The minimum tick size for series trading below $3 will be 0.05 ($5.00) and above $3 will be 0.10 ($10.00). Initially, the Exchange will list in-, at- and out-of-the-money strike prices and the procedures for adding additional series are provided in Rule 5.5.[8] Dollar strikes (or greater) will be permitted for VXSLV options where the strike price is $200 or less and $5 or greater where the strike price is greater than $200. The Exchange will not be permitted to list LEAPS on VXSLV options at strike price intervals less than $1.[9]

Transactions in VXSLV may be effected on the Exchange between the hours of 8:30 a.m. Chicago time and 3 p.m. (Chicago time). The Exchange is proposing to close trading at 3 p.m. (Chicago time) for VXSLV options because trading in SLV options on CBOE closes at 3 p.m. (Chicago time).[10]

**Exercise and Settlement**

The proposed options will typically expire on the Wednesday that is 30 days prior to the third Friday of the calendar month immediately following the expiration month (the expiration date of the options used in the calculation of the index). If the third Friday of the calendar month immediately following the expiring month is a CBOE holiday, the expiration date will be 30 days prior to the CBOE business day immediately preceding that Friday.[11] For example, November 2011 Vol VXSLV options would expire on Wednesday, November 16, 2011, exactly 30 days prior to the third Friday of the calendar month immediately following the expiring month.

Trading in the expiring contract month will normally cease at 3 p.m.

[3] *See* Securities Exchange Act Release Nos. 62139 (May 19, 2010) 75 FR 29597 (May 26, 2010) (order approving proposal to list and trade CBOE Gold ETF Volatility Index (''GVZ'') options on CBOE) and 64551 (May 26, 2011), 76 FR 32000 (June 2, 2011) (order approving proposal to list and trade options on certain individual stock based volatility indexes and ETF based volatility indexes).

[4] *See* Rules 12.3, 24.1(bb), 24.4C, 24.5.04, 24.6, 24.9, 24A.7, 24A.8, 24B.7 and 24B.8.

[5] CBOE maintains a micro-site for VXSLV: *http://www.cboe.com/micro/VIXETF/VXSLV/*.

[6] *See* proposed amendment to Interpretation and Policy .01 to Rule 24.1 (designating CBOE as the reporting authority for VXSLV).

[7] Trading in SLV options (the index components of VXSLV) on CBOE closes at 3 p.m. (Chicago time). *See* Rule 24.6.02. The Exchange is proposing to make non-substantive changes to this rule.

[8] *See* Rule 5.5(c). ''Additional series of options of the same class may be opened for trading on the Exchange when the Exchange deems it necessary to maintain an orderly market, to meet customer demand or when the market price of the underlying * * * moves substantially from the initial exercise price or prices.'' For purposes of this rule, ''market price'' shall mean the implied forward level based on any corresponding futures price or the calculated forward value of VXSLV.

[9] *See* Rule 24.9.01(l). The Exchange is proposing to amend Rule 24.9.01(l) by expressly providing that ''[t]he Exchange shall not list LEAPS on Volatility Index options at strike price intervals less than $1.'' The Exchange notes that when GVZ options were approved for trading, a substantially similar provision regarding the strike price intervals for LEAPS was adopted. *See* Securities Exchange Act Release No. 62139 (May 19, 2010) 75 FR 29597 (May 26, 2010). However, when the Exchange filed to list options on certain individual stock based volatility indexes and ETF based volatility indexes, the Exchange revised the strike setting parameters for Volatility Index options to permit $1 strikes where the strike price is $200 or less. The LEAPS strike setting provision was inadvertently not carried forward at the time Rule 24.9.01(l) was adopted, but should have been.

[10] *See* Rule 24.6.02.

[11] *See* Rule 24.9(a)(5).

(Chicago time) on the business day immediately preceding the expiration date. Exercise will result in delivery of cash on the business day following expiration. VXSLV options will be A.M.-settled.[12] The exercise settlement value will be determined by a Special Opening Quotations (''SOQ'') of VXSLV calculated from the sequence of opening prices of a single strip of options expiring 30 days after the settlement date. The opening price for any series in which there is no trade shall be the average of that options' bid price and ask price as determined at the opening of trading.[13]

The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day is moved because of a CBOE holiday, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

*Position and Exercise Limits*

The Exchange is proposing that the existing position limits for ETF Based Volatility Index options apply to VXSLV options.[14] For regular options trading, the position limit for VXSLV options will be 50,000 contracts on either side of the market and no more than 30,000 contracts in the nearest expiration month. CBOE believes that a 50,000 contract position limit is appropriate due to the fact that SLV options, which are the underlying components for VXSLV, are among the most actively traded option classes currently listed. In determining compliance with these proposed position limits, VXSLV options will not be aggregated with the SLV options.[15] Positions in Short Term Option Series, Quarterly Options Series, and Delayed Start Option Series will be aggregated with position in options contracts in the same VXSLV class.[16] Exercise limits will be equivalent to the proposed position limits.[17] VXSLV options will be subject to the same reporting requirements triggered for other options dealt in on the Exchange.

The Exchange is proposing that the existing position limits for FLEX ETF Based Volatility Index options apply to VXSLV options. Specifically, the position limits for FLEX VXSLV Options will be equal to the position limits for Non-FLEX VXSLV Options.[18] Similarly, the exercise limits for FLEX VXSLV Options will be equivalent to the position limits set forth in Rule 24.4C. As provided for in Rules 24A.7(d) and 24B.7(d), as long as the options positions remain open, positions in FLEX VXSLV Options that expire on the same day as Non-FLEX VXSLV Index Options, as determined pursuant to Rule 24.9(a)(5), shall be aggregated with positions in Non-FLEX VXSLV Options and shall be subject to the position limits set forth in Rules 4.11, 24.4, 24.4A, 24.4B and 24.4C, and the exercise limits set forth in Rules 4.12 and 24.5.

The Exchange is proposing that the existing Hedge Exemption for ETF Based Volatility Index options apply to VXSLV options, which would be in addition to the standard limit and other exemptions available under Exchange rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for a ETF Based Volatility Index hedge exemption:

- The account in which the exempt option positions are held (''hedge exemption account'') has received prior Exchange approval for the hedge exemption specifying the maximum number of contracts which may be exempt. The hedge exemption account has provided all information required on Exchange-approved forms and has kept such information current. Exchange approval may be granted on the basis of verbal representations, in which event the hedge exemption account shall within two (2) business days or such other time period designated by the Department of Market Regulation furnish the Department of Market Regulation with appropriate forms and documentation substantiating the basis for the exemption. The hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.
- A hedge exemption account that is not carried by a CBOE member organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group.
- The hedge exemption account maintains a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time as the execution of the exempt options positions, of a net long or short position in ETF Based Volatility Index futures contracts or in options on ETF Based Volatility Index futures contracts, or long or short positions in ETF Based Volatility Index options, for which the underlying ETF Based Volatility Index is included in the same margin or cross-margin product group cleared at the Clearing Corporation as the ETF Based Volatility Index option class to which the hedge exemption applies. To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity.
- The exemption applies to positions in ETF Based Volatility Index options dealt in on the Exchange and is applicable to the unhedged value of the qualified portfolio. The unhedged value will be determined as follows: (1) The values of the net long or short positions of all qualifying products in the portfolio are totaled; (2) for positions in excess of the standard limit, the underlying market value (a) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (b) of any opposite side of the market positions in ETF Based Volatility Index futures, options on ETF Based Volatility Index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and (3) the market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows—the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.
- Only the following qualified hedging transactions and positions will be eligible for purposes of hedging a qualified portfolio (*i.e.* futures and options) pursuant to Interpretation .01 to Rule 24.4C:
  - ○ Long put(s) used to hedge the holdings of a qualified portfolio;
  - ○ Long call(s) used to hedge a short position in a qualified portfolio;
  - ○ Short call(s) used to hedge the holdings of a qualified portfolio; and

[12] *See* proposed amendment to Rule 24.9(a)(4) (adding VXSLV to the list of A.M.-settled index options approved for trading on the Exchange).

[13] *See* Rule 24.9(a)(5).

[14] *See* Rule 24.4C (Position Limits for Individual Stock or ETF Based Volatility Index Options).

[15] *See* Rule 24.4C(b).

[16] *See* proposed new subparagraph (c) to Rule 24.4C. The Exchange is proposing to add new subparagraph (c) regarding aggregation to Rule 24.4C. The Exchange notes that when GVZ options were approved for trading, the position limits for GVZ options were layered into existing Rule 24.4 (Position Limits for Broad-Based Index Options). Rule 24.4(e) sets forth an aggregation requirement substantially similar to proposed new subparagraph (c) to Rule 24.4C. *See* Securities Exchange Act Release No. 62139 (May 19, 2010) 75 FR 29597 (May 26, 2010). When the Exchange filed to list options on certain individual stock based volatility indexes and ETF based volatility indexes, the Exchange removed GVZ from Rule 24.4 and proposed a new rule setting forth positions limits for these products. The aggregation requirement from Rule 24.4(e) was inadvertently not carried forward at the time Rule 24.4C was adopted, but should have been.

[17] *See* Rule 24.5.

[18] *See* Rules 24A.7(a)(5) and 24B.7(a)(5).

○ Short put(s) used to hedge a short position in a qualified portfolio.

• The following strategies may be effected only in conjunction with a qualified stock portfolio:

○ A short call position accompanied by long put(s), where the short call(s) expires with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s) (a ''collar''). Neither side of the collar transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 4.11 and Rule 24.4C, a collar position will be treated as one (1) contract;

○ A long put position coupled with a short put position overlying the same ETF Based Volatility Index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s) (a ''debit put spread position''); and

○ A short call position accompanied by a debit put spread position, where the short call(s) expires with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Neither side of the short call, long put transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rule 4.11 and Rule 24.4C, the short call and long put positions will be treated as one (1) contract.

• The hedge exemption account shall:

○ Liquidate and establish options, their equivalent or other qualified portfolio products in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

○ Liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.

○ Promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.

• If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.

*Exchange Rules Applicable*

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to VXSLV options.

The Exchange is proposing that the margin requirements for VXSLV options be set at the same levels that apply to ETF Based Volatility Index options under Exchange Rule 12.3. Margin of up to 100% of the current market value of the option, plus 20% of the underlying volatility index value must be deposited and maintained. Additional margin may be required pursuant to Exchange Rule 12.10.

As with other ETF Based Volatility Index options, the Exchange hereby designates VXSLV options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System). The Exchange notes that FLEX VXSLV Options will only expire on business days that non-FLEX VXSLV options expire. This is because the term ''exercise settlement value'' in Rules 24A.4(b)(3) and 24B.4(b)(3), *Special Terms for FLEX Index Options,* has the same meaning set forth in Rule 24.9(a)(5). As is described earlier, Rule 24.9(a)(5) provides that the exercise settlement value of VXSLV options for all purposes under CBOE Rules will be calculated as the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which a VXSLV option expires.

*Capacity*

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of VXSLV options.

*Surveillance*

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other Volatility Index and index options to monitor trading in VXSLV options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in VXSLV options. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) [19] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5) [20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market in a manner consistent with the protection of investors and the public interest. The Exchange believes that the introduction of VXSLV options will attract order flow to the Exchange, increase the variety of listed options to investors, and provide a valuable hedging tool to investors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2011–055 on the subject line.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

*Paper Comments*

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2011–055. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–CBOE–2011–055 and should be submitted on or before July 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16075 Filed 6–27–11; 8:45 am]

**BILLING CODE 8011–01–P**

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–64724; File No. SR–NASDAQ–2011–085]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a Market Order Timer

June 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 20, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by 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

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market (''NOM'') to amend Chapter VI, Trading Systems, Section 1, Definitions, to provide that Participants can designate that their market orders not executed after a pre-established period of time be cancelled back to the Participant, as described below. This optional feature will be called the Market Order Timer.

This change is scheduled to be implemented on NOM on or about August 1, 2011; the Exchange will announce the implementation schedule by Options Trader Alert, once the rollout schedule is finalized.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to reflect in NOM's rules new functionality respecting market orders. The Market Order Timer is intended to provide an optional protection to all Participants who enter market orders. This protection should help Participants better manage both their risk and their order flow by controlling how long a market order remains in the market.

Currently, Chapter VI, Section 1(e)(5) defines market orders as orders to buy or sell at the best price available at the time of execution. The Exchange proposes to add an additional sentence to this Section to reflect new functionality, which is that Participants can designate that their market orders not executed after a pre-established period of time will be cancelled back to the Participant. The pre-established period of time, and any changes thereto, will be published in a NOM notification to Participants, with sufficient advanced notice. The pre-established period of time will be the same for all options. The Exchange believes that this functionality should be beneficial to Participants who choose to employ it, because it should serve as an additional feature for Participants to manage their market orders on NOM.

Pursuant to Chapter VI, Sections 1 and 6 of NOM's rules, various time-in-force (''TIF'') designations are available on NOM, including Immediate or Cancel (''IOC''), Good-till-Cancelled (''GTC''), Day (''DAY''), WAIT or Expire Time (''EXPR'').[3] Currently, market orders on NOM are treated as IOC, but the Exchange will soon accept, pursuant to its existing rules, market orders with a time-in-force of DAY and GTC[4] at the same time that the Market Order Timer is implemented. Accordingly, the Market Order Timer should be particularly useful for NOM Participants

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] EXPR was eliminated in SR–NASDAQ–2011–052. *See* Securities Exchange Act Release No. 64311 (April 20, 2011), 76 FR 23349 (April 26, 2011). This is scheduled to take effect in August 2011.

[4] *See* Chapter VI, Section 6(a)(1). Because Market Orders will no longer be limited to IOC, the System will employ the normal book order processing that applies to limit orders today for Market Orders. *See* Chapter VI, Section 6, Acceptance of Quotes and Orders, Section 7, Entry and Display Orders, Section 10, Book Processing and Section 11, Order Routing.

to manage market orders with TIFs other than IOC.

Some Participants would prefer to have market orders cancelled if they are not executed within a short timeframe, even if the order is marked with a TIF of DAY or GTC. Other participants prefer to leave the market order with an exchange even if it is not executed right away. The Exchange believes that both the Market Order Timer and the additional TIFs should be useful additional features for NOM Participants. A common use of DAY and GTC market orders is when a customer is trying to sell an option that no longer holds any value. The customer enters a market order to sell that the customer expects the exchange to retain on its book in the event that another participant is willing to buy the option at $0.01 or $0.05. In this case, the market order cannot be executed, because there is no interest on the other side; thus, the Market Order Timer can be helpful when there is no contra-side interest, and, conversely, it is not needed when a marketable order executes right away. Accordingly, customers should benefit from the additional TIFs for market orders as well as from being able to choose whether a Market Order Timer applies.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposal should help market participants better manage their market orders by providing a timer mechanism, which should, in turn, protect investors and the public interest and promote just and equitable principles of trade. The ability to, in effect, have market orders automatically cancel after a pre-established time period helps market participants manage the potential risks of using market orders.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [8] 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 should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2011–085 on the subject line.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–085. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2011–085 and should be submitted on or before July 19, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Cathy H. Ahn,**

*Deputy Secretary.*

[FR Doc. 2011–16085 Filed 6–27–11; 8:45 am]

**BILLING CODE 8011–01–P**

[9] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### National Women's Business Council

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice of open Federal advisory committee meeting.

**SUMMARY:** The SBA is issuing this notice to announce the location, date, time,

and agenda for the next meeting of the National Women's Business Council (NWBC). The meeting will be open to the public.

**DATE:** The meeting will be held on Tuesday, July 12, 2011 from approximately 10:30 a.m. to 12:30 p.m., and from 1:10 p.m. to 2:30 p.m. EST.

**ADDRESSES:** The meeting will be held at the U. S. Small Business Administration Building 409 third Street, NW. in Eisenhower Room A, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the National Women's Business Council. The National Women's Business Council is tasked with providing policy recommendations on issues of importance to women business owners to the President, Congress, and the SBA Administrator.

The purpose of the meeting is to receive and discuss: legislative updates on policies affecting women entrepreneurs and business owners; updates on NWBC's research agenda; and remaining outreach efforts for fiscal year 2011. Additionally, newly appointed members to the NWBC will be introduced.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public however advance notice of attendance is requested. Anyone wishing to attend or make a presentation to the NWBC must either e-mail their interest to *info@nwbc.gov* or call the main office number at 202–205–3850.

For more information, please visit our Web site at *http://www.nwbc.gov.*

**Dan S. Jones,**

*SBA Committee Management Officer.*

[FR Doc. 2011–16207 Filed 6–27–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Request To Release Airport Property at Lehigh Valley International Airport, Allentown, PA

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

**ACTION:** Notice of request to release airport property.

**SUMMARY:** The Federal Aviation Administration proposes to rule and invite public comment on the release of land at the Lehigh Valley International Airport, Allentown, Pennsylvania under the provisions of Section 47125(a) of Title 49 United States Code (U.S.C.).

The parcel is a generally north/south rectangular property whose south end of the parcel is located at the north end of Lynnwood Dr. The property is currently vacant land, under agricultural production, and is maintained to protect airspace surfaces of 14 CFR 77.19. The requested release is for the purpose of permitting the Airport Owner to convey title of 14.496 Acres as open space dedication to meet the conditions of an existing zone change (Resolution 07–08), and the Subdivision and Land Development Ordinance of Hanover Township in Northampton County, Pennsylvania. This release will enable the airport to implement the Noise Land Reuse Plan approved by the FAA on May 10, 2010.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Manager's office and the FAA Harrisburg Airport District Office.

**DATES:** Comments must be received on or before July 28, 2011.

**ADDRESSES:** Documents are available for review at the Airport Director's office: Lehigh Northampton Airport Auth., 5311 Airport Road, Allentown, PA 18109–3040, 610–266–6001 voice, 610–264–0115 fax; and at the FAA Harrisburg Airports District Office: James M. Fels, Program Manager, Harrisburg Airports District Office, 3905 Hartzdale Dr., Suite 508, Camp Hill, PA 17011, (717) 730–2830.

**FOR FURTHER INFORMATION CONTACT:** James M. Fels, Harrisburg Airports District Office location listed above.

**SUPPLEMENTARY INFORMATION:** The parcel is a generally north/south rectangular parcel approximately 1,637ft by 540ft excluding the 795ft by 327ft rectangle of the south east quadrant. The south end of the parcel is located at the north end of Lynnwood Dr.

**Legal Description: Lot 2—to Hanover Township for Current & Advance Open Space Dedication Purposes**

A certain lot, piece or parcel of land, bounded and described as follows, to wit:

Beginning at a point on the right-of-way line of Innovation Way (60 feet wide);

Thence along lands now or late of Darbin T. & Deborah S. Skeans, S 08°25′08″ E, 851.93 feet to an iron pin found;

Thence along lands now or late of Hanover Township S 82°26′56″ W, 326.90 feet to a point;

Thence continuing along said lands S 08°08′33″ E, 795.39 feet to a point;

Thence along the Village View Gardens Subdivision S 82°12′34″ W, 217.20 feet to a point;

Thence along lands now or late of the Lehigh-Northampton Airport Authority N 08°08′33″ W, 1,636.50 feet to a point;

Thence continuing along said lands N 81°12′34″ E, 540.00 feet to a point, the place of beginning. containing: 14.496 acres.

And a rounded area located at the NE. corner of the above 14.496 acre tract:

A certain lot, piece or parcel of land, bounded and described as follows, to wit:

Beginning at a point in the corner along the lands now or late of Victor and Stephanie Warminsky and Darbin T. and Deborah S. Skeans;

Thence along the lands now or late of Darbin T. and Deborah S. Skeans S 08°25′08″ E passing through an iron pin found at 51.31 feet, a total distance of 111.31 feet to an iron pin found;

Thence through the lands now or late of the Lehigh-Northampton Airport Authority the following three (3) courses and distances:

1. S 81°12′34″ W, 128.79 feet to a point;

2. Along a curve to the right having a radius of 60.00 feet, a central angle of 188°03′23″, an arc length of 196.93 feet and the chord being N 05°32′31″ W, 119.70 feet to a point;

3. N 05°14′14″ W, 1.46 feet to a point;

Thence along the lands now or late of Victor and Stephanie Warminsky N 85°42′37″ E, 123.02 feet to a point, the place of beginning. Containing 0.477 acres (20,779 sq. feet).

The parcel was acquired without Federal participation. The requested release is for the purpose of permitting the Sponsor to sell and convey title of the subject 14.973 Acres to meet the conditions of an existing zone change (Resolution 07–08), and the open space dedication requirements of the Subdivision and Land Development Ordinance of Hanover Township in Northampton County Pennsylvania for future land sales or development leases of other airport owned parcels. This advance dedication of open space meets 93 percent of the total requirement for all of the developable land that may be released for sale, lease or rental in the future. Proceeds from the future sale, lease, or rental of property must be used for the capital and operating costs of the airport.

Interested persons are invited to comment on the proposed release from obligations. All comments will be considered by the FAA to the extent practicable.

Issued in Camp Hill, Pennsylvania, on June 17, 2011.

**Lori K. Pagnanelli,**

*Manager, Harrisburg Airports District Office.*

[FR Doc. 2011–16153 Filed 6–27–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2011–0050]**

### Temporary Closure of I–395 Just South of Conway Street in the City of Baltimore to Vehicular Traffic To Accommodate the Construction and Operation of the Baltimore Grand Prix

**AGENCIES:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Maryland Transportation Authority (MDTA) has requested FHWA approval of MDTA's proposed plan to temporarily close a portion of I–395 (just south of Conway Street in Baltimore City) from approximately 7 p.m. on Thursday, September 1, 2011, until approximately 6 a.m. on Tuesday, September 6, 2011. The closure is requested to accommodate the construction and operation of the Baltimore Grand Prix (BGP), which will use the streets of downtown Baltimore as a race course. The request is based on the provisions in 23 CFR 658.11 which authorizes the deletion of segments of the federally designated routes that make up the National Network designated in Appendix A of 23 CFR Part 658 upon approval by the FHWA.

The FHWA seeks comments from the general public on this request submitted by the MDTA for a deletion in accordance with section 658.11(d) for the considerations discussed in this notice.

**DATES:** Comments must be received on or before July 28, 2011.

**ADDRESSES:** The letter of request along with justifications can be viewed electronically at the docket established for this notice at *http://www.regulations.gov.* Hard copies of the documents will also be available for viewing at the DOT address listed below.

Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted via the Federal eRulemaking Portal at *http://www.regulations.gov* (follow the on-line instructions for submitting comments). All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. All comments received into any docket may be searched in electronic format by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). Persons making comments may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may view the statement at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mr. John C. Nicholas, Truck Size and Weight Team, Office of Operations, (202) 366–2317, Mr. Bill Winne, Office of the Chief Counsel, (202) 366–0791, Federal Highway Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, and Mr. Gregory Murrill, FHWA Division Administrator—DELMAR Division, (410) 962–4440. Office hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov.*

#### Background

The FHWA is responsible for enforcing the Federal regulations applicable to the National Network of highways that can safely and efficiently accommodate the large vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982, as amended, designated in accordance with 23 CFR part 658 and listed in Appendix A. In accordance with section 658.11, the FHWA may approve deletions or restrictions of the Interstate System or other National Network route based upon specified justification criteria in section 658.11(d)(2). These deletions are then published in the **Federal Register** for notice and comment.

The MDTA has submitted a request to the FHWA for approval of the temporary closure of I–395 just south of Conway Street in the city of Baltimore from the period beginning Thursday, September 1, 2011, at approximately 7 p.m. through Tuesday, September 6, 2011, at around 6 a.m., encompassing the Labor Day holiday. The incoming request and supporting documents, including maps, may be viewed electronically at the docket established for this notice at *http://www.regulations.gov.* This closure will be undertaken in support of the BGP which will use the streets of downtown Baltimore as a race course. The MDTA is the owner and operator of I–395 and I–95 within the city of Baltimore.

It is anticipated the BGP event will be hosted in the city of Baltimore for 5 consecutive years beginning in 2011. The inaugural event is scheduled to occur September 2 through September 4, 2011. The event is expected to attract 150,000 spectators over a 3–4 day period, not including the event organizer workforce and volunteers, the racing organizations and their respective personnel, or media and vendors. Event planners expect spectators from within a 400-mile radius of the city, with a large portion traveling the I–95 corridor. It is anticipated that the attendance for the peak day (Sunday) will reach 70,000 people with most arriving by private vehicle.

The construction and operation of the race course will create safety concerns by obstructing access from the I–395 northern terminus to the local street system including Howard Street, Conway Street, and Lee Street. However, an existing connection from I–395 to Martin Luther King, Jr. Boulevard will remain open throughout the event. In addition, access to and from I–95 into and out of the city along alternative access routes, including US 1, US 40, Russell Street, and Washington Boulevard will be maintained. The BGP and the city are developing a signage plan to inform and guide motorists to, through, and around the impacted downtown area. The statewide transportation operations system, the Coordinated Highways Action Response Team, will provide real-time traffic information to motorists through dynamic message signs and highway advisory radio. The MDTA states that

the temporary closure of this segment of I–395 to general traffic should have no impact on interstate commerce. I–95, the main north-south Interstate route in the region, will remain open during the time period of the event. There are five additional I–95 interchanges, just to the north or south of I–395, with connections to the local street system including the arterials servicing the city's downtown area. A sign and supplemental traffic control systems plan is being developed as part of the event's Traffic Management Plan (TMP). In addition, I–695 (Baltimore Beltway) will provide motorists traveling through the region the ability to bypass the impact area by circling around the city.

Commercial motor vehicles of the dimensions and configurations described in 23 CFR 658.13 and 658.15 which serve the impacted area, may use the alternate routes listed above. Vehicles servicing the businesses bordering the impacted area will still be able to do so by also using the alternative routes noted above to circulate around the restricted area. In addition, vehicles not serving businesses in the restricted area but currently using I–395 and the local street system to reach their ultimate destinations will be able to use the I–95 interchanges north and south of I–395 to access the alternative routes. A map depicting the alternative routes is available electronically at the docket established for this notice at *http://www.regulations.gov.* The MDTA has reviewed these alternative routes and determined the routes to generally be capable of safely accommodating the diverted traffic during the period of temporary restriction. As mentioned previously, a sign and supplemental traffic control system plan is also being developed as part of the event's TMP. Commercial vehicles as well as general traffic leaving the downtown area will also be able to use the alternative routes to reach I–95 and the rest of the Interstate System. The BGP and the city are working closely with businesses, including the hotels and restaurants located within the impact area, to schedule deliveries prior to the proposed I–395 closure to the extent feasible. The BGP is also working with affected businesses to schedule delivery services during the event period.

The plan is to use a credentialing process for access through designated gates with access to specific loading areas. This request to temporarily close I–395 was prepared for the MDTA by the BGP and the city. In addition, the city has reached out to the Federal, State, and local agencies to collaborate and coordinate efforts to address the logistical challenges of hosting the BGP. The BGP and the city have worked extensively with the businesses and residential communities in the city that could be affected by the event. These efforts include the formation of Task Forces and event Sub-Committees, to guide the development of plans for event security, transportation management, public safety and more. Neighborhood meetings have been held since late 2009 to discuss the event and pertinent access issues.

The FHWA seeks comments on this request for temporary deletion from the National Network for consideration in accordance with 23 CFR 658.11(d).

**Authority:** 23 U.S.C. 127, 315 and 49 U.S.C. 31111, 31112, and 31114; 23 CFR part 658.

Issued on: June 22, 2011.

**Victor M. Mendez,**

*Administrator.*

[FR Doc. 2011–16113 Filed 6–27–11; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–28043]**

### Hours of Service (HOS) of Drivers; Renewal of American Pyrotechnics Association (APA) Exemption From the 14-Hour Rule During Independence Day Celebrations

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

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** The FMCSA announces the renewal of the exemption of specified members of the American Pyrotechnics Association (APA) from FMCSA's prohibition on driving commercial motor vehicles (CMVs) after the 14th hour after the driver comes on duty. The exemption granted to 53 motor carriers and approximately 3,000 CMV drivers is applicable during the periods June 28–July 8, 2011, and June 28–July 8, 2012, inclusive. The requested renewal of a prior exemption for one motor carrier is not being granted. Drivers who operate applicable CMVs in conjunction with staging fireworks shows celebrating Independence Day will be allowed to exclude off-duty and sleeper-berth time of any length from the calculation of the 14 hours. These drivers will continue to be subject to the 14-hour cumulative on-duty limit, the 11-hour driving time limit, and the 60- and 70-hour weekly on-duty limits. The FMCSA believes that with the terms and conditions of this exemption in effect, designated APA-member motor carriers will maintain a level of safety that, at a minimum, is equivalent to the level of safety that would be obtained by complying with the regulation.

**DATES:** This renewed exemption is effective during the periods of June 28 (12:01 a.m.) through July 8, 2011 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2012 (11:59 p.m.). Comments must be received on or before July 28, 2011.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System Number FMCSA–2007–28043 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* In the *Enter Keyword* OR *ID* box enter FMCSA–2007–28043 and click on the tab labeled *Search.* On the ensuing page, click on any tab labeled *Submit a Comment* on the extreme right of the page and a page should open that is titled ''Submit a Comment.'' You may identify yourself under section 1, *Enter Information,* or you may skip section 1 and remain anonymous. You enter your comments in section 2, *Type Comment & Upload File.* When you are ready to submit your comments, click on the tab labeled *Submit.* Your comment is then submitted to the docket; and you will receive a tracking number.
- *Fax:* 1–202–493–2251.
- *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:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

*Docket:* For access to the docket to read background documents or comments received, go to www.regulations.gov at any time, and in the *Enter Keyword or ID* box enter FMCSA–2007–28043 and click on the tab labeled *Search.*

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on January 17, 2008 (73 FR 3316) or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

*Public Participation:* The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## APA Application for Exemption Renewal

The hours-of-service (HOS) rules in 49 CFR 395.3(a)(2) prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. Under 49 U.S.C. 31315 and 31136(e), FMCSA may renew an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are prescribed in 49 CFR part 381.

The APA, a trade association representing the domestic fireworks industry, had previously requested and received an exemption from this HOS subsection for certain motor carrier members. The APA has applied for renewal of that exemption. A copy of the request for renewal is included in the docket referenced at the beginning of this notice. A copy of APA's original 2004 request for waiver or exemption is also in the docket. The FMCSA has evaluated the APA application for renewal on its merits and decided to renew the exemption for 53 companies for a two-year period, and not renew the exemption requested for one company. The list of APA-member companies covered by the exemption from 49 CFR 395.3(a)(2) is included as an Appendix to this Notice.

As stated in APA's 2004 request for waiver or exemption, the CMV drivers employed by APA-member companies are trained pyrotechnicians, and hold commercial driver's licenses (CDLs) with hazardous materials (HM) endorsements. They transport fireworks and equipment by CMV on a very demanding schedule during a brief Independence Day period, often to remote locations. After they arrive, the APA drivers are responsible for set-up and staging of the fireworks shows.

In 2009, FMCSA granted a limited exemption to 14 new APA-member motor carriers (74 FR 29266, June 19, 2009) and renewed 61exemptions of APA-member motor carriers (74 FR 29264, June 19, 2009) for their CMV transportation of fireworks for Independence Day displays in 2009 and 2010. The exemption was limited to the period from June 28 to July 8, inclusive, in 2009 and 2010. Previously, the Agency had granted a waiver to APA for a similar exception for the 2004 Independence Day period, and two-year exemptions for the 2005–2006 and 2007–2008 periods. The Agency is not aware of any adverse safety events related to APA operations during these Independence Day periods.

The APA is seeking renewal of the 2009 exemptions for the 2011 and 2012 Independence Day periods because it argues that compliance with the current 14-hour rule by its members would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies. To meet the demand for fireworks under the current HOS rules, APA-member companies claim they would be required to hire a second driver for most trips. The APA argues that the result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of its members' customers—and that many Americans would be denied this important component of the celebration of Independence Day.

## Method To Ensure an Equivalent or Greater Level of Safety

The APA believes that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers. According to APA, its member motor carriers have operated under this exemption for seven previous Independence Day periods without a reported motor carrier safety incident. Moreover, it asserts, without the extra duty-period time provided by the exemption, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. As a condition of holding the exemption, each motor carrier is required to notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5) involving the operation of any its CMVs while under this exemption. To date, FMCSA has received no accident notifications, nor is the Agency aware of any accidents reportable under terms of the exemption.

In its original exemption request, APA argued that the operational demands of this unique industry minimize the risks of CMV crashes. In the last few days before the Independence Day holiday, these drivers transport fireworks over relatively short routes from distribution points to the site of the fireworks display, and normally do so in the early morning when traffic is light. At the site, they spend considerable time installing, wiring, and safety-checking the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During this time, the drivers are able to rest and nap, thereby reducing or eliminating the fatigue accumulated during the day. Before beginning another duty day, these drivers must take 10 consecutive hours off-duty, the same as other CMV drivers. FMCSA believes that these APA operations, conducted under the terms and conditions of this limited exemption, will provide a level of safety that, at a minimum, is equivalent to the level of safety achieved without the exemption.

## Advocates for Highway and Auto Safety (Advocates) June 5, 2009, Comments

During the exemption renewal process in 2009, FMCSA's June 19, 2009, notice did not acknowledge or respond to comments submitted by Advocates. Although Advocates timely filed its comments on June 5, prior to the June 8 deadline for responding to the Agency's May 22 notices (74 FR 24066 and 74 FR 24069), those comments were not available at *http://www.regulations.gov,* the Web site at which docket comments are posted, until after the comment period had closed. By the time the personnel responsible for managing this Web site for all Federal regulatory matters had posted Advocates' comments to the electronic docket, FMCSA staff had prepared its draft notice of final

disposition. Because of the time constraints for issuing a decision in time for the 2009 Independence Day celebration, FMCSA issued the notice of final disposition on June 19, 2009 (74 FR 29264), without the Advocates' comments.

In consideration of the administrative delay in the posting of the Advocates' comments to the docket, FMCSA published a notice requesting public comment on March 25, 2011, pertaining to the safety impact of the exemption prior to consideration of any subsequent requests for renewal of the exemption (76 FR 16852). The deadline for submitting comments was April 25, 2011. As of June 20, 2011, no comments had been submitted to the public docket. However, because the Agency did not specifically address Advocates' comments in 2009, we will do so now.

**FMCSA Response to Advocates' 2009 Comments**

Advocates argue that the Agency is relying on uncorroborated statements about APA members' work schedules and safety management controls. The Agency acknowledges that it does not, as a matter of routine practice, review data on the actual schedules drivers are working during the period of the exemption. However, the participating carriers are generally required under 49 CFR 395.8 to retain records of duty status information for a period of 6 months from the date the records are generated, as is the case for all interstate drivers subject to the recordkeeping provisions of the HOS rules. Therefore, in the event of a crash or unintentional release or detonation of hazardous materials, the carriers would be required to produce, upon demand, records to document the actual work and rest hours of the drivers in question, which would enable the Agency to assess the likelihood of fatigue being a factor in the adverse event. Also, the Agency retains full regulatory jurisdiction to conduct investigations of allegations of violations of the Federal safety or hazardous materials regulations by these carriers, including allegations of violations of the terms and conditions of the exemption.

With regard to participating carriers' safety management controls, the Agency routinely reviews the safety performance records of all carriers prior to granting an exemption. Any carrier with safety management deficiencies that would call into question its ability to operate safety under the terms and conditions of the exemption is excluded from operating under the exemption. Carriers that have violation rates that meet or exceed the thresholds under the Agency's Compliance, Safety, Accountability (CSA) Safety Measurement System are subject to enforcement interventions to address the deficiencies in their safety management controls.

As for Advocates' charge that the exemption process is a procedural and substantive abuse of regulatory authority, the Agency's actions are consistent with the statutory authority provided under 49 U.S.C. 31315 concerning waivers, exemptions and pilot programs. The notice-and-comment process associated with exemption applications is consistent with notice-and-comment rulemaking procedures. In both cases, FMCSA offers for public comment a matter being considered for action, and the final action taken by the Agency must consider the public comments received. The Agency provides a formal written response to substantive concerns raised by the commenters via a **Federal Register** notice to bring to closure the matter before the Agency. The Agency may agree or disagree with commenters. Any decision to move forward with the exemption is not an abuse of authority, but an exercise of judgment based on the information in the public record.

In that regard, the Agency does not consider the granting of APA's exemption application or requests for renewal to represent a ''major departure'' from the HOS regulations, as argued by Advocates. While the participating carriers would be provided with limited relief from 49 CFR 395.3(a)(2), which prohibits a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty, drivers will be prohibited from driving at any time after accumulating 14 hours of on-duty time. Therefore, drivers would not be allowed to drive CMVs in interstate commerce after accumulating 14 hours of on-duty time, following 10 consecutive hours off-duty. The participating drivers will continue to be subject to the 11-hour driving time limit following 10 consecutive hours off duty, and the 60- and 70-hour weekly on-duty limits. The FMCSA believes that with the terms and conditions of this exemption in effect, APA-member motor carriers will maintain a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

**Non-Renewal of a Prior Exemption**

During its review of the safety history of applicants for this exemption, FMCSA examined records of the Pipeline and Hazardous Materials Safety Administration (PHMSA), which has jurisdiction over certain aspects of the transportation of hazardous materials, as specified in the Hazardous Materials Regulations (HMR) (49 CFR parts 105–185). PHMSA records indicate that one of the APA-member applicants for this exemption—Melrose Pyrotechnics, Inc. (Melrose), PO Box 302, Kingsbury, IN 46345, USDOT 434586—was investigated on November 23, 2009, and that PHMSA investigators discovered five violations regarding the shipment of hazardous materials, one of which was coded as ''high severity'' (Case 09436056). This resulted in an enforcement action that included a total of $24,800 in penalties. In view of this unfavorable safety information, FMCSA is not granting APA's request to include Melrose among the exempted motor carriers.

**Terms and Conditions of the Exemption**

*Period of the Exemption*

The exemption from the requirements of 49 CFR 395.3(a)(2) is effective June 28 through July 8, 2011, inclusive, and from June 28 through July 8, 2012, inclusive. The exemption expires on July 8, 2012, at 11:59 p.m.

*Extent of the Exemption*

This exemption is restricted to drivers employed by the 53 companies, firms and entities listed in the appendix to this notice. The drivers will be given a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. This exemption is contingent on each driver driving no more than 11 hours in a 14-hour period. The exemption is further contingent on each driver having a full 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period. The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) and Hazardous Materials Regulations (49 CFR parts 105–180).

*Preemption*

During the periods the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption (49 U.S.C. 31315(d)).

*FMCSA Notification*

Exempt motor carriers must notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of its CMVs while under this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident,

c. Driver's name and driver's license number,

d. Vehicle number and State license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

i. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

*Termination*

The FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Exempt motor carriers and drivers are subject to FMCSA monitoring while operating under this exemption.

**Request for Comments**

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA requests public comments on the renewal of APA's exemption from the requirements of 49 CFR 395.3(a)(2). The FMCSA will review all comments received and determine whether the renewal of the exemption is consistent with the requirements of 49 U.S.C. 31315 and 31136(e). Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable.

Interested parties or organizations possessing information that would show that any or all of these APA member companies are not achieving the requisite statutory level of safety should immediately notify FMCSA. The Agency will evaluate any information submitted and, if safety is being compromised or if the continuation of the exemption is inconsistent with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA will immediately take steps to revoke the exemption of the company or companies and drivers in question.

Issued on: June 22, 2011.

**Anne S. Ferro,**

*Administrator.*

APPENDIX TO NOTICE OF RENEWAL OF AMERICAN PYROTECHNICS ASSOCIATION (APA) EXEMPTION FROM THE 14-HOUR HOS RULE DURING 2011 AND 2012 INDEPENDENCE DAY CELEBRATIONS

| Motor carrier | Address 1 | Address 2 | DOT No. |
|---|---|---|---|
| 1. Alonzo Fireworks Display, Inc | 12 County Rd 75 | Mechanicsville, NY 12118 | 420639 |
| 2. American Fireworks Company | 7041 Darrow Road | Hudson, OH 44236 | 103972 |
| 3. Arrowhead Fireworks Co., Inc | 3625 Normanna Rd | Duluth, MN 55803 | 125673 |
| 4. Atlas Enterprises Inc | 6601 Nine Mile Azle Rd | Fort Worth, TX 76135 | 0116910 |
| 5. Atlas Pyrovision Productions, Inc | 136 Old Sharon Road | Jaffrey, NH 03452 | 789777 |
| 6. B.J. Alan Company | 555 Martin Luther King, Jr Blvd | Youngstown, OH 44502–1102 | 262140 |
| 7. Cartwright Fireworks, Inc | 1608 Keely Road | Franklin, PA 16323 | 882283 |
| 8. Central States Fireworks, Inc | 18034 Kincaid Street | Athens, IL 62613 | 1022659 |
| 9. Colonial Fireworks Company | 5225 Telegraph Road | Toledo, OH 43612 | 177274 |
| 10. Entertainment Fireworks, Inc | PO Box 7160 | Olympia, WA 98507–7160 | 680942 |
| 11. Falcon Fireworks | 3411 Courthouse Road | Guyton, GA 31312 | 1037954 |
| 12. Fireworks & Stage FX America | PO Box 488 | Lakeside, CA 92040 | 908304 |
| 13. Fireworks by Grucci, Inc | 1 Grucci Lane | Brookhaven, NY 11719 | 324490 |
| 14. Fireworks Productions of Arizona, Ltd | 17034 S 54th Street | Chandler, AZ 85226 | 948780 |
| 15. Fireworks West Internationale | 3200 West 910 North | Logan, UT 84321 | 245423 |
| 16. Garden State Fireworks, Inc | 383 Carlton Road | Millington, NJ 07946 | 435878 |
| 17. Gateway Fireworks Displays | PO Box 39327 | St Louis, MO 63139 | 1325301 |
| 18. Global Pyrotechnics Solutions, Inc | 10476 Sunset Drive | Dittmer, MO 63023 | 1183902 |
| 19. Great Lakes Fireworks | 24805 Marine | Eastpointe, MI 48021 | 1011216 |
| 20. Hamburg Fireworks Display Inc | 4300 Logan Lancaster Rd | Lancaster, OH | 395079 |
| 21. Hollywood Pyrotechnics, Inc | 1567 Antler Point | Eagan, MN 55122 | 1061068 |
| 22. Ingram Enterprises dba Fireworks over America. | 6597 W Independece Drive | Springfield, MO 65802 | 0268419 |
| 23. Island Fireworks Company | N735 825th St | Hager City, WI 54014 | 414583 |
| 24. J&M Displays, Inc | 18064 170th Ave | Yarmouth, IA 52660 | 377461 |
| 25. Jake's Fireworks/Fireworks Spectacular. | 2311 A West 4th St | Pittsburg, KS 66762 | 449599 |
| 26. Johnny Rockets Fireworks Display Co | 4410 N. Hamilton | Chicago, IL 60625 | 1263181 |
| 27. Kellner's Fireworks Inc | 478 Old Rte 8 | Harrisville, PA | 481553 |
| 28. Lantis Productions dba Lantis Fireworks and Lasers. | PO Box 491 | Draper, UT 84202 | 195428 |
| 29. Legion Fireworks Co., Inc | 10 Legion Lane | Wappingers Falls, NY 12590 | 554391 |
| 30. Mad Bomber/Planet Productions | PO Box 294 | Kingsbury, IN 46345 | 777176 |
| 31. Montana Display Inc | 9480 Inspiration Drive | Missoula, MT 59808 | 1030231 |
| 32. Precocious Pyrotechnics, Inc | 4420–278th Ave NW | Belgrade, MN 56312 | 435931 |
| 33. Pyro Engineering Inc., dba/Bay Fireworks. | 110 Route 110, Suite 102 | Huntington Station, NY 11746 | 530262 |
| 34. Pyro Shows Inc | 701 W. Central Ave | LaFollette, TN 37766 | 456818 |
| 35. Pyro Spectacluars, Inc | 3196 N Locust Ave | Rialto, CA 92376 | 029329 |
| 36. Pyrotecnico | 302 Wilson Rd. | New Castle, PA 16105 | 526749 |
| 37. Pyrotecnico of Louisiana, LLC | 60 West Ct | Mandeville, LA 70471 | 548303 |

APPENDIX TO NOTICE OF RENEWAL OF AMERICAN PYROTECHNICS ASSOCIATION (APA) EXEMPTION FROM THE 14-HOUR HOS RULE DURING 2011 AND 2012 INDEPENDENCE DAY CELEBRATIONS—Continued

| Motor carrier | Address 1 | Address 2 | DOT No. |
|---|---|---|---|
| 38. Rainbow Fireworks, Inc | 76 Plum Ave | Inman, KS 67546 | 1139643 |
| 39. RES Specialty Pyrotechnics | 21595 286th St | Belle Plaine, MN 56011 | 523981 |
| 40. Rich Brothers Company | 700 S Marion Rd | Sioux Falls, SD 57106 | 001356 |
| 41. Rozzi's Famous Fireworks, Inc | 11605 North Lebanon Rd | Loveland, OH 45140 | 0483686 |
| 42. Skyworks, Ltd | 13513 W. Carrier Rd | Carrier, OK 73727 | 1421047 |
| 43. Spielbauer Fireworks Co, Inc | 220 Roselawn Blvd | Green Bay, WI 54301 | 046479 |
| 44. Stonebraker-Rocky Mountain Fireworks Co. | 5650 Lowell Blvd, Unit E | Denver, CO 80221 | 0029845 |
| 45. Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc. | 2235 Vermont Route 14 South | East Montpelier, VT 05651 | 310632 |
| 46. Wald & Co., Inc | PO Box 319 | Greenwood, MO 64034–0319 | 087079 |
| 47. Walt Disney Parks and Resorts US Inc. | Box 10000 | Lake Buena Vista, FL 32830 | 1025131 |
| 48. Western Enterprises, Inc | PO Box 160 | Carrier, OK 73727 | 203517 |
| 49. Winco Fireworks Int. LLC | 1992 NW Hwy 50 | Lone Jack, MO | 259688 |
| 50. Wolverine Fireworks Display, Inc | 205 W Seidlers | Kawkawlin, MI | 376857 |
| 51. Victory Fireworks Inc | 579 Vincent Lane | Ellsworth, WI 54011 | 539751 |
| 52. Young Explosives Corp | P.O. Box 18653 | Rochester, NY | 450304 |
| 53. Zambelli Fireworks MFG, Co., Inc | PO Box 1463 | New Castle, PA 16103 | 033167 |

[FR Doc. 2011–16192 Filed 6–27–11; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2007–28043]**

### Hours of Service (HOS) of Drivers; Granting of Exemption; American Pyrotechnics Association (APA)

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

**ACTION:** Notice of final disposition; granting of application for exemption.

**SUMMARY:** FMCSA announces its decision to grant the application for exemption from the American Pyrotechnics Association (APA) on behalf of 9 member motor carriers seeking relief from FMCSA's hours-of-service (HOS) regulation that prohibits driving of commercial motor vehicles (CMV) after the 14th hour after the driver comes on duty [49 CFR 395.3(a)(2)].

**DATES:** This exemption is effective during the periods of June 28, 2011, through July 8, 2011, and June 28, 2012, through July 8, 2012, inclusive.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine Hydock, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Telephone: 202–366–4325. E-mail: *MCPSD@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the HOS requirements in 49 CFR 395.3(a)(2) for up to two years if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption'' (49 U.S.C. 31315(b)(1)).

The initial APA application for waiver or exemption relief from the 14-hour rule was submitted in 2004; a copy of the application is in the docket. That application fully describes the nature of the pyrotechnic operations of the CMV drivers employed by APA-member motor carriers during a typical Independence Day period. The CMV drivers are trained pyrotechnicians and hold commercial driver's licenses with hazardous materials endorsements. They transport fireworks and related equipment by CMV on a very demanding schedule, often to remote locations. After they arrive, the APA drivers are responsible for set-up and staging of the fireworks shows.

Previously, the Agency had granted a waiver to APA for a similar exemption for the 2004 Independence Day period, and two-year exemptions for the 2005–2006 and 2007–2008 periods. In 2009, FMCSA granted the same limited exemption to 14 new APA-member motor carriers (74 FR 29266, June 19, 2009) and renewed 61exemptions of APA-member motor carriers (74 FR 29264, June 19, 2009) for their CMV transportation of fireworks for Independence Day displays in 2009 and 2010.

APA is currently seeking relief for 9 APA-member companies from FMCSA's HOS regulation for the 2011 and 2012 Independence Day periods. A list of the 9 APA-member companies being exempted from 49 CFR 395.3(a)(2) is included as an Appendix to this notice.

The HOS rules prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). During the periods June 28—July 8, 2011, and June 28—July 8, 2012, inclusive, the companies named in the Appendix, and CMV drivers employed by them, will be exempt from section 395.3(a)(2) if they are operating in conjunction with the staging of fireworks shows celebrating Independence Day.

The exemption permits CMV drivers engaged in these operations to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour on-duty period. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and observe the 11-hour driving time limit, as well as the 60- and 70-hour on-duty limits.

APA sought this exemption because compliance with the current 14-hour rule by its members during these two 11-day periods would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as the APA companies. To meet the demand for fireworks under the current HOS rules, APA asserts that its member companies would be required to hire a second driver for most trips. The result would be a substantial increase in the cost of the fireworks shows—beyond the means of many of its members' customers—and would deny many Americans this

important component of their Independence Day celebration.

APA maintains that the operational demands of this unique industry minimize the risk of CMV crashes. It also maintains that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers, and will actually improve safety in the storage of hazardous materials.

**Public Comment**

On May 24, 2011, FMCSA published a notice in the **Federal Register** (76 FR 30232) announcing APA's application for exemption for these 9 member motor carriers, and requesting public comment. The comment period closed on June 14, 2011. As of June 20, no comments were filed in response to the May 24 notice.

**FMCSA Decision**

In considering this application for exemption, the Agency reviewed its records for any unfavorable safety information regarding the applicants' motor carrier operations. The Agency also reviewed records of the Pipeline and Hazardous Materials Safety Administration (PHMSA), which has jurisdiction over certain aspects of the transportation of hazardous materials, as specified in the Hazardous Materials Regulations (HMR)(49 CFR Parts 105–185). FMCSA and PHMSA records contained no significant unfavorable safety information regarding these 9 motor carriers.

The FMCSA decision to grant the request for exemption from 49 CFR 395.3(a)(2) is based on the merits of the application. The Agency believes that these APA operations, conducted under the terms and conditions of this limited exemption, will achieve a level of safety that, at a minimum, is equivalent to the level that would be achieved absent the exemption. The identical limited exemption has been in effect during Independence Day periods since 2005 for designated APA-member motor carriers conducting these operations. There have been no reported accidents or incidents involving these carriers while operating under the exemption. The drivers employed by the companies, firms, and entities listed in the appendix to this notice are granted relief from the requirements of 49 CFR 395.3(a)(2) under the following terms and conditions:

**Terms of the Exemption**

*Period of the Exemption*

The exemption from the requirements of 49 CFR 395.3(a)(2) [the ''14-hour rule''] is effective from June 28 (12:01 a.m.) through July 8, 2011 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2012 (11:59 p.m.).

*Extent of the Exemption*

This exemption is restricted to drivers employed by the companies, firms and entities listed in the Appendix to this notice. The drivers are provided a limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving after the 14th hour of coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and remain subject to the 11-hour driving time limit, the 60- and 70-hour on-duty limits, and all other requirements of 49 CFR Part 395.

*Preemption*

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption (49 U.S.C. 31315(d)).

*Notification to FMCSA*

Under the exemption, each APA motor carrier, firm and entity listed in the appendix to this notice must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs, operating under the terms of this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or closest to the accident scene,

c. Driver's name and license number,

d. Vehicle number and State license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

i. The total driving time and total on-duty time period prior to the accident.

*Termination*

FMCSA does not believe the APA member-motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Each motor carrier and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on: June 22, 2011.

**Anne S. Ferro,**

*Administrator.*

## Appendix to the Notice of Application of American Pyrotechnics Association (APA)

**For a Limited HOS Exemption for 9 Motor Carriers During the 2011 and 2012 Independence Day Celebrations**

| Motor carrier | Address | DOT No. |
|---|---|---|
| 1. AM Pyrotechnics, LLC | 2429 East 535th Rd., Buffalo, MO 65622 | 1034961 |
| 2. Arthur Rozzi Pyrotechnics | 6607 Red Hawk Ct., Maineville, OH 45039 | 2008107 |
| 3. East Coast Pyrotechnics, Inc | 4652 Catawba River Rd., Catawba, SC 29704 | 545033 |
| 4. Fireworks Extravaganza | 58 Maple Lane, Otisville, NY 10963 | 2064141 |
| 5. Hi-Tech FX, LLC | 1135 Ave. I, Fort Madison, IA 52627 | 1549055 |
| 6. North Central Industries, Inc | 1500 E. Washington, Muncie, IN 47305 | 00165755 |
| 7. Pyro Spectaculars North, Inc | 5301 Lang Avenue, McClellan, CA 95652 | 1671438 |
| 8. Pyrotechnic Display, Inc | 8450 W. St. Francis Rd., Frankfort, IL 60423 | 1929883 |
| 9. Western Display Fireworks, Ltd | 10946 S. New Era Rd., Canby, OR 97013 | 498941 |

[FR Doc. 2011–16195 Filed 6–27–11; 8:45 am]
BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[FMCSA Docket No. FMCSA–2011–0093]**

### Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt twenty-one individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

**DATES:** The exemptions are effective June 28, 2011. The exemptions expire on June 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

#### Background

On April 18, 2011, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-one individuals and requested comments from the public (76 FR 21792). The public comment period closed on May 18, 2011, and no comments were received.

FMCSA has evaluated the eligibility of the twenty-one applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

#### Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century''. The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible.

The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-one applicants have had ITDM over a range of 1 to 36 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure requiring the assistance of another person or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 18, 2011, **Federal Register** notice and will not be repeated in this notice.

#### Discussion of Comment

FMCSA did not receive any comments in this proceeding.

#### Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce. To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

#### Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and that includes the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a

copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Conclusion**

Based upon its evaluation of the twenty-one exemption applications, FMCSA exempts, Jerry L. Arrington, Edward W. Carlson, Thomas F. Cook, Dale C. Cromer, Jerry R. Earle, Terry J. Johnson, Ida D. Kidd, Ronald J. Klinke, Raymond H. LaGrow, Doyle F. Love, Todd L. McAuley, Stephen A. Miles, David W. Neher, Richard S. Polly, Edgar M. Ridlon, Andrew M. Schutt, Billy Joe Sisk, Robert J. Talbert, Gregory L. Whitt, John W. Wortman, and Kemlyn K. Yowell from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 21, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–16191 Filed 6–27–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0079]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 14 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective June 28, 2011. The exemptions expire on June 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**Background**

On May 5, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 25764). That notice listed 14 applicants' case histories. The 14 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 14 applications on their merits and made a determination to grant exemptions to each of them.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 14 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, no light perception, cataract, central retinal atrophy, glaucoma, macular scar and retinal scar. In most cases, their eye conditions were not recently developed. Ten of the applicants were either born with their vision impairments or have had them since childhood. The 4 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 35 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of

residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 14 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 50 years. In the past 3 years, two of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 5, 2011 notice (76 FR 25764).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 14 applicants, two of the applicants were convicted for moving violations and none of the applicants were involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 14 applicants listed in the notice of May 5, 2011 (76 FR 25764).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 14 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received no comments in this proceeding.

**Conclusion**

Based upon its evaluation of the 14 exemption applications, FMCSA exempts, Jan M. Bernath, Jason M. Birrenkott, John E. Edler, III., Saul E. Fierro, Mark T. Gileau, Peter D. Gouge, Thomas M. Harris, Paul M. Hinkson, Lyle H. Lightner, Ellie L. Murphree, Claude S. Overstreet, James F. Partin, Kevin W. Van Arsdol and Harlon C. VanBlaricom. from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 21, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–16189 Filed 6–27–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0092]**

### Qualification of Drivers; Exemption Applications; Vision

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

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 19 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent too, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective June 28, 2011. The exemptions expire on June 28, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs, (202)-366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

**Background**

On May 5, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 25766). That notice listed 19 applicants' case histories. The 19 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 19 applications on their merits and made a determination to grant exemptions to each of them.

**Vision and Driving Experience of the Applicants**

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 19 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, cataract, misplaced pupil, prosthesis, macular hole and optic atrophy. In most cases, their eye conditions were not recently developed. Fourteen of the applicants were either born with their vision impairments or have had them since childhood. The 5 individuals who sustained their vision conditions as adults have had them for periods ranging from 3 to 40 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 19 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 42 years. In the past 3 years, two of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 5, 2011 notice (76 FR 25766).

**Basis for Exemption Determination**

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' *Journal of American Statistical Association,* June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 19 applicants, two of the applicants were convicted for moving violations and none of the applicants were involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 19 applicants listed in the notice of May 5, 2011 (76 FR 25766).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 19 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) that each individual be physically examined every year (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received no comments in this proceeding.

**Conclusion**

Based upon its evaluation of the 19 exemption applications, FMCSA

exempts, Keith E. Allstot, Christopher L. Bagby, Joseph L. Butler, Shawn M. Carroll, Erik R. Davis, Walter C. Dean, Sr., John C. DiMassa, Jerry O. Ekes, Robert A. Goerl, Jr., Eric M. Grayson, Alan D. Harberts, Vincent A.R. Neal, Harry Smith, Jr., Michael P. Passmore, Timothy L. Porsley, James B. Prunty, Wendell S. Sehen, Gary E. Valentine and Charles Van Dyke from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 21, 2011.

**Larry W. Minor,**

*Associate Administrator, Office of Policy.*

[FR Doc. 2011–16154 Filed 6–27–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

### Office of Hazardous Materials Safety; Notice of Application for Special Permits

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications for Special Permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 28, 2011.

**ADDRESSES:** Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue, SE., Washington, DC or at *http://regulations.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC on June 20, 2011.

**Donald Burger,**

*Chief, General Approvals and Permits.*

NEW SPECIAL PERMITS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of special permits thereof |
|---|---|---|---|---|
| 15347–N ..... | | Raytheon Missile Systems Company, Tucson, AZ. | 49 CFR 173.301, 173.302 and 173.306. | To authorize the transportation in commerce of helium in non-DOT specification packaging (cryoengines and assemblies of Maverick Missiles, Gudance Control Sections and Training Guidance Missiles containing cryoengines). (modes 1, 3, 5). |
| 15364–N ..... | | Winco Fireworks International, LLC, Lone Jack, MO. | 49 CFR 172.302 and 173.60–173.62. | To authorize the transportation in commerce of Fireworks 1.4G, UN0336 in alternative packaging by motor vehicle. (mode 1). |
| 15368–N ..... | | Shannon & Wilson, Inc., Fairbanks, AL. | 49 CFR 173.4 and 173.4a | To authorize the transportation in commerce of methanol mixtures as small quantities when the amount of material exceeds 30 ml. (modes 1, 4, 5, 6). |
| 15372–N ..... | | Takata de Mexico, S.A. de C.V. Ciudad Frontera, Co. | 49 CFR 173.301(a), 173.302(a), 178.65(f)(2). | To authorize the manufacture, marking, sale and use of non-DOT specification pressure vessels for use as components of safety systems. (modes 1, 2, 3, 4, 5). |
| 15373–N ..... | | Flinn Scientific Inc., Batavia, IL. | 49 CFR 173.13(c)(2) ..... | To authorize the manufacture, mark, sale and use of the specially designed combination packagings described herein for transportation in commerce of the materials listed in paragraph 6 without hazard labels or placards, with quantity limits not exceeding 25 grams. (mode 1). |

[FR Doc. 2011–15787 Filed 6–27–11; 8:45 am]

**BILLING CODE 4909–60–M**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[Docket No. AB 991X]**

### Yellowstone Valley Railroad, L.L.C.—Discontinuance of Service Exemption—in Dawson and Richland Counties, Mont.

Yellowstone Valley Railroad, L.L.C. (YVRR) [1] has filed a verified notice of exemption under 49 CFR Part 1152 subpart F–*Exempt Abandonments and Discontinuances of Service* to discontinue service over 37 miles of rail line owned by BNSF Railway Company, between milepost 6.0 near Glendive and milepost 43.0 at Crane, in Dawson and Richland Counties, Mont.[2] The line traverses United States Postal Service Zip Codes 59217, 59262 and 59330.

YVRR has 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] (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 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[4]

As a condition to this exemption, any employee adversely affected by the 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, this exemption will become effective on July 28, 2011, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2),[5] must be filed by July 8, 2011.[6] Petitions to reopen must be filed by July 18, 2011, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to YVRR's representative: Karl Morell, 655 Fifteenth St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 22, 2011.

By the Board.

**Rachel D. Campbell,**

*Director, Office of Proceedings.*

**Andrea Pope-Matheson,**

*Clearance Clerk.*

[FR Doc. 2011–16050 Filed 6–27–11; 8:45 am]

**BILLING CODE 4915–01–P**

[1] Applicant's name was formerly Yellowstone Valley Railroad, Inc. *See Watco Holdings, Watco Companies, and Watco Transp. Services—Corporate Family Transaction,* FD 35439 (STB served Nov. 4, 2010).

[2] The 37-mile segment is a portion of a 171.97 mile rail line that YVRR was authorized to lease and operate in *Yellowstone Valley RR.—Lease & Op.—BNSF Ry. Co.,* FD 34737 (STB served Sept. 1, 2005).

[3] While overhead traffic can be rerouted, applicant states that BNSF intends to route certain BNSF overhead traffic over the line after YVRR discontinues its operations and BNSF becomes the operator.

[4] Because this is a discontinuance proceeding and not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

[5] Each OFA must be accompanied by the filing fee, which is currently set at $1,500. *See* 49 CFR 1002.2(f)(25).

[6] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

## DEPARTMENT OF THE TREASURY

### Survey of Foreign Ownership of U.S. Securities as of June 30, 2011

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Notice of reporting requirements.

**SUMMARY:** By this Notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of foreign ownership of U.S. securities as of June 30, 2011. This mandatory survey is conducted under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*) This Notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this Notice that they must respond to, and comply with, this survey. Additional copies of the reporting forms SHLA (2011) and instructions may be printed from the Internet at: *http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx.*

*Definition:* A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

*Who Must Report:* The panel for this survey is based primarily on the level of foreign resident holdings of U.S. securities reported on the June 2009 benchmark survey of foreign resident holdings of U.S. securities, and will consist mostly of the largest reporters on that survey. Entities required to report will be contacted individually by the Federal Reserve Bank of New York. Entities not contacted by the Federal Reserve Bank of New York have no reporting responsibilities.

*What to Report:* This report will collect information on foreign resident holdings of U.S. securities, including equities, short-term debt securities (including selected money market instruments), and long-term debt securities.

*How to Report:* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, may be obtained at the Web site address given above in the Summary, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300 or (646) 720–6300, *e-mail: SHLA.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001. Inquiries can also be made to the Federal Reserve Board of Governors, at (202) 452–3476, or to Dwight Wolkow, at (202) 622–1276, or by *e-mail: comments2TIC@do.treas.gov.*

*When to Report:* Data should be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by August 31, 2011.

*Paperwork Reduction Act Notice:* This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the

Paperwork Reduction Act and assigned control number 1505–0123. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 486 hours per report for the largest custodians of securities, and 110 hours per report for the largest issuers of securities that have data to report and are not custodians. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Office of International Affairs, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

**Dwight Wolkow,**

*Administrator, International Portfolio Investment Data Reporting Systems.*

[FR Doc. 2011–16063 Filed 6–27–11; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Proposed Information Collection; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled ''Debt Cancellation Contracts and Debt Suspension Agreements—12 CFR 37.''

**DATES:** You should submit written comments by: August 29, 2011.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Mail Stop 2–3, Attention: 1557–0224, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments to OCC Desk Officer, 1557–0224, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from Mary H. Gottlieb, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Debt Cancellation Contracts and Debt Suspension Agreements.

*OMB Control No.:* 1557–0224.

*Description:* This submission covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests that OMB approve its revised estimates and renew its approval of the information collection. The estimates have been revised to reflect the current number of national banks.

The regulation requires national banks to disclose information about a Debt Cancellation Contract (DCC) or Debt Suspension Agreement (DSA). The short form disclosure usually is made orally and is issued at the time the bank firsts solicits the purchase of a contract. The long form disclosure usually is made in writing and is issued before the customer completes the purchase of the contract. There are special rules for transactions by telephone, solicitations using written mail inserts or ''take one'' applications, and electronic transactions. Part 37 provides two forms of disclosure that serve as models for satisfying the requirements of the rule. Use of the forms is not mandatory. A bank may adjust the form and wording of its disclosures so long as the requirements of the regulation are met.

12 U.S.C. 24 (Seventh) authorizes national banks to enter into DCCs and DSAs. The requirements of part 37 enhance consumer protections for customers who buy DCCs and DSAs from national banks and ensure that national banks provide these products in a safe and sound manner by requiring them to effectively manage their risk exposure.

**Section 37.6**

Section 37.6 and Appendices A and B to part 37 require a bank to provide the following disclosures, as appropriate:

- Anti-tying—A bank must inform the customer that purchase of the product is optional and neither its decision whether to approve the loan nor the terms and conditions of the loan are conditioned on the purchase of a DCC or DSA.
- Explanation of debt suspension agreement—A bank must disclose that if a customer activates the agreement, the customer's duty to pay the loan principal and interest is only suspended and the customer must fully repay the loan after the period of suspension has expired.
- Amount of the fee—A bank must make disclosures regarding the amount of the fee. The disclosure must differ depending on whether the credit is open-end or closed-end. In the case of closed-end credit, the bank must disclose the total fee. In the case of open-end credit, the bank must either disclose that the periodic fee is based on the account balance multiplied by a unit cost and provide the unit cost, or disclose the formula used to compute the fee.
- Lump sum payment of fee—A bank must disclose, where appropriate, that a customer has the option to pay the fee in a single payment or in periodic payments. This disclosure is not appropriate in the case of a DCC or DSA provided in connection with a home mortgage loan since the option to pay the fee in a single payment is not available in that case. Banks are also required to disclose that adding the fee to the amount borrowed will increase the cost of the contract.
- Lump sum payment of fee with no refund—A bank must disclose that the customer has the option to choose a contract with or without a refund provision. This disclosure also states that prices of refund and no-refund products are likely to differ.
- Refund of fee paid in lump sum—If a bank permits a customer to pay the fee in a single payment and to add the fee to the amount borrowed, the bank must disclose the bank's cancellation policy. The disclosure informs the customer of the bank's refund policy, as applicable, *i.e.,* that the DCC or DSA: (i) May be canceled at any time for a refund; (ii) may be cancelled within a specified number of days for a full refund; or (iii) may be cancelled at any time with no refund.

• Whether use of credit line is restricted—A bank must inform a customer if the customer's activation of the contract would prohibit the customer from incurring additional charges or using the credit line.

• Termination of a DCC or DSA— If termination is permitted during the life of the loan, a bank must explain the circumstances under which a customer or the bank could terminate the contract.

• Additional disclosures—A bank must inform consumers that it will provide additional information before the customer is required to pay for the product.

• Eligibility requirements, conditions, and exclusions—A bank must describe any material limitations relating to the DCC or DSA.

The content of the short and long form may vary, depending on whether a bank elects to provide a summary of the conditions and exclusions in the long form disclosures or refer the customer to the pertinent paragraphs in the contract. The short form requires a bank to instruct the customer to read carefully both the long form disclosures and the contract for a full explanation of the terms of the contract. The long form gives a bank the option of either separately summarizing the limitations or advising the customer that a complete explanation of the eligibility requirements, conditions, and exclusions is available in the contract and identifying the paragraphs where a customer may find that information.

**Section 37.7**

Section 37.7 requires a bank to obtain a customer's written affirmative election to purchase a contract and written acknowledgment of receipt of the disclosures required by § 37.6. If the sale of the contract occurs by telephone, the customer's affirmative election to purchase and acknowledgment of receipt of the required short form may be made orally, provided the bank maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract; mails the affirmative written election and written acknowledgment, together with the long form disclosures required by section 37.6, to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer; and permits the customer to cancel the purchase of the contract without penalty within 30 days after it mailed the long form disclosures to the customer.

If the contract is solicited through written materials such as mail inserts or ''take one'' applications and the bank provides only the short form disclosures in the written materials, then the bank shall mail the acknowledgment, together with the long form disclosures, to the customer. The bank may not obligate the customer to pay for the contract until after the bank has received the customer's written acknowledgment of receipt of disclosures, unless the bank takes certain steps, maintains certain documentation, and permits the customer to cancel the purchase within 30 days after mailing the long form disclosures to the customer. The affirmative election and acknowledgment may also be made electronically.

*Type of Review:* Regular.

*Affected Public:* Businesses or other for-profit.

*Number of Respondents:* 1,650.

*Total Annual Responses:* 1,650.

*Frequency of Response:* On occasion.

*Total Annual Burden Hours:* 39,600.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Dated: June 22, 2011.

**Michele Meyer,**

*Assistant Director, Legislative & Regulatory Activities Division.*

[FR Doc. 2011–16061 Filed 6–27–11; 8:45 am]

BILLING CODE 4810–33–P

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Certification Pursuant to Energy Policy Act of 2005

**AGENCY:** Financial Management Service, Fiscal Service, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Energy Policy Act of 2005 (Pub. L. 109–58) requires the Secretary of the Treasury to publish a certification when certain royalties withheld by lessees amount to a particular sum. This Notice is to provide the required certification.

**DATES:** This notice is effective as of June 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Teresa Dawson, Senior Counsel, Financial Management Service, 401 14th Street, SW., Washington, DC 20227; telephone (202) 874–7000.

**SUPPLEMENTARY INFORMATION:** The Oil Pollution Control Act of 1990, Public Law 101–380, dated August 18, 1990, authorized the appropriation of ''such sums as may be necessary to provide compensation, including interest, to the State of Louisiana and its lessees, for net drainage of oil and gas resources * * *'' The authorization also included funds for the payment of interest on this amount.

Congress established an alternate means of paying this compensation in the Energy Policy Act of 2005, Public Law 109–58, dated August 8, 2005. Rather than using appropriated funds to pay compensation to lessees and the State of Louisiana, section 383 of that Act provided that a lessee could withhold 100% of royalty payments due to the United States if the lessee paid to the State of Louisiana 44 cents of every dollar withheld. Any royalty payment withheld pursuant to that provision of law would be treated as paid in satisfaction of the lessee's royalty obligations to the United States. Section 383 also charged the Secretary of the Treasury with (1) determining the amount of royalty withheld by a lessee, and (2) publishing a certification when the total amount of royalty withheld by the lessee equaled $18,115,147.16 plus interest at 8% per annum.

To implement the payment provisions of Section 383, in October 2006 the Minerals Management Service (MMS) of the United States Department of the Interior entered into a Memorandum of Understanding (MOU) with the State of Louisiana and the lessee. Pursuant to that MOU, the lessee would report monthly to MMS the amount of royalties due, and would remit a

payment of 44% of that total to the State of Louisiana. After the State of Louisiana confirmed receipt of that payment, MMS would offset the royalty receivable created on its books for amounts due from the lessee with a credit for the amount of royalty withheld. In January 2011, the Department of the Interior's Office of Natural Resources Revenue (ONRR) advised Treasury that the total amount due pursuant to Section 383 had been paid and requested the publication of the required certification.

Pursuant to the delegation of authority in Treasury Order 101–05 and the assignment of duties in Treasury Directive 27–02, Treasury's Financial Management Service (FMS) is publishing this notice to carry out the Secretary's certification obligation under the Oil Pollution Act of 2005. FMS has reviewed the schedule of withheld royalty payments provided by ONRR. Based on the information presented in that payment schedule, FMS is publishing this notice, certifying that, as of October 1, 2010, the royalties reported as withheld by the lessee in accordance with the Energy Policy Act of 2005 amounted to $18,115,147.16 plus interest at 8% per annum. This certification is applicable as of October 1, 2010.

Dated: June 21, 2011.

**David A. Lebryk,**

*Commissioner.*

[FR Doc. 2011–16009 Filed 6–27–11; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Surety Companies Acceptable on Federal Bonds; Termination; Western Insurance Company

**AGENCY:** Financial Management Service, Fiscal Service, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** This is Supplement No. 13 to the Treasury Department Circular 570; 2010 Revision, published July 1, 2010, at 75 FR 38192.

**FOR FURTHER INFORMATION CONTACT:** Surety Bond Branch at (202) 874–6850.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Certificate of Authority issued by the Treasury to Western Insurance Company (NAIC# 10008) under 31 U.S.C. 9305 to qualify as an acceptable surety on Federal bonds is terminated effective July 1, 2011. Federal bond-approving officials should annotate their reference copies of the Treasury Department Circular 570 (''Circular''), 2010 Revision, to reflect this change.

With respect to any bonds, including continuous bonds, currently in force with above listed Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, in no event, should bonds that are continuous in nature be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: June 21 2011.

**Laura Carrico,**

*Director, Financial Accounting and Services Division, Financial Management Service.*

[FR Doc. 2011–16008 Filed 6–27–11; 8:45 am]

**BILLING CODE 4810–35–M**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of Four Individuals Pursuant to Executive Order 13224

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of four newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

**DATES:** The designations by the Director of OFAC of the four individuals identified in this notice, pursuant to Executive Order 13224, are effective on June 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

#### Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in,

sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 21, 2011 the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, four individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. AGHA, Ahmad Zia (a.k.a. AGHA SAYEED, Sia; a.k.a. AGHA, Zia; a.k.a. AHMAD, Noor; a.k.a. AHMED, Noor); DOB 1974; POB Maiwand District, Qandahar Province, Afghanistan; Haji (individual) [SDGT]
2. AKHUND, Mohammad Aman (a.k.a. AMAN, Mohammed; a.k.a. NOORZAI, Mullah Mad Aman Ustad; a.k.a. OMAN, Mullah Mohammed; a.k.a. ''SANAULLAH''); DOB 1970; POB Bande Tumur Village, Maiwand District, Qandahar Province, Afghanistan (individual) [SDGT]
3. RABI, Fazl (a.k.a. RABBI, Faisal; a.k.a. RABI, Fazal); DOB 1972; alt. DOB 1975; POB Kohe Safi District, Parwan Province, Afghanistan; alt. POB Kapisa Province, Afghanistan; alt. POB Nangarhar Province, Afghanistan; alt. POB Kabul Province, Afghanistan (individual) [SDGT]
4. WAZIR, Ahmed Jan (a.k.a. KUCHI, Ahmed Jan; a.k.a. ZADRAN, Ahmed Jan); DOB 1963; POB Barlah Village, Qareh Bagh District, Ghazni Province, Afghanistan (individual) [SDGT]

Dated: June 21, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–16185 Filed 6–27–11; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated National and Blocked Person Pursuant to Executive Order 13566

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property have been unblocked pursuant to Executive Order 13566 of February 25, 2011, ''Blocking Property and Prohibiting Certain Transactions Related to Libya''

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the individual identified in this notice whose property and interests in property were blocked pursuant to Executive Order 13566 of February 25, 2011, is effective on June 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service *tel.:* (202) 622–0077.

#### Background

On February 25, 2011, President Barack Obama declared a national emergency in order to address the threat created by the deteriorating situation in Libya and Colonel Muammar Qadhafi's and his government's extreme measures against the people of Libya by issuing Executive Order 13566 ''Blocking Property and Prohibiting Certain Transactions Related to Libya'' (''E.O. 13566'' or the ''Order'') pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (''IEEPA''). E.O. 13566 imposes economic sanctions on persons named in the Annex to the Order. The Order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons determined to meet the criteria set forth in E.O. 13566.

On April 8, 2011, the Director of OFAC, in consultation with the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (b)(i) through (b)(vi) of Section 1 of the Order, the individual listed below, whose property and interests in property were blocked pursuant to the Order:

GHANEM, Shukri Mohammed (a.k.a. GHANEM, Shokri); DOB 9 Oct 1942; POB Tripoli, Libya; Oil Minister; Chairman of the National Oil Company of Libya (individual) [LIBYA2].

On June 21, 2011, the Director of OFAC removed this individual from the list of those subject to sanctions under the Order, and correspondingly removed him from the SDN list.

Dated: June 21, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–16187 Filed 6–27–11; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Unblocking of Specially Designated Nationals and Blocked Persons Pursuant to Executive Orders 13288 and 13391

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of two individuals and four entities the property and interests in property of which have been unblocked pursuant to Executive Order 13288 of March 6, 2003, ''Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe'' (''Executive Order 13288''), and/or Executive Order 13288, as amended by Executive Order 13391 of November 22, 2005, ''Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe'' (''Executive Order 13391'').

**DATES:** The unblocking and removal from the list of Specially Designated Nationals and Blocked Persons (''SDN List'') of the two individuals and four entities identified in this notice the property and interests in property of which were blocked pursuant to Executive 13288 and/or Executive Order 13288, as amended by Executive Order 13391, is effective on June 21, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

**Background**

On March 6, 2003, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06) (''IEEPA'') issued Executive Order 13288 (68 FR 11457, March 10, 2003). In Executive Order 13288, the President declared a national emergency to deal with the threat posed by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions, contributing to the deliberate breakdown in the rule of law in Zimbabwe, to politically motivated violence and intimidation in that country, and to political and economic instability in the southern African region. The Annex to Executive Order 13288 included 77 individuals, including the two individuals identified in this notice, which resulted in the blocking of all property and interests in property of these individuals that was or thereafter came within the United States or the possession or control of U.S. persons. Executive Order 13288 also authorized the Secretary of the Treasury, in consultation with the Secretary of State, to designate additional persons determined to meet the criteria set forth in Executive Order 13288. Subsequently, the four entities identified in this notice were designated pursuant to Executive Order 13288, which resulted in the blocking of all property and interests in property of these entities that was or thereafter came within the United States or the possession or control of U.S. persons.

On November 22, 2005, in order to take additional steps with respect to the continued actions and policies of certain persons who undermine Zimbabwe's democratic processes and with respect to the national emergency described and declared in Executive Order 13288, the President, invoking the authority of, *inter alia,* IEEPA, issued Executive Order 13391 (70 FR 71201, November 25, 2005). Executive Order 13391 amends Executive Order 13288 and provides that the Annex to Executive Order 13288 is replaced and superseded in its entirety by the Annex to Executive Order 13391, containing the names of 128 individuals and 33 entities, including the two individuals and four entities identified in this notice. Executive Order 13288, as amended by Executive Order 13391, authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to block the property and interests in property of additional categories of persons beyond the category set forth in Executive Order 13288 prior to its amendment.

Executive Order 13288, as amended by Executive Order 13991, also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to determine that circumstances no longer warrant the inclusion of a person in the Annex to Executive Order 13288, as replaced and superseded by the Annex to Executive Order 13991, and to unblock any property and interests in property that had been blocked as a result of the person's inclusion in the Annex.

On June 21, 2011, the Director of OFAC, in consultation with the State Department, determined that circumstances no longer warrant the designation of the four entities listed below pursuant to Executive Order 13288 or the inclusion of the four entities, and the two individuals, listed below in the Annex to Executive Order 13288, as replaced and superseded by the Annex to Executive Order 13391, and that the property and interests in property of the individuals and entities listed below are therefore no longer blocked pursuant to the aforementioned Executive Orders, and accordingly removed them from the SDN List.

**Individuals**

1. MANYIKA, Elliot, P.O. Box 300, Bindura, Zimbabwe; DOB 30 Jul 1955; Passport AD000642 (Zimbabwe); Minister Without Portfolio (individual) [ZIMBABWE].

2. ZVINAVASHE, Vitalis; DOB 27 Sep 1943; Politburo Member & Retired Commander of Zimbabwe Defense Forces (individual) [ZIMBABWE].

**Entities**

1. DUIKER FLATS FARM, Zimbabwe [ZIMBABWE].

2. SUBDIVISION 3 OF CALEDON FARM, Caledon, Zimbabwe [ZIMBABWE].

3. SWIFT INVESTMENTS (PVT) LTD., 730 Cowie Road, Tynwald, Harare, Zimbabwe; P.O. Box 3928, Harare, Zimbabwe [ZIMBABWE].

4. ZVINAVASHE INVESTMENTS LTD. (a.k.a. LAMFONTINE FARM; a.k.a. ZVINAVASHE TRANSPORT), 730 Cowie Road, Tynwald, Harare, Zimbabwe; P.O. Box 3928, Harare, Zimbabwe [ZIMBABWE].

Dated: June 21, 2011.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–16182 Filed 6–27–11; 8:45 am]

BILLING CODE 4810–AL–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of Meeting.

**SUMMARY:** An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Wednesday, July 27, 2011.

**FOR FURTHER INFORMATION CONTACT:** Timothy Shepard at 1–888–912–1227 or 206–220–6095.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed Correspondence Exam Toll Free Project Committee will be held Wednesday, July 27, 2011, at 1 p.m. Pacific Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: June 21, 2011.

**Shawn Collins,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 2011–16066 Filed 6–27–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Loans in Areas Having Special Flood Hazards

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before August 29, 2011.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Ekita Mitchell on (202) 906–6451, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Comments should address one or more of the following points:*

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Loans in Areas Having Special Flood Hazards.

*OMB Number:* 1550–0088.

*Form Number:* N/A.

*Description:* The National Flood Insurance Act of 1968 (42 U.S.C. 4104a and 4104b) and the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a and 4106(b)) require a savings association to make a determination of whether a property that is to secure a loan is located in a special flood hazard area, to notify a prospective borrower of the need for and availability of flood insurance for a property that is located in a special flood hazard area for which flood insurance is available, and to keep records of its determinations. OTS regulations implementing the statutory requirements are located at 12 CFR part 572.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 717.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Burden:* 158,457 hours.

Dated: June 22, 2011.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2011–16074 Filed 6–27–11; 8:45 am]

**BILLING CODE 6720–01–P**

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## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Amendment of a Savings Association's Bylaws

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before August 29, 2011.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Donald W. Dwyer on (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Comments should address one or more of the following points:*

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of

public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Amendment of a Savings Association's Bylaws.

*OMB Number:* 1550–0017.

*Form Number:* N/A.

*Description:* The bylaws of an insured Federal savings association are a formal document created when a savings association establishes its corporate existence. The bylaws state the rules and procedures for the internal governance of the savings association and contain provisions that comply with all requirements specified by the Office of Thrift Supervision (OTS) in 12 CFR part 544 or part 552.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 26.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Burden:* 208 hours.

Dated: June 22, 2011.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2011–16079 Filed 6–27–11; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### Merger Applications

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

**DATES:** Submit written comments on or before August 29, 2011.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. by appointment. To make an appointment, call (202) 906–5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information about this proposed information collection from Donald W. Dwyer on (202) 906–6414, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Comments should address one or more of the following points:*

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

*Title of Proposal:* Merger Applications.

*OMB Number:* 1550–0016.

*Form Number:* N/A.

*Description:* No savings association may, without application to and approval by the OTS combine with any insured depository institution if the acquiring or resulting institution is to be a savings association, or assume liability to pay any deposit made in any insured depository institution. Transactions in which a thrift institution merges with an FDIC-insured depository institution must be reviewed by OTS under the Bank Merger Act, 12 U.S.C. 1828(c) of the Federal Deposit Insurance Act. OTS merger regulations are found at 12 CFR 563.22(a), and corporate governance requirements are found at 12 CFR part 546.3 and 12 CFR Section 552.13.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit.

*Estimated Number of Respondents:* 21.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Burden:* 630 hours.

Dated: June 22, 2011.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2011–16080 Filed 6–27–11; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on Wednesday, July 20, 2011, at the Salt Lake City Marriott University Park, 480 Wakara Way, Salt Lake City, Utah, from 9 a.m. to 2 p.m. MDT (11 a.m. to 4 p.m., EDT, Washington, DC time). This meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

The Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other VA benefits programs. Time will be allocated for receiving public comments in the afternoon. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-

served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Corina Negrescu, M.D., M.P.H., Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Regulation Staff (211D), 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail at *Corina.Negrescu@va.gov.* Any member of the public wishing to attend the meeting or seeking additional information should contact Dr. Negrescu at (202) 461–9752.

Dated: June 23, 2011.

By Direction of the Secretary.

**Vivian Drake,**

*Acting Committee Management Officer.*

[FR Doc. 2011–16201 Filed 6–27–11; 8:45 am]

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## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet July 14, 2011, in The Connect Room, at The Liaison Capitol Hill Hotel, 415 New Jersey Avenue, NW., Washington, DC, from 8:30 a.m. until 4:30 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include briefings on the National fee program and fee-based care for women Veterans; services provided by the Office of Survivors Assistance; the Veterans Crisis Line; and updates from the DoD–VA Suicide Prevention Conference, military sexual trauma claims identifiers, and the Caregivers Program. In the afternoon, the Committee will receive briefings on the 2011 National Training Summit on Women Veterans and the 2012 report process and timeline. The Committee will then engage in discussions on its 2012 annual report and work in subcommittees.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *00W@mail.va.gov*, or fax to (202) 273–7092. Individuals who wish to attend the meeting should contact Ms. Middleton at (202) 461–6193.

Dated: June 23, 2011.

By Direction of the Secretary.

**Vivian Drake,**

*Acting Committee Management Officer.*

[FR Doc. 2011–16206 Filed 6–27–11; 8:45 am]

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# FEDERAL REGISTER

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Part II

## Department of Labor

Office of Workers' Compensation Programs

20 CFR Parts 1, 10 and 25

Performance of Functions; Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States; Final Rule

**DEPARTMENT OF LABOR**

**Office of Workers' Compensation Programs**

**20 CFR Parts 1, 10 and 25**

**RIN 1240–AA03**

# Performance of Functions; Claims for Compensation Under the Federal Employees' Compensation Act; Compensation for Disability and Death of Noncitizen Federal Employees Outside the United States

**AGENCY:** Office of Workers' Compensation Programs, Department of Labor.

**ACTION:** Final Rule.

**SUMMARY:** On August 13, 2010, the Department of Labor (DOL) proposed revisions to the regulations governing the administration of the Federal Employees' Compensation Act (FECA). The FECA provides benefits to all civilian Federal employees and certain other groups of employees and individuals who are injured or killed while performing their jobs. At that time, DOL also proposed revisions to the regulations establishing the authority of the Office of Workers' Compensation Programs (OWCP) which administers the FECA.

The proposed changes were summarized in that publication. The existing rules have been amended to acknowledge a change in the organization of the OWCP and amendments to the FECA which have occurred since the last time the regulations were amended in 1999. These changes also update the regulations by taking into account changes in technology and other changes to improve administrative efficiency. As many FECA claimants are not represented, the regulations are revised to insert FECA statutory references as a frame of reference for clarity and ease of use. The regulations include adding the skin as an organ pursuant to 5 U.S.C. 8107(c)(22). The regulations also create a new special schedule covering injuries to non-citizen non-resident Federal employees outside the United States. Finally, the regulations covering the processing of medical bills have been updated to provide for greater use of technology in that process to reduce costs and to clarify requirements for such submissions.

**DATES:** *Effective Date:* This final rule is effective on August 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Douglas Fitzgerald, Director, Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor, Room S3229, 200 Constitution Avenue, NW., Washington, DC 20210, *Telephone:* 202–693–0040 (this is not a toll-free number). Individuals with hearing or speech impairments may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Proposed regulations were published in the **Federal Register** on August 13, 2010 (75 FR 49596). They allowed a 60-day period for comment, during which the DOL received timely comments from 251 parties: one comment was submitted by a Federal employing agency; two comments were received from labor organizations representing Federal employees; one comment was received from a medical professional association; 173 comments were received from private individuals; and 74 comments were received from attorneys. Also, 44 untimely comments were received from private individuals and attorneys; the points made by these commenters echoed those made in comments that were timely submitted. Almost all of the comments addressed the reinsertion of the FECA's explicit bar on receipt of contingency fees. Furthermore, a number of the comments addressed scheduling of hearings before the Branch of Hearings and Review and a proposed change in how a request for reconsideration is determined to be timely. A smaller number of comments addressed changes in language regarding suitable employment and loss of wage earning capacity determinations. Finally, individual comments were received addressing a small number of issues, including changes to procedures involving Peace Corps volunteers, questions regarding verbiage, and a number of issues not raised by the proposed changes to the FECA regulations. All of these comments are addressed below.

Two minor changes have been made to the notice of proposed rulemaking that did not result from any comments. The first change clarifies language in § 10.104 to promote ease of reading. The second change was to §§ 10.619, 10.818 and 10.819, which added ''or equivalent service from a commercial carrier'' in situations where OWCP is to use certified mail, return receipt requested when mailing notices or decisions. This change will provide greater flexibility in such mailings while providing for proof of receipt.

When publishing a final rule following a comment period, it is customary to publish only the changes that have been made to the rule; however, in order to be more user-friendly, OWCP is publishing the entire rule, including the parts that have not been changed. By doing so, only one document containing all of the regulations and commentary needs to be consulted rather than multiple documents.

## I. Comments on the Notice of Proposed Rulemaking

The section numbers used in the headings of the following analysis are those that were used in the notice of proposed rulemaking. Unless otherwise stated, the section numbers in the text of the analysis refer to the numbering used for the final regulations. No comments were received with respect to parts 1 and 25.

*Section 10.16*

One attorney suggested that the addition of language to subsection (b) of this section which discussed actions under the False Claims Act indicated that OWCP was changing this section to allow other agencies to institute actions under the Program Fraud Civil Remedies Act. The addition of this language was only intended to notify employees that suits may be maintained under the False Claims Act. As such, the comment is well taken in that it indicates that placing this language in subsection (b) reduced the clarity of the regulation. Accordingly, the language has been moved to subsection (a).

*Section 10.104*

Two labor organizations recommended the abbreviation ''*i.e.*'' be changed to ''*e.g.*'' because surgery is only one of multiple reasons that could support payment of wage-loss compensation for a limited period of disability in the presence of a loss-of-wage-earning-capacity determination. While OWCP does not think that such modification is required, the language has been changed to ''such as'' in an attempt to address the concerns expressed by the commenters and to add clarity through the use of plain language.

*Section 10.310*

One medical provider noted that Round 1 of Medicare's Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Competitive Bidding process covers only a limited number of metropolitan areas and closed on November 4, 2009. Registration for Round 2 has yet to open

with no date even tentatively scheduled. As a result, many providers currently supplying durable medical equipment services for OWCP would be precluded from participation.

This provision was added to afford OWCP with a measure of reliability in durable medical equipment suppliers while avoiding the use of scarce program resources to police all such providers. The comment is well taken as there are two processes relating to DMEPOS under Medicare. Relevant to this regulation is Medicare's DMEPOS Accreditation Process. This process was established as a result of the Medicare Modernization Act to implement quality standards for suppliers of, among other things, durable medical equipment. The accreditation process is currently open and providers are still being enrolled. This section has therefore been modified to require registration under Medicare's DMEPOS Accreditation Process rather than Medicare's Competitive Bidding Program. This should address the concerns of the commenter.

*Section 10.321*

One attorney suggested that the language should be changed to require OWCP to provide notice to the claimant of the right to object to the referee selection at the time the referee notice is sent and that OWCP bears the burden of showing that it complied with the strict rotational system. The only proposed change to the existing rule was to add the ''impartial'' nomenclature that the Employees' Compensation Appeals Board (ECAB) uses in its appeal decisions for the third tie-breaking (referee) physician. This section explains under what circumstances OWCP will appoint a third physician to make an examination. There is no requirement in the statute, ECAB case law or OWCP procedure for such notices or rotational requirements or for placing such strict obligations on OWCP by regulation. In addition, OWCP needs to retain some flexibility as to how it selects its impartial specialists, as some esoteric specialties may require more flexibility in scheduling. Consequently, the language in this section has not been modified.

*Section 10.401*

Two labor organizations commented that the proposed language does not clearly establish that USPS employees who use leave during the first three days of temporary disability should have their leave reinstated if the injury causes permanent disability or if the pay loss continues for more than 14 calendar days. This explanation is specifically provided in § 10.200(c). For clarity, a reference to § 10.200(c) and to 5 U.S.C. 8117(b) has been added.

*Section 10.421*

One agency commented that this section omitted a discussion of U.S. Department of Veterans Affairs benefits. The proposed language contains nothing novel and no specific reference to VA benefits appeared in either the 1988 or 1999 final rules. Furthermore, the program's procedures have long contained instructions on determining when VA payments constitute a prohibited dual benefit under the statute, and OWCP is not aware of any problems which have arisen with respect to these instructions. Therefore, the program does not believe that it is necessary to address it by regulation.

*Section 10.500*

Eight attorneys noted that the additional sentence added to paragraph (a) of this section ignores and appears to undercut a very necessary procedure that has been set up to protect the employee's vested interest in continuation of wage-loss benefits absent being afforded due process rights prior to any reduction or elimination of benefits.

Two labor organizations argued that the change to ''appropriate work'' in paragraph (b) of this section recasts the discussion into the context of loss of wage earning capacity determinations and that the term ''appropriate'' lacks a meaningful statutory or regulatory history and questioned the cross reference in § 10.515.

OWCP first notes that § 10.500, as evidenced by the question proposed in the title, is meant to provide the very basic rules on receipt of benefits and rules regarding return to work and its effect on compensation. The changes made to this section were to clarify these situations and to provide information to claimants regarding their obligation to perform light duty when the evidence establishes that work is available within the employee's restrictions. These comments, however, indicate an apparent misunderstanding of the basic intent of § 10.500. Accordingly, the section has been clarified by splitting up paragraphs (a) and (b) in the proposed rule to paragraphs (a)–(d) in this section. While these sections do not provide any new information or communicate a change in interpretation of current law, OWCP believes that the purpose and intent of the rule will be demonstrated more clearly. Furthermore, in any situation where benefits are reduced or denied under this section, OWCP will issue a decision that contains findings of fact and a statement of reasons. Where appropriate, such as in cases of ongoing continuous entitlement, OWCP will also provide the claimant notice of its proposed action as well as an opportunity to respond prior to issuing a decision based on this regulation. All such decisions will be accompanied by an explanation of the claimant's right to further administrative review including appeal to ECAB. These actions will address the due process concerns expressed by these organizations. Finally, the cross-reference that was questioned by the labor organizations was removed from § 10.515 as that was no longer needed.

*Section 10.509*

The proposed new § 10.509 was modified by splitting this section into two sections, § 10.509 and § 10.510. Section 10.509 now covers only situations involving the effect of downsizing of a light duty position on compensation. This section elicited comment from eight attorneys who disputed the additional phrase requiring the employing agency to state, in writing, that no other employment is available as being simply conclusory in nature. However, this clarifying phrase does not impact the section's basic premise that employees who have a wage-earning capacity determination in place do not sustain a compensable recurrence of disability when they lose their light duty positions pursuant to reductions-in-force and merely codifies existing procedures. As such, no change has been made to this section.

Another commenter took issue with the use of ''other forms of downsizing'', arguing that this allows the agency to evade responsibilities under any collective bargaining agreement and established RIF law. As this is a personnel matter outside the scope of these FECA regulations, no change is necessary to the regulations as a result of this comment.

*Section 10.510*

This section elicited comments from sixty-nine individuals, all of which were form letters, as well as comments from nine attorneys and two labor organizations. All comments expressed concern that the change in language would undercut the job suitability determination process. The purpose of the section, as noted in the preamble to the proposed rule, was to clarify when a light duty job may form the basis of a loss of wage-earning capacity determination, and does not involve determinations regarding job suitability under 5 U.S.C. 8106(c). One of the

fundamental bases for a loss of wage-earning capacity determination is that the position must fairly and reasonably represent an employee's ability to earn wages. As that basic factor was not explicitly expressed in this section, this language has been added.

*Section 10.511*

Two labor organizations recommended the abbreviation ''*i.e.*'' be changed to ''*e.g.*'' because surgery is only one of multiple reasons that could support payment of wage-loss compensation for a limited period of disability in the presence of a loss-of-wage-earning-capacity determination. While no modification is strictly required, using the term ''such as'' will address the concerns expressed by the commenters and add clarity through the use of plain language.

*Section 10.519*

Two labor organizations noted that, although the reference to OWCP nurses was removed from § 10.518, it was not removed from this section. The reference to registered nurses was deleted from § 10.518 as ECAB found that nurse services were not to be considered vocational rehabilitation for the purposes of imposing sanctions pursuant to 5 U.S.C. 8113 (b). While OWCP will not apply such sanctions to non-cooperation with OWCP registered nurses, the reference remains in § 10.519(a) to allow for flexibility in coordinating the services of both registered nurses and vocational rehabilitation counselors in OWCP's return to work efforts for injured workers.

*Section 10.521*

The proposed rule added this section to explain the ramifications of electing to receive retirement benefits instead of FECA benefits. While not averse to referencing existing procedure in the regulatory language, two labor organizations objected to the addition of the phrase ''where OWCP is attempting to otherwise place that employee in a suitable job[.]'' The commenters argued that such language was potentially so broad as to cover any effort, including those inconsistent with law, regulation or procedure, and such a regulation would be punitive toward injured workers electing retirement benefits in order to receive schedule award payments. OWCP does not believe a change in this section is warranted, as the requirements for determining a loss of wage earning capacity are well established. A loss of wage earning capacity determination does not constitute a sanction; this section will have no impact on the concurrent receipt of OPM retirement benefits and a schedule award that is plainly permissible under the statute.

*Section 10.607*

Ninety commenters objected to the change to § 10.607, which modified the deadline for seeking reconsideration with OWCP on a denial of benefits from the requirement that the request ''be sent within one year'' to being ''received'' by OWCP within one year and requiring the request itself to be dated. Most of these comments were form letters. One commenter questioned whether the date would be the date received by OWCP or the date the letter is scanned into OWCP's electronic claim file system. Two commenters noted that this would create separate rules on deadlines for filing a request for reconsideration and a request for hearing with OWCP's Branch of Hearings and Review, in that the current rule in each instance bases the deadlines on the postmark on the envelope. The form letter comments suggested that this will increase the cost of filing reconsiderations by requiring claimants to send such requests by certified mail or facsimile in order to clearly know when the request has been received.

OWCP notes that the prior regulation, which allowed for the date a request for reconsideration was sent to be documented by postmark, predated the current electronic file system (iFECs). Due to the large volume of mail that is received and scanned into this file system, it is not feasible or efficient to keep envelopes for all mail scanned prior to determining whether such mail is a request for reconsideration, making it impossible to determine the date such a request was sent to OWCP. This anomaly led to situations where dated requests for reconsideration were received well past the one year deadline, but were required to be treated as timely under the prior regulations. Such a problem is not inherent in requests for oral hearings, as hearing requests are mailed directly to the Branch of Hearings and Review. Therefore no change was necessary to that procedure. OWCP believes that this difference in procedure will be clearly explained in the appeal rights notice to avoid confusion.

Furthermore, by 2012, OWCP will implement a free, Web-based system (E–COMP) that will allow claimants and representatives to directly upload documents to the electronic case file, minimizing both the cost and documentation questions noted by the commenters. Such electronic submissions should come at no cost to either the claimant or a representative and will provide instant acknowledgment as to when a document was received by OWCP.

Finally, OWCP notes that the one year period for requesting reconsideration is extremely generous compared to other benefit appeals systems. As noted in the preamble to the notice of proposed rulemaking, rather than cutting back the time to file such a request (to either 180 days, as with the ECAB, or 65 days, as with the Social Security Administration), OWCP simply chose to provide a solution that would allow OWCP to more easily document when the request was timely. The regulation provides more than ample time to both claimants and representatives to gather new evidence and submit a request for reconsideration. Accordingly, no change has been made to this section as a result of these comments.

*Sections 10.616, 10.617 & 10.622*

The notice of proposed rule making drew six comments, all from attorneys, in regards to §§ 10.616, 10.617 and 10.622. Although these sections address different issues, the comments all involved requests for additional flexibility in the scheduling of an oral hearing. One commenter specifically requested that the regulation be changed to require a hearing representative to consult with a claimant or representative prior to scheduling any hearing to arrange a mutually convenient time and place to hold the hearing. The remaining commenters simply asked that there be some coordination with the representative to better accommodate hearing calendars.

Due to the volume of hearing requests and limited resources available to conduct those hearings, OWCP is not able to grant the large degree of consultation and latitude in the scheduling or postponements of hearings requested by the commenters. However, the increased use of teleconferences and other technology in hearings affords OWCP some flexibility in scheduling that did not exist previously. Accordingly, OWCP has redrafted § 10.622 to provide greater flexibility while still maintaining OWCP's discretion in how and when these hearings are conducted. Specifically, OWCP added language allowing rescheduling within a monthly docket where a claimant or the representative has a prior unavoidable scheduling conflict and extended the previously existing language in paragraph (d) to include representatives as well.

*Section 10.626*

One labor organization stated in reference to § 10.626 that OWCP should consider adding language that states that OWCP will follow decisions of the Employees' Compensations Appeals Board based on the unions reading of a FECA circular from 1990. OWCP notes however that this section deals solely with the jurisdiction over a claim while that claim is appealed to ECAB. OWCP notes that part 0 of the *Federal (FECA) Procedure Manual* clearly states that the Employees' Compensation Appeals Board is an independent body that has jurisdiction to determine appeals from denials of FECA benefits. *Federal (FECA) Procedure Manual,* part 0–0100–3.

*Section 10.700*

An attorney commented that this section should include a mandatory requirement that copies of all documents in the case file, including e-mails, be automatically mailed to the claimant as well as the claimant's representative. OWCP notes that such a requirement is unnecessary, as the Privacy Act allows a claimant to request one free copy of all such documents and to sign a waiver allowing any representative to view those documents or receive a copy upon request. Furthermore, while representatives are frequently copied on correspondence to claimants, certain correspondence (such as the CA–1032) remains the direct responsibility of the claimant to complete and submit. For this reason, and based on program experience, OWCP will not impose the regulatory requirement suggested by this commenter and the regulation remains unchanged.

*Sections 10.702 & 10.703*

Two hundred forty-three of the comments, most of which were form letters, disagreed with the specific prohibition on contingency fees noted in these sections. One commenter strongly supported the ban on contingency fees as she believed that current fee application requirements compelled accountability on the part of the representative. Language specifically banning contingency fees was omitted during the last regulatory update, as the requirements for the fee application were believed to make the additional language redundant. Notwithstanding the regulation's explicit reference to hourly rates, the removal of this language left some with the impression that contingency fees were permissible and that the ban on contingency arrangements had been removed. ECAB precedent has stated that FECA does not allow for the payment of contingency fees, and the current regulations clearly contemplate the use of an hourly rate in determining representatives' fees. Furthermore, ECAB, in its recently published final rule, noted that no contract for a stipulated fee or on a contingent basis will be approved by ECAB. **Federal Register** cite. As 5 U.S.C. 8127 applies to representative fees before both ECAB and OWCP, OWCP will continue to conform its position on contingency fees with that of ECAB's. Consequently, no change has been made to this section as a result of these comments.

*Section 10.730*

This section was amended to restore the statutory language applicable to coverage of claims involving Peace Corps volunteers. The use of ''deemed proximately caused'' mirrors the language in 5 U.S.C. 8142(c)(3). One attorney noted that the language of this section reverses the statutory burden of proof for Peace Corps Volunteers by adding additional requirements of proof in paragraph (b) and (c) to those that are required in 5 U.S.C. 8142(c)(3). The language to which the attorney took exception was not the amended language, but the general statutory requirement that a volunteer must sustain either an occupational disease or illness or a traumatic injury in order for FECA coverage to apply. As such, no change has been made to this section as a result of these comments.

*Section 10.812*

One attorney commented that OWCP seldom sends a notice explaining appeal rights to the medical provider of reduced or denied fees and does not send notice to the claimant of a reduction or denial of a medical fee. This occasionally results in a claimant being sued years after the bill was denied or reduced.

The existing rule was unchanged in the notice of proposed rulemaking. Notification of payment, denial of payment or fee reduction of a service is supplied in writing to the provider requesting payment. A claimant may review the bills submitted in his/her case and information regarding the amount billed, paid and the reason for any denial is readily available on-line. Although § 10.813 of this part clearly states that claimants may not be billed for the difference when a fee is reduced, OWCP agrees that claimants may not realize that they are not responsible for medical charges exceeding the maximum allowed in the OWCP fee schedule. While no change has been made to this section, language regarding this concern has been added to the Web site and included in the acceptance letter sent to a claimant.

## II. Administrative Requirements for the Proposed Rulemaking

*Executive Orders 12866 and 13563*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

This rule constitutes a ''significant'' rule within the meaning of Executive Order 12866 in that any executive agency could be required to participate in the development of claims for benefits under this regulatory action. OWCP believes, however, that as this rule merely updates existing regulations, this rule will not have a significant economic impact on the economy, or any person or organization subject to the proposed changes. OWCP has projected that the addition of the skin as an organ under the schedule award provision as well as the revision of the part 25 compensation for non-citizen non-resident employees will result in additional expenditures of $10,893,434 over ten years.

This projection is based on a very limited amount of data and a single significant event could result in substantially higher than projected expenditures. This has been reviewed by the Office of Management and Budget for consistency with the President's priorities and the principles set forth in Executive Order 12866.

*Regulatory Flexibility Act of 1980*

This rule has been reviewed in accordance with the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601–612. OWCP has concluded that the rule does not involve regulatory and informational requirements regarding businesses, organizations, and governmental jurisdictions subject to regulation.

*Paperwork Reduction Act (PRA)*

This rule contains information collection requirements subject to the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501, *et seq.* The

requirements set out in this rule were both submitted to and approved by the OMB under the OMB Control Numbers 1240–0001, 1240–0007, 1240–0008, 1240–0009, 1240–0012, 1240–0013, 1240–0015, 1240–0016, 1240–0017, 1240–0018, 1240–0019, 1240–0022, 1240–0044, 1240–0045, 1240–0046, 1240–0047, 1240–0049, 1240–0050 and 1240–0051.

*The National Environmental Policy Act of 1969*

OWCP certifies that this rule has been assessed in accordance with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). OWCP concludes that NEPA requirements do not apply to this rulemaking because this rule includes no provisions impacting the maintenance, preservation, or enhancement of a healthful environment.

*Federal Regulations and Policies on Families*

OWCP has reviewed this rule in accordance with the requirements of section 654 of the Treasury and General Government Appropriations Act of 1999, 5 U.S.C. 601 note. This rule was not found to have a potential negative effect on family well-being as it is defined thereunder.

*Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

OWCP certifies that this rule has been assessed regarding environmental health risks and safety risks that may disproportionately affect children. This rule was not found to have a potential negative effect on the health or safety of children.

*Unfunded Mandates Reform Act of 1995 and Executive Order 13132*

OWCP has reviewed this rule in accordance with the requirements of Executive Order 13132, 64 FR 43225 (Aug. 10, 1999), and the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.,* and has found no potential or substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. As there is no Federal mandate contained herein that could result in increased expenditures by State, local, or Tribal governments or by the private sector, OWCP has not prepared a budgetary impact statement.

*Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

OWCP has reviewed this rule in accordance with Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), and has determined that it does not have ''Tribal implications.'' The rule does not ''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.''

*Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights*

OWCP has reviewed this rule in accordance with Executive Order 12630, 53 FR 8859 (Mar. 15, 1988), and has determined that it does not contain any ''policies that have takings implications'' in regard to the ''licensing, permitting, or other condition requirements or limitations on private property use, or that require dedications or exactions from owners of private property.''

*Executive Order 13211: Energy Supply, Distribution, or Use*

OWCP has reviewed this rule and has determined that the provisions of Executive Order 13211, 66 FR 28355 (May 18, 2001), are not applicable as there are no direct or implied effects on energy supply, distribution, or use.

*The Privacy Act of 1974, 5 U.S.C. 552a, as Amended*

Claims filed under these regulations are subject to the current Privacy Act System of Records, DOL/GOVT–1, Office of Workers' Compensation Programs, Federal Employees' Compensation Act File, 67 FR 16826 (April 8, 2002).

*Clarity of This Regulation*

Executive Order 12866, 58 FR 51735 (September 30, 1993), and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. OWCP invited comments on how to make the proposed rule easier to understand, and has incorporated plain language into the rule.

**List of Subjects in 20 CFR Parts 1, 10, and 25**

Administrative practice and procedure, Claims, Government Employees, Labor, Workers' Compensation.

For reasons set forth in the preamble, the Office of Workers' Compensation Programs, Department of Labor, amends 20 CFR chapter I as follows:

■ 1. Part 1 is revised to read as follows:

## PART 1—PERFORMANCE OF FUNCTIONS

Sec.
1.1 Under what authority does the Office of Workers' Compensation Programs operate?
1.2 What functions are assigned to OWCP?
1.3 What rules are contained in this chapter?
1.4 Where are other rules concerning OWCP functions found?
1.5 When was the former Bureau of Employees' Compensation abolished?
1.6 How were many of OWCP's current functions administered in the past?

**Authority:** 5 U.S.C. 301, 8145 and 8149 (Reorganization Plan No. 6 of 1950, 15 FR 3174, 3 CFR, 1949–1953 Comp., p. 1004, 64 Stat. 1263); 42 U.S.C. 7384d and 7385s–10; E.O. 13179, 65 FR 77487, 3 CFR, 2000 Comp., p. 321; Secretary of Labor's Order No. 13–71, 36 FR 8155; Employment Standards Order No. 2–74, 39 FR 34722; Secretary of Labor's Order No. 10–2009, 74 FR 218.

### § 1.1 Under what authority does the Office of Workers' Compensation Programs operate?

(a) The Assistant Secretary of Labor for Employment Standards, by authority vested in him by the Secretary of Labor in Secretary's Order No. 13–71 (36 FR 8755), established in the Employment Standards Administration (ESA) an Office of Workers' Compensation Programs (OWCP) by Employment Standards Order No. 2–74 (39 FR 34722). The Assistant Secretary subsequently designated as the head thereof a Director who, under the general supervision of the Assistant Secretary, administered the programs assigned to OWCP by the Assistant Secretary.

(b) Effective November 8, 2009, ESA was dissolved into its four component parts, including OWCP. Secretary of Labor's Order 10–2009 (74 FR 58834) cancelled or modified all prior orders and directives referencing ESA, devolved certain authorities and responsibilities of ESA to OWCP, and delegated authority to the Director, OWCP, to administer the programs now assigned directly to OWCP.

### § 1.2 What functions are assigned to OWCP?

The Secretary of Labor has delegated authority and assigned responsibility to the Director of OWCP for the Department of Labor's programs under the following statutes:

(a) The Federal Employees' Compensation Act, as amended and extended (5 U.S.C. 8101 *et seq.*), except

5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board.

(b) The War Hazards Compensation Act, as amended (42 U.S.C. 1701 *et seq.*).

(c) The War Claims Act of 1948, as amended (50 U.S.C. App. 2003 *et seq.*).

(d) The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended (42 U.S.C. 7384 *et seq.*), except 42 U.S.C. 7385s–15 as it pertains to the Office of the Ombudsman, and activities, pursuant to Executive Order 13179 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000, assigned to the Secretary of Health and Human Services, the Secretary of Energy and the Attorney General.

(e) The Longshore and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 *et seq.*), except: 33 U.S.C. 919(d) with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b) as it pertains to the Benefits Review Board; and activities, pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary of Labor for Occupational Safety and Health.

(f) The Black Lung Benefits Act, as amended (30 U.S.C. 901 *et seq.*)., including 26 U.S.C. 9501, except: 33 U.S.C. 919(d) as incorporated by 30 U.S.C. 932(a), with respect to administrative law judges in the Office of Administrative Law Judges; and 33 U.S.C. 921(b) as incorporated by 30 U.S.C. 932(a), as it applies to the Benefits Review Board.

### § 1.3 What rules are contained in this chapter?

The rules in this chapter are those governing the OWCP functions under the Federal Employees' Compensation Act, the War Hazards Compensation Act, the War Claims Act and the Energy Employees Occupational Illness Compensation Program Act of 2000.

### § 1.4 Where are other rules concerning OWCP functions found?

(a) The rules of OWCP governing its functions under the Longshore and Harbor Workers' Compensation Act and its extensions are set forth in subchapter A of chapter VI of this title.

(b) The rules of OWCP governing its functions under the Black Lung Benefits Act program are set forth in subchapter B of chapter VI of this title.

(c) The rules and regulations of the Employees' Compensation Appeals Board are set forth in chapter IV of this title.

(d) The rules and regulations of the Benefits Review Board are set forth in Chapter VII of this title.

### § 1.5 When was the former Bureau of Employees' Compensation abolished?

By Secretary of Labor's Order issued September 23, 1974 (39 FR 34723), issued concurrently with Employment Standards Order 2–74 (39 FR 34722), the Secretary revoked the prior Secretary's Order No. 18–67 (32 FR 12979), which had delegated authority and assigned responsibility for the various workers' compensation programs enumerated in § 1.2, except the Black Lung Benefits Program and the Energy Employees Occupational Illness Compensation Program not then in existence, to the Director of the former Bureau of Employees' Compensation.

### § 1.6 How were many of OWCP's current functions administered in the past?

(a) Administration of the Federal Employees' Compensation Act and the Longshore and Harbor Workers' Compensation Act was initially vested in an independent establishment known as the U.S. Employees' Compensation Commission. By Reorganization Plan No. 2 of 1946 (3 CFR, 1943–1949 Comp., p. 1064; 60 Stat. 1095, effective July 16, 1946), the Commission was abolished and its functions were transferred to the Federal Security Agency to be performed by a newly created Bureau of Employees' Compensation within such Agency. By Reorganization Plan No. 19 of 1950 (15 FR 3178, 3 CFR, 1949–1954 Comp., page 1010, 64 Stat. 1271), said Bureau was transferred to the Department of Labor (DOL), and the authority formerly vested in the Administrator, Federal Security Agency, was vested in the Secretary of Labor. By Reorganization Plan No. 6 of 1950 (15 FR 3174, 3 CFR, 1949–1953 Comp., page 1004, 64 Stat. 1263), the Secretary of Labor was authorized to make from time to time such provisions as he shall deem appropriate, authorizing the performance of any of his functions by any other officer, agency, or employee of the DOL.

(b) In 1972, two separate organizational units were established within the Bureau: an Office of Workmen's Compensation Programs (37 FR 20533) and an Office of Federal Employees' Compensation (37 FR 22979). In 1974, these two units were abolished and one organizational unit, the Office of Workers' Compensation Programs, was established in lieu of the Bureau of Employees' Compensation (39 FR 34722).

■ 2. Part 10 is revised to read as follows:

## PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATOIN ACT, AS AMENDED

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**Authority:** 5 U.S.C. 301, 8102a, 8103, 8145 and 8149; 31 U.S.C. 3716 and 3717; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; Secretary of Labor's Order No. 10–2009, 74 FR 218.

## Subpart A—General Provisions

### Introduction

#### § 10.0 What are the provisions of the FECA, in general?

The Federal Employees' Compensation Act (FECA) as amended (5 U.S.C. 8101 *et seq.*) provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the Government of the United States. The regulations in this part describe the rules for filing, processing, and paying claims for benefits under the FECA. Proceedings under the FECA are non-adversarial in nature.

(a) The FECA has been amended and extended a number of times to provide workers' compensation benefits to volunteers in the Civil Air Patrol (5 U.S.C. 8141), members of the Reserve Officers' Training Corps (5 U.S.C. 8140), Peace Corps Volunteers (5 U.S.C. 8142), Job Corps enrollees and Volunteers in Service to America (5 U.S.C. 8143), members of the National Teachers Corps (5 U.S.C. 8143a), certain student employees (5 U.S.C. 5351 and 8144), certain law enforcement officers not employed by the United States (5 U.S.C. 8191–8193), and various other classes of persons who provide or have provided services to the Government of the United States.

(b) The FECA provides for payment of several types of benefits, including compensation for wage loss, schedule awards, medical and related benefits, and vocational rehabilitation services for conditions resulting from injuries sustained in performance of duty while in service to the United States.

(c) The FECA also provides for payment of monetary compensation to specified survivors of an employee whose death resulted from a work-related injury and for payment of certain burial expenses subject to the provisions of 5 U.S.C. 8134.

(d) All types of benefits and conditions of eligibility listed in this section are subject to the provisions of the FECA and of this part. This section shall not be construed to modify or

enlarge upon the provisions of the FECA.

**§ 10.1 What rules govern the administration of the FECA and this chapter?**

In accordance with 5 U.S.C. 8145 and Secretary's Order 5–96, the responsibility for administering the FECA, except for 5 U.S.C. 8149 as it pertains to the Employees' Compensation Appeals Board, has been delegated to the Director of the Office of Workers' Compensation Programs (OWCP). Except as otherwise provided by law, the Director, OWCP and his or her designees have the exclusive authority to administer, interpret and enforce the provisions of the Act.

**§ 10.2 What do these regulations contain?**

This part 10 sets forth the regulations governing administration of all claims filed under the FECA, except to the extent specified in certain particular provisions. Its provisions are intended to assist persons seeking compensation benefits under the FECA, as well as personnel in the various Federal agencies and the Department of Labor who process claims filed under the FECA or who perform administrative functions with respect to the FECA. This part 10 applies to part 25 of this chapter except as modified by part 25. The various subparts of this part contain the following:

(a) *Subpart A.* The general statutory and administrative framework for processing claims under the FECA. It contains a statement of purpose and scope, together with definitions of terms, descriptions of basic forms, information about the disclosure of OWCP records, and a description of rights and penalties under the FECA, including convictions for fraud.

(b) *Subpart B.* The rules for filing notices of injury and claims for benefits under the FECA. It also addresses evidence and burden of proof, as well as the process of making decisions concerning eligibility for benefits.

(c) *Subpart C.* The rules governing claims for and payment of continuation of pay.

(d) *Subpart D.* The rules governing emergency and routine medical care, second opinion and referee medical examinations directed by OWCP, and medical reports and records in general. It also addresses the kinds of treatment which may be authorized and how medical bills are paid.

(e) *Subpart E.* The rules relating to the payment of monetary compensation benefits for disability, impairment and death. It includes the provisions for identifying and processing overpayments of compensation.

(f) *Subpart F.* The rules governing the payment of continuing compensation benefits. It includes provisions concerning the employee's and the employer's responsibilities in returning the employee to work. It also contains provisions governing reports of earnings and dependents, recurrences, and reduction and termination of compensation benefits.

(g) *Subpart G.* The rules governing the appeals of decisions under the FECA. It includes provisions relating to hearings, reconsiderations, and appeals before the Employees' Compensation Appeals Board.

(h) *Subpart H.* The rules concerning legal representation and for adjustment and recovery from a third party. It also contains provisions relevant to three groups of employees whose status requires special application of the provisions of the FECA: Federal grand and petit jurors, Peace Corps volunteers, and non- Federal law enforcement officers.

(i) *Subpart I.* Information for medical providers. It includes rules for medical reports, medical bills, and the OWCP medical fee schedule, as well as the provisions for exclusion of medical providers.

(j) *Subpart J.* Death Gratuity. The rules relating to the payment of the death gratuity benefit under 5 U.S.C. 8102a.

**§ 10.3 Have the collection of information requirements of this part been approved by the Office of Management and Budget (OMB)?**

The collection of information requirements in this part have been approved by OMB and assigned OMB control numbers 1240–0001, 1240–0007, 1240–0008, 1240–0009, 1240–0012, 1240–0013, 1240–0015, 1240–0016, 1240–0017, 1240–0018, 1240–0019, 1240–0022, 1240–0044, 1240–0045, 1240–0046, 1240–0047, 1240–0049, 1240–0050 and 1240–0051.

## Definitions and Forms

**§ 10.5 What definitions apply to the regulations in this subchapter?**

Certain words and phrases found in this part are defined in this section or in the FECA. Some other words and phrases that are used only in limited situations are defined in the later subparts of the regulations in this subchapter.

(a) *Benefits* or *Compensation* in the regulations in this subchapter means Compensation as defined by the FECA at 5 U.S.C. 8101(12), which is the money OWCP pays to or on behalf of a beneficiary from the Employees' Compensation Fund. The terms Benefits and Compensation include payments for lost wages, loss of wage-earning capacity, and permanent physical impairment. The terms Benefits and Compensation also include the money paid to beneficiaries for an employee's death, including both death benefits and any death gratuity benefit. These two terms also include any other amounts paid out of the Employees' Compensation Fund for such things as medical treatment, medical examinations conducted at the request of OWCP as part of the claims adjudication process, vocational rehabilitation services under 5 U.S.C. 8111, services of an attendant and funeral expenses under 5 U.S.C. 8134, but do not include continuation of pay as provided by 5 U.S.C. 8118.

(b) *Beneficiary* means an individual who is entitled to a benefit under the FECA and this part.

(c) *Claim* means a written assertion of an individual's entitlement to benefits under the FECA, submitted in a manner authorized by this part.

(d) *Claimant* means an individual whose claim has been filed.

(e) *Director* means the Director of OWCP or a person designated to carry out his or her functions.

(f) *Disability* means the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury. It may be partial or total.

(g) *Earnings from employment or self-employment* means:

(1) Gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any other goods or services received in kind as remuneration; or

(2) A reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration. Neither lack of profits, nor the characterization of the duties as a hobby, removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.

(h) *Employee* means, but is not limited to, an individual who fits within one of the following listed groups:

(1) A civil officer or employee in any branch of the Government of the United States, including an officer or employee of an instrumentality wholly owned by the United States pursuant to 5 U.S.C. 8101(1)(A);

(2) An individual rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay, when a statute authorizes

the acceptance or use of the service, or authorizes payment of travel or other expenses of the individual pursuant to 5 U.S.C. 8101(1)(B);

(3) An individual, other than an independent contractor or an individual employed by an independent contractor, employed on the Menominee Indian Reservation in Wisconsin in operations conducted under a statute relating to Tribal timber and logging operations on that reservation pursuant to 5 U.S.C. 8101(1)(C);

(4) An individual appointed to a position on the office staff of a former President under section 1(b) of the Act of August 25, 1958 (72 Stat. 838) pursuant to 5 U.S.C. 8101(1)(E); or

(5) An individual selected and serving as a Federal petit or grand juror pursuant to 5 U.S.C. 8101(1)(F).

(i) *Employer* or *Agency* means any civil agency or instrumentality of the United States Government, or any other organization, group or institution employing an individual defined as an ''employee'' by this section. These terms also refer to officers and employees of an employer having responsibility for the supervision, direction or control of employees of that employer as an ''immediate superior,'' and to other employees designated by the employer to carry out the functions vested in the employer under the FECA and this part, including officers or employees delegated responsibility by an employer for authorizing medical treatment for injured employees.

(j) *Entitlement* means entitlement to benefits as determined by OWCP under the FECA and the procedures described in this part.

(k) *FECA* means the Federal Employees' Compensation Act, as amended.

(l) *Hospital services* means services and supplies provided by hospitals within the scope of their practice as defined by State law.

(m) *Impairment* means any anatomic or functional abnormality or loss. A permanent impairment is any such abnormality or loss after maximum medical improvement has been achieved.

(n) *Knowingly* means with knowledge, consciously, willfully or intentionally.

(o) *Medical services* means services and supplies provided by or under the supervision of a physician. Reimbursable chiropractic services are limited to physical examinations (and related laboratory tests), x-rays performed to diagnose a subluxation of the spine and treatment consisting of manual manipulation of the spine to correct a subluxation.

(p) *Medical support services* means services, drugs, supplies and appliances provided by a person other than a physician or hospital.

(q) *Occupational disease or illness* means a condition produced by the work environment over a period longer than a single workday or shift.

(r) *OWCP* means the Office of Workers' Compensation Programs.

(s) *Pay rate for compensation purposes* means the employee's pay, as determined under 5 U.S.C. 8114, at the time of injury, the time disability begins or the time compensable disability recurs if the recurrence begins more than six months after the injured employee resumes regular full-time employment with the United States, whichever is greater, except as otherwise determined under 5 U.S.C. 8113 with respect to any period.

(t) *Physician* means an individual defined as such in 5 U.S.C. 8101(2), except during the period for which his or her license to practice medicine has been suspended or revoked by a State licensing or regulatory authority.

(u) *Qualified hospital* means any hospital licensed as such under State law which has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified hospital shall be deemed to be designated or approved by OWCP.

(v) *Qualified physician* means any physician who has not been excluded under the provisions of subpart I of this part. Except as otherwise provided by regulation, a qualified physician shall be deemed to be designated or approved by OWCP.

(w) *Qualified provider of medical support services or supplies* means any person, other than a physician or a hospital, who provides services, drugs, supplies and appliances for which OWCP makes payment, who possesses any applicable licenses required under State law, and who has not been excluded under the provisions of subpart I of this part.

(x) *Recurrence of disability* means an inability to work after an employee has returned to work, caused by a spontaneous change in a medical condition which had resulted from a previous injury or illness without an intervening injury or new exposure to the work environment that caused the illness. This term also means an inability to work that takes place when a light-duty assignment made specifically to accommodate an employee's physical limitations due to his or her work-related injury or illness is withdrawn or when the physical requirements of such an assignment are altered so that they exceed his or her established physical limitations. A recurrence of disability does not apply when a light-duty assignment is withdrawn for reasons of misconduct, non-performance of job duties or other downsizing or where a loss of wage-earning capacity determination as provided by 5 U.S.C. 8115 is in place.

(y) *Recurrence of medical condition* means a documented need for further medical treatment after release from treatment for the accepted condition or injury when there is no accompanying work stoppage. Continuous treatment for the original condition or injury is not considered a ''need for further medical treatment after release from treatment,'' nor is an examination without treatment.

(z) *Representative* means an individual or law firm properly authorized by a claimant in writing to act for the claimant in connection with a claim or proceeding under the FECA or this part.

(aa) *Student* means an individual defined at 5 U.S.C. 8101(17). Two terms used in that particular definition are further defined as follows:

(1) *Additional type of educational or training institution* means a technical, trade, vocational, business or professional school accredited or licensed by the United States Government or a State Government or any political subdivision thereof providing courses of not less than three months duration, that prepares the individual for a livelihood in a trade, industry, vocation or profession.

(2) *Year beyond the high school level* means:

(i) The 12-month period beginning the month after the individual graduates from high school, provided he or she had indicated an intention to continue schooling within four months of high school graduation, and each successive 12-month period in which there is school attendance or the payment of compensation based on such attendance; or

(ii) If the individual has indicated that he or she will not continue schooling within four months of high school graduation, the 12-month period beginning with the month that the individual enters school to continue his or her education, and each successive 12-month period in which there is school attendance or the payment of compensation based on such attendance.

(bb) *Subluxation* means an incomplete dislocation, off-centering, misalignment, fixation or abnormal spacing of the vertebrae which must be demonstrable on any x-ray film to an

individual trained in the reading of x-rays.

(cc) *Surviving spouse* means the husband or wife living with or dependent for support upon a deceased employee at the time of his or her death, or living apart for reasonable cause or because of the deceased employee's desertion, unless otherwise defined under the FECA for the specific benefit such as the FECA death gratuity at 5 U.S.C. 8102a.

(dd) *Temporary aggravation of a pre-existing condition* means that factors of employment have directly caused that condition to be more severe for a limited period of time and have left no greater impairment than existed prior to the employment injury.

(ee) *Traumatic injury* means a condition of the body caused by a specific event or incident, or series of events or incidents, within a single workday or shift. Such condition must be caused by external force, including stress or strain, which is identifiable as to time and place of occurrence and member or function of the body affected.

### § 10.6 What special statutory definitions apply to dependents and survivors?

(a) 5 U.S.C. 8133 provides that certain benefits are payable to certain enumerated survivors of employees who have died from an injury sustained in the performance of duty.

(b) 5 U.S.C. 8148 also provides that certain other benefits may be payable to certain family members of employees who have been incarcerated due to a felony conviction.

(c) 5 U.S.C. 8110(b) further provides that any employee who is found to be eligible for a basic benefit shall be entitled to have such basic benefit augmented at a specified rate for certain persons who live in the beneficiary's household or who are dependent upon the beneficiary for support.

(d) 5 U.S.C. 8101, 8110, 8133, and 8148, which define the nature of such survivorship or dependency necessary to qualify a beneficiary for a survivor's benefit or an augmented benefit, apply to the provisions of this part but not to the death gratuity provided under subpart J.

(e) 5 U.S.C. 8102a provides the definitions for survivorship or dependency necessary to qualify as a beneficiary for a death gratuity benefit as well as allowing half the death gratuity benefit to be paid to alternate beneficiary.

### § 10.7 What forms are needed to process claims under the FECA?

(a) Notice of injury, claims and certain specified reports shall be made on forms prescribed by OWCP. Employers shall not modify these forms or use substitute forms. Employers are expected to maintain an adequate supply of the basic forms needed for the proper recording and reporting of injuries.

| Form No. | Title |
|---|---|
| (1) CA–1 | Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation. |
| (2) CA–2 | Notice of Occupational Disease and Claim for Compensation. |
| (3) CA–2a | Notice of Employee's Recurrence of Disability and Claim for Pay/Compensation. |
| (4) CA–3 | Report of Work Status. |
| (5) CA–5 | Claim for Compensation by Widow, Widower and/or Children. |
| (6) CA–5b | Claim for Compensation by Parents, Brothers, Sisters, Grandparents, or Grandchildren. |
| (7) CA–6 | Official Superior's Report of Employee's Death. |
| (8) CA–7 | Claim for Compensation Due to Traumatic Injury or Occupational Disease. |
| (9) CA–7a | Time Analysis Form. |
| (10) CA–7b | Leave Buy Back (LBB) Worksheet/Certification and Election. |
| (11) CA–16 | Authorization of Examination and/or Treatment. |
| (12) CA–17 | Duty Status Report. |
| (13) CA–20 | Attending Physician's Report. |
| (14) CA–20a | Attending Physician's Supplemental Report. |
| (15) CA–40 | Designation of a Recipient of the Federal Employees' Compensation Act Death Gratuity Payment under Section 1105 of Public Law 110–181 (Section 8102a). |
| (16) CA–41 | Claim for Survivor Benefits Under the Federal Employees' Compensation Act Section 8102a Death Gratuity. |
| (17) CA–42 | Official Notice of Employees' Death for Purposes of FECA Section 8102a Death Gratuity. |
| (18) CA–1108 | Statement of Recovery Letter with Long Form. |
| (19) CA–1122 | Statement of Recovery Letter with Short Form. |

(b) Copies of the forms listed in this paragraph are available for public inspection at the Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210. They may also be obtained from district offices, employers (*i.e.,* safety and health offices, supervisors), and the Internet, at *http://www.dol.gov.*

## Information in Program Records

### § 10.10 Are all documents relating to claims filed under the FECA considered confidential?

All records relating to claims for benefits, including copies of such records maintained by an employer, are considered confidential and may not be released, inspected, copied or otherwise disclosed except as provided in the Freedom of Information Act and the Privacy Act of 1974 or under the routine uses provided by DOL/GOVT–1 if such release is consistent with the purpose for which the record was created.

### § 10.11 Who maintains custody and control of FECA records?

All records relating to claims for benefits filed under the FECA, including any copies of such records maintained by an employing agency, are covered by the government-wide Privacy Act system of records entitled DOL/GOVT–1 (Office of Workers' Compensation Programs, Federal Employees' Compensation Act File). This system of records is maintained by and under the control of OWCP, and, as such, all records covered by DOL/GOVT–1 are official records of OWCP. The protection, release, inspection and copying of records covered by DOL/GOVT–1 shall be accomplished in accordance with the rules, guidelines and provisions of this part, as well as those contained in 29 CFR parts 70 and 71, and with the notice of the system of records and routine uses published in the **Federal Register**. All questions relating to access/disclosure, and/or amendment of FECA records maintained by OWCP or the employing agency, are to be resolved in accordance with this section.

### § 10.12 How may a FECA claimant or beneficiary obtain copies of protected records?

(a) A claimant seeking copies of his or her official FECA file should address a request to the District Director of the OWCP office having custody of the file. A claimant seeking copies of FECA-related documents in the custody of the employer should follow the procedures established by that agency.

(b) (1) While an employing agency may establish procedures that an injured employee or beneficiary should follow in requesting access to documents it maintains, any decision issued in response to such a request must comply with the rules and regulations of the Department of Labor which govern all other aspects of safeguarding these records.

(2) No employing agency has the authority to issue determinations with

respect to requests for the correction or amendment of records contained in or covered by DOL/GOVT–1. That authority is within the exclusive control of OWCP. Thus, any request for correction or amendment received by an employing agency must be referred to OWCP for review and decision.

(3) Any administrative appeal taken from a denial issued by the employing agency or OWCP shall be filed with the Solicitor of Labor in accordance with 29 CFR 71.7 and 71.9.

#### § 10.13 What process is used by a person who wants to correct FECA-related documents?

Any request to amend a record covered by DOL/GOVT–1 should be directed to the district office having custody of the official file. No employer has the authority to issue determinations with regard to requests for the correction of records contained in or covered by DOL/GOVT–1. Any request for correction received by an employer must be referred to OWCP for review and decision.

### Rights and Penalties

#### § 10.15 May compensation rights be waived?

No employer or other person may require an employee or other claimant to enter into any agreement, either before or after an injury or death, to waive his or her right to claim compensation under the FECA. No waiver of compensation rights shall be valid.

#### § 10.16 What criminal and civil penalties may be imposed in connection with a claim under the FECA?

(a) A number of statutory provisions make it a crime to file a false or fraudulent claim or statement with the Government in connection with a claim under the FECA, or to wrongfully impede a FECA claim. Included among these provisions are 18 U.S.C. 287, 1001, 1920, and 1922. Furthermore, a civil action to recover benefits paid erroneously under the FECA may be maintained under the False Claims Act, 31 U.S.C. 3729–3733. Enforcement of such provisions that may apply to claims under the FECA is within the jurisdiction of the Department of Justice.

(b) In addition, administrative proceedings may be initiated under the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–12, to impose civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted or presented, false, fictitious or fraudulent claims or written statements to OWCP in connection with a claim under the FECA. The Department of Labor's regulations implementing the PFRCA are found at 29 CFR part 22.

#### § 10.17 Is a beneficiary who defrauds the Government in connection with a claim for benefits still entitled to those benefits?

When a beneficiary either pleads guilty to or is found guilty on either Federal or State criminal charges of defrauding the Federal Government in connection with a claim for benefits, the beneficiary's entitlement to any further compensation benefits will terminate effective the date of conviction, which is the date of the verdict or, in the case of a plea bargain, the date the claimant made the plea in open court (not the date of sentencing or the date court papers were signed). The employing agency may, upon request, be required to provide the documentation needed for termination under this section. Termination of entitlement under this section is not affected by any subsequent change in or recurrence of the beneficiary's medical condition.

#### § 10.18 Can a beneficiary who is incarcerated based on a felony conviction still receive benefits?

(a) Whenever a beneficiary is incarcerated in a State or Federal jail, prison, penal institution or other correctional facility due to a State or Federal felony conviction, he or she forfeits all rights to compensation benefits during the period of incarceration. A beneficiary's right to compensation benefits for the period of his or her incarceration is not restored after such incarceration ends, even though payment of compensation benefits may resume. A beneficiary has an affirmative duty to provide notice of any conviction and imprisonment. The employing agency shall provide OWCP any information or documentation they may have concerning such matters.

(b) If the beneficiary has eligible dependents, OWCP will pay compensation to such dependents at a reduced rate during the period of his or her incarceration, by applying the percentages of 5 U.S.C. 8133(a)(1) through (5) to the beneficiary's gross current entitlement rather than to the beneficiary's monthly pay.

(c) If OWCP's decision on entitlement is pending when the period of incarceration begins, and compensation is due for a period of time prior to such incarceration, payment for that period will only be made to the beneficiary following his or her release.

## Subpart B—Filing Notices and Claims; Submitting Evidence

### Notices and Claims for Injury, Disease, and Death—Employee or Survivor's Actions

#### § 10.100 How and when is a notice of traumatic injury filed?

(a) To claim benefits under the FECA, an employee who sustains a work-related traumatic injury must give notice of the injury in writing on Form CA–1, which may be obtained from the employer or from the Internet at www.dol.gov under forms. The employee must forward this notice to the employer. Another person, including the employer, may give notice of injury on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee. All such notices should be submitted electronically wherever feasible to facilitate processing of such claims. All employers that currently do not have such capability should create such a method by December 31, 2012.

(b) For injuries sustained on or after September 7, 1974, a notice of injury must be filed within three years of the injury. (The form contains the necessary words of claim.) The requirements for filing notice are further described in 5 U.S.C. 8119. Also see § 10.205 concerning time requirements for filing claims for continuation of pay.

(1) If the claim is not filed within three years, compensation may still be allowed if notice of injury was given within 30 days or the employer had actual knowledge of the injury or death within 30 days after occurrence. This knowledge may consist of written records or verbal notification. An entry into an employee's medical record may also satisfy this requirement if it is sufficient to place the employer on notice of a possible work-related injury or disease.

(2) OWCP may excuse failure to comply with the three-year time requirement because of truly exceptional circumstances (for example, being held prisoner of war).

(3) The claimant may withdraw his or her claim (but not the notice of injury) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits. Any continuation of pay (COP) granted to an employee after a claim is withdrawn must be charged to sick or annual leave, or considered an overpayment of pay consistent with 5 U.S.C. 5584, at the employee's option.

(c) However, in cases of latent disability, the time for filing claim does

not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

**§ 10.101 How and when is a notice of occupational disease filed?**

(a) To claim benefits under the FECA, an employee who has a disease which he or she believes to be work-related must give notice of the condition in writing on Form CA–2, which may be obtained from the employer or from the Internet at www.dol.gov under forms. The employee must forward this notice to the employer. Another person, including the employer, may do so on the employee's behalf. The person submitting a notice shall include the Social Security Number (SSN) of the injured employee. All such notices should be submitted electronically wherever feasible to facilitate processing of such claims. All employers that currently do not have such capability should create such a method by December 31, 2012. The claimant may withdraw his or her claim (but not the notice of occupational disease) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For occupational diseases sustained as a result of exposure to injurious work factors that occurs on or after September 7, 1974, a notice of occupational disease must be filed within three years of the onset of the condition. (The form contains the necessary words of claim.) The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of latent disability, the time for filing claim does not begin to run until the employee has a compensable disability and is aware, or reasonably should have been aware, of the causal relationship between the disability and the employment (see 5 U.S.C. 8122(b)).

**§ 10.102 How and when is a claim for wage loss compensation filed?**

(a) Form CA–7 is used to claim compensation for periods of disability not covered by COP.

(1) An employee who is disabled with loss of pay for more than three calendar days due to an injury, or someone acting on his or her behalf, must file Form CA–7 before compensation can be paid.

(2) The employee shall complete the front of Form CA–7 and submit the form to the employer for completion and transmission to OWCP. The form should be completed as soon as possible, but no more than 14 calendar days after the date pay stops due to the injury or disease. All such notices should be submitted electronically wherever feasible to facilitate processing of such claims. All employers that currently do not have such capability should create such a method by December 31, 2012.

(3) The requirements for filing claims are further described in 5 U.S.C. 8121.

(b) Form CA–7 is also used to claim compensation for additional periods of disability following the initial injury.

(1) It is the employee's responsibility to submit Form CA–7. Without receipt of such claim, OWCP has no knowledge of continuing wage loss. Therefore, while disability continues, the employee should submit a claim on Form CA–7 each two weeks until otherwise instructed by OWCP.

(2) The employee shall complete the front of Form CA–7 and submit the form to the employer for completion and transmission to OWCP.

(3) The employee is responsible for submitting, or arranging for the submittal of, medical evidence to OWCP which establishes both that disability continues and that the disability is due to the work-related injury. Form CA–20a is submitted with Form CA–7 for this purpose.

**§ 10.103 How and when is a claim for permanent impairment filed?**

Form CA–7 is used to claim compensation for impairment to a body part covered under the schedule established by 5 U.S.C. 8107. All such notices should be submitted electronically wherever feasible to facilitate processing of such claims. All employers that currently do not have such capability should create such a method by December 31, 2012. If Form CA–7 has already been filed to claim disability compensation, an employee may file a claim for such impairment by sending a letter to OWCP which specifies the nature of the benefit claimed. OWCP may create a form specifically for schedule award claims; if that form is created, only that form may be used to file a claim under 5 U.S.C. 8107.

**§ 10.104 How and when is a claim for recurrence filed?**

(a) A recurrence should be reported on Form CA–2a if that recurrence causes the employee to lose time from work and incur a wage loss, or if the employee experiences a renewed need for treatment after previously being released from care. However, a notice of recurrence should not be filed when a new injury, new occupational disease, or new event contributing to an already-existing occupational disease has occurred. In these instances, the employee should file Form CA–1 or CA–2.

(b) The employee has the burden of establishing by the weight of reliable, probative and substantial evidence that the recurrence of disability is causally related to the original injury.

(1) The employee must include a detailed factual statement as described on Form CA–2a. The employer may submit comments concerning the employee's statement.

(2) The employee should arrange for the submittal of a detailed medical report from the attending physician as described on Form CA–2a. The employee should also submit, or arrange for the submittal of, similar medical reports for any examination and/or treatment received after returning to work following the original injury.

(c) A claim for recurrence of disability is not available where OWCP has issued a loss of wage-earning capacity determination. Under that circumstance, the only method for claiming additional wage loss compensation is through a request to modify that determination. However, OWCP is not precluded from adjudicating a limited period of disability following the issuance of a loss of wage-earning capacity decision, such as where an employee has a demonstrated need for surgery.

**§ 10.105 How and when is a notice of death and claim for benefits filed?**

(a) If an employee dies from a work-related traumatic injury or an occupational disease, any survivor may file a claim for death benefits using Form CA–5 or CA–5b, which may be obtained from the employer or from the Internet at *www.dol.gov* under forms. The survivor must provide this notice in writing and forward it to the employer. Another person, including the employer, may do so on the survivor's behalf. The survivor may also submit the completed Form CA–5 or CA–5b directly to OWCP. The survivor shall disclose the SSNs of all survivors on whose behalf claim for benefits is made in addition to the SSN of the deceased employee. All such notices should be submitted electronically wherever feasible to facilitate processing of such claims. All employers that currently do not have such capability should create such a method by December 31, 2012. The survivor may withdraw his or her claim (but not the notice of death) by so requesting in writing to OWCP at any time before OWCP determines eligibility for benefits.

(b) For deaths that occur on or after September 7, 1974, a notice of death must be filed within three years of the

death. The form contains the necessary words of claim. The requirements for timely filing are described in § 10.100(b)(1) through (3).

(c) However, in cases of death due to latent disability, the time for filing the claim does not begin to run until the survivor is aware, or reasonably should have been aware, of the causal relationship between the death and the employment (see 5 U.S.C. 8122(b)).

(d) The filing of a notice of injury or occupational disease will satisfy the time requirements for a death claim based on the same injury or occupational disease. If an injured employee or someone acting on the employee's behalf does not file a claim before the employee's death, the right to claim compensation for disability other than medical expenses ceases and does not survive.

(e) A survivor must be alive to receive any payment; there is no vested right to such payment. A report as described in § 10.414 of this part must be filed once each year to support continuing payments of compensation.

## Notices and Claims for Injury, Disease, and Death—Employer's Actions

### § 10.110 What should the employer do when an employee files a notice of traumatic injury or occupational disease?

(a) The employer shall complete the agency portion of Form CA–1 (for traumatic injury) or CA–2 (for occupational disease) no more than 10 working days after receipt of notice from the employee. The employer shall also complete the Receipt of Notice and give it to the employee, along with copies of both sides of Form CA–1 or Form CA–2.

(b) The employer must complete and transmit the form to OWCP within 10 working days after receipt of notice from the employee if the injury or disease will likely result in:

(1) A medical charge against OWCP;

(2) Disability for work beyond the day or shift of injury;

(3) The need for more than two appointments for medical examination and/or treatment on separate days, leading to time loss from work;

(4) Future disability;

(5) Permanent impairment; or

(6) Continuation of pay pursuant to 5 U.S.C. 8118.

(c) The employer should not wait for submittal of supporting evidence before sending the form to OWCP.

(d) If none of the conditions in paragraph (b) of this section applies, the Form CA–1 or CA–2 shall be retained as a permanent record in the Employee Medical Folder in accordance with the guidelines established by the Office of Personnel Management.

### § 10.111 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?

(a) Except for employees covered by paragraph (d) of this section, when an employee is disabled by a work-related injury and loses pay for more than three calendar days, or has a permanent impairment or serious disfigurement as described in 5 U.S.C. 8107, the employer shall furnish the employee with Form CA–7 for the purpose of claiming compensation.

(b) If the employee is receiving continuation of pay (COP), the employer should give Form CA–7 to the employee by the 30th day of the COP period and submit the form to OWCP by the 40th day of the COP period. If the employee has not returned the form to the employer by the 40th day of the COP period, the employer should ask him or her to submit it as soon as possible.

(c) Upon receipt of Form CA–7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–7 and any accompanying medical report to OWCP.

(d) Postal Service employees are not entitled to compensation or continuation of pay for the waiting period, the first three days of disability. Such employees may use annual leave, sick leave or leave without pay during that period; however, if the disability exceeds 14 days, the employee may have their sick leave or annual leave reinstated or receive pay for the time spent on leave without pay. This waiting period does not apply to the provision of medical care, and days of time loss for medical treatment only with no work-related disability do not count as part of the waiting period. A Postal Service employee seeking wage loss compensation for this period should utilize Form CA–7 to claim such benefits.

### § 10.112 What should the employer do when an employee files a claim for continuing compensation due to disability?

(a) If the employee continues in a leave-without-pay status due to a work-related injury after the period of compensation initially claimed on Form CA–7, the employer shall furnish the employee with another Form CA–7 for the purpose of claiming continuing compensation.

(b) Upon receipt of Form CA–7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA–7 and any accompanying medical report to OWCP.

### § 10.113 What should the employer do when an employee dies from a work-related injury or disease?

(a) The employer shall immediately report a death due to a work-related traumatic injury or occupational disease to OWCP by telephone, telegram, or facsimile (fax). No more than 10 working days after notification of the death, the employer shall complete and send Form CA–6 to OWCP.

(b) When possible, the employer shall furnish a Form CA–5 or CA–5b to all persons likely to be entitled to compensation for death of an employee. The employer should also supply information about completing and filing the form.

(c) The employer shall promptly transmit Form CA–5 or CA–5b to OWCP. The employer shall also promptly transmit to OWCP any other claim or paper submitted which appears to claim compensation on account of death.

## Evidence and Burden of Proof

### § 10.115 What evidence is needed to establish a claim?

Forms CA–1, CA–2, CA–5 and CA–5b describe the basic evidence required. OWCP may send a request for additional evidence to the claimant and to his or her representative, if any; however the burden of proof still remains with the claimant. Evidence should be submitted in writing. The evidence submitted must be reliable, probative and substantial. Each claim for compensation must meet five requirements before OWCP can accept it. These requirements, which the employee must establish to meet his or her burden of proof, are as follows:

(a) The claim was filed within the time limits specified by the FECA;

(b) The injured person was, at the time of injury, an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part;

(c) The fact that an injury, disease or death occurred;

(d) The injury, disease or death occurred while the employee was in the performance of duty; and

(e) The medical condition for which compensation or medical benefits is claimed is causally related to the

claimed injury, disease or death. Neither the fact that the condition manifests itself during a period of Federal employment, nor the belief of the claimant that factors of employment caused or aggravated the condition, is sufficient in itself to establish causal relationship.

(f) In all claims, the claimant is responsible for submitting, or arranging for submittal of, a medical report from the attending physician. For wage loss benefits, the claimant must also submit medical evidence showing that the condition claimed is disabling. The rules for submitting medical reports are found in §§ 10.330 through 10.333.

**§ 10.116 What additional evidence is needed in cases based on occupational disease?**

(a) The employee must submit the specific detailed information described on Form CA–2 and should submit any checklist (Form CA–35, A–H) provided by the employer. OWCP has developed these checklists to address particular occupational diseases. The medical report should also include the information specified on the checklist for the particular disease claimed.

(b) The employer should submit the specific detailed information described on Form CA–2 and on any checklist pertaining to the claimed disease.

**§ 10.117 What happens if, in any claim, the employer contests any of the facts as stated by the claimant?**

(a) An employer who has reason to disagree with any aspect of the claimant's report shall submit a statement to OWCP that specifically describes the factual allegation or argument with which it disagrees and provide evidence or argument to support its position. The employer may include supporting documents such as witness statements, medical reports or records, or any other relevant information.

(b) Any such statement shall be submitted to OWCP with the notice of traumatic injury or death, or within 30 calendar days from the date notice of occupational disease or death is received from the claimant. If the employer does not submit a written explanation to support the disagreement, OWCP may accept the claimant's report of injury as established. The employer may not use a disagreement with an aspect of the claimant's report to delay forwarding the claim to OWCP or to compel or induce the claimant to change or withdraw the claim.

**§ 10.118 Does the employer participate in the claims process in any other way?**

(a) The employer is responsible for submitting to OWCP all relevant and probative factual and medical evidence in its possession, or which it may acquire through investigation or other means. Such evidence may be submitted at any time.

(b) The employer may ascertain the events surrounding an injury and the extent of disability where it appears that an employee who alleges total disability may be performing other work, or may be engaging in activities which would indicate less than total disability. This authority is in addition to that given in § 10.118(a). However, the provisions of the Privacy Act apply to any endeavor by the employer to ascertain the facts of the case (see §§ 10.10 and 10.11).

(c) The employer does not have the right, except as provided in subpart C of this part, to actively participate in the claims adjudication process.

**§ 10.119 What action will OWCP take with respect to information submitted by the employer?**

OWCP will consider all evidence submitted appropriately, and OWCP will inform the employee, the employee's representative, if any, and the employer of any action taken. Where an employer contests a claim within 30 days of the initial submittal and the claim is later approved, OWCP will notify the employer of the rationale for approving the claim.

**§ 10.120 May a claimant submit additional evidence?**

A claimant or a person acting on his or her behalf may submit to OWCP at any time any other evidence relevant to the claim.

**§ 10.121 What happens if OWCP needs more evidence from the claimant?**

If the claimant submits factual evidence, medical evidence, or both, but OWCP determines that this evidence is not sufficient to meet the burden of proof, OWCP will inform the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the evidence required. OWCP is not required to notify the claimant a second time if the evidence submitted in response to its first request is not sufficient to meet the burden of proof.

## Decisions on Entitlement to Benefits

**§ 10.125 How does OWCP determine entitlement to benefits?**

(a) In reaching any decision with respect to FECA coverage or entitlement, OWCP considers the claim presented by the claimant, the report by the employer, and the results of such investigation as OWCP may deem necessary.

(b) OWCP claims staff apply the law, the regulations, and its procedures to the facts as reported or obtained upon investigation. They also apply decisions of the Employees' Compensation Appeals Board and administrative decisions of OWCP as set forth in FECA Program Memoranda.

**§ 10.126 What does the decision contain?**

The decision shall contain findings of fact and a statement of reasons. It is accompanied by information about the claimant's appeal rights, which may include the right to a hearing, a reconsideration, and/or a review by the Employees' Compensation Appeals Board. (See subpart G of this part.)

**§ 10.127 To whom is the decision sent?**

A copy of the decision shall be mailed to the employee's last known address. If the employee has a designated representative before OWCP, a copy of the decision will also be mailed to the representative. A copy of the decision will also be sent to the employer.

## Subpart C—Continuation of Pay

**§ 10.200 What is continuation of pay?**

(a) For most employees who sustain a traumatic injury, the FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability, up to a maximum of 45 calendar days. This is called continuation of pay, or COP. The employer, not OWCP, pays COP. Unlike wage loss benefits, COP is subject to taxes and all other payroll deductions that are made from regular income.

(b) The employer must continue the pay of an employee, except for Postal Service employees pursuant to 5 U.S.C. 8117 and as provided below in paragraph (c) of this section, who is eligible for COP, and may not require the employee to use his or her own sick or annual leave, unless the provisions of §§ 10.200(c), 10.220, or 10.222 apply. However, while continuing the employee's pay, the employer may controvert the employee's COP entitlement pending a final determination by OWCP. OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP.

(c) Postal Service employees are not entitled to continuation of pay for the first 3 days of temporary disability and may use annual, sick or leave without pay during that period, except that if the disability exceeds 14 days or is followed by permanent disability, the Postal

Service employee may have that leave restored.

(d) The FECA excludes certain persons from eligibility for COP. COP cannot be authorized for members of these excluded groups, which include but are not limited to: persons rendering personal service to the United States similar to the service of a civil officer or employee of the United States, without pay or for nominal pay; volunteers (for instance, in the Civil Air Patrol and Peace Corps); Job Corps and Youth Conservation Corps enrollees; individuals in work- study programs, and grand or petit jurors (unless otherwise Federal employees).

## Eligibility for COP

### § 10.205 What conditions must be met to receive COP?

(a) To be eligible for COP, a person must:

(1) Have a ''traumatic injury'' as defined at § 10.5(ee) which is job-related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment;

(2) File Form CA–1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and

(3) Begin losing time from work due to the traumatic injury within 45 days of the injury.

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see § 10.220).

### § 10.206 May an employee who uses leave after an injury later decide to use COP instead?

On Form CA–1, an employee may elect to use accumulated sick or annual leave, or leave advanced by the agency, instead of electing COP. The employee can change the election between leave and COP for prospective periods at any point while eligibility for COP remains. The employee may also change the election for past periods and request COP in lieu of leave already taken for the same period. In either situation, the following provisions apply:

(a) The request must be made to the employer within one year of the date the leave was used or the date of the written approval of the claim by OWCP (if written approval is issued), whichever is later.

(b) Where the employee is otherwise eligible, the agency shall restore leave taken in lieu of any of the 45 COP days. Where any of the 45 COP days remain unused, the agency shall continue pay prospectively.

(c) The use of leave may not be used to delay or extend the 45-day COP period or to otherwise affect the time limitation as provided by 5 U.S.C. 8117. Therefore, any leave used during the period of eligibility counts towards the 45-day maximum entitlement to COP.

### § 10.207 May an employee who returns to work, then stops work again due to the effects of the injury, receive COP?

If the employee recovers from disability and returns to work, then becomes disabled again and stops work, the employer shall pay any of the 45 days of entitlement to COP not used during the initial period of disability where:

(a) The employee completes Form CA–2a and elects to receive regular pay;

(b) OWCP did not deny the original claim for disability;

(c) The disability recurs and the employee stops work within 45 days of the time the employee first returned to work following the initial period of disability; and

(d) Pay has not been continued for the entire 45 days.

## Responsibilities

### § 10.210 What are the employee's responsibilities in COP cases?

An employee who sustains a traumatic injury which he or she considers disabling, or someone authorized to act on his or her behalf, must take the following actions to ensure continuing eligibility for COP. The employee must:

(a) Complete and submit Form CA–1 to the employing agency as soon as possible, but no later than 30 days from the date the traumatic injury occurred.

(b) Ensure that medical evidence supporting disability resulting from the claimed traumatic injury, including a statement as to when the employee can return to his or her date of injury job, is provided to the employer within 10 calendar days after filing the claim for COP.

(c) Ensure that relevant medical evidence is submitted to OWCP, and cooperate with OWCP in developing the claim.

(d) Ensure that the treating physician specifies work limitations and provides them to the employer and/or representatives of OWCP.

(e) Provide to the treating physician a description of any specific alternative positions offered the employee, and ensure that the treating physician responds promptly to the employer and/or OWCP, with an opinion as to whether and how soon the employee could perform that or any other specific position.

### § 10.211 What are the employer's responsibilities in COP cases?

Once the employer learns of a traumatic injury sustained by an employee, it shall:

(a) Provide a Form CA–1 and Form CA–16 to authorize medical care in accordance with § 10.300. Failure to do so may mean that OWCP will not uphold any termination of COP by the employer.

(b) Advise the employee of the right to receive COP, and the need to elect among COP, annual or sick leave or leave without pay, for any period of disability.

(c) Inform the employee of any decision to controvert COP and/or terminate pay, and the basis for doing so.

(d) Complete Form CA–1 and transmit it, along with all other available pertinent information, (including the basis for any controversion), to OWCP within 10 working days after receiving the completed form from the employee.

## Calculation of COP

### § 10.215 How does OWCP compute the number of days of COP used?

COP is payable for a maximum of 45 calendar days, and every day used is counted toward this maximum. The following rules apply:

(a) Time lost on the day or shift of the injury does not count toward COP. (Instead, the agency must keep the employee in a pay status for that period);

(b) The first COP day is the first day disability begins following the date of injury (providing it is within the 45 days following the date of injury), except where the injury occurs before the beginning of the work day or shift, in which case the date of injury is charged to COP;

(c) Any part of a day or shift (except for the day of the injury) counts as a full day toward the 45 calendar day total;

(d) Regular days off are included if COP has been used on the regular work days immediately preceding or following the regular day(s) off, and medical evidence supports disability; and

(e) Leave used during a period when COP is otherwise payable is counted toward the 45-day COP maximum as if the employee had been in a COP status.

(f) For employees with part-time or intermittent schedules, all calendar days on which medical evidence indicates disability are counted as COP days, regardless of whether the employee was or would have been scheduled to work on those days. The rate at which COP is paid for these employees is calculated according to § 10.216(b).

**§ 10.216 How is the pay rate for COP calculated?**

The employer shall calculate COP using the period of time and the weekly pay rate.

(a) The pay rate for COP purposes is equal to the employee's regular ''weekly'' pay (the average of the weekly pay over the preceding 52 weeks).

(1) The pay rate excludes overtime pay, but includes other applicable extra pay except to the extent prohibited by law.

(2) Changes in pay or salary (for example, promotion, demotion, within-grade increases, termination of a temporary detail, *etc.*) which would have otherwise occurred during the 45-day period are to be reflected in the weekly pay determination.

(b) The weekly pay for COP purposes is determined according to the following formulas:

(1) For full or part-time workers (permanent or temporary) who work the same number of hours each week of the year (or of the appointment), the weekly pay rate is the hourly pay rate (A) in effect on the date of injury multiplied by (×) the number of hours worked each week (B): A × B = Weekly Pay Rate.

(2) For part-time workers (permanent or temporary) who do not work the same number of hours each week, but who do work each week of the year (or period of appointment), the weekly pay rate is an average of the weekly earnings, established by dividing (÷) the total earnings (excluding overtime) from the year immediately preceding the injury (A) by the number of weeks (or partial weeks) worked in that year (B): A ÷ B = Weekly Pay Rate.

(3) For intermittent and seasonal workers, whether permanent or temporary, who do not work either the same number of hours or every week of the year (or period of appointment), the weekly pay rate is the average weekly earnings established by dividing (÷) the total earnings during the full 12-month period immediately preceding the date of injury (excluding overtime) (A), by the number of weeks (or partial weeks) worked during that year (B) (that is, A ÷ B); or 150 times the average daily wage earned in the employment during the days employed within the full year immediately preceding the date of injury divided by 52 weeks, whichever is greater.

**§ 10.217 Is COP charged if the employee continues to work, but in a different job that pays less?**

If the employee cannot perform the duties of his or her regular position, but instead works in another job with different duties with no loss in pay, then COP is not chargeable. COP must be paid and the days counted against the 45 days authorized by law whenever an actual reduction of pay results from the injury, including a reduction of pay for the employee's normal administrative workweek that results from a change or diminution in his or her duties following an injury. However, this does not include a reduction of pay that is due solely to an employer being prohibited by law from paying extra pay to an employee for work he or she does not actually perform.

## Controversion and Termination of COP

**§ 10.220 When is an employer not required to pay COP?**

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:

(a) The disability was not caused by a traumatic injury;

(b) The employee is not a citizen of the United States or Canada;

(c) No written claim was filed within 30 days from the date of injury;

(d) The injury was not reported until after employment has been terminated;

(e) The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;

(f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or

(g) Work did not stop until more than 45 days following the injury.

**§ 10.221 How is a claim for COP controverted?**

When the employer stops an employee's pay for one of the reasons cited in § 10.220, the employer must controvert the claim for COP on Form CA–1, explaining in detail the basis for the refusal. The final determination on entitlement to COP always rests with OWCP.

**§ 10.222 When may an employer terminate COP which has already begun?**

(a) Where the employer has continued the pay of the employee, it may be stopped only when at least one of the following circumstances is present:

(1) Medical evidence which on its face supports disability due to a work-related injury is not received within 10 calendar days after the claim is submitted (unless the employer's own investigation shows disability to exist). Where the medical evidence is later provided, however, COP shall be reinstated retroactive to the date of termination;

(2) The medical evidence from the treating physician shows that the employee is not disabled from his or her regular position;

(3) Medical evidence from the treating physician shows that the employee is not totally disabled, and the employee refuses a written offer of a suitable alternative position which is approved by the attending physician. If OWCP later determines that the position was not suitable, OWCP will direct the employer to grant the employee COP retroactive to the termination date.

(4) The employee returns to work with no loss of pay;

(5) The employee's period of employment expires or employment is otherwise terminated (as established prior to the date of injury);

(6) OWCP directs the employer to stop COP; and/or

(7) COP has been paid for 45 calendar days.

(b) An employer may not interrupt or stop COP to which the employee is otherwise entitled because of a disciplinary action, unless a preliminary notice was issued to the employee before the date of injury and the action becomes final or otherwise takes effect during the COP period.

(c) An employer cannot otherwise stop COP unless it does so for one of the reasons found in this section or § 10.220. Where an employer stops COP, it must file a controversion with OWCP, setting forth the basis on which it terminated COP, no later than the effective date of the termination.

**§ 10.223 Are there other circumstances under which OWCP will not authorize payment of COP?**

When OWCP finds that an employee or his or her representative refuses or obstructs a medical examination required by OWCP, the right to COP is suspended until the refusal or obstruction ceases. COP already paid or payable for the period of suspension is forfeited. If already paid, the COP may be charged to annual or sick leave or considered an overpayment of pay consistent with 5 U.S.C. 5584.

**§ 10.224 What happens if OWCP finds that the employee is not entitled to COP after it has been paid?**

Where OWCP finds that the employee is not entitled to COP after it has been paid, the employee may chose to have the time charged to annual or sick leave, or considered an overpayment of pay under 5 U.S.C. 5584. The employer must correct any deficiencies in COP as directed by OWCP.

## Subpart D—Medical and Related Benefits

### Emergency Medical Care

#### § 10.300 What are the basic rules for authorizing emergency medical care?

(a) When an employee sustains a work-related traumatic injury that requires medical examination, medical treatment, or both, the employer shall authorize such examination and/or treatment by issuing a Form CA–16. This form may be used for occupational disease or illness only if the employer has obtained prior permission from OWCP.

(b) The employer shall issue Form CA–16 within four hours of the claimed injury. If the employer gives verbal authorization for such care, he or she should issue a Form CA–16 within 48 hours. The employer is not required to issue a Form CA–16 more than one week after the occurrence of the claimed injury. The employer may not authorize examination or medical or other treatment in any case that OWCP has disallowed.

(c) Form CA–16 must contain the full name and address of the qualified physician or qualified medical facility authorized to provide service. The authorizing official must sign and date the form and must state his or her title. Form CA–16 authorizes treatment for 60 days from the date of injury, unless OWCP terminates the authorization sooner.

(d) The employer should advise the employee of the right to his or her initial choice of physician. The employer shall allow the employee to select a qualified physician, after advising him or her of those physicians excluded under subpart I of this part. The physician may be in private practice, including a health maintenance organization (HMO), or employed by a Federal agency such as the Department of the Army, Navy, Air Force, or Veterans Affairs. Any qualified physician may provide initial treatment of a work-related injury in an emergency. See also § 10.825(b).

#### § 10.301 May the physician designated on Form CA–16 refer the employee to another medical specialist or medical facility?

The physician designated on Form CA–16 may refer the employee for further examination, testing, or medical care. OWCP will pay this physician or facility's bill on the authority of Form CA–16. The employer should not issue a second Form CA–16.

#### § 10.302 Should the employer authorize medical care if he or she doubts that the injury occurred, or that it is work-related?

If the employer doubts that the injury occurred, or that it is work-related, he or she should authorize medical care by completing Form CA–16 and checking block 6B of the form. If the medical and factual evidence sent to OWCP shows that the condition treated is not work-related, OWCP will notify the employee, the employer, and the physician or hospital that OWCP will not authorize payment for any further treatment.

#### § 10.303 Should the employer use a Form CA–16 to authorize medical testing when an employee is exposed to a workplace hazard just once?

(a) Simple exposure to a workplace hazard, such as an infectious agent, does not constitute a work-related injury entitling an employee to medical treatment under the FECA. The employer therefore should not use a Form CA–16 to authorize medical testing for an employee who has merely been exposed to a workplace hazard, unless the employee has sustained an identifiable injury or medical condition as a result of that exposure. OWCP will authorize preventive treatment only under certain well-defined circumstances (see § 10.313).

(b) Employers may be required under other statutes or regulations to provide their employees with medical testing and/or other services in situations described in paragraph (a) of this section. For example, regulations issued by the Occupational Safety and Health Administration at 29 CFR chapter XVII require employers to provide their employees with medical consultations and/or examinations when they either exhibit symptoms consistent with exposure to a workplace hazard, or when an identifiable event such as a spill, leak or explosion occurs and results in the likelihood of exposure to a workplace hazard. In addition, 5 U.S.C. 7901 authorizes employers to establish health programs whose staff can perform tests for workplace hazards, counsel employees for exposure or feared exposure to such hazards, and provide health care screening and other associated services.

#### § 10.304 Are there any exceptions to these procedures for obtaining medical care?

In cases involving emergencies or unusual circumstances, OWCP may authorize treatment in a manner other than as stated in this subpart.

### Medical Treatment and Related Issues

#### § 10.310 What are the basic rules for obtaining medical care?

(a) The employee is entitled to receive all medical services, appliances or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury. Billing for these services is described in subpart I of this part. The employee need not be disabled to receive such treatment. If there is any doubt as to whether a specific service, appliance or supply is necessary to treat the work-related injury, the employee should consult OWCP prior to obtaining it through the automated authorization process described in § 10.800. OWCP may also utilize the services of a field nurse to facilitate and coordinate medical care for the employee. OWCP may contract with a specific provider or providers to supply such services or appliances, including durable medical equipment and prescribed medications.

(b) Any qualified physician or qualified hospital may provide such services, appliances and supplies. Non-physician providers such as physicians' assistants, nurse practitioners and physical therapists may also provide authorized services for injured employees to the extent allowed by applicable Federal and State law.

(c) Where OWCP has not contracted for the provision of appliances or supplies, only a supplier of durable medical equipment that is registered in Medicare's Durable Medical Equipment, Prosthetics, Orthotics and Supplies Accreditation process may furnish such appliances and supplies. OWCP may apply a test of cost-effectiveness to appliances and supplies, may offset the cost of prior rental payments against a future purchase price, and may provide refurbished appliances where appropriate.

#### § 10.311 What are the special rules for the services of chiropractors?

(a) The services of chiropractors that may be reimbursed are limited by the FECA to treatment to correct a spinal subluxation. The costs of physical and related laboratory tests performed by or required by a chiropractor to diagnose such a subluxation are also payable.

(b) In accordance with 5 U.S.C. 8101(3), a diagnosis of spinal ''subluxation as demonstrated by X-ray to exist'' must appear in the chiropractor's report before OWCP can consider payment of a chiropractor's bill.

(c) A chiropractor may interpret his or her x-rays to the same extent as any other physician. To be given any weight,

the medical report must state that x-rays support the finding of spinal subluxation. OWCP will not necessarily require submittal of the x-ray, or a report of the x-ray, but the report must be available for submittal on request.

(d) A chiropractor may also provide services in the nature of physical therapy under the direction of, and as prescribed by, a qualified physician.

**§ 10.312 What are the special rules for the services of clinical psychologists?**

A clinical psychologist may serve as a physician only within the scope of his or her practice as defined by State law. Therefore, a clinical psychologist may not serve as a physician for conditions that include a physical component unless the applicable State law allows clinical psychologists to treat physical conditions. A clinical psychologist may also perform testing, evaluation and other services under the direction of a qualified physician.

**§ 10.313 Will OWCP pay for preventive treatment?**

The FECA does not authorize payment for preventive measures such as vaccines and inoculations, and in general, preventive treatment may be a responsibility of the employing agency under the provisions of 5 U.S.C. 7901 (see § 10.303). However, OWCP can authorize treatment for the following conditions, even though such treatment is designed, in part, to prevent further injury:

(a) Complications of preventive measures which are provided or sponsored by the agency, such as an adverse reaction to prophylactic immunization.

(b) Actual or probable exposure to a known contaminant due to an injury, thereby requiring disease-specific measures against infection. Examples include the provision of tetanus antitoxin or booster toxoid injections for puncture wounds; administration of rabies vaccine for a bite from a rabid or potentially rabid animal; or appropriate measures where exposure to human immunodeficiency virus (HIV) has occurred.

(c) Conversion of tuberculin reaction from negative to positive following exposure to tuberculosis in the performance of duty. In this situation, the appropriate therapy may be authorized.

(d) Where injury to one eye has resulted in loss of vision, periodic examination of the uninjured eye to detect possible sympathetic involvement of the uninjured eye at an early stage.

**§ 10.314 Will OWCP pay for the services of an attendant?**

Yes, OWCP will pay for the services of an attendant where the need for such services has been medically documented. In the exercise of the discretion afforded by 5 U.S.C. 8111(a), the Director has determined that, except where attendant service payments were being made prior to January 4, 1999, direct payments to the claimant to cover such services will no longer be made. Rather, the cost of providing attendant services will be paid under section 8103 of the Act, and medical bills for these services will be considered under § 10.801, so long as the personal care services have been determined to be medically necessary and are provided by a home health aide, licensed practical nurse, or similarly trained individual, subject to requirements specified by OWCP. By paying for the services under section 8103, OWCP can better determine whether the services provided are necessary, and what type of provider is most qualified to provide adequate care to meet the needs of the injured employee. In addition, a system requiring the personal care provider to submit a bill to OWCP, where the amount billed will be subject to OWCP's fee schedule, will result in greater fiscal accountability.

**§ 10.315 Will OWCP pay for transportation to obtain medical treatment?**

(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what is a reasonable distance to travel, OWCP will consider the availability of services, the employee's condition, and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel. Travel should be undertaken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.

(b) For non-emergency medical treatment, if roundtrip travel of more than 100 miles is contemplated, or air transportation or overnight accommodations will be needed, the employee must submit a written request to OWCP for prior authorization with information describing the circumstances and necessity for such travel expenses. OWCP will approve the request if it determines that the travel expenses are reasonable and necessary, and are incident to obtaining authorized medical services, appliances or supplies. Requests for travel expenses that are often approved include those resulting from referrals to a specialist for further medical treatment, and those involving air transportation of an employee who lives in a remote geographical area with limited local medical services.

(c) If a claimant disagrees with the decision of OWCP that requested travel expenses are either not reasonable or necessary, or are not incident to obtaining authorized medical services or supplies, he or she may utilize the appeals process described in subpart G of this part.

(d) The standard form designated for medical travel refund requests is Form OWCP–957 and must be used to seek reimbursement under this section. This form can be obtained from OWCP.

**§ 10.316 After selecting a treating physician, may an employee choose to be treated by another physician instead?**

(a) When the physician originally selected to provide treatment for a work-related injury refers the employee to a specialist for further medical care, the employee need not consult OWCP for approval. In all other instances, however, the employee must submit a written request to OWCP with his or her reasons for desiring a change of physician.

(b) OWCP will approve the request if it determines that the reasons submitted are sufficient. Requests that are often approved include those for transfer of care from a general practitioner to a physician who specializes in treating conditions like the work-related one, or the need for a new physician when an employee has moved. The employer may not authorize a change of physicians.

## Directed Medical Examinations

**§ 10.320 Can OWCP require an employee to be examined by another physician?**

OWCP sometimes needs a second opinion from a medical specialist. The employee must submit to examination by a qualified physician as often and at such times and places as OWCP considers reasonably necessary. The employee may have a qualified physician, paid by him or her, present at such examination. However, the employee is not entitled to have anyone else present at the examination unless there is rationalized medical evidence that establishes that someone else is needed in the room or OWCP decides that exceptional circumstances exist. Where an employee requires an accommodation, such as where a hearing-impaired employee needs an

interpreter, the presence of an interpreter will be allowed. Also, OWCP may send a case file for second opinion review where actual examination is not needed, or where the employee is deceased.

**§ 10.321 What happens if the opinion of the physician selected by OWCP differs from the opinion of the physician selected by the employee?**

(a) If one medical opinion holds more probative value, OWCP will base its determination of entitlement on that medical conclusion (see § 10.502). A difference in medical opinion sufficient to be considered a conflict occurs when two reports of virtually equal weight and rationale reach opposing conclusions (see *James P. Roberts,* 31 ECAB 1010 (1980)).

(b) If a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser or consultant, OWCP shall appoint a third physician to make an examination (see § 10.502). This is called a referee or impartial examination. OWCP will select a physician who is qualified in the appropriate specialty and who has had no prior connection with the case. The employee is not entitled to have anyone present at the examination unless OWCP decides that exceptional circumstances exist. For example, where a hearing-impaired employee needs an interpreter, the presence of an interpreter would be allowed. Also, a case file may be sent for referee or impartial medical review where there is no need for an actual examination, or where the employee is deceased.

**§ 10.322 Who pays for second opinion and referee examinations?**

OWCP will pay second opinion and referee medical specialists directly. OWCP will reimburse the employee all necessary and reasonable expenses incident to such an examination, including transportation costs and actual wages lost for the time needed to submit to an examination required by OWCP.

**§ 10.323 What are the penalties for failing to report for or obstructing a second opinion or referee examination?**

(a) If an employee refuses to submit to or in any way obstructs an examination required by OWCP, including testing such as functional capacity determinations conducted in connection with an OWCP-directed medical examination, his or her right to compensation under the FECA is suspended under 5 U.S.C. 8123(d) until such refusal or obstruction stops. The action of the employee's representative is considered to be the action of the employee for purposes of this section. The employee will forfeit compensation otherwise paid or payable under the FECA for the period of the refusal or obstruction, and any compensation already paid for that period will be declared an overpayment and will be subject to recovery pursuant to 5 U.S.C. 8129.

(b) If the employee does not report for an OWCP-directed examination or in any way obstructs this examination, he or she may provide an explanation to OWCP within 14 days. If this explanation does not establish good cause for the employee's actions, entitlement to compensation will be suspended in accordance with 5 U.S.C. 8123(d). Should the employee subsequently agree to attend the examination or cease the obstruction (as expressed in writing or by telephone documented on Form CA–110), OWCP will restore any periodic benefits to which the employee is entitled when the employee actually reports for and cooperates with the examination. Payment is retroactive to the date the employee agreed to attend or cease obstruction of the examination.

**§ 10.324 May an employer require an employee to undergo a physical examination in connection with a work-related injury?**

The employer may have authority independent of the FECA to require the employee to undergo a medical examination to determine whether he or she meets the medical requirements of the position held or can perform the duties of that position. Nothing in the FECA or in this part affects such authority. However, no agency-required examination or related activity shall interfere with the employee's initial choice of physician or the provision of any authorized examination or treatment, including the issuance of Form CA–16.

## Medical Reports

**§ 10.330 What are the requirements for medical reports?**

In all cases reported to OWCP, a medical report from the attending physician is required. This report should include:

(a) Dates of examination and treatment;

(b) History given by the employee;

(c) Physical findings;

(d) Results of diagnostic tests;

(e) Diagnosis;

(f) Course of treatment;

(g) A description of any other conditions found but not due to the claimed injury;

(h) The treatment given or recommended for the claimed injury;

(i) The physician's opinion, with medical reasons, as to causal relationship between the diagnosed condition(s) and the factors or conditions of the employment;

(j) The extent of disability affecting the employee's ability to work due to the injury;

(k) The prognosis for recovery; and

(l) All other material findings.

**§ 10.331 How and when should the medical report be submitted?**

(a) Form CA–16 may be used for the initial medical report; Form CA–20 may be used for the initial report and for subsequent reports; and Form CA–20a may be used where continued compensation is claimed. Use of medical report forms is not required, however. The report may also be made in narrative form on the physician's letterhead stationery. The report should bear the physician's signature or signature stamp. OWCP may require an original signature on the report.

(b) The report shall be submitted directly to OWCP as soon as possible after medical examination or treatment is received, either by the employee or the physician. (See also § 10.210.) The employer may request a copy of the report from OWCP. The employer should use Form CA–17 to obtain interim reports concerning the duty status of an employee with a disabling injury.

**§ 10.332 What additional medical information will OWCP require to support continuing payment of benefits?**

In all cases of serious injury or disease, especially those requiring hospital treatment or prolonged care, OWCP will request detailed narrative reports from the attending physician at periodic intervals. The physician will be asked to describe continuing medical treatment for the condition accepted by OWCP, a prognosis, a description of work limitations, if any, and the physician's opinion as to the continuing causal relationship between the employee's condition and factors of his or her Federal employment.

**§ 10.333 What additional medical information will OWCP require to support a claim for a schedule award?**

To support a claim for a schedule award, a medical report must contain accurate measurements of the function of the organ or member, in accordance with the American Medical Association's *Guides to the Evaluation*

*of Permanent Impairment* as described in § 10.404. These measurements may include: The actual degree of loss of active or passive motion or deformity; the amount of atrophy; the decrease, if any, in strength; the disturbance of sensation; pain due to nerve impairment; the diagnosis of the condition; and functional impairment ratings.

### Medical Bills

#### § 10.335 How are medical bills submitted?

Usually, medical providers submit bills directly to OWCP or to a bill processing agent designated by OWCP. The rules for submitting and paying bills are stated in subpart I of this part. An employee claiming reimbursement of medical expenses should submit an itemized bill as described in § 10.802.

#### § 10.336 What are the time frames for submitting bills?

To be considered for payment, bills must be submitted by the end of the calendar year after the year when the expense was incurred, or by the end of the calendar year after the year when OWCP first accepted the claim as compensable, whichever is later.

#### § 10.337 If an employee is only partially reimbursed for a medical expense, must the provider refund the balance of the amount paid to the employee?

(a) The OWCP fee schedule sets maximum limits on the amounts payable for many services (see § 10.805). The employee may be only partially reimbursed for medical expenses because the amount he or she paid to the medical provider for a service exceeds the maximum allowable charge set by the OWCP fee schedule.

(b) If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in §§ 10.812 and 10.813.

(c) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

## Subpart E—Compensation and Related Benefits

### Compensation for Disability and Impairment

#### § 10.400 What is total disability?

(a) Permanent total disability is presumed to result from the loss of use of both hands, both arms, both feet, or both legs, or the loss of sight of both eyes. 5 U.S.C. 8105(b). However, the presumption of permanent total disability as a result of such loss may be rebutted by evidence to the contrary, such as evidence of continued ability to work and to earn wages despite the loss.

(b) Temporary total disability is defined as the inability to return to the position held at the time of injury or earn equivalent wages, or to perform other gainful employment, due to the work-related injury. Except as presumed under paragraph (a) of this section, an employee's disability status is always considered temporary pending return to work.

#### § 10.401 When and how is compensation for total disability paid?

(a) Compensation is payable when an employee starts to lose pay if the injury causes permanent disability or if pay loss continues for more than 14 calendar days. Otherwise, compensation is payable on the fourth day after pay stops pursuant to 5 U.S.C. 8117(a). Compensation may not be paid while an injured employee is in a continuation of pay status or receives pay for leave or, for Postal Service employees, for the first three days of temporary disability as described in 5 U.S.C. 8117(b) and § 10.200(c), except for medical or vocational rehabilitation benefits.

(b) Compensation for total disability is payable at the rate of 66⅔ percent of the pay rate if the employee has no dependents, or 75 percent of the pay rate if the employee has at least one dependent. (''Dependents'' are defined at 5 U.S.C. 8110(a).)

#### § 10.402 What is partial disability?

An injured employee who cannot return to the position held at the time of injury (or earn equivalent wages) due to the work-related injury, but who is not totally disabled for all gainful employment, is considered to be partially disabled.

#### § 10.403 When and how is compensation for partial disability paid?

(a) 5 U.S.C. 8115 outlines how compensation for partial disability is determined. If the employee has actual earnings which fairly and reasonably represent his or her wage-earning capacity, those earnings will form the basis for payment of compensation for partial disability. (See §§ 10.500 through 10.521 concerning return to work.) If the employee's actual earnings do not fairly and reasonably represent his or her wage-earning capacity, or if the employee has no actual earnings, OWCP uses the factors stated in 5 U.S.C. 8115 to select a position which represents his or her wage-earning capacity, which include the nature of the injury, the degree of physical impairment, the usual employment, the age of the employee, the employee's qualifications for other employment and the availability of suitable employment. However, OWCP will not secure employment for the employee in the position selected for establishing a wage-earning capacity.

(b) Compensation for partial disability is payable as a percentage of the difference between the employee's pay rate for compensation purposes and the employee's wage-earning capacity. The percentage is 66⅔ percent of this difference if the employee has no dependents, or 75 percent of this difference if the employee has at least one dependent.

(c) The formula which OWCP uses to compute the compensation payable for partial disability employs the following terms: Pay rate for compensation purposes, which is defined in § 10.5(s) of this part; current pay rate, which means the salary or wages for the job held at the time of injury at the time of the determination; and earnings, which means the employee's actual earnings, or the salary or pay rate of the position selected by OWCP as representing the employee's wage-earning capacity.

(d) The employee's wage-earning capacity in terms of percentage is computed by dividing the employee's earnings by the current pay rate. The comparison of earnings and ''current'' pay rate for the job held at the time of injury need not be made as of the beginning of partial disability. OWCP may use any convenient date for making the comparison as long as both wage rates are in effect on the date used for comparison.

(e) The employee's wage-earning capacity in terms of dollars is computed by first multiplying the pay rate for compensation purposes by the percentage of wage-earning capacity. The resulting dollar amount is then subtracted from the pay rate for compensation purposes to obtain the employee's loss of wage-earning capacity.

**§ 10.404 When and how is compensation for a schedule impairment paid?**

Compensation is provided for specified periods of time for the permanent loss or loss of use of certain members, organs and functions of the body. Such loss or loss of use is known as permanent impairment. Compensation for proportionate periods of time is payable for partial loss or loss of use of each member, organ or function. 5 U.S.C. 8107(b)(19). OWCP evaluates the degree of impairment to schedule members, organs and functions as defined in 5 U.S.C. 8107 according to the standards set forth in the specified (by OWCP) edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment.*

(a) 5 U.S.C. 8107(c) provides compensation for loss to the following list of schedule members:

| Member | Weeks |
|---|---|
| Arm | 312 |
| Leg | 288 |
| Hand | 244 |
| Foot | 205 |
| Eye | 160 |
| Thumb | 75 |
| First Finger lost | 46 |
| Great toe | 38 |
| Second finger | 30 |
| Third finger | 25 |
| Toe other than great toe | 16 |
| Fourth finger | 15 |
| Hearing, one ear | 52 |
| Hearing, both ears | 200 |

(b) Pursuant to the authority provided by 5 U.S.C. 8107(c)(22), the Secretary has added the following organs to the compensation schedule for injuries that were sustained on or after September 7, 1974, except that a schedule award for the skin may be paid for injuries on or after September 11, 2001:

| Member | Weeks |
|---|---|
| Breast (one) | 52 |
| Kidney (one) | 156 |
| Larynx | 160 |
| Lung (one) | 156 |
| Penis | 205 |
| Testicle (one) | 52 |
| Tongue | 160 |
| Ovary (one) | 52 |
| Uterus/cervix and vulva/vagina | 205 |
| Skin | 205 |

(c) Compensation for schedule awards is payable at 66⅔ percent of the employee's pay, or 75 percent of the pay when the employee has at least one dependent.

(d) The period of compensation payable under 5 U.S.C. 8107(c) shall be reduced by the period of compensation paid or payable under the schedule for an earlier injury if:

(1) Compensation in both cases is for impairment of the same member or function or different parts of the same member or function, or for disfigurement; and

(2) OWCP finds that compensation payable for the later impairment in whole or in part would duplicate the compensation payable for the pre-existing impairment.

(e) Compensation not to exceed $3,500 may be paid for serious disfigurement of the face, head or neck which is likely to handicap a person in securing or maintaining employment. Under 5 U.S.C. 8107(21), a disfigurement award may be paid concurrently with schedule awards.

**§ 10.405 Who is considered a dependent in a claim based on disability or impairment?**

(a) Dependents include a wife or husband; an unmarried child under 18 years of age; an unmarried child over 18 who is incapable of self-support; a student, until he or she reaches 23 years of age or completes four years of school beyond the high school level; or a wholly dependent parent.

(b) Augmented compensation payable for an unmarried child, which would otherwise terminate when the child reached the age of 18, may be continued while the child is a student as defined in 5 U.S.C. 8101(17).

**§ 10.406 What are the maximum and minimum rates of compensation in disability cases?**

(a) Compensation for total or partial disability may not exceed 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule. (Basic monthly pay does not include locality adjustments.) However, this limit does not apply to disability sustained in the performance of duty which was due to an assault which occurred during an attempted assassination of a Federal official described under 18 U.S.C. 351(a) or 1751(a).

(b) Compensation for total disability may not be less than 75 percent of the basic monthly pay of the first step of grade 2 of the General Schedule or actual pay, whichever is less. (Basic monthly pay does not include locality adjustments.)

## Compensation for Death

**§ 10.410 Who is entitled to compensation in case of death, and what are the rates of compensation payable in death cases?**

(a) Pursuant to 5 U.S.C. 8133, benefits may be paid to eligible dependents of an employee whose death results from an injury sustained in the performance of duty. This benefit is separate and distinct from a death gratuity benefit under 5 U.S.C. 8102a and subpart J of this part.

(b) If there is no child entitled to compensation, the employee's surviving spouse will receive compensation equal to 50 percent of the employee's monthly pay until death or remarriage before reaching age 55. Upon remarriage, the surviving spouse will be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage. If remarriage occurs at age 55 or older, the lump-sum payment will not be paid and compensation will continue until death.

(c) If there is a child entitled to compensation, the compensation for the surviving spouse will equal 45 percent of the employee's monthly pay plus 15 percent for each child, but the total percentage may not exceed 75 percent.

(d) If there is a child entitled to compensation and no surviving spouse, compensation for one child will equal 40 percent of the employee's monthly pay. Fifteen percent will be awarded for each additional child, not to exceed 75 percent, the total amount to be shared equally among all children.

(e) If there is no child or surviving spouse entitled to compensation, the parents will receive compensation equal to 25 percent of the employee's monthly pay if one parent was wholly dependent on the employee at the time of death and the other was not dependent to any extent, or 20 percent each if both were wholly dependent on the employee, or a proportionate amount in the discretion of the Director if one or both were partially dependent on the employee. If there is a child or surviving spouse entitled to compensation, the parents will receive so much of the compensation described in the preceding sentence as, when added to the total percentages payable to the surviving spouse and children, will not exceed a total of 75 percent of the employee's monthly pay.

(f) If there is no child, surviving spouse or dependent parent entitled to compensation, the brothers, sisters, grandparents and grandchildren will receive compensation equal to 20 percent of the employee's monthly pay to such dependent if one was wholly dependent on the employee at the time of death; or 30 percent if more than one was wholly dependent, divided among such dependents equally; or 10 percent if no one was wholly dependent but one or more was partly dependent, divided

among such dependents equally. If there is a child, surviving spouse or dependent parent entitled to compensation, the brothers, sisters, grandparents and grandchildren will receive so much of the compensation described in the preceding sentence as, when added to the total percentages payable to the children, surviving spouse and dependent parents, will not exceed a total of 75 percent of the employee's monthly pay.

(g) A child, brother, sister or grandchild may be entitled to receive death benefits until death, marriage, or reaching age 18. Regarding entitlement after reaching age 18, refer to § 10.417.

**§ 10.411 What are the maximum and minimum rates of compensation in death cases?**

(a) Compensation for death may not exceed the employee's pay or 75 percent of the basic monthly pay of the highest step of grade 15 of the General Schedule, except that compensation may exceed the employee's basic monthly pay if such excess is created by authorized cost-of-living increases. (Basic monthly pay does not include locality adjustments.) However, the maximum limit does not apply when the death occurred during an assassination of a Federal official described under 18 U.S.C. 351(a) or 18 U.S.C. 1751(a).

(b) Compensation for death is computed on a minimum pay rate equal to the basic monthly pay of an employee at the first step of grade 2 of the General Schedule. (Basic monthly pay does not include locality adjustments.)

**§ 10.412 Will OWCP pay the costs of burial and transportation of the remains?**

In a case accepted for death benefits, OWCP will pay up to $800 for funeral and burial expenses. When an employee's home is within the United States and the employee dies outside the United States, or away from home or the official duty station, an additional amount may be paid for transporting the remains to the employee's home as set forth in 5 U.S.C. 8134. An additional amount of $200 is paid to the personal representative of the decedent for reimbursement of the costs of terminating the decedent's status as an employee of the United States in accordance with 5 U.S.C. 8133.

**§ 10.413 May a schedule award be paid after an employee's death?**

For a schedule award to be paid following the death of an employee, the employee must have filed a valid claim specifically for a schedule award prior to death; in addition, the employee must have died from a cause other than the injury before the end of the period specified in the schedule. The balance of the schedule award may be paid to an employee's survivors pursuant to the proportions and order of precedence described in 5 U.S.C. 8109.

**§ 10.414 What reports of dependents are needed in death cases?**

If a beneficiary is receiving compensation benefits on account of an employee's death, OWCP will ask him or her to complete a report once each year on Form CA–12. The report requires the beneficiary to note changes in marital status and dependents. If the beneficiary fails to submit the form (or an equivalent written statement) within 30 days of the date of request, OWCP shall suspend compensation until the requested form or equivalent written statement is received. The suspension will include compensation payable for or on behalf of another person (for example, compensation payable to a widow on behalf of a child). When the form or statement is received, compensation will be reinstated at the appropriate rate retroactive to the date of suspension, provided the beneficiary is entitled to such compensation.

**§ 10.415 What must a beneficiary do if the number of beneficiaries decreases?**

The circumstances under which compensation on account of death shall be terminated are described in 5 U.S.C. 8133(b). A beneficiary in a claim for death benefits should promptly notify OWCP of any event which would affect his or her entitlement to continued compensation. The terms ''marriage'' and ''remarriage'' include common-law marriage as recognized and defined by State law in the State where the beneficiary resides. If a beneficiary, or someone acting on his or her behalf, receives a check or electronic payment which includes payment of compensation for any period after the date when entitlement ended, he or she must promptly return such funds to OWCP.

**§ 10.416 How does a change in the number of beneficiaries affect the amount of compensation paid to the other beneficiaries?**

If compensation to a beneficiary is terminated, the amount of compensation payable to one or more of the remaining beneficiaries may be reapportioned. Similarly, the birth of a posthumous child may result in a reapportionment of the amount of compensation payable to other beneficiaries. The parent, or someone acting on the child's behalf, shall promptly notify OWCP of the birth and submit a copy of the birth certificate.

**§ 10.417 What reports are needed when compensation payments continue for children over age 18?**

(a) Compensation payable on behalf of a child, brother, sister, or grandchild, which would otherwise end when the person reaches 18 years of age, shall be continued if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least once each year, OWCP will ask a beneficiary receiving compensation based on the student status of a dependent to provide proof of continuing entitlement to such compensation, including certification of school enrollment. The beneficiary is required to report any changes to student status in the interim.

(c) Likewise, at least once each year unless otherwise provided in paragraph (d) of this section, OWCP will ask a beneficiary or legal guardian receiving compensation based on a dependent's physical or mental inability to support himself or herself to submit a medical report verifying that the dependent's medical condition persists and that it continues to preclude self-support. If there is a change in that condition, the beneficiary or legal guardian is required to immediately report that change to OWCP.

(d) In the case of a dependent incapable of self support due to that dependent's physical or mental disability where the status of that dependent is unlikely to change, a beneficiary or legal guardian may establish the permanency of that condition by submitting a well rationalized medical report which describes that condition and the ongoing prognosis of that condition. If the permanency of that condition is established by such a report, OWCP will not seek further information regarding that condition; however, if there is a change in that condition, the beneficiary or legal guardian is required to immediately report that change to OWCP.

## Adjustments to Compensation

**§ 10.420 How are cost-of-living adjustments applied?**

(a) In cases of disability, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146a where injury-related disability began more than one year prior to the date the cost-of-living adjustment took effect. The employee's use of continuation of pay as provided by 5 U.S.C. 8118, or of sick or annual leave, during any part of the period of disability does not affect the computation of the one-year period.

(b) Where an injury does not result in disability but compensation is payable for permanent impairment of a covered member, organ or function of the body, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146a where the award for such impairment began more than one year prior to the date the cost-of-living adjustment took effect.

(c) In cases of recurrence of disability, where the pay rate for compensation purposes is the pay rate at the time disability recurs, a beneficiary is eligible for cost-of-living adjustments under 5 U.S.C. 8146a where the effective date of that pay rate began more than one year prior to the date the cost-of-living adjustment took effect.

(d) In cases of death, entitlement to cost-of-living adjustments under 5 U.S.C. 8146a begins with the first such adjustment occurring more than one year after the date of death. However, if the death was preceded by a period of injury-related disability, compensation payable to the survivors will be increased by the same percentages as the cost-of-living adjustments paid or payable to the deceased employee for the period of disability, as well as by subsequent cost-of-living adjustments to which the survivors would otherwise be entitled.

**§ 10.421 May a beneficiary receive other kinds of payments from the Federal Government concurrently with compensation?**

(a) 5 U.S.C. 8116(a) provides that a beneficiary may not receive wage-loss compensation concurrently with a Federal retirement or survivor annuity. The beneficiary must elect the benefit that he or she wishes to receive, and the election, once made, is revocable.

(b) An employee may receive compensation concurrently with military retired pay, retirement pay, retainer pay or equivalent pay for service in the Armed Forces or other uniformed services.

(c) An employee may not receive compensation for total disability concurrently with severance pay or separation pay. However, an employee may concurrently receive compensation for partial disability or permanent impairment to a schedule member, organ or function with severance pay or separation pay.

(d) Pursuant to 5 U.S.C. 8116(d), a beneficiary may receive compensation under the FECA for either the death or disability of an employee concurrently with benefits under title II of the Social Security Act on account of the age or death of such employee. However, this provision of the FECA also requires OWCP to reduce the amount of any such compensation by the amount of any Social Security Act benefits that are attributable to the Federal service of the employee.

(e) To determine the employee's entitlement to compensation, OWCP may require an employee to submit an affidavit or statement as to the receipt of any Federally funded or Federally assisted benefits. If an employee fails to submit such affidavit or statement within 30 days of the date of the request, his or her right to compensation shall be suspended until such time as the requested affidavit or statement is received. At that time compensation will be reinstated retroactive to the date of suspension provided the employee is entitled to such compensation.

**§ 10.422 May compensation payments be issued in a lump sum?**

(a) In exercise of the discretion afforded under 5 U.S.C. 8135(a), OWCP has determined that lump-sum payments will not be made to persons entitled to wage-loss benefits (that is, those payable under 5 U.S.C. 8105 and 8106). Therefore, when OWCP receives requests for lump-sum payments for wage-loss benefits, OWCP will not exercise further discretion in the matter. This determination is based on several factors, including:

(1) The purpose of the FECA, which is to replace lost wages;

(2) The prudence of providing wage-loss benefits on a regular, recurring basis; and

(3) The high cost of the long-term borrowing that is needed to pay out large lump sums.

(b) However, a lump-sum payment may be made to an employee entitled to a schedule award under 5 U.S.C. 8107 where OWCP determines that such a payment is in the employee's best interest. Lump-sum payments of schedule awards generally will be considered in the employee's best interest only where the employee does not rely upon compensation payments as a substitute for lost wages (that is, the employee is working or is receiving annuity payments). An employee possesses no absolute right to a lump-sum payment of benefits payable under 5 U.S.C. 8107.

(c) Lump-sum payments to surviving spouses are addressed in 5 U.S.C. 8135(b); payments to beneficiaries under 5 U.S.C. 8137 payable as a lump sum pursuant to 5 U.S.C. 8135 are addressed in part 25 of this title.

**§ 10.423 May compensation payments be assigned to, or attached by, creditors?**

(a) As a general rule, compensation and claims for compensation are exempt from the claims of private creditors. Further, any attempt by a FECA beneficiary to assign his or her claim is null and void. However, pursuant to provisions of the Social Security Act, 42 U.S.C. 659, and regulations issued by the Office of Personnel Management (OPM) at 5 CFR part 581, FECA benefits, including survivor's benefits, may be garnished to collect overdue alimony and child support payments.

(b) Garnishment for child support and alimony may be requested by providing a copy of the State agency or court order to the district office handling the FECA claim.

**§ 10.424 May someone other than the beneficiary be designated to receive compensation payments?**

A beneficiary may be incapable of managing or directing the management of his or her benefits because of a mental or physical disability, or because of legal incompetence, or because he or she is under 18 years of age. In this situation, absent the appointment of a guardian or other party to manage the financial affairs of the claimant by a court or administrative body authorized to do so, OWCP in its sole discretion may approve a person to serve as the representative payee for funds due the beneficiary. Where a guardian or other party has been appointed by a court or administrative body authorized to do so to manage the financial affairs of the claimant, OWCP will recognize that individual as the representative payee.

**§ 10.425 May compensation be claimed for periods of restorable leave?**

The employee may claim compensation for periods of annual and sick leave which are restorable in accordance with the rules of the employing agency. Forms CA–7a and CA–7b are used for this purpose. Leave donated to an employee by an employing agency leave bank is not restorable leave.

## Overpayments

**§ 10.430 How does OWCP notify an individual of a payment made?**

(a) In addition to providing narrative descriptions to recipients of benefits paid or payable, OWCP includes on each periodic check a clear indication of the period for which payment is being made. A form is sent to the recipient with each supplemental check which states the date and amount of the payment and the period for which payment is being made. For payments sent by electronic funds transfer (EFT), a notification of the date and amount of payment appears on the statement from the recipient's financial institution.

(b) By these means, OWCP puts the recipient on notice that a payment was made and the amount of the payment. If the amount received differs from the amount indicated on the written notice or bank statement, the recipient is responsible for notifying OWCP of the difference. Absent affirmative evidence to the contrary, the beneficiary will be presumed to have received the notice of payment, whether mailed or transmitted electronically. For EFT payments, OWCP is entitled to presume receipt and acceptance of that payment once a recipient has had an opportunity to receive a statement from their financial institution.

**§ 10.431 What does OWCP do when an overpayment is identified?**

Before seeking to recover an overpayment or adjust benefits, OWCP will advise the beneficiary in writing that:

(a) The overpayment exists, and the amount of overpayment;

(b) A preliminary finding shows either that the individual was or was not at fault in the creation of the overpayment;

(c) He or she has the right to inspect and copy Government records relating to the overpayment; and

(d) He or she has the right to present evidence which challenges the fact or amount of the overpayment, and/or challenges the preliminary finding that he or she was at fault in the creation of the overpayment. He or she may also request that recovery of the overpayment be waived.

**§ 10.432 How can an individual present evidence to OWCP in response to a preliminary notice of an overpayment?**

The individual may present this evidence to OWCP in writing or at a pre-recoupment hearing. The evidence must be presented or the hearing requested within 30 days of the date of the written notice of overpayment. Failure to request the hearing within this 30-day time period shall constitute a waiver of that right.

**§ 10.433 Under what circumstances can OWCP waive recovery of an overpayment?**

(a) OWCP may consider waiving an overpayment only if the individual to whom it was made was not at fault in accepting or creating the overpayment. Each recipient of compensation benefits is responsible for taking all reasonable measures to ensure that payments he or she receives from OWCP are proper. The recipient must show good faith and exercise a high degree of care in regard to receipt of their benefits. Such care includes reporting events which may affect entitlement to or the amount of benefits, including reviewing their accounts and related statements (including electronic statements and records from their financial institutions involving EFT payments). A recipient who has done any of the following will be found to be at fault with respect to creating an overpayment:

(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

(2) Failed to provide information which he or she knew or should have known to be material; or

(3) Accepted a payment which the recipient knew or should have known to be incorrect. (This provision applies only to the overpaid individual.)

(b) Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual's capacity to realize that he or she is being overpaid.

**§ 10.434 If OWCP finds that the recipient of an overpayment was not at fault, what criteria are used to decide whether to waive recovery of it?**

If OWCP finds that the recipient of an overpayment was not at fault, repayment will still be required unless:

(a) Adjustment or recovery of the overpayment would defeat the purpose of the FECA (see § 10.436), or

(b) Adjustment or recovery of the overpayment would be against equity and good conscience (see § 10.437).

**§ 10.435 Is an individual responsible for an overpayment that resulted from an error made by OWCP or another Government agency?**

(a) The fact that OWCP may have erred in making the overpayment, or that the overpayment may have resulted from an error by another Government agency, does not by itself relieve the individual who received the overpayment from liability for repayment if the individual also was at fault in accepting the overpayment.

(b) However, OWCP may find that the individual was not at fault if failure to report an event affecting compensation benefits, or acceptance of an incorrect payment, occurred because:

(1) The individual relied on misinformation given in writing by OWCP (or by another Government agency which he or she had reason to believe was connected with the administration of benefits) as to the interpretation of a pertinent provision of the FECA or its regulations; or

(2) OWCP erred in calculating cost-of-living increases, schedule award length and/or percentage of impairment, or loss of wage-earning capacity.

**§ 10.436 Under what circumstances would recovery of an overpayment defeat the purpose of the FECA?**

Recovery of an overpayment will defeat the purpose of the FECA if such recovery would cause hardship to a currently or formerly entitled beneficiary because:

(a) The beneficiary from whom OWCP seeks recovery needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses; and

(b) The beneficiary's assets do not exceed a specified amount as determined by OWCP from data furnished by the Bureau of Labor Statistics. A higher amount is specified for a beneficiary with one or more dependents.

**§ 10.437 Under what circumstances would recovery of an overpayment be against equity and good conscience?**

(a) Recovery of an overpayment is considered to be against equity and good conscience when any individual who received an overpayment would experience severe financial hardship in attempting to repay the debt.

(b) Recovery of an overpayment is also considered to be against equity and good conscience when any individual, in reliance on such payments or on notice that such payments would be made, gives up a valuable right or changes his or her position for the worse. In making such a decision, OWCP does not consider the individual's current ability to repay the overpayment.

(1) To establish that a valuable right has been relinquished, it must be shown that the right was in fact valuable, that it cannot be regained, and that the action was based chiefly or solely in reliance on the payments or on the notice of payment. Donations to charitable causes or gratuitous transfers of funds to other individuals are not considered relinquishments of valuable rights.

(2) To establish that an individual's position has changed for the worse, it must be shown that the decision made would not otherwise have been made but for the receipt of benefits, and that this decision resulted in a loss.

**§ 10.438 Can OWCP require the individual who received the overpayment to submit additional financial information?**

(a) The individual who received the overpayment is responsible for

providing information about income, expenses and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of the FECA, or be against equity and good conscience. This information will also be used to determine the repayment schedule, if necessary.

(b) Failure to submit the requested information within 30 days of the request shall result in denial of waiver, and no further request for waiver shall be considered until the requested information is furnished.

**§ 10.439 What is addressed at a pre-recoupment hearing?**

At a pre-recoupment hearing, the OWCP representative will consider all issues in the claim on which a formal decision has been issued. Such a hearing will thus fulfill OWCP's obligation to provide pre-recoupment rights and a hearing under 5 U.S.C. 8124(b). Pre-recoupment hearings shall be conducted in exactly the same manner as provided in § 10.615 through § 10.622.

**§ 10.440 How does OWCP communicate its final decision concerning recovery of an overpayment, and what appeal right accompanies it?**

(a) OWCP will send a copy of the final decision to the individual from whom recovery is sought; his or her representative, if any; and the employing agency.

(b) The only review of a final decision concerning an overpayment is to the Employees' Compensation Appeals Board. The provisions of 5 U.S.C. 8124(b) (concerning hearings) and 5 U.S.C. 8128(a) (concerning reconsiderations) do not apply to such a decision. The pendency of an appeal with ECAB has no effect on the finality of the order being appealed; in the event ECAB reverses the final overpayment decision, any monies collected will be restored to the beneficiary.

**§ 10.441 How are overpayments collected?**

(a) When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship. Should the individual die before collection has been completed, collection shall be made by decreasing later payments, if any, payable under the FECA with respect to the individual's death. If no further benefits are payable with respect to the individual's death, OWCP may also file a claim with the estate of the individual or seek repayment of the overpayment through other means including referral of the debt to the Treasury Department.

(b) When an overpayment has been made to an individual who is not entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. The overpayment is subject to the provisions of the Federal Claims Collection Act of 1966 (as amended) and may be reported to the Internal Revenue Service as income. If the individual fails to make such refund, OWCP may recover the same through any available means, including offset of salary, annuity benefits, or other Federal payments, including tax refunds as authorized by the Tax Refund Offset Program, or referral of the debt to a collection agency or to the Department of Justice.

## Subpart F—Continuing Benefits

### Rules and Evidence

**§ 10.500 What are the basic rules governing continuing receipt of compensation benefits and return to work?**

(a) Benefits are available only while the effects of a work-related condition continue. Compensation for wage loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury. For example, an employee is not entitled to compensation for any wage-loss claimed on a CA–7 to the extent that evidence contemporaneous with the period claimed on a CA–7 establishes that an employee had medical work restrictions in place; that light duty within those work restrictions was available; and that the employee was previously notified in writing that such duty was available. Similarly, an employee receiving continuing periodic payments for disability was not prevented from earning the wages earned before the work-related injury if the evidence establishes that the employing agency had offered, in accordance with OWCP procedures, a temporary light duty assignment within the employee's work restrictions. (The penalty provision of 5 U.S.C. 8106(c)(2) will not be imposed on such assignments under this paragraph.)

(b) Each disabled employee is obligated to perform such work as he or she can. OWCP's goal is to return each disabled employee to work as soon as he or she is medically able. In determining what work qualifies under 5 U.S.C. 8115 for determining the wage-earning capacity for a particular disabled employee, OWCP considers all relevant factors, including the employee's current physical limitations, whether the work is available within the employee's demonstrated commuting area and the employee's qualifications to perform such work.

(c) A disabled employee who refuses to seek or accept suitable employment within the meaning of 5 U.S.C. 8106(c)(2) is not entitled to compensation.

(d) Payment of medical benefits is available for all treatment necessary due to a work-related medical condition.

**§ 10.501 What medical evidence is necessary to support continuing receipt of compensation benefits?**

(a) The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.

(1) To support payment of continuing compensation where an employee has been found entitled to periodic benefits, narrative medical evidence must be submitted whenever OWCP requests it but ordinarily not less than once a year and with any filing of a form CA–1032. It must contain a physician's rationalized opinion as to whether the specific period of alleged disability is causally related to the employee's accepted injury or illness.

(2) For those employees with more serious conditions not likely to improve and for employees over the age of 65, OWCP may require less frequent documentation, but ordinarily not less than once every three years.

(3) The physician's opinion must be based on the facts of the case and the complete medical background of the employee, must be one of reasonable medical certainty and must include objective findings in support of its conclusions. Subjective complaints of pain are not sufficient, in and of themselves, to support payment of continuing compensation. Likewise, medical limitations based solely on the fear of a possible future injury are also not sufficient to support payment of continuing compensation. See § 10.330 for a fuller discussion of medical evidence.

(b) OWCP may require any kind of non-invasive testing to determine the employee's functional capacity. Failure to undergo such testing will result in a

suspension of benefits. In addition, OWCP may direct the employee to undergo a second opinion or referee examination in any case it deems appropriate (see §§ 10.320 and 10.321).

**§ 10.502 How does OWCP evaluate evidence in support of continuing receipt of compensation benefits?**

In considering the medical and factual evidence, OWCP will weigh the probative value of the attending physician's report, any second opinion physician's report, any other medical reports, or any other evidence in the file. If OWCP determines that the medical evidence supporting one conclusion is more consistent, logical, and well-reasoned than evidence supporting a contrary conclusion, OWCP will use the conclusion that is supported by the weight of the medical evidence as the basis for awarding or denying further benefits. If medical reports that are equally well-reasoned support inconsistent determinations of an issue under consideration, OWCP will direct the employee to undergo a third, impartial referee examination to resolve the issue, which will be given special weight in determining the issue.

**§ 10.503 Under what circumstances may OWCP reduce or terminate compensation benefits?**

Once OWCP has advised the employee that it has accepted a claim and has either approved continuation of pay or paid medical benefits or compensation, benefits will not be terminated or reduced unless the weight of the evidence establishes that:

(a) The disability for which compensation was paid has ceased;

(b) The disabling condition is no longer causally related to the employment;

(c) The employee is only partially disabled;

(d) The employee has returned to work;

(e) The beneficiary was convicted of fraud in connection with a claim under the FECA, or the beneficiary was incarcerated based on any felony conviction; or

(f) OWCP's initial decision was in error.

## Return to Work—Employer's Responsibilities

**§ 10.505 What actions must the employer take?**

Upon authorizing medical care, the employer should advise the employee in writing as soon as possible of his or her obligation to return to work under § 10.210 and as defined in this subpart. The term ''return to work'' as used in this subpart is not limited to returning to work at the employee's normal worksite or usual position, but may include returning to work at other locations and in other positions. In general, the employer should make all reasonable efforts to place the employee in his or her former or an equivalent position, in accordance with 5 U.S.C. 8151(b)(2), if the employee has fully recovered after one year. The Office of Personnel Management (not OWCP) administers this provision.

(a) Where the employer has specific alternative positions available for partially disabled employees, the employer should advise the employee in writing of the specific duties and physical requirements of those positions.

(b) Where the employer has no specific alternative positions available for an employee who can perform restricted or limited duties, the employer should advise the employee of any accommodations the agency can make to accommodate the employee's limitations due to the injury.

**§ 10.506 May the employer monitor the employee's medical care?**

The employer may monitor the employee's medical progress and duty status by obtaining periodic medical reports. Form CA–17 is usually adequate for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

**§ 10.507 How should the employer make an offer of suitable work?**

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

(a) If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee in writing of the specific duties and physical requirements, the employer shall notify the employee in writing immediately of the date of availability.

(b) If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or whether an existing job can be modified. If so, the employer shall advise the employee in writing of the duties, their physical requirements and availability.

(c) The employer must make any job offer in writing. However, the employer may make a job offer verbally as long as it provides the job offer to the employee in writing within two business days of the verbal job offer.

(d) The offer must include a description of the duties of the position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

**§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?**

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a Federal employer. OWCP will notify the employee that relocation expenses are payable if it makes a finding that the job is suitable. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the Federal travel regulations for permanent changes of duty station.

**§ 10.509 If an employee's light duty job is eliminated due to downsizing, what is the effect on compensation?**

In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of

downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made and the employing agency has stated, in writing, that no other employment is available.

**§ 10.510 When may a light duty job form the basis of a loss of wage-earning capacity determination?**

A light-duty position that fairly and reasonably represents an employee's ability to earn wages may form the basis of a loss of wage-earning capacity determination if that light duty position is a classified position to which the injured employee has been formally reassigned. The position must conform to the established physical limitations of the injured employee; the employer must have a written position description outlining the duties and physical requirements; and the position must correlate to the type of appointment held by the injured employee at the time of injury. If these circumstances are present, a determination may be made that the position constitutes ''regular'' Federal employment. In the absence of a ''light-duty position'' as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive, makeshift or odd lot employment which does not represent the employee's wage-earning capacity, *i.e.,* work of the type provided to injured employees who cannot otherwise be employed by the Federal Government or in any well-known branch of the general labor market.

**§ 10.511 How may a loss of wage-earning capacity determination be modified?**

If OWCP issues a formal loss of wage-earning capacity determination, including a finding of no loss of wage-earning capacity, that determination and rate of compensation, if applicable, remains in place until that determination is modified by OWCP. Modification of such a determination is only warranted where the party seeking the modification establishes either that there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous. However, OWCP is not precluded from adjudicating a limited period of disability following the issuance of a loss of wage-earning capacity decision, such as where an employee has a demonstrated need for surgery.

## Return to Work—Employee's Responsibilities

**§ 10.515 What actions must the employee take with respect to returning to work?**

(a) If an employee can resume regular Federal employment, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must seek work. In the alternative, the employee must accept suitable work offered to him or her. This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternative positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the Federal Government, State and local Governments, or in the private sector.

**§ 10.516 How will an employee know if OWCP considers a job to be suitable?**

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

**§ 10.517 What are the penalties for refusing to accept a suitable job offer?**

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107 on all claims where the injury occurred prior to the termination decision, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

**§ 10.518 Does OWCP provide services to help employees return to work?**

OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. Vocational rehabilitation services may include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help to tailor individual rehabilitation programs to employees' physical reconditioning and behavioral modification needs, and help employees to meet the demands of current or potential jobs.

**§ 10.519 What action will OWCP take if an employee refuses to undergo vocational rehabilitation?**

Under 5 U.S.C. 8104(a), OWCP may direct a permanently disabled employee to undergo vocational rehabilitation. To ensure that vocational rehabilitation services are available to all who might be entitled to benefit from them, an injured employee who has a loss of wage-earning capacity shall be presumed to be ''permanently disabled,'' for purposes of this section only, unless and until the employee proves that the disability is not permanent. If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows:

(a) Where a suitable job has been identified, OWCP will reduce the employee's future monetary

compensation based on the amount which would likely have been his or her wage-earning capacity had he or she undergone vocational rehabilitation. OWCP will determine this amount in accordance with the job identified through the vocational rehabilitation planning process, which includes meetings with the OWCP nurse and the employer. The reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early but necessary stages of a vocational rehabilitation effort (that is, interviews, testing, counseling, functional capacity evaluations, and work evaluations), OWCP cannot determine what would have been the employee's wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee's monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.

**§ 10.520 How does OWCP determine compensation after an employee completes a vocational rehabilitation program?**

After completion of a vocational rehabilitation program, OWCP may adjust compensation to reflect the injured worker's wage-earning capacity. Actual earnings will be used if they fairly and reasonably reflect the earning capacity. The position determined to be the goal of a training plan is assumed to represent the employee's earning capacity if it is suitable and performed in sufficient numbers so as to be reasonably available, whether or not the employee is placed in such a position.

**§ 10.521 If an employee elects to receive retirement benefits instead of FECA benefits, what effect may such an election have on that employee's entitlement to FECA compensation?**

Where an employee is undergoing vocational rehabilitation, or where OWCP is attempting to otherwise place that employee in a suitable job, and that employee elects to receive retirement benefits from the Office of Personnel Management instead of benefits under the FECA, the OWCP may proceed with a loss of wage-earning capacity determination which may reduce FECA entitlement as long as the determination is based on the evidence of record at the time of such election.

## Reports of Earnings From Employment and Self-Employment

**§ 10.525 What information must the employee report?**

(a) An employee who is receiving compensation for partial or total disability must advise OWCP immediately of any return to work, either part-time or full-time. An employee must report all outside employment, including any concurrent dissimilar employment held at the time of injury, even if the injury did not result in any lost time in that position. In addition, an employee who is receiving compensation for partial or total disability will periodically be required to submit a report of earnings from employment or self-employment, either part-time or full-time. (See § 10.5(g) for a definition of ''earnings.'')

(b) The employee must report even those earnings which do not seem likely to affect his or her level of benefits. Many kinds of income, though not all, will result in reduction of compensation benefits. While earning income will not necessarily result in a reduction of compensation, failure to report income may result in forfeiture of all benefits paid during the reporting period.

**§ 10.526 Must the employee report volunteer activities?**

An employee who is receiving compensation for partial or total disability is periodically required to report volunteer activity or any other kind of activity which shows that the employee is no longer totally disabled for work. The fact that the employee did not receive any salary for this work is not a basis for failing to report this activity; instead the employee must report the cost if any to have someone else do the work or activity.

**§ 10.527 Does OWCP verify reports of earnings?**

To make proper determinations of an employee's entitlement to benefits, OWCP may verify the earnings reported by the employee through a variety of means, including but not limited to computer matches with the Office of Personnel Management and inquiries to the Social Security Administration. Also, OWCP may perform computer matches with records of State agencies, including but not limited to workers' compensation administrations, to determine whether private employers are paying workers' compensation insurance premiums for recipients of benefits under the FECA.

**§ 10.528 What action will OWCP take if the employee fails to file a report of activity indicating an ability to work?**

OWCP periodically requires each employee who is receiving compensation benefits to complete an affidavit as to any work, or activity indicating an ability to work, which the employee has performed for the prior 15 months. If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss under 5 U.S.C. 8105 or 8106 is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.

**§ 10.529 What action will OWCP take if the employee files an incomplete report?**

(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment, or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the period of forfeiture pursuant to 5 U.S.C. 8129 and other relevant statutes.

## Reports of Dependents

**§ 10.535 How are dependents defined, and what information must the employee report?**

(a) Dependents in disability cases are defined in § 10.405. While the employee has one or more dependents, the employee's basic compensation for wage loss or for permanent impairment shall be augmented as provided in 5 U.S.C. 8110. (The rules for death claims are found in § 10.414.)

(b) An employee who is receiving augmented compensation on account of dependents must advise OWCP immediately of any change in the number or status of dependents. The employee should also promptly refund to OWCP any amounts received on account of augmented compensation after the right to receive augmented compensation has ceased. Any difference between actual entitlement and the amount already paid beyond the date entitlement ended is an overpayment of compensation and may be recovered pursuant to 5 U.S.C. 8129 and other relevant statutes.

(c) An employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation.

#### § 10.536 What is the penalty for failing to submit a report of dependents?

If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, OWCP will suspend his or her right to augmented compensation until OWCP receives the requested statement or supporting document. At that time, OWCP will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation.

#### § 10.537 What reports are needed when compensation payments continue for children over age 18?

(a) Compensation payable on behalf of a child that would otherwise end when the child reaches 18 years of age will continue if and for so long as he or she is not married and is either a student as defined in 5 U.S.C. 8101(17), or physically or mentally incapable of self-support.

(b) At least once each year, OWCP will ask an employee who receives compensation based on the student status of a child to provide proof of continuing entitlement to such compensation, including certification of school enrollment. The employee is required to report any changes to student status in the interim as soon as they occur.

(c) Likewise, at least once each year, OWCP will ask an employee who receives compensation based on a child's physical or mental inability to support himself or herself, and who is not covered by § 10.417(d) of this part, to submit a medical report verifying that the child's medical condition persists and that it continues to preclude self-support. The employee is required to report any changes to that status in the interim.

(d) If an employee fails to submit proof within 30 days of the date of the request, OWCP will suspend the employee's right to compensation until the requested information is received. At that time OWCP will reinstate compensation retroactive to the date of suspension, provided the employee is entitled to such compensation.

### Reduction and Termination of Compensation

#### § 10.540 When and how is compensation reduced or terminated?

(a) Except as provided in paragraphs (c), (d), and (e) of this section, where the evidence establishes that compensation should be either reduced or terminated, OWCP will provide the beneficiary with written notice of the proposed action and give him or her 30 days to submit relevant evidence or argument to support entitlement to continued payment of compensation.

(b) Notice provided under this section will include a description of the reasons for the proposed action and a copy of the specific evidence upon which OWCP is basing its determination. Payment of compensation will continue until any evidence or argument submitted has been reviewed and an appropriate decision has been issued, or until 30 days have elapsed if no additional evidence or argument is submitted.

(c) OWCP will not provide such written notice when the beneficiary has no reasonable basis to expect that payment of compensation will continue. For example, when a claim has been made for a specific period of time and that specific period expires, no written notice will be given.

(d) Written notice will also not be given when a beneficiary dies, when OWCP either reduces or terminates compensation upon an employee's return to work, when OWCP terminates only medical benefits after a physician indicates that further medical treatment is not necessary or has ended, or when OWCP denies payment for a particular medical expense.

(e) OWCP will also not provide such written notice when compensation is terminated, suspended or forfeited due to one of the following: A beneficiary's conviction for fraud in connection with a claim under the FECA; a beneficiary's incarceration based on any felony conviction; an employee's failure to report earnings from employment or self-employment; an employee's failure or refusal to either continue performing suitable work or to accept an offer of suitable work; or an employee's refusal to undergo or obstruction of a directed medical examination or treatment for substance abuse.

#### § 10.541 What action will OWCP take after issuing written notice of its intention to reduce or terminate compensation?

(a) If the beneficiary submits evidence or argument prior to the issuance of the decision, OWCP will evaluate it in light of the proposed action and undertake such further development as it may deem appropriate, if any. Evidence or argument which is repetitious, cumulative, or irrelevant will not require any further development. If the beneficiary does not respond within 30 days of the written notice, OWCP will issue a decision consistent with its prior notice. OWCP will not grant any request for an extension of this 30-day period.

(b) Evidence or argument which refutes the evidence upon which the proposed action was based will result in the continued payment of compensation. If the beneficiary submits evidence or argument which fails to refute the evidence upon which the proposed action was based but which requires further development, OWCP will not provide the beneficiary with another notice of its proposed action upon completion of such development. Once any further development of the evidence is completed, OWCP will either continue payment or issue a decision consistent with its prior notice.

## Subpart G—Appeals Process

#### § 10.600 How can final decisions of OWCP be reviewed?

There are three methods for reviewing a formal decision of the OWCP (§§ 10.125 through 10.127 discuss how decisions are made). These methods are: reconsideration by the district office; a hearing before an OWCP hearing representative; and appeal to the Employees' Compensation Appeals Board (ECAB). For each method there are time limitations and other restrictions which may apply, and not all options are available for all decisions, so the employee should consult the requirements set forth below. Further rules governing appeals to the ECAB are found at part 501 of this title.

### Reconsiderations and Reviews by the Director

#### § 10.605 What is reconsideration?

The FECA provides that the Director may review an award for or against compensation upon application by an employee (or his or her representative) who receives an adverse decision. The employee shall exercise this right through a request to the district office. The request, along with the supporting statements and evidence, is called the ''application for reconsideration.''

#### § 10.606 How does a claimant request reconsideration?

(a) An employee (or representative) seeking reconsideration should send the application for reconsideration to the

address as instructed by OWCP in the final decision.

(b) The application for reconsideration, including all supporting documents, must:

(1) Be submitted in writing;

(2) Be signed and dated by the claimant or the authorized representative; and

(3) Set forth arguments and contain evidence that either:

(i) Shows that OWCP erroneously applied or interpreted a specific point of law;

(ii) Advances a relevant legal argument not previously considered by OWCP; or

(iii) Constitutes relevant and pertinent new evidence not previously considered by OWCP.

**§ 10.607 What is the time limit for requesting reconsideration?**

(a) An application for reconsideration must be received by OWCP within one year of the date of the OWCP decision for which review is sought.

(b) OWCP will consider an untimely application for reconsideration only if the application demonstrates clear evidence of error on the part of OWCP in its most recent merit decision. The application must establish, on its face, that such decision was erroneous.

(c) The year in which a claimant has to timely request reconsideration shall not include any period subsequent to an OWCP decision for which the claimant can establish through probative medical evidence that he or she is unable to communicate in any way and that his or her testimony is necessary in order to obtain modification of the decision.

**§ 10.608 How does OWCP decide whether to grant or deny the request for reconsideration?**

(a) A timely request for reconsideration may be granted if OWCP determines that the employee has presented evidence and/or argument that meets at least one of the standards described in § 10.606(b)(3). If reconsideration is granted, the case is reopened and the case is reviewed on its merits (see § 10.609).

(b) Where the request is timely but fails to meet at least one of the standards described in § 10.606(b)(3), or where the request is untimely and fails to present any clear evidence of error, OWCP will deny the application for reconsideration without reopening the case for a review on the merits. A decision denying an application for reconsideration cannot be the subject of another application for reconsideration. The only review for this type of non-merit decision is an appeal to the ECAB (see § 10.625), and OWCP will not entertain a request for reconsideration or a hearing on this decision denying reconsideration.

**§ 10.609 How does OWCP decide whether new evidence requires modification of the prior decision?**

When application for reconsideration is granted, OWCP will review the decision for which reconsideration is sought on the merits and determine whether the new evidence or argument requires modification of the prior decision.

(a) After OWCP decides to grant reconsideration, but before undertaking the review, OWCP will send a copy of the reconsideration application to the employer, which will have 20 days from the date sent to comment or submit relevant documents. OWCP will provide any such comments to the employee, who will have 20 days from the date the comments are sent to him or her within which to comment. If no comments are received from the employer, OWCP will proceed with the merit review of the case. Where a reconsideration request pertains only to a medical issue (such as disability or a schedule award) not requiring comment from the employing agency, the employing agency will be notified that a request for reconsideration has been received, but OWCP is not required to wait 20 days for comment before reaching a determination, except when that claimant is deployed in an area of armed conflict.

(b) A claims examiner who did not participate in making the contested decision will conduct the merit review of the claim. When all evidence has been reviewed, OWCP will issue a new merit decision, based on all the evidence in the record. A copy of the decision will be provided to the agency.

(c) An employee dissatisfied with this new merit decision may again request reconsideration under this subpart or appeal to the ECAB. An employee may not request a hearing on this decision.

**§ 10.610 What is a review by the Director?**

The FECA specifies that an award for or against payment of compensation may be reviewed at any time on the Director's own motion. Such review may be made without regard to whether there is new evidence or information. If the Director determines that a review of the award is warranted (including, but not limited to circumstances indicating a mistake of fact or law or changed conditions), the Director (at any time and on the basis of existing evidence) may modify, rescind, decrease or increase compensation previously awarded, or award compensation previously denied. A review on the Director's own motion is not subject to a request or petition and none shall be entertained.

(a) The decision whether or not to review an award under this section is solely within the discretion of the Director. The Director's exercise of this discretion is not subject to review by the ECAB, nor can it be the subject of a reconsideration or hearing request.

(b) Where the Director reviews an award on his or her own motion, any resulting decision is subject as appropriate to reconsideration, a hearing and/or appeal to the ECAB. Jurisdiction on review or on appeal to ECAB is limited to a review of the merits of the resulting decision. The Director's determination to review the award is not reviewable.

## Hearings

**§ 10.615 What is a hearing?**

A hearing is a review of an adverse decision by a hearing representative. Initially, the claimant can choose between two formats: An oral hearing or a review of the written record. At the discretion of the hearing representative, an oral hearing may be conducted by telephone, teleconference, videoconference or other electronic means. In addition to the evidence of record, the employee may submit new evidence to the hearing representative.

**§ 10.616 How does a claimant obtain a hearing?**

(a) A claimant, injured on or after July 4, 1966, who has received a final adverse decision by the district office may obtain a hearing by writing to the address specified in the decision. The hearing request must be sent within 30 days (as determined by postmark or other carrier's date marking) of the date of the decision for which a hearing is sought. The claimant must not have previously submitted a reconsideration request (whether or not it was granted) on the same decision.

(b) OWCP will schedule an oral hearing and determine whether the oral hearing will be conducted in person, including whether the in person hearing will be by teleconference, videoconference or other electronic means. The claimant can request a change in the format from a hearing to a review of the written record by making a written request to the Branch of Hearings and Review. OWCP will grant a request received by the Branch of Hearings and Review within 30 days of: the date OWCP acknowledges the initial hearing request, or the date OWCP issues a notice setting a date for an oral hearing, in cases where the initial

request was for, or was treated as a request for, an oral hearing. A request received after those dates will be subject to OWCP's discretion. The decision to grant or deny a change of format from a hearing to a review of the written record is not reviewable.

**§ 10.617 How is an oral hearing conducted?**

(a) The hearing representative retains complete discretion to set the time, place and method of the hearing, including the amount of time allotted for the hearing, considering the issues to be resolved. Any requests for reasonable accommodation by individuals with disabilities should be made through the procedure described in the initial acknowledgement letter.

(b) Unless otherwise directed in writing by the claimant, the hearing representative will mail a notice of the time, place and method of the oral hearing to the claimant and any representative at least 30 days before the scheduled date. The employer will also be mailed a notice at least 30 days before the scheduled date.

(c) The hearing is an informal process, and the hearing representative is not bound by common law or statutory rules of evidence, by technical or formal rules of procedure or by section 5 of the Administrative Procedure Act, but the hearing representative may conduct the hearing in such manner as to best ascertain the rights of the claimant. During the hearing process, the claimant may state his or her arguments and present new written evidence in support of the claim. Hearings are limited to one hour; this limitation may be extended in the discretion of the hearing representative.

(d) Testimony at oral hearings, including those conducted by teleconference, videoconference or other electronic means, is recorded, then transcribed and placed in the record. Oral testimony shall be made under oath. The transcript of the hearing is the official record of the hearing.

(e) OWCP will furnish a transcript of the oral hearing to the claimant and the employer, who have 20 days from the date it is sent to comment. The employer shall send any comments to OWCP and the claimant, who will have 20 more days from the date of the agency's certificate of service to comment.

(f) The hearing remains open for the submittal of additional evidence until 30 days after the hearing is held, unless the hearing representative, in his or her sole discretion, grants an extension. Only one such extension may be granted. A copy of the decision will be mailed to the claimant's last known address, to any representative, and to the employer.

(g) The hearing representative determines the conduct of the oral hearing and may terminate the hearing at any time he or she determines that all relevant evidence has been obtained, or because of misbehavior on the part of the claimant and/or representative.

(h) Pursuant to 5 U.S.C. 8126, if an individual disobeys or resists a lawful order or process in proceedings under this part, or misbehaves during a hearing or in a manner so as to obstruct the hearing, OWCP may certify the facts to the appropriate U.S. District Court, which may, if the evidence warrants, punish the individual in the same manner and to the same extent as for a contempt committed before the court, or commit the individual on the same conditions as if the forbidden act had occurred with reference to the process of or in the presence of the court.

**§ 10.618 How is a review of the written record conducted?**

(a) The hearing representative will review the official record and any additional evidence submitted by the claimant and by the agency. The hearing representative may also conduct whatever investigation is deemed necessary. New evidence and arguments are to be submitted at any time up to the time specified by OWCP, but they should be submitted as soon as possible to avoid delaying the hearing process.

(b) The claimant should submit, with his or her application for review, all evidence or argument that he or she wants to present to the hearing representative. If the claimant chooses to change the request from an oral hearing to a review of the written record, the claimant should submit all evidence or argument at that time. A copy of all pertinent material will be sent to the employer, which will have 20 days from the date it is sent to comment. (Medical evidence is not considered ''pertinent'' for review and comment by the agency, and it will therefore not be furnished to the agency. OWCP has sole responsibility for evaluating medical evidence.) The employer shall send any comments to OWCP and the claimant, who will have 20 more days from the date of the agency's certificate of service to comment.

**§ 10.619 May subpoenas be issued for witnesses and documents?**

A claimant may request a subpoena, but the decision to grant or deny such a request is within the discretion of the hearing representative. The hearing representative may issue subpoenas for the attendance and testimony of witnesses, and for the production of books, records, correspondence, papers or other relevant documents. Subpoenas are issued for documents only if they are relevant and cannot be obtained by other means, and for witnesses only where oral testimony is the best way to ascertain the facts.

(a) A claimant may request a subpoena only as part of the hearings process, and no subpoena will be issued under any other part of the claims process. To request a subpoena, the requestor must:

(1) Submit the request in writing and send it to the hearing representative as early as possible but no later than 60 days (as evidenced by postmark, electronic marker or other objective date mark) after the date of the original hearing request.

(2) Explain in the original request for a subpoena why the testimony or evidence is directly relevant to the issues at hand, and a subpoena is the best method or opportunity to obtain such evidence because there are no other means by which the documents or testimony could have been obtained.

(b) No subpoena will be issued for attendance of employees of OWCP acting in their official capacities as decision-makers or policy administrators. For hearings taking the form of a review of the written record, no subpoena for the appearance of witnesses will be considered.

(c) The hearing representative issues the subpoena under his or her own name. It may be served in person or by certified mail, return receipt requested (or equivalent service from a commercial carrier), addressed to the person to be served at his or her last known principal place of business or residence. A decision to deny a subpoena can only be appealed as part of an appeal of any adverse decision which results from the hearing.

**§ 10.620 Who pays the costs associated with subpoenas?**

(a) Witnesses who are not employees or former employees of the Federal Government shall be paid the same fees and mileage as paid for like services in the District Court of the United States where the subpoena is returnable, except that expert witnesses shall be paid a fee not to exceed the local customary fee for such services.

(b) Where OWCP asked that the witness submit evidence into the case record or asked that the witness attend, OWCP shall pay the fees and mileage. Where the claimant requested the subpoena, and where the witness

submitted evidence into the record at the request of the claimant, the claimant shall pay the fees and mileage.

**§ 10.621 What is the employer's role when an oral hearing has been requested?**

(a) The employer may send one (or more, if deemed appropriate by the hearing representative) representative(s) to observe the proceeding, but the agency representative cannot give testimony or argument or otherwise participate in the hearing, except where the claimant or the hearing representative specifically asks the agency representative to testify.

(b) The hearing representative may deny a request by the claimant that the agency representative testify where the claimant cannot show that the testimony would be relevant or where the agency representative does not have the appropriate level of knowledge to provide such evidence at the hearing. The employer may also comment on the hearing transcript, as described in § 10.617(e).

**§ 10.622 May a claimant or representative withdraw a request for or postpone a hearing?**

(a) The claimant and/or representative may withdraw the hearing request at any time up to and including the day the hearing is held, or the decision issued. Withdrawing the hearing request means the record is returned to the jurisdiction of the district office and no further requests for a hearing on the underlying decision will be considered.

(b) OWCP will entertain any reasonable request for scheduling the oral hearing, including whether to participate by teleconference, videoconference or other electronic means, but such requests should be made at the time of the original application for hearing. Scheduling (including format) is at the sole discretion of the hearing representative, and is not reviewable.

(c) Once the oral hearing is scheduled and OWCP has mailed appropriate written notice to the claimant and representative, OWCP will, upon submission of proper written documentation of unavoidable serious scheduling conflicts (such as court-ordered appearances/trials, jury duty or previously scheduled outpatient procedures), entertain requests from a claimant or his representative for rescheduling as long as the hearing can be rescheduled on the same monthly docket, generally no more than 7 days after the originally scheduled time. When a request to postpone a scheduled hearing under this subsection cannot be accommodated on the docket, no further opportunity for an oral hearing will be provided. Instead, the hearing will take the form of a review of the written record and a decision issued accordingly.

(d) Where the claimant or representative is hospitalized for a non-elective reason or where the death of the claimant's or representative's parent, spouse, child or other immediate family prevents attendance at the hearing, OWCP will, upon submission of proper documentation, grant a postponement beyond one monthly docket.

(e) Decisions regarding rescheduling under paragraphs (b) through (d) of this section are within the sole discretion of the hearing representative and are not reviewable.

(f) A claimant who fails to appear at a scheduled hearing may request in writing within 10 days after the date set for the hearing that another hearing be scheduled. Where good cause for failure to appear is shown, another hearing will be scheduled and conducted by teleconference. The failure of the claimant to request another hearing within 10 days, or the failure of the claimant to appear at the second scheduled hearing without good cause shown, shall constitute abandonment of the request for a hearing. Where good cause is shown for failure to appear at the second scheduled hearing, review of the matter will proceed as a review of the written record.

### Review by the Employees' Compensation Appeals Board (ECAB)

**§ 10.625 What kinds of decisions may be appealed?**

Only final decisions of OWCP may be appealed to the ECAB. However, certain types of final decisions, described in this part as not subject to further review, cannot be appealed to the ECAB. Decisions that are not appealable to the ECAB include: Decisions concerning the amounts payable for medical services, decisions concerning exclusion and reinstatement of medical providers, decisions by the Director to review an award on his or her own motion, and denials of subpoenas independent of the appeal of the underlying decision. In appeals before the ECAB, attorneys from the Office of the Solicitor of Labor shall represent OWCP.

**§ 10.626 Who has jurisdiction of cases on appeal to the ECAB?**

While a case is on appeal to the ECAB, OWCP has no jurisdiction over the claim with respect to issues which directly relate to the issue or issues on appeal. The OWCP continues to administer the claim and retains jurisdiction over issues unrelated to the issue or issues on appeal and issues which arise after the appeal as a result of ongoing administration of the case. Such issues would include, for example, the ability to terminate benefits where an individual returns to work while an appeal is pending at the ECAB. ECAB's rules of procedure are found at part 501 of this title.

## Subpart H—Special Provisions

### Representation

**§ 10.700 May a claimant designate a representative?**

(a) The claims process under the FECA is informal. Unlike many workers' compensation laws, the employer is not a party to the claim, and OWCP acts as an impartial evaluator of the evidence. Nevertheless, a claimant may appoint one individual to represent his or her interests, but the appointment must be in writing.

(b) There can be only one representative at any one time, so after one representative has been properly appointed, OWCP will not recognize another individual as representative until the claimant withdraws the authorization of the first individual. In addition, OWCP will recognize only certain types of individuals (see § 10.701); however if the representative is an attorney, OWCP may communicate with any member of that attorney's recognized law firm.

(c) A properly appointed representative who is recognized by OWCP may make a request or give direction to OWCP regarding the claims process, including a hearing. This authority includes presenting or eliciting evidence, making arguments on facts or the law, and obtaining information from the case file, to the same extent as the claimant.

**§ 10.701 Who may serve as a representative?**

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A Federal employee may act as a representative only:

(a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or

(b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

**§ 10.702 How are fees for services paid?**

(a) A representative may charge the claimant a fee and other costs associated with the representation before OWCP. The claimant is solely responsible for paying the fee and other charges. The claimant will not be reimbursed by OWCP, nor is OWCP in any way liable for the amount of the fee. Contingency fees are not allowed in any form.

(b) Administrative costs (mailing, copying, messenger services, travel and the like, but not including secretarial services, paralegal and other activities) need not be approved before the representative collects them. Before any fee for services can be collected, however, the fee must be approved by the Secretary.

**§ 10.703 How are fee applications approved?**

(a) *Fee application.* The representative must submit the fee application to OWCP for services rendered before OWCP. (Representative services before ECAB must be approved by ECAB under 20 CFR part 501.) The application submitted to OWCP shall contain the following:

(1) An itemized statement showing the representative's hourly rate, the number of hours worked and specifically identifying the work performed and a total amount charged for the representation (excluding administrative costs).

(2) A statement of agreement or disagreement with the amount charged, signed by the claimant. The statement must also acknowledge that the claimant is aware that he or she must pay the fees and that OWCP is not responsible for paying the fee or other costs.

(b) *Approval where there is no dispute.* Where a fee application that describes the services rendered in accordance with paragraph (a)(1) of this section is accompanied by a signed statement indicating the claimant's agreement with the fee as described in paragraph (a)(2) of this section, the application is deemed approved except that no contingency fee arrangement may be considered deemed approved through this process.

(c) *Disputed requests.* (1) Where the claimant disagrees with the amount of the fee, as indicated in the statement accompanying the submittal, OWCP will evaluate the objection and decide whether or not to approve the request. OWCP will provide a copy of the request to the claimant and ask him or her to submit any further information in support of the objection within 15 days from the date the request is forwarded. After that period has passed, OWCP will evaluate the information received to determine whether the amount of the fee is substantially in excess of the value of services received by looking at the following factors:

(i) Usefulness of the representative's services;

(ii) The nature and complexity of the claim;

(iii) The actual time spent on development and presentation of the claim; and

(iv) Customary local charges for services for a representative of similar background and experience.

(2) Where the claimant disputes the representative's request and files an objection with OWCP, an appealable decision will be issued.

**§ 10.704 What penalties apply to representatives who collect a fee without approval?**

Representatives who collect a fee without proper approval from OWCP may be charged with a misdemeanor under 18 U.S.C. 292.

## Third Party Liability

**§ 10.705 When must an employee or other FECA beneficiary take action against a third party?**

(a) If an injury or death for which benefits are payable under the FECA is caused, wholly or partially, by someone other than a Federal employee acting within the scope of his or her employment, the claimant can be required to take action against that third party.

(b) The Office of the Solicitor of Labor (SOL) is hereby delegated authority to administer the subrogation aspects of certain FECA claims for OWCP. Either OWCP or SOL can require a FECA beneficiary to assign his or her claim for damages to the United States or to prosecute the claim in his or her own name. All information regarding subrogation claims administered by SOL should be submitted to Chief, Subrogation Unit, U.S. Department of Labor, Office of the Solicitor, 200 Constitution Avenue, NW., Room S4325, Washington, DC 20210.

**§ 10.706 How will a beneficiary know if OWCP or SOL has determined that action against a third party is required?**

When OWCP determines that an employee or other FECA beneficiary must take action against a third party, it will notify the employee or beneficiary in writing. If the case is transferred to SOL, a second notification may be issued.

**§ 10.707 What must a FECA beneficiary who is required to take action against a third party do to satisfy the requirement that the claim be "prosecuted"?**

At a minimum, a FECA beneficiary must do the following:

(a) Seek damages for the injury or death from the third party, either through an attorney or on his or her own behalf;

(b) Either initiate a lawsuit within the appropriate statute of limitations period or obtain a written release of this obligation from OWCP or SOL unless recovery is possible through a negotiated settlement prior to filing suit;

(c) Refuse to settle or dismiss the case for any amount less than the amount necessary to repay OWCP's refundable disbursements, as defined in § 10.714, without receiving permission from OWCP or SOL;

(d) Provide periodic status updates and other relevant information in response to requests from OWCP or SOL;

(e) Submit detailed information about the amount recovered and the costs of the suit on a "Statement of Recovery" form approved by OMB;

(f) Submit information regarding the names of all plaintiffs to the suit or settlement and their relationship to the injured employee, if not the same as the FECA beneficiary;

(g) If any portion of the settlement or judgment was paid to more than one individual, advise whether it was indicated in the settlement or judgment the amount each individual is to receive, and if so, the percentage of the total award;

(h) Advise whether any portion of the settlement or judgment was paid in more than one capacity, such as a joint payment to a husband and wife for personal injury and loss of consortium or a payment to a spouse representing both loss of consortium and wrongful death; and

(i) Pay any required refund.

**§ 10.708 Can a FECA beneficiary who refuses to comply with a request to assign a claim to the United States or to prosecute the claim in his or her own name be penalized?**

When a FECA beneficiary refuses a request to either assign a claim or prosecute a claim in his or her own name, OWCP may determine that he or she has forfeited his or her right to all past or future compensation for the injury with respect to which the request is made. Alternatively, OWCP may also suspend the FECA beneficiary's compensation payments until he or she complies with the request.

**§ 10.709 What happens if a beneficiary directed by OWCP or SOL to take action against a third party does not believe that a claim can be successfully prosecuted at a reasonable cost?**

If a beneficiary consults an attorney and is informed that a suit for damages against a third party for the injury or death for which benefits are payable is unlikely to prevail or that the costs of such a suit are not justified by the potential recovery, he or she should request that OWCP or SOL release him or her from the obligation to proceed. This request should be in writing and provide evidence of the attorney's opinion. If OWCP or SOL agrees, the beneficiary will not be required to take further action against the third party.

**§ 10.710 Under what circumstances must a recovery of money or other property in connection with an injury or death for which benefits are payable under the FECA be reported to OWCP or SOL?**

Any person who has filed a FECA claim that has been accepted by OWCP (whether or not compensation has been paid), or who has received FECA benefits in connection with a claim filed by another, is required to notify OWCP or SOL of the receipt of money or other property as a result of a settlement or judgment in connection with the circumstances of that claim. This includes an injured employee, and in the case of a claim involving the death of an employee, a spouse, children or other dependents entitled to receive survivor's benefits. OWCP or SOL should be notified in writing within 30 days of the receipt of such money or other property or the acceptance of the FECA claim, whichever occurs later.

**§ 10.711 How is the amount of the recovery of the FECA beneficiary determined?**

(a) When a FECA beneficiary is entitled to receive money as a result of a judgment entered in a lawsuit or settlement of a lawsuit or any other settlement or recovery from a responsible third party, the entire amount of the award is reported as the gross recovery. To determine the amount of the recovery of the FECA beneficiary, deductions are made for the portion representing damage to real or personal property, the portion representing loss of consortium, the portion representing wrongful death and the portion representing a survival action. To make deductions for loss of consortium, wrongful death and survival action, it must be established that:

(1) These claims were asserted in the suit (or if there was no suit that these claims were included in the settlement or recovery); and

(2) That such claims are permissible under the state law where the action was brought.

(b) OWCP or SOL will determine the appropriate percentage of the total judgment or settlement that will be allocated for loss of consortium, wrongful death action and survival action. FECA beneficiaries may accept OWCP's or SOL's determination or demonstrate good cause in writing for a different allocation. Whether to accept a specific allocation is at the discretion of OWCP or SOL, even where it has been incorporated into the settlement agreement. OWCP or SOL will not determine the appropriate percentage to be allocated for loss of consortium, wrongful death action and survival action if a judge or jury specifies the percentage to be awarded of a contested verdict attributable to each of several plaintiffs; in such case, OWCP or SOL will accept that percentage allocation.

(c) The amount of the recovery of the FECA beneficiary will be determined as followed:

(1) If a settlement or judgment is paid to or for one individual, the recovery is the gross recovery less the portion representing damage to real or personal property. The portion representing damage to real or personal property must be established in writing and approved by OWCP or SOL.

(2) In any case involving an injury to an employee where a judgment or settlement is paid to or on behalf of more than one individual, the recovery is the gross recovery less the portion representing damage to real or personal property and less the portion representing loss of consortium. OWCP or SOL will allocate up to 25% for a spouse and up to 5% for each child not to exceed 15% for all children for loss of consortium.

(3) In any case involving the death of an employee, where both wrongful death and survival actions have been asserted, separate statements of recovery are completed for the deceased employee and the surviving FECA beneficiaries. For the deceased employee, the recovery is the gross recovery less the portion representing damage to real or personal property, less the portion representing loss of consortium, less the portion representing the wrongful death action. For the surviving spouse and children, the recovery is the gross recovery less the portion representing damage to real or personal property, less the portion representing loss of consortium, less the portion representing the survival action. OWCP or SOL will allocate the total judgment or settlement as follows:

(i) For loss of consortium, OWCP or SOL will allocate up to 15% for a spouse and up to 5% for each child not to exceed 10% for all children;

(ii) For the wrongful death action, OWCP or SOL will allocate 65% of the remainder after subtraction of the amounts attributed to loss of consortium;

(iii) For the survival action, OWCP or SOL will allocate 35% percent of the remainder after subtraction of the amounts attributed to loss of consortium.

(d) In any case involving an injury to an employee where a judgment or settlement is paid to or on behalf of more than one individual and in any case involving the death of an employee, court costs will be attributed using the same percentages as was used for loss of consortium, wrongful death action and survival action. Attorney fees will be determined using the same percentage that was used for the gross recovery. These calculations are used only for the purpose of determining the amount of the refund and if applicable the surplus.

**§ 10.712 How much of any settlement or judgment must be paid to the United States?**

The statute permits a FECA beneficiary to retain, as a minimum, one-fifth of the net amount of money or property remaining after a reasonable attorney's fee and the costs of litigation have been deducted from the third-party recovery. The United States shares in the attorney fees by allowing the beneficiary to retain, at the time of distribution, an amount equivalent to a reasonable attorney's fee proportionate to the refund due the United States. After the refund owed to the United States is calculated, the FECA beneficiary retains any surplus remaining, and this amount is credited, dollar for dollar, against future compensation including wage-loss compensation, schedule award benefits and medical benefits for the same injury, as defined in § 10.719. OWCP will resume the payment of compensation only after the FECA beneficiary has been awarded compensation which exceeds the amount of the surplus.

(a) The refund to the United States is calculated as follows, using the Statement of Recovery form approved by OMB:

(1) Determine the amount of the recovery of the FECA beneficiary as set forth in § 10.711 as follows:

(i) Set out the gross recovery which is the entire amount of the award;

(ii) Subtract the amount of award representing damage to real or personal property approved by OWCP or SOL (Subtotal A);

(iii) Multiply Subtotal A by the appropriate percentage in § 10.711(c), or if it is a contested verdict by the percentage allocated by the judge or jury, and subtract this amount from Subtotal A (Subtotal B);

(iv) If both a wrongful death action and survival action have been asserted, multiply Subtotal B by 65% to determine the amount allocated to the wrongful death case and multiply Subtotal B by 35% to determine the amount allocated to the survival action, or if it is a contested verdict, by the percentage allocated by the judge or jury. Separate Statements of Recovery must be completed for each cause of action. For the wrongful death action use the result of Subtotal B times 65% for Subtotal C and for the survival action use the result of Subtotal B times 35% for Subtotal C. If both a wrongful death and survival have not been asserted the amount in Subtotal B is used for Subtotal C;

(v) Subtotal C is the amount of recovery of the FECA beneficiary;

(2) Subtract the amount of attorney's fees actually paid, but not more than the maximum amount of attorney's fees considered by OWCP or SOL to be reasonable, from Subtotal C. This is calculated by first determining the attorney fee percentage which is determined by dividing the gross recovery into the amount of attorney's fees actually paid, but the attorney's fee amount must not be more than the maximum amount of attorney's fees considered to be reasonable by OWCP or SOL and must be approved by OWCP or SOL. Subtotal C is multiplied by the fee percentage and this amount is subtracted from Subtotal C (Subtotal D);

(3) Subtract the costs of litigation, as allowed by OWCP or SOL from Subtotal D (Subtotal E). If loss of consortium and/or wrongful death and survival actions are claimed, the costs of litigation are reduced first by the percentage used for loss of consortium and then by the percentage used for wrongful death or survival action as set forth in § 10.711;

(4) Multiply Subtotal E by 20% and subtract this amount from Subtotal E (Subtotal F);

(5) Compare Subtotal F and the refundable disbursements as defined in § 10.714. Subtotal G is the lower of the two amounts;

(6) Multiply Subtotal G by the percentage used for attorney's fees in paragraph (a)(2), to determine the Government's allowance for attorney's fees, and subtract this amount from Subtotal G. This is the amount of the refund.

(b) The credit against future benefits (also referred to as the surplus) is calculated as follows:

(1) If Subtotal F, as calculated according to paragraph (a)(4) of this section, is less than the refundable disbursements, as defined in § 10.714, there is no credit to be applied against future benefits (but the remainder of the unused disbursements must be applied to any future recovery for the same injury);

(2) If Subtotal F is greater than the refundable disbursements, the credit against future benefits (or surplus) amount is determined by subtracting the refundable disbursements from Subtotal F.

(c) Examples of how these calculations are made follows:

(1) In this example, a Federal employee sues another party for causing injuries for which the employee has received $22,000 in benefits under the FECA, subject to refund. The suit is settled and the injured employee receives $100,000, all of which was for his injury. The injured worker paid attorney's fees of $25,000 and costs for the litigation of $3,000.

| | |
|---|---|
| (i) Gross Recovery | $100,000.00 |
| (ii) Amount of Property Damage | $0.00 |
| (iii) Subtotal A (Line a minus Line b) | $100,000.00 |
| (iv) Amount Allocated for Loss of Consortium 0% of Line c | $0.00 |
| (v) Subtotal B (Line c minus Line d) | $100,000.00 |
| (vi) Amount Allocated for Wrongful Death 0% of Line e | $0.00 |
| (vii) Amount Allocated for Survival Action 0% of Line e | $0.00 |
| (viii) Subtotal C—If Wrongful Death use Line f, if survival action use Line g, otherwise use Subtotal B | $100,000.00 |
| (ix) Attorney's Fees 25% (Line h × .25) | $25,000.00 |
| (x) Subtotal D (Line h minus Line i) | $75,000.00 |
| (xi) Court costs | $3,000.00 |
| (xii) Subtotal E (Line j minus Line k) | $72,000.00 |
| (xiii) One-fifth of Subtotal E (Line l × .20) | $14,400.00 |
| (xiv) Subtotal F (Line l minus Line m) | $57,600.00 |
| (xv) Refundable Disbursements | $22,000.00 |
| (xvi) Subtotal G (lower of Subtotal F or refundable disbursements) | $22,000.00 |
| (xvii) Government's allowance for attorney's fees (attorney's fees percentage used to determine Subtotal D multiplied by Subtotal G) | $5,500.00 |
| (xviii) Refund to the United States (Line p minus Line q) | $16,500.00 |
| (xix) Credit against future benefits (If Subtotal F greater than refundable disbursements, Line n minus Line o) | $35,600.00 |

(2) In this example, a Federal employee who is married sues another party for causing injuries as a result of car accident where she was driving her personally owned vehicle on approved travel and the employee received $75,000 in disbursements. The suit includes a claim for loss of consortium which is permitted under the state law and for damage to her vehicle (documented at $50,000.00). A joint settlement is reached where the injured employee and her spouse receive $250,000 for all their claims. Attorney's fees were $83,325 and there were $25,000 in approved court costs.

| | |
|---|---|
| (i) Gross Recovery | $250,000.00 |
| (ii) Amount of Property Damage | $50,000.00 |
| (iii) Subtotal A (Line a minus Line b) | $200,000.00 |
| (iv) Amount Allocated for Loss of Consortium (25% of Line c) | $50,000.00 |
| (v) Subtotal B (Line c minus Line d) | $150,000.00 |
| (vi) Amount Allocated for Wrongful Death 0% of Line e | $0.00 |

| | |
|---|---|
| (vii) Amount Allocated for Survival Action 0% of Line e | $0.00 |
| (viii) Subtotal C—If Wrongful Death Use Line f, if survival action use Line g, otherwise use Subtotal B | $150,000.00 |
| (ix) Attorney's Fees 33.33% (line h × .3333) | $49,995.00 |
| (x) Subtotal D (Line h minus Line i) | $100,005.00 |
| (xi) Court costs are reduced by the amount allocated for the loss of consortium (in this example, $25,000 − ($25,000 × .25)) | $18,750.00 |
| (xii) Subtotal E (line j minus Line k) | $81,255.00 |
| (xiii) One-fifth of Subtotal E (Line l × .20) | $16,251.00 |
| (xiv) Subtotal F (Line l minus Line m) | $65,004.00 |
| (xv) Refundable Disbursements | $75,000.00 |
| (xvi) Subtotal G (lower of Subtotal F or refundable disbursements) | $65,004.00 |
| (xvii) Government's allowance for attorney's fees (attorney's fees percentage used to determine Subtotal D multiplied by subtotal G) | $21,665.83 |
| (xviii) Refund to the United States (Line p minus Line q) | $43,338.17 |
| (xix) Credit against future benefits (If Subtotal F is greater than refundable disbursements, Line n minus Line o) | $0.00 |

(3) In this example, a Federal employee who is married with two minor children is killed in the performance of duty. A suit for wrongful death and survival is filed which includes claims for loss of consortium all of which is permitted under state law. A joint settlement is reached for all claims and all parties in the amount of $1,000,000. There were court costs of $48,000 and attorney's fees of $300,000. Two Statements of Recovery are completed: One for the wrongful death claim and the other for the survival action. Disbursements in this case were $30,000 for the deceased employee and $100,000 for the surviving spouse and children.

(i) For the wrongful death claim the calculation is as follows:

| | |
|---|---|
| (A) Gross Recovery | $1,000.000.00 |
| (B) Amount of Property Damage | $0.00 |
| (C) Subtotal A (Line a minus Line b) | $1,000,000.00 |
| (D) Amount Allocated for Loss of Consortium (25% (15% for spouse, 5% for each child) of Line c) | $250,000.00 |
| (E) Subtotal B (Line c minus Line d) | $750,000.00 |
| (F) Amount Allocated for Wrongful Death 65% of Line e | $487,500.00 |
| (G) Amount Allocated for Survival Action 35% of Line e | $262,500.00 |
| (H) Subtotal C—If Wrongful Death Use Line f, if survival action use Line g, otherwise use Subtotal B | $487,500.00 |
| (I) Attorney's Fees 30% (Line h × .30) | $146,250.00 |
| (J) Subtotal D (Line h minus Line i) | $341,250.00 |
| (K) Court costs are reduced by the amount allocated for the loss of consortium (in this example, .25 × $48,000 = 12,000) and then by the amount allocated for survivor action, [(48,000 − 12,000) × .35 = 12,600], [48,000 − 12,000 − 12,600]) | $23,400.00 |
| (L) Subtotal E (Line j minus Line k) | $317,850.00 |
| (M) One-fifth of Subtotal E (Line l × .20) | $63,570.00 |
| (N) Subtotal F (Line l minus Line m) | $254,280.00 |
| (O) Refundable Disbursements | $100,000.00 |
| (P) Subtotal G (lower of Subtotal F or refundable disbursements) | $100,000.00 |
| (Q) Government's allowance for attorney's fees (attorney's fees percentage used to determine Subtotal D multiplied by subtotal G) | $30,000.00 |
| (R) Refund to the United States (Line p minus Line q) | $70,000.00 |
| (S) Credit against future benefits (If Subtotal F is greater than refundable disbursements, Line n minus Line o) | $154,280.00 |

(ii) For the survival claim the calculation is as follows:

| | |
|---|---|
| (A) Gross Recovery | $1,000.000.00 |
| (B) Amount of Property Damage | $0.00 |
| (C) Subtotal A (Line a minus Line b) | $1,000,000.00 |
| (D) Amount Allocated for Loss of Consortium (25% (15% for spouse, 5% for each child) of Line c) | $250,000.00 |
| (E) Subtotal B (Line c minus Line d) | $750,000.00 |
| (F) Amount Allocated for Wrongful Death 65% of Line e | $487,500.00 |
| (G) Amount Allocated for Survival Action 35% of Line e | $262,500.00 |
| (H) Subtotal C—If Wrongful Death Use Line f, if survival action use Line g, otherwise use Subtotal B | $262,500.00 |
| (I) Attorney's Fees 30% (line h × .30) | $78,750.00 |
| (J) Subtotal D (Line h minus Line i) | $183,750.00 |
| (K) Court costs are reduced by the amount allocated for the loss of consortium (in this example, .25 × $48,000 = 12,000) and then by the amount allocated for wrongful death, [(48,000 − 12,000) × .65 = 23,400], [48,000 − 12,000 − 23,400]) | $12,600.00 |
| (L) Subtotal E (Line j minus Line k) | $171,150.00 |
| (M) One-fifth of Subtotal E (Line l × .20) | $34,230.00 |
| (N) Subtotal F (Line l minus Line m) | $136,920.00 |
| (O) Refundable Disbursements | $30,000.00 |
| (P) Subtotal G (lower of Subtotal F or refundable disbursements) | $30,000.00 |
| (Q) Government's allowance for attorney's fees (attorney's fees percentage used to determine Subtotal D multiplied by subtotal G) | $9,000.00 |
| (R) Refund to the United States (Line p minus Line q) | $21,000.00 |
| (S) Credit against future benefits (If Subtotal F is greater than refundable disbursements, Line n minus Line o) | $106,920.00 |

**§ 10.713 How is a structured settlement (that is, a settlement providing for receipt of funds over a specified period of time) treated for purposes of reporting the gross recovery?**

In this situation, the gross recovery to be reported is the present value of the right to receive all of the payments included in the structured settlement, allocated in the case of multiple recipients in the same manner as single payment recoveries.

**§ 10.714 What amounts are included in the refundable disbursements?**

The refundable disbursements of a specific claim consist of the total money paid by OWCP from the Employees' Compensation Fund with respect to that claim to or on behalf of a FECA beneficiary including charges for field nurses, vocational rehabilitation, and second opinion and referee physicians, less charges for any medical file review (*i.e.,* the physician does not examine the employee) done at the request of OWCP. Charges for medical examinations also may be subtracted if the FECA beneficiary establishes that the examinations were required to be made available to the employee under a statute other than the FECA by the employing agency or at the employing agency's cost. Requests for disbursements can be made to SOL or OWCP.

**§ 10.715 Is a beneficiary required to pay interest on the amount of the refund due to the United States?**

If the refund due to the United States is not submitted within 30 days of receiving a request for payment from SOL or OWCP, interest shall accrue on the refund due to the United States from the date of the request. The rate of interest assessed shall be the rate of the current value of funds to the United States Treasury as published in the **Federal Register** (as of the date the request for payment is sent). Waiver of the collection of interest shall be in accordance with the provisions of the Department of Labor regulations on Federal Claims Collection governing waiver of interest, 29 CFR 20.61.

**§ 10.716 If the required refund is not paid within 30 days of the request for repayment, can it be collected from payments due under the FECA?**

If the required refund is not paid within 30 days of the request for payment, OWCP can, in its discretion, collect the refund by withholding all or part of any payments currently payable to the beneficiary under the FECA with respect to any injury. The waiver provisions of §§ 10.432 through 10.440 do not apply to such determinations.

**§ 10.717 Is a settlement or judgment received as a result of allegations of medical malpractice in treating an injury covered by the FECA a gross recovery that must be reported to OWCP or SOL?**

Since an injury caused by medical malpractice in treating an injury covered by the FECA is also an injury covered under the FECA, any recovery in a suit alleging such an injury is treated as a gross recovery that must be reported to OWCP or SOL.

**§ 10.718 Are payments to a beneficiary as a result of an insurance policy which the beneficiary has purchased a gross recovery that must be reported to OWCP or SOL?**

Since payments received by a FECA beneficiary pursuant to an insurance policy purchased by someone other than a liable third party are not payments in satisfaction of liability for causing an injury covered by the FECA, they are not considered a gross recovery covered by section 8132 that requires filing a Statement of Recovery and paying any required refund.

**§ 10.719 If a settlement or judgment is received for more than one wound or medical condition, can the refundable disbursements paid on a single FECA claim be attributed to different conditions for purposes of calculating the refund or credit owed to the United States?**

(a) All wounds, diseases or other medical conditions accepted by OWCP in connection with a single claim are treated as the same injury for the purpose of computing any required refund and any credit against future benefits in connection with the receipt of a recovery from a third party, except that an injury caused by medical malpractice in treating an injury covered under the FECA will be treated as a separate injury for purposes of section 8132.

(b) If an injury covered under the FECA is caused under circumstances creating a legal liability in more than one person, other than the United States, to pay damages, OWCP or SOL will determine whether recoveries received from one or more third parties should be attributed to separate conditions for which compensation is payable in connection with a single FECA claim. If such an attribution is both practicable and equitable, as determined by OWCP or SOL, in its discretion, the conditions will be treated as separate injuries for purposes of calculating the refund and credit owed to the United States under section 8132.

## Federal Grand and Petit Jurors

**§ 10.725 When is a Federal grand or petit juror covered under the FECA?**

(a) Federal grand and petit jurors are covered under the FECA when they are in performance of duty as a juror, which includes that time when a juror is:

(1) In attendance at court pursuant to a summons;

(2) In deliberation;

(3) Sequestered by order of a judge; or

(4) At a site, by order of the court, for the taking of a view.

(b) A juror is not considered to be in the performance of duty while traveling to or from home in connection with the activities enumerated in paragraphs (a)(1) through (4) of this section.

**§ 10.726 When does a juror's entitlement to disability compensation begin?**

Pursuant to 28 U.S.C. 1877, entitlement to disability compensation does not commence until the day after the date of termination of service as a juror.

**§ 10.727 What is the pay rate of jurors for compensation purposes?**

For the purpose of computing compensation payable for disability or death, a juror is deemed to receive pay at the minimum rate for Grade GS–2 of the General Schedule unless his or her actual pay as an ''employee'' of the United States while serving on court leave is higher, in which case the pay rate for compensation purposes is determined in accordance with 5 U.S.C. 8114.

## Peace Corps Volunteers

**§ 10.730 What are the conditions of coverage for Peace Corps volunteers and volunteer leaders injured while serving outside the United States?**

(a) Any injury sustained by a volunteer or volunteer leader while he or she is located abroad is deemed proximately caused by Peace Corps employment and will be found by OWCP to have been sustained in the performance of duty, and any illness contracted while that volunteer is located abroad will be found by OWCP to be proximately caused by the employment unless the evidence establishes:

(1) The injury or illness was caused by the claimant's willful misconduct, intent to bring about the injury or death of self or another, or was proximately caused by the intoxication by alcohol or illegal drugs of the injured claimant; or

(2) The illness is shown to have pre-existed the period of service abroad; or

(3) The injury or illness claimed is a manifestation of symptoms of, or

consequent to, a pre-existing congenital defect or abnormality.

(b) If the OWCP finds that the evidence indicates that the injury or illness may not have been sustained in the performance of duty due to the circumstances enumerated in paragraph (a)(2) and (3) of this section, the claimant may still prove his claim by the submittal of substantial and probative evidence that such injury or illness was sustained in the performance of duty with the Peace Corps.

(c) If an injury or illness, or episode thereof, comes within one of the exceptions described in paragraph (a)(2) or (3) of this section, the claimant may nonetheless be entitled to compensation. This will be so provided he or she meets the burden of proving by the submittal of substantial, probative and rationalized medical evidence that the illness or injury was proximately caused by factors or conditions of Peace Corps service, or that it was materially aggravated, accelerated or precipitated by factors of Peace Corps service; if the injury or illness was temporarily aggravated by factors of Peace Corps service, disability compensation is payable for the period of such aggravation.

### § 10.731 What is the pay rate of Peace Corps volunteers and volunteer leaders for compensation purposes?

The pay rate for these claimants is defined as the pay rate in effect on the date following separation, provided that the rate equals or exceeds the pay rate on the date of injury. It is defined in accordance with 5 U.S.C. 8142(a), not 8101(4).

## Non-Federal Law Enforcement Officers

### § 10.735 When is a non-Federal law enforcement officer (LEO) covered under the FECA?

(a) A law enforcement officer (officer) includes an employee of a State or local Government, the Governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521–535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not ''employees'' under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

### § 10.736 What are the time limits for filing a LEO claim?

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

### § 10.737 How is a LEO claim filed, and who can file a LEO claim?

A claim for injury or occupational disease should be filed on Form CA–721; a death claim should be filed on Form CA–722. All claims should be submitted to the officer's employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer's survivor, or any person or association authorized to act on behalf of an officer or an officer's survivors.

### § 10.738 Under what circumstances are benefits payable in LEO claims?

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a Federal crime. However, either an actual Federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential Federal crime was in progress or had already been committed. The actual or potential Federal crime must be an integral part of the criminal activity toward which the officer's actions are directed. The fact that an injury to an officer is related in some way to the commission of a Federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a Federal crime, there must be objective evidence that a Federal crime is about to be committed. An officer's belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a Federal crime will not result in coverage. Moreover, the officer's subjective intent, as measured by all available evidence (including the officer's own statements and testimony, if available), must have been directed toward the prevention of a Federal crime. In this context, an officer's own statements and testimony are relevant to, but do not control, the determination of coverage.

### § 10.739 What kind of objective evidence of a potential Federal crime must exist for coverage to be extended?

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to conclude that a Federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient evidence that the officer was in fact engaged in actual or attempted apprehension of a Federal criminal or prevention of a Federal crime.

### § 10.740 In what situations will OWCP automatically presume that a law enforcement officer is covered by the FECA?

(a) Where an officer is detailed by a competent State or local authority to assist a Federal law enforcement authority in the protection of the President of the United States, or any other person actually provided or entitled to U.S. Secret Service protection, coverage will be extended.

(b) Coverage for officers of the U.S. Park Police and those officers of the Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System is adjudicated under the principles set forth in paragraph (a) of this section, and does not extend to numerous tangential activities of law enforcement (for example, reporting to work, changing clothes). However, officers of the Non-Uniformed Division of the U.S. Secret Service who participate in the District of Columbia Retirement System are covered under the FECA during the performance of all official duties.

### § 10.741 How are benefits calculated in LEO claims?

(a) Except for continuation of pay, eligible officers and survivors are entitled to the same benefits as if the officer had been an employee under 5 U.S.C. 8101. However, such benefits may be reduced or adjusted as OWCP in its discretion may deem appropriate to reflect comparable benefits which the officer or survivor received or would have been entitled to receive by virtue of the officer's employment.

(b) For the purpose of this section, a comparable benefit includes any benefit that the officer or survivor is entitled to receive because of the officer's employment, including pension and disability funds, State workers' compensation payments, Public Safety Officers' Benefits Act payments, and State and local lump-sum payments.

Health benefits coverage and proceeds of life insurance policies purchased by the employer are not considered to be comparable benefits.

(c) The FECA provides that, where an officer receives comparable benefits, compensation benefits are to be reduced proportionally in a manner that reflects the relative percentage contribution of the officer and the officer's employer to the fund which is the source of the comparable benefit. Where the source of the comparable benefit is a retirement or other system which is not fully funded, the calculation of the amount of the reduction will be based on a per capita comparison between the contribution by the employer and the contribution by all covered officers during the year prior to the officer's injury or death.

(d) The non-receipt of compensation during a period where a dual benefit (such as a lump-sum payment on the death of an officer) is being offset against compensation entitlement does not result in an adjustment of the respective benefit percentages of remaining beneficiaries because of a cessation of compensation under 5 U.S.C. 8133(c).

## Subpart I—Information for Medical Providers

### Medical Records and Bills

#### § 10.800 How do providers enroll with OWCP for authorizations and billing?

(a) All providers must enroll with OWCP or its designated bill processing agent (hereinafter OWCP in this subpart) to have access to the automated authorization system and to submit medical bills to OWCP. To enroll, the provider must complete and submit a Form OWCP–1168 to the appropriate location noted on that form. By completing and submitting this form, providers certify that they satisfy all applicable Federal and State licensure and regulatory requirements that apply to their specific provider or supplier type. The provider must maintain documentary evidence indicating that it satisfies those requirements. The provider is also required to notify OWCP immediately if any information provided to OWCP in the enrollment process changes. Agency medical officers, private physicians and hospitals are also required to keep records of all cases treated by them under the FECA so they can supply OWCP with a history of the injury, a description of the nature and extent of injury, the results of any diagnostic studies performed, the nature of the treatment rendered and the degree of any impairment and/or disability arising from the injury.

(b) Where a medical provider intends to bill for a procedure where prior authorization is required, that provider must request such authorization from OWCP.

(c) After enrollment, a provider must submit all medical bills to OWCP through its bill processing portal and include the Provider Number/ID obtained through enrollment or other identifying number required by OWCP.

#### § 10.801 How are medical bills to be submitted?

(a) All charges for medical and surgical treatment, appliances or supplies furnished to injured employees, except for treatment and supplies provided by nursing homes, shall be supported by medical evidence as provided in § 10.800. OWCP may withhold payment for services until such report or evidence is provided. The physician or provider shall itemize the charges on Form OWCP–1500 or CMS–1500 (for professional services or medicinal drugs dispensed in the office), Form OWCP–04 or UB–04 (for hospitals), an electronic or paper-based bill that includes required data elements (for pharmacies) or other form as warranted and accepted by OWCP, and submit the form promptly to OWCP.

(b) The provider shall identify each service performed using the Physician's Current Procedural Terminology (CPT) code, the Healthcare Common Procedure Coding System (HCPCS) code, the National Drug Code (NDC), or the Revenue Center Code (RCC) with a brief narrative description; OWCP has discretion to determine which of these codes may be utilized in the billing process. The Director also has the authority to create and supply specific procedure codes that will be used by OWCP to better describe and allow specific payments for special services. These OWCP-created codes will be issued to providers by OWCP as appropriate and may only be used as authorized by OWCP. For example, a physician conducting a referee or second opinion examination under 5 U.S.C. 8123 will be furnished an OWCP-created code; a provider may not use such an OWCP-created code for other types of medical examinations or services. Where no appropriate code is submitted to identify the services performed, the bill will be returned to the provider and/or denied.

(c) For professional charges billed on Form OWCP–1500 or CMS–1500, the provider shall also state each diagnosed condition and furnish the corresponding diagnostic code using the ''International Classification of Disease, 9th Edition, Clinical Modification'' (ICD–9–CM), or as revised. A separate bill shall be submitted when the employee is discharged from treatment or monthly, if treatment for the work-related condition is necessary for more than 30 days.

(1) (i) Hospitals shall submit charges for inpatient medical and surgical treatment or supplies promptly to OWCP on Form OWCP–04 or UB–04.

(ii) For outpatient billing, the provider shall identify each service performed, using Revenue Center Codes (RCCs) and HCPCS/CPT codes as warranted. The charge for each individual service, or the total charge for all identical services, should also appear on the form. OWCP may adopt an Outpatient Prospective Payment System (OWCP OPPS) (as developed and implemented by the Center for Medicare and Medicaid services (CMS) for Medicare, while modifying the allowable costs under Medicare to account for deductibles and other additional costs which are covered by FECA). Once adopted, hospital providers shall submit outpatient hospital bills on the current version of the Universal Billing Form (UB) and use HCPCS codes and other coding schemes in accordance with the OWCP OPPS.

(2) Pharmacies shall itemize charges for prescription medications, appliances, or supplies on electronic or paper-based bills and submit them promptly to OWCP. Bills for prescription medications must include the NDC assigned to the product, the generic or trade name of the drug provided, the prescription number, the quantity provided, and the date the prescription was filled.

(3) Nursing homes shall itemize charges for appliances, supplies or services on the provider's billhead stationery and submit them promptly to OWCP. Such charges shall be subject to any applicable OWCP fee schedule.

(d) By submitting a bill and/or accepting payment, the provider signifies that the service for which reimbursement is sought was performed as described, necessary, appropriate and properly billed in accordance with accepted industry standards. For example, accepted industry standards preclude upcoding billed services for extended medical appointments when the employee actually had a brief routine appointment, or charging for the services of a professional when a paraprofessional or aide performed the service; industry standards prohibit unbundling services to charge separately for services that should be billed as a single charge. In addition, the provider thereby agrees to comply with all regulations set forth in this subpart concerning the rendering of treatment

and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

(e) In summary, bills submitted by providers must: Be itemized on the Health Insurance Claim Form (for physicians) or the OWCP–04 (for hospitals); contain the signature or signature stamp of the provider; and identify the procedures using HCPCS/CPT codes, RCCs, or NDCs. Otherwise, OWCP may deny the bill, and the provider must correct and resubmit the bill.

**§ 10.802 How should an employee prepare and submit requests for reimbursement for medical expenses, transportation costs, loss of wages, and incidental expenses?**

(a) If an employee has paid bills for medical, surgical or dental services, supplies or appliances due to an injury sustained in the performance of duty and seeks reimbursement for those expenses, he or she may submit a request for reimbursement on Form OWCP–915, together with an itemized bill on Form OWCP–1500, CMS–1500, OWCP–04 or UB–04 prepared by the provider and a medical report as provided in § 10.800, to OWCP.

(1) The provider of such service shall state each diagnosed condition and furnish the applicable ICD–9–CM code, or as revised, and identify each service performed using the applicable HCPCS/CPT code, with a brief narrative description of the service performed, or, where no code is applicable, a detailed description of that service. If no code or description is received, OWCP will deny the reimbursement request and correction and resubmission will be required.

(2) The reimbursement request must be accompanied by evidence that the provider received payment for the service from the employee and a statement of the amount paid. Acceptable evidence that payment was received includes, but is not limited to, a signed statement by the provider, a mechanical stamp or other device showing receipt of payment, a copy of the employee's canceled check (both front and back) or a copy of the employee's credit card receipt or a form indicating a balance of zero to the provider.

(b) If services were provided by a hospital, pharmacy or nursing home, the employee should submit the bill in accordance with the provisions of § 10.801(a). Any request for reimbursement must be accompanied by evidence, as described in paragraph (a) of this section, that the provider received payment for the service from the employee and a statement of the amount paid.

(c) OWCP may waive the requirements of paragraphs (a) and (b) of this section if extensive delays in the filing or the adjudication of a claim make it unusually difficult for the employee to obtain the required information.

(d) OWCP will not accept copies of bills for reimbursement unless they bear the signature of the provider, with evidence of payment. Payment for medical and surgical treatment, appliances or supplies shall in general be no greater than the maximum allowable charge for such service determined by the Director, as set forth in § 10.805.

(e) An employee will be only partially reimbursed for a medical expense if the amount he or she paid to a provider for the service exceeds the maximum allowable charge set by the Director's schedule. If this happens, OWCP shall advise the employee of the maximum allowable charge for the service in question and of his or her responsibility to ask the provider to refund to the employee, or credit to the employee's account, the amount he or she paid which exceeds the maximum allowable charge. The provider may request reconsideration of the fee determination as set forth in § 10.812.

(f) If the provider fails to make appropriate refund to the employee, or to credit the employee's account, within 60 days after the employee requests a refund of any excess amount, or the date of a subsequent reconsideration decision which continues to disallow all or a portion of the appealed amount, the provider shall be subject to exclusion procedures as provided by § 10.815.

(g) If the provider does not refund to the employee or credit to his or her account the amount of money paid in excess of the charge which OWCP allows, the employee should submit documentation of the attempt to obtain such refund or credit to OWCP. OWCP may make reasonable reimbursement to the employee after reviewing the facts and circumstances of the case.

(h) If an employee seeks reimbursement for transportation costs, loss of wages or incidental expenses related to medical treatment under this part, that employee may submit such reimbursement request on the Medical Travel Refund Request OWCP–957 form to OWCP along with all proof of payment. Requests for reimbursement for lost wages under this subsection must include an official statement from the employing agency indicating the amount of wage loss.

**§ 10.803 What are the time limitations on OWCP's payment of bills?**

OWCP will pay providers and reimburse employees promptly for all bills received on an approved form and in a timely manner. However, no bill will be paid for expenses incurred if the bill is submitted more than one year beyond the end of the calendar year in which the expense was incurred or the service or supply was provided, or more than one year beyond the end of the calendar year in which the claim was first accepted as compensable by OWCP, whichever is later.

## Medical Fee Schedule

**§ 10.805 What services are covered by the OWCP fee schedule?**

(a) Payment for medical and other health services, devices and supplies furnished by physicians, hospitals, and other providers for work-related injuries shall not exceed a maximum allowable charge for such service as determined by the Director, except as provided in this section.

(b) The schedule of maximum allowable charges does not apply to charges for services provided in nursing home for employees admitted to that nursing home prior to August 29, 2011, but does apply to all charges for services provided by a nursing home where the employee was admitted to that nursing home after that date. The schedule does apply to charges for treatment furnished in a nursing home by a physician or other medical professional at any time.

(c) The schedule of maximum allowable charges also does not apply to charges for appliances, supplies, services or treatment furnished by medical facilities of the U.S. Public Health Service or the Departments of the Army, Navy, Air Force and Veterans Affairs.

**§ 10.806 How are the maximum fees defined?**

For professional medical services, the Director shall maintain a schedule of maximum allowable fees for procedures performed in a given locality. The schedule shall consist of: An assignment of Relative Value Units (RVU) to procedures identified by Healthcare Common Procedure Coding System/Current Procedural Terminology (HCPCS/CPT) code which represents the relative skill, effort, risk and time required to perform the procedure, as compared to other procedures of the same general class; an assignment of Geographic Practice Cost Index (GPCI) values which represent the relative work, practice expenses and malpractice expenses relative to other localities throughout the country; and a monetary

value assignment (conversion factor) for one unit of value for each coded service.

**§ 10.807 How are payments for particular services calculated?**

Payment for a procedure, service or device identified by a HCPCS/CPT code shall not exceed the amount derived by multiplying the Relative Value Units (RVU) values for that procedure by the Geographic Practice Cost Index (GPCI) values for services in that area and by the conversion factor to arrive at a dollar amount assigned to one unit in that category of service.

(a) The ''locality'' which serves as a basis for the determination of cost is defined by the Office of Management and Budget Metropolitan Statistical Areas. The Director shall base the determination of the relative per capita cost of medical care in a locality using information about enrollment and medical cost per county, provided by the Centers for Medicare and Medicaid Services (CMS).

(b) The Director shall assign the RVUs published by CMS to all services for which CMS has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may develop and assign any RVUs that he or she considers appropriate. The geographic adjustment factor shall be that designated by GPCI for Metropolitan Statistical Areas as devised for CMS and as updated or revised by CMS from time to time. The Director will devise conversion factors for each category of service as appropriate using OWCP's processing experience and internal data.

(c) For example, if the RVUs for a particular surgical procedure are 2.48 for physician's work (W), 3.63 for practice expense (PE), and 0.48 for malpractice insurance (MP), and the conversion factor assigned to one unit in that category of service (surgery) is $61.20, then the maximum allowable charge for one performance of that procedure is the product of the three RVUs times the corresponding GPCI values for the locality times the conversion factor. If the GPCI values for the locality are 0.988(W), 0.948 (PE), and 1.174 (MP), then the maximum payment calculation is:

$$[(2.48)(0.988) + (3.63)(0.948) + (0.48)(1.174)] \times \$61.20$$
$$[2.45 + 3.44 + .56] \times \$61.20$$
$$6.45 \times \$61.20 = \$394.74$$

**§ 10.808 Does the fee schedule apply to every kind of procedure?**

Where the time, effort and skill required to perform a particular procedure vary widely from one occasion to the next, the Director may choose not to assign a relative value to that procedure. In this case the allowable charge for the procedure will be set individually based on consideration of a detailed medical report and other evidence. At its discretion, OWCP may set fees without regard to schedule limits for specially authorized consultant examinations, for examinations performed under 5 U.S.C. 8123, and for other specially authorized services.

**§ 10.809 How are payments for medicinal drugs determined?**

Payment for medicinal drugs prescribed by physicians shall not exceed the amount derived by multiplying the average wholesale price, or as otherwise specified by OWCP, of the medication by the quantity or amount provided, plus a dispensing fee. OWCP may, in its discretion, contract for or require the use of specific providers for certain medications.

(a) All prescription medications identified by National Drug Code (NDC) will be assigned an average wholesale price representing the product's nationally recognized wholesale price as determined by surveys of manufacturers and wholesalers, or by other method designated by OWCP. The Director will establish the dispensing fee, which will not be affected by the location or type of provider dispensing the medication.

(b) The NDCs, the average wholesale prices, and the dispensing fee shall be reviewed from time to time and updated as necessary.

(c) With respect to prescribed medications, OWCP may require the use of generic equivalents where they are available.

**§ 10.810 How are payments for inpatient medical services determined?**

(a) OWCP will pay for inpatient medical services according to pre-determined, condition-specific rates based on the Inpatient Prospective Payment System (IPPS) devised by CMS (42 CFR parts 412, 413, 424, 485, and 489). Using this system, payment is derived by multiplying the diagnosis-related group (DRG) weight assigned to the hospital discharge by the provider-specific factors.

(1) All inpatient hospital discharges will be classified according to the DRGs prescribed by the CMS in the form of the DRG Grouper software program. Each DRG represents the average resources necessary to provide care in a case in that DRG relative to the national average of resources consumed per case.

(2) The provider-specific factors will be provided by CMS in the form of their PPS Pricer software program. The software takes into consideration the type of facility, census division, actual geographic location (MSA) of the hospital, case mix cost per discharge, number of hospital beds, intern/beds ratio, operating cost to charge ratio, and other factors used by CMS to determine the specific rate for a hospital discharge under their PPS. The Director may devise price adjustment factors as appropriate using OWCP's processing experience and internal data.

(3) OWCP will base payments to facilities excluded from CMS' IPPS on consideration of detailed medical reports and other evidence.

(4) The Director shall review the pre-determined hospital rates at least once a year, and may adjust any or all components when he or she deems it necessary or appropriate.

(b) The Director shall review the schedule of fees at least once a year, and may adjust the schedule or any of its components when he or she deems it necessary or appropriate.

**§ 10.811 When and how are fees reduced?**

(a) OWCP accepts a provider's designation of the code used to identify a billed procedure or service if the code is consistent with the medical and other evidence, and will pay no more than the maximum allowable fee for that procedure. If the code is not consistent with the medical evidence or where no code is supplied, the bill will be returned to the provider for correction and resubmission.

(b) If the charge submitted for a service supplied to an injured employee exceeds the maximum amount determined to be reasonable according to the schedule, OWCP shall pay the amount allowed by the schedule for that service and shall notify the provider in writing that payment was reduced for that service in accordance with the schedule. OWCP shall also notify the provider of the method for requesting reconsideration of the balance of the charge.

**§ 10.812 If OWCP reduces a fee, may a provider request reconsideration of the reduction?**

(a) A physician or other provider whose charge for service is only partially paid because it exceeds a maximum allowable amount set by the Director may, within 30 days, request reconsideration of the fee determination.

(1) The provider should make such a request to the OWCP district office with jurisdiction over the employee's claim. The request must be accompanied by documentary evidence that the procedure performed was incorrectly

identified by the original code, that the presence of a severe or concomitant medical condition made treatment especially difficult, or that the provider possessed unusual qualifications. In itself, board-certification in a specialty is not sufficient evidence of unusual qualifications to justify an exception. These are the only three circumstances which will justify reevaluation of the paid amount.

(2) A list of OWCP district offices and their respective areas of jurisdiction is available upon request from the U.S. Department of Labor, Office of Workers' Compensation Programs, Washington, DC 20210, or from the Internet at *http://www.dol.gov./owcp.* Within 30 days of receiving the request for reconsideration, the OWCP district office shall respond in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted.

(b) If the OWCP district office issues a decision which continues to disallow a contested amount, the provider may apply to the Regional Director of the region with jurisdiction over the OWCP district office. The application must be filed within 30 days of the date of such decision, and it may be accompanied by additional evidence. Within 60 days of receipt of such application, the Regional Director shall issue a decision in writing stating whether or not an additional amount will be allowed as reasonable, considering the evidence submitted. This decision shall be final, and shall not be subject to further review.

**§ 10.813 If OWCP reduces a fee, may a provider bill the claimant for the balance?**

A provider whose fee for service is partially paid by OWCP as a result of the application of its fee schedule or other tests for reasonableness in accordance with this part shall not request reimbursement from the employee for additional amounts.

(a) Where a provider's fee for a particular service or procedure is lower to the general public than as provided by the schedule of maximum allowable charges, the provider shall bill at the lower rate. A fee for a particular service or procedure which is higher than the provider's fee to the general public for that same service or procedure will be considered a charge ''substantially in excess of such provider's customary charges'' for the purposes of § 10.815(d).

(b) A provider whose fee for service is partially paid by OWCP as the result of the application of the schedule of maximum allowable charges and who collects or attempts to collect from the employee, either directly or through a collection agent, any amount in excess of the charge allowed by OWCP, and who does not cease such action or make appropriate refund to the employee within 60 days of the date of the decision of OWCP, shall be subject to the exclusion procedures provided by § 10.815(h).

## Exclusion of Providers

**§ 10.815 What are the grounds for excluding a provider from payment under the FECA?**

A physician, hospital, or provider of medical services, appliances or supplies shall be excluded from payment under the FECA if such physician, hospital or provider has:

(a) Been convicted under any criminal statute of fraudulent activities in connection with any Federal or State program for which payments are made to providers for similar medical, surgical or hospital services, appliances or supplies;

(b) Been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any Federal or State program referred to in paragraph (a) of this section;

(c) Knowingly made, or caused to be made, any false statement or misrepresentation of a material fact in connection with a determination of the right to reimbursement under the FECA, or in connection with a request for payment;

(d) Submitted, or caused to be submitted, three or more bills or requests for payment within a twelve-month period under this subpart containing charges which OWCP finds to be substantially in excess of such provider's customary charges, unless OWCP finds there is good cause for the bills or requests containing such charges;

(e) Knowingly failed to timely reimburse employees for treatment, services or supplies furnished under this subpart and paid for by OWCP;

(f) Failed, neglected or refused on three or more occasions during a 12-month period to submit full and accurate medical reports, or to respond to requests by OWCP for additional reports or information, as required by the FECA and § 10.800;

(g) Knowingly furnished treatment, services or supplies which are substantially in excess of the employee's needs, or of a quality which fails to meet professionally recognized standards; or

(h) Collected or attempted to collect from the employee, either directly or through a collection agent, an amount in excess of the charge allowed by OWCP for the procedure performed, and has failed or refused to make appropriate refund to the employee, or to cease such collection attempts, within 60 days of the date of the decision of OWCP.

(i) Failed to inform OWCP of any change in their provider status as required in section 10.800 of this title.

(j) Engaged in conduct related to care of an employee's FECA covered injury that OWCP finds to be misleading, deceptive or unfair.

**§ 10.816 What will cause OWCP to automatically exclude a physician or other provider of medical services and supplies?**

(a) OWCP shall automatically exclude a physician, hospital, or provider of medical services or supplies who has been convicted of a crime described in § 10.815(a), or has been excluded or suspended, or has resigned in lieu of exclusion or suspension, from participation in any program as described in § 10.815(b).

(b) The exclusion applies to participating in the program and to seeking payment under the FECA for services performed after the date of the entry of the judgment of conviction or order of exclusion, suspension or resignation, as the case may be, by the court or agency concerned. Proof of the conviction, exclusion, suspension or resignation may consist of a copy thereof authenticated by the seal of the court or agency concerned.

(c) A provider may be excluded on a voluntary basis at any time.

**§ 10.817 How are OWCP's exclusion procedures initiated?**

(a) Upon receipt of information indicating that a physician, hospital or provider of medical services or supplies (hereinafter the provider) has or may have engaged in activities enumerated in § 10.815(c) through (j) OWCP will forward that information to the Department of Labor's Office of Inspector General (DOL OIG) for its consideration. If the information was provided directly to DOL OIG, DOL OIG will notify OWCP of its receipt and implement the appropriate action within its authority, unless such notification will or may compromise the identity of confidential sources, or compromise or prejudice an ongoing or potential criminal investigation.

(b) DOL OIG will conduct such action as it deems necessary, and, when appropriate, provide a written report as described in paragraph (c) of this section to OWCP. OWCP will then determine whether to initiate procedures to exclude the provider from participation in the FECA program. If DOL OIG determines not to take any further action, it will promptly notify OWCP.

(c) If DOL OIG discovers reasonable cause to believe that violations of

§ 10.815 have occurred, it shall, when appropriate, prepare a written report, *i.e.,* investigative memorandum, and forward that report along with supporting evidence to OWCP. The report shall be in the form of a single memorandum in narrative form with attachments.

(1) The report should contain all of the following elements:

(i) A brief description and explanation of the subject provider or providers;

(ii) A concise statement of the DOL OIG's findings upon which exclusion may be based;

(iii) A summary of the events that make up the DOL OIG's findings;

(iv) A discussion of the documentation supporting the DOL OIG's findings;

(v) A discussion of any other information that may have bearing upon the exclusion process; and

(vi) The supporting documentary evidence including any expert opinion rendered in the case.

(2) The attachments to the report should be provided in a manner that they may be easily referenced from the report.

**§ 10.818 How is a provider notified of OWCP's intent to exclude him or her?**

Following receipt of the investigative report, OWCP will determine if there exists a reasonable basis to exclude the provider or providers. If OWCP determines that such a basis exists, OWCP shall initiate the exclusion process by sending the provider a letter, by certified mail and with return receipt requested (or equivalent service from a commercial carrier), which shall contain the following:

(a) A concise statement of the grounds upon which exclusion shall be based;

(b) A summary of the information, with supporting documentation, upon which OWCP has relied in reaching an initial decision that exclusion proceedings should begin;

(c) An invitation to the provider to:

(1) Resign voluntarily from eligibility for providing services under this part without admitting or denying the allegations presented in the letter; or

(2) Request a decision on exclusion based upon the existing record and any additional documentary information the provider may wish to furnish;

(d) A notice of the provider's right, in the event of an adverse ruling by the deciding official, to request a formal hearing before an administrative law judge;

(e) A notice that should the provider fail to answer (as described in § 10.819) the letter of intent within 60 days of receipt, the deciding official may deem the allegations made therein to be true and may order exclusion of the provider without conducting any further proceedings; and

(f) The address to where the answer from the provider should be sent.

**§ 10.819 What requirements must the provider's answer and OWCP's decision meet?**

(a) The provider's answer shall be in writing and shall include an answer to OWCP's invitation to resign voluntarily. If the provider does not offer to resign, he or she shall request that a determination be made upon the existing record and any additional information provided.

(b) Should the provider fail to answer the letter of intent within 60 days of receipt, the deciding official may deem the allegations made therein to be true and may order exclusion of the provider.

(c) The provider may inspect or request copies of information in the record at any time prior to the deciding official's decision by making such request to OWCP within 20 days of receipt of the letter of intent.

(d) Any response from the provider will be forwarded to DOL OIG, which shall have 30 days to answer the provider's response. That answer will be forwarded to the provider, who shall then have 15 days to reply.

(e) The deciding official shall be the Regional Director in the region in which the provider is located unless otherwise specified by the Director of the Division of Federal Employees' Compensation.

(f) The deciding official shall issue his or her decision in writing, and shall send a copy of the decision to the provider by certified mail, return receipt requested (or equivalent service from a commercial carrier). The decision shall advise the provider of his or her right to request, within 30 days of the date of an adverse decision, a formal hearing before an administrative law judge under the procedures set forth in §§ 10.820 through 10.823. The filing of a request for a hearing within the time specified shall stay the effectiveness of the decision to exclude.

**§ 10.820 How can an excluded provider request a hearing?**

A request for a hearing shall be sent to the deciding official and shall contain:

(a) A concise notice of the issues on which the provider desires to give evidence at the hearing;

(b) Any request for the presentation of oral argument or evidence; and

(c) Any request for a certification of questions concerning professional medical standards, medical ethics or medical regulation for an advisory opinion from a competent recognized professional organization or Federal, State or local regulatory body.

**§ 10.821 How are hearings assigned and scheduled?**

(a) If the deciding official receives a timely request for hearing, the OWCP representative shall refer the matter to the Chief Administrative Law Judge of the Department of Labor, who shall assign it for an expedited hearing. The administrative law judge assigned to the matter shall consider the request for hearing, act on all requests therein, and issue a Notice of Hearing and Hearing Schedule for the conduct of the hearing. A copy of the hearing notice shall be served on the provider by certified mail, return receipt requested. The Notice of Hearing and Hearing Schedule shall include:

(1) A ruling on each item raised in the request for hearing;

(2) A schedule for the prompt disposition of all preliminary matters, including requests for the certification of questions to advisory bodies; and

(3) A scheduled hearing date not less than 30 days after the date the schedule is issued, and not less than 15 days after the scheduled conclusion of preliminary matters, provided that the specific time and place of the hearing may be set on 10 days' notice.

(b) The provider is entitled to be heard on any matter placed in issue by his or her response to the Notice of Intent to Exclude, and may designate ''all issues'' for purposes of hearing. However, a specific designation of issues is required if the provider wishes to interpose affirmative defenses, or request the issuance of subpoenas or the certification of questions for an advisory opinion.

**§ 10.822 How are subpoenas or advisory opinions obtained?**

(a) The provider may apply to the administrative law judge for the issuance of subpoenas upon a showing of good cause therefor.

(b) A certification of a request for an advisory opinion concerning professional medical standards, medical ethics or medical regulation to a competent recognized or professional organization or Federal, State or local regulatory agency may be made:

(1) As to an issue properly designated by the provider, in the sound discretion of the administrative law judge, provided that the request will not unduly delay the proceedings;

(2) By OWCP on its own motion either before or after the institution of

proceedings, and the results thereof shall be made available to the provider at the time that proceedings are instituted or, if after the proceedings are instituted, within a reasonable time after receipt. The opinion, if rendered by the organization or agency, is advisory only and not binding on the administrative law judge.

**§ 10.823 How will the administrative law judge conduct the hearing and issue the recommended decision?**

(a) To the extent appropriate, proceedings before the administrative law judge shall be governed by 29 CFR part 18.

(b) The administrative law judge shall receive such relevant evidence as may be adduced at the hearing. Parties to the hearing are the provider and OWCP. Evidence shall be presented under oath, orally or in the form of written statements. The administrative law judge shall consider the Notice and Response, including all pertinent documents accompanying them, and may also consider any evidence which refers to the provider or to any claim with respect to which the provider has provided medical services, hospital services, or medical services and supplies, and such other evidence as the administrative law judge may determine to be necessary or useful in evaluating the matter.

(c) All hearings shall be recorded and the original of the complete transcript shall become a permanent part of the official record of the proceedings.

(d) Pursuant to 5 U.S.C. 8126 and 29 CFR part 18, the administrative law judge may issue subpoenas, administer oaths, and examine witnesses with respect to the proceedings.

(e) At the conclusion of the hearing, the administrative law judge shall issue a recommended decision and cause it to be served on all parties to the proceeding, their representatives and the Director of OWCP.

**§ 10.824 How does the recommended decision become final?**

(a) Within 30 days from the date the recommended decision is issued, each party may state, in writing, whether the party objects to the recommended decision. This written statement should be filed with the Director of OWCP.

(b) For purposes of determining whether the written statement referred to in paragraph (a) of this section has been timely filed with the Director, the statement will be considered to be ''filed'' on the date that the provider mails it to the Director, as determined by postmark or the date that such written statement is actually received by the Director, whichever is earlier.

(c) Written statements objecting to the recommended decision may be filed upon one or more of the following grounds:

(1) A finding or conclusion of material fact is not supported by substantial evidence;

(2) A necessary legal conclusion is erroneous;

(3) The decision is contrary to law or to the duly promulgated rules or decisions of the Director;

(4) A substantial question of law, policy, or discretion is involved; or

(5) A prejudicial error of procedure was committed.

(d) Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record when assignments of error are based on the record, and by statutes, regulations or principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the administrative law judge had not been afforded an opportunity to pass.

(e) If a written statement of objection is filed within the allotted period of time, the Director will review the objection. The Director will forward the written objection to the DOL OIG, which will have 14 calendar days from that date to respond. Any response from DOL OIG will be forwarded to the provider, which will have 14 calendar days from that date to reply.

(f) The Director of OWCP will consider the recommended decision, the written record and any response or reply received and will then issue a written, final decision either upholding or reversing the exclusion.

(g) If no written statement of objection is filed within the allotted period of time, the Director of OWCP will issue a written, final decision accepting the recommendation of the administrative law judge.

(h) The decision of the Director of OWCP shall be final with respect to the provider's participation in the program, and shall not be subject to further review by any court or agency.

**§ 10.825 What are the effects of exclusion?**

(a) OWCP may give notice of the exclusion of a physician, hospital or provider of medical services or supplies:

(1) All OWCP district offices;

(2) All Federal employers;

(3) The CMS;

(4) The State or local authority responsible for licensing or certifying the excluded party.

(b) Notwithstanding any exclusion of a physician, hospital, or provider of medical services or supplies under this subpart, OWCP shall not refuse an employee reimbursement for any otherwise reimbursable medical treatment, service or supply if:

(1) Such treatment, service or supply was rendered in an emergency by an excluded physician; or

(2) The employee could not reasonably have been expected to have known of such exclusion.

(c) An employee who is notified that his or her attending physician has been excluded shall have a new right to select a qualified physician.

**§ 10.826 How can an excluded provider be reinstated?**

(a) If a physician, hospital, or provider of medical services or supplies has been automatically excluded pursuant to § 10.816, the provider excluded will automatically be reinstated upon notice to OWCP that the conviction or exclusion which formed the basis of the automatic exclusion has been reversed or withdrawn. However, an automatic reinstatement shall not preclude OWCP from instituting exclusion proceedings based upon the underlying facts of the matter.

(b) A physician, hospital, or provider of medical services or supplies excluded from participation as a result of an order issued pursuant to this subpart may apply for reinstatement one year after the entry of the order of exclusion, unless the order expressly provides for a shorter period. An application for reinstatement shall be addressed to the Director for Federal Employees' Compensation, and shall contain a concise statement of the basis for the application. The application should be accompanied by supporting documents and affidavits.

(c) A request for reinstatement may be accompanied by a request for an oral presentation. Oral presentations will be allowed only in unusual circumstances where it will materially aid the decision process.

(d) The Director of OWCP shall order reinstatement only in instances where such reinstatement is clearly consistent with the goal of this subpart to protect the FECA program against fraud and abuse. To satisfy this requirement the provider must provide reasonable assurances that the basis for the exclusion will not be repeated.

## Subpart J—Death Gratuity

**§ 10.900 What is the death gratuity under this subpart?**

(a) The death gratuity authorized by 5 U.S.C. 8102a and payable pursuant to the provisions of this subpart is a

payment to a claimant who is an eligible survivor (as defined in §§ 10.906 and 10.907) or a designated alternate beneficiary (as defined in §§ 10.908 and 10.909) of an employee who dies of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation. This payment was authorized by section 1105 of Public Law 110–181 (2008). For the purposes of this subchapter, the term ''Armed Force'' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

(b) This death gratuity payment is a FECA benefit, as defined by § 10.5(a) of this part. All the provisions and definitions in this part apply to claims for payment under this subpart unless otherwise specified.

**§ 10.901 Which employees are covered under this subpart?**

For purposes of this subpart, the term ''employee'' means all employees defined in 5 U.S.C. 8101 and § 10.5 of this part and all non-appropriated fund instrumentality employees as defined in 10 U.S.C. 1587(a)(1).

**§ 10.902 Does every employee's death due to injuries incurred in connection with his or her service with an Armed Force in a contingency operation qualify for the death gratuity?**

Yes. All such deaths that occur on or after January 28, 2008 (the date of enactment of Public Law 110–181 (2008)) qualify for the death gratuity administered by this subpart.

**§ 10.903 Is the death gratuity payment applicable retroactively?**

An employee's death qualifies for the death gratuity if the employee died on or after October 7, 2001, and before January 28, 2008, if the death was a result of injuries incurred in connection with the employee's service with an Armed Force in the theater of operations of Operation Enduring Freedom or Operation Iraqi Freedom.

**§ 10.904 Does a death as a result of occupational disease qualify for payment of the death gratuity?**

Yes—throughout this subpart, the word ''injury'' is defined as it is in 5 U.S.C. 8101(5), which includes a disease proximately caused by employment. If an employee's death results from an occupational disease incurred in connection with the employee's service in a contingency operation, the death qualifies for payment of the death gratuity under this subpart.

**§ 10.905 If an employee incurs a covered injury in connection with his or her service with an Armed Force in a contingency operation but does not die of the injury until years later, does the death qualify for payment of the death gratuity?**

Yes—as long as the employee's death is a result of injuries incurred in connection with the employee's service with an Armed Force in a contingency operation, the death qualifies for the death gratuity of this subpart regardless of how long after the injury the employee's death occurs.

**§ 10.906 What special statutory definitions apply to survivors under this subpart?**

For the purposes of paying the death gratuity to eligible survivors under this subpart, OWCP will use the following definitions:

(a) ''Surviving spouse'' means the person who was legally married to the deceased employee at the time of his or her death.

(b) ''Children'' means, without regard to age or marital status, the deceased employee's natural children and adopted children. It also includes any stepchildren who were a part of the decedent's household at the time of death.

(1) A stepchild will be considered part of the decedent's household if the decedent and the stepchild share the same principal place of abode in the year prior to the decedent's death. The decedent and stepchild will be considered as part of the same household notwithstanding temporary absences due to special circumstances such as illness, education, business travel, vacation travel, military service, or a written custody agreement under which the stepchild is absent from the employee's household for less than 180 days of the year.

(2) A natural child who is an illegitimate child of a male decedent is included in the definition of ''children'' under this subpart if:

(i) The child has been acknowledged in writing signed by the decedent;

(ii) The child has been judicially determined, before the decedent's death, to be his child;

(iii) The child has been otherwise proved, by evidence satisfactory to the employing agency, to be the decedent's child; or

(iv) The decedent had been judicially ordered to contribute to the child's support.

(c) ''Parent'' or ''parents'' mean the deceased employee's natural father and mother or father and mother through adoption. It also includes persons who stood in loco parentis to the decedent for a period of not less than one year at any time before the decedent became an employee.

(1) A person stood in loco parentis when the person assumed the status of parent toward the deceased employee. (Any person who takes a child of another into his or her home and treats the child as a member of his or her family, providing parental supervision, support, and education as if the child were his or her own child, will be considered to stand in loco parentis.)

(2) Only one father and one mother, or their counterparts in loco parentis, may be recognized in any case.

(3) Preference will be given to those who exercised a parental relationship on the date, or most nearly before the date, on which the decedent became an employee.

(d) ''Brother'' and ''sister'' mean any person, without regard to age or marital status, who is a natural brother or sister of the decedent, a half-brother or half-sister, or a brother or sister through adoption. Step-brothers or step-sisters of the decedent are not considered a ''brother'' or a ''sister.''

**§ 10.907 What order of precedence will OWCP use to determine which survivors are entitled to receive the death gratuity payment under this subpart?**

If OWCP determines that an employee's death qualifies for the death gratuity, the FECA provides that the death gratuity payment will be disbursed to the living survivor(s) highest on the following list:

(a) The employee's surviving spouse.

(b) The employee's children, in equal shares.

(c) The employee's parents, brothers, and sisters, or any combination of them, if designated by the employee pursuant to the designation procedures in § 10.909.

(d) The employee's parents, in equal shares.

(e) The employee's brothers and sisters, in equal shares.

**§ 10.908 Can an employee designate alternate beneficiaries to receive a portion of the death gratuity payment?**

An employee may designate another person or persons to receive not more than 50 percent of the death gratuity payment pursuant to the designation procedures in § 10.909. Only living persons, rather than trusts, corporations or other legal entities, may be designated under this subsection. The balance of the death gratuity will be paid according to the order of precedence described in § 10.907.

**§ 10.909 How does an employee designate a variation in the order or percentage of gratuity payable to survivors and how does the employee designate alternate beneficiaries?**

(a) Form CA–40 must be used to make a variation in the order or percentages of survivors under § 10.907 and/or to make an alternate beneficiary designation under § 10.908. A designation may be made at any time before the employee's death, regardless of the time of injury. The form will not be valid unless it is signed by the employee and received and signed prior to the death of the employee by the supervisor of the employee or by another official of the employing agency authorized to do so.

(b) Alternatively, any paper executed prior to the effective date of this regulation that specifies an alternate beneficiary of the death gratuity payment will serve as a valid designation if it is in writing, completed before the employee's death, signed by the employee, and signed prior to the death of the employee by the supervisor of the employee or by another official of the employing agency authorized to do so.

(c) If an employee makes a survivor designation under § 10.907(c), but does not designate the portions to be received by each designated survivor, the death gratuity will be disbursed to the survivors in equal shares.

(d) An alternate beneficiary designation made under § 10.908 must indicate the percentage of the death gratuity, in 10 percent increments up to the maximum of 50 percent, that the designated person(s) will receive. No more than five alternate beneficiaries may be designated. If the designation fails to indicate the percentage to be paid to an alternate beneficiary, the designation to that person will be invalid.

**§ 10.910 What if a person entitled to a portion of the death gratuity payment dies after the death of the covered employee but before receiving his or her portion of the death gratuity?**

(a) If a person entitled to all or a portion of the death gratuity due to the order of precedence for survivors in § 10.907 dies after the death of the covered employee but before the person receives the death gratuity, the portion will be paid to the living survivors otherwise eligible according to the order of precedence prescribed in that subsection.

(b) If a survivor designated under the survivor designation provision in § 10.907(c) dies after the death of the covered employee but before receiving his or her portion of the death gratuity, the survivor's designated portion will be paid to the next living survivors according to the order of precedence.

(c) If a person designated as an alternate beneficiary under § 10.908 dies after the death of the covered employee but before the person receives his or her designated portion of the death gratuity, the designation to that person will have no effect. The portion designated to that person will be paid according to the order of precedence prescribed in § 10.907.

(d) If there are no living survivors or alternate beneficiaries, the death gratuity will not be paid.

**§ 10.911 How is the death gratuity payment process initiated?**

(a) Either the employing agency or a living claimant (survivor or alternate beneficiary) may initiate the death gratuity payment process. If the death gratuity payment process is initiated by the employing agency notifying OWCP of the employee's death, each claimant must file a claim with OWCP in order to receive payment of the death gratuity. The legal representative or guardian of any minor child may file on the child's behalf. Alternatively, if a claimant initiates the death gratuity payment process by filing a claim, the employing agency must complete a death notification form and submit it to OWCP. Other claimants must also file a claim for their portion of the death gratuity.

(b) The employing agency must notify OWCP immediately upon learning of an employee's death that may be eligible for benefits under this subpart, by submitting form CA–42 to OWCP. The agency must also submit to OWCP any designation forms completed by the employee, and the agency must provide as much information as possible about any living survivors or alternate beneficiaries of which the agency is aware.

(1) OWCP will then contact any living survivor(s) or alternate beneficiary(ies) it is able to identify.

(2) OWCP will furnish claim form CA–41 to any identified survivor(s) or alternate beneficiary(ies) and OWCP will provide information to them explaining how to file a claim for the death gratuity.

(c) Alternatively, any claimant may file a claim for death gratuity benefits with OWCP. Form CA–41 may be used for this purpose. The claimant will be required to provide any information that he or she has regarding any other beneficiaries who may be entitled to the death gratuity payment. The claimant must disclose, in addition to the Social Security number (SSN) of the deceased employee, the SSNs (if known) and all known contact information of all other possible claimants who may be eligible to receive the death gratuity payment. The claimant must also identify, if known, the agency that employed the deceased employee when he or she incurred the injury that caused his or her death. OWCP will then contact the employing agency and notify the agency that it must complete and submit form CA–42 for the employee. OWCP will also contact any other living survivor(s) or alternate beneficiary(ies) it is able to identify, furnish to them claim form CA–41, and provide information explaining how to file a claim for the death gratuity.

(d) If a claimant submits a claim for the death gratuity to an employing agency, the agency must promptly transmit the claim to OWCP. This includes both claim forms CA–41 and any other claim or paper submitted which appears to claim compensation on account of the employee's death.

**§ 10.912 What is required to establish a claim for the death gratuity payment?**

Claim form CA–41 describes the basic requirements. Much of the required information will be provided by the employing agency when it completes notification form CA–42. However, the claimant bears the burden of proof to ensure that OWCP has the evidence needed to establish the claim. OWCP may send any request for additional evidence to the claimant and to his or her representative, if any. Evidence should be submitted in writing. The evidence submitted must be reliable, probative, and substantial. Each claim for the death gratuity must establish the following before OWCP can pay the gratuity:

(a) That the claim was filed within the time limits specified by the FECA, as prescribed in 5 U.S.C. 8122 and this part. Timeliness is based on the date that the claimant filed the claim for the death gratuity under § 10.911, not the date the employing agency submitted form CA–42. As procedures for accepting and paying retroactive claims were not available prior to the publication of the interim final rule, the applicable statute of limitations began to run for a retroactive payment under this subpart on August 18, 2009.

(b) That the injured person, at the time he or she incurred the injury or disease, was an employee of the United States as defined in 5 U.S.C. 8101(1) and § 10.5(h) of this part, or a non-appropriated fund instrumentality employee, as defined in 10 U.S.C. 1587(a)(1).

(c) That the injury or disease occurred and that the employee's death was causally related to that injury or disease. The death certificate of the employee must be provided. Often, the employing agency will provide the death certificate and any needed medical documentation. OWCP may request from the claimant any additional documentation that may be needed to establish the claim.

(d) That the employee incurred the injury or disease in connection with the employee's service with an Armed Force in a contingency operation. This will be determined from evidence provided by the employing agency or otherwise obtained by OWCP and from any evidence provided by the claimant.

(1) Section 8102a defines ''contingency operation'' to include humanitarian operations, peacekeeping operations, and similar operations. (''Similar operations'' will be determined by OWCP.)

(i) A ''contingency operation'' is defined by 10 U.S.C. 101(a)(13) as a military operation that—

(A) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(B) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10, chapter 15 of Title 10, or any other provision of law during a war or during a national emergency declared by the President or Congress.

(ii) A ''humanitarian or peacekeeping operation'' is defined by 10 U.S.C. 2302(8) as a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing.

(iii) ''Humanitarian assistance'' is defined by 10 U.S.C. 401(e) to mean medical, surgical, dental, and veterinary care provided in areas of a country that are rural or are underserved by medical, surgical, dental, and veterinary professionals, respectively, including education, training, and technical assistance related to the care provided; construction of rudimentary surface transportation systems; well drilling and construction of basic sanitation facilities; rudimentary construction and repair of public facilities.

(2) A contingency operation may take place within the United States or abroad. However, operations of the National Guard are only considered ''contingency operations'' for purposes of this subpart when the President, Secretary of the Army, or Secretary of the Air Force calls the members of the National Guard into service. A ''contingency operation'' does not include operations of the National Guard when called into service by a Governor of a State.

(3) To show that the injury or disease was incurred ''in connection with'' the employee's service with an Armed Force in a contingency operation, the claim must show that the employee incurred the injury or disease while in the performance of duty as that phrase is defined for the purposes of otherwise awarding benefits under FECA.

(4)(i) When the contingency operation occurs outside of the United States, OWCP will find that an employee's injury or disease was incurred ''in connection with'' the employee's service with an Armed Force in a contingency operation if the employee incurred the injury or disease while performing assignments in the same region as the operation, unless there is conclusive evidence that the employee's service was not supporting the Armed Force's operation.

(ii) Economic or social development projects, including service on Provincial Reconstruction Teams, undertaken by covered employees in regions where an Armed Force is engaged in a contingency operation will be considered to be supporting the Armed Force's operation.

(5) To show that an employee's injury or disease was incurred ''in connection with'' the employee's service with an Armed Force in a contingency operation, the claimant will be required to establish that the employee's service was supporting the Armed Force's operation. The death gratuity does not cover Federal employees who are performing service within the United States that is not supporting activity being performed by an Armed Force.

(e) The claimant must establish his or her relationship to the deceased employee so that OWCP can determine whether the claimant is the survivor entitled to receive the death gratuity payment according to the order of precedence prescribed in § 10.907.

**§ 10.913 In what situations will OWCP consider that an employee incurred injury in connection with his or her service with an Armed Force in a contingency operation?**

(a) OWCP will consider that an employee incurred injury in connection with service with an Armed Force in a contingency operation if:

(1) The employee incurred injury while serving under the direction or supervision of an official of an Armed Force conducting a contingency operation; or

(2) The employee incurred injury while riding with members of an Armed Force in a vehicle or other conveyance deployed to further an Armed Force's objectives in a contingency operation.

(b) An employee may incur injury in connection with service with an Armed Force in a contingency operation in situations other than those listed above. Additional situations will be determined by OWCP on a case-by-case basis.

**§ 10.914 What are the responsibilities of the employing agency in the death gratuity payment process?**

Because some of the information needed to establish a claim under this subpart will not be readily available to the claimants, the employing agency of the deceased employee has significant responsibilities in the death gratuity claim process. These responsibilities are as follows:

(a) The agency must completely fill out form CA–42 immediately upon learning of an employee's death that may be eligible for benefits under this subpart. The agency must complete form CA–42 as promptly as possible if notified by OWCP that a survivor filed a claim based on the employee's death. The agency should provide as much information as possible regarding the circumstances of the employee's injury and his or her assigned duties at the time of the injury, so that OWCP can determine whether the injury was incurred in the performance of duty and whether the employee was performing service in connection with an Armed Force in a contingency operation at the time.

(b) The employing agency must promptly transmit any form CA–41s received from claimants to OWCP. The employer must also promptly transmit to OWCP any other claim or paper submitted that appears to claim compensation on account of the employee's death.

(c) The employing agency must maintain any designations completed by the employee and signed by a representative of the agency in the

employee's official personnel file or a related system of records. The agency must forward any such forms to OWCP if the agency submits form CA–42 notifying OWCP of the employee's death. The agency must also forward any other paper signed by the employee and employing agency that appears to make designations of the death gratuity.

(d) If requested by OWCP, the employing agency must determine whether a survivor, who is claiming the death gratuity based on his or her status as an illegitimate child of a deceased male employee, has offered satisfactory evidence to show that he or she is in fact the employee's child.

(e) The employing agency must notify OWCP of any other death gratuity payments under any other law of the United States for which the employee's death qualifies. The employing agency also must notify OWCP of any other death gratuity payments that have been paid based on the employee's death.

(f) Non-appropriated fund instrumentalities must fulfill the same requirements under this subpart as any other employing agency.

**§ 10.915 What are the responsibilities of OWCP in the death gratuity payment process?**

(a) If the death gratuity payment process is initiated by the employing agency's submission of form CA–42, OWCP will identify living potential claimants. OWCP will make a reasonable effort to provide claim form CA–41s to any known potential claimants and provide instructions on how to file a claim for the death gratuity payment.

(b) If the death gratuity payment process is initiated by a claimant's submission of a claim, OWCP will contact the employing agency and prompt it to submit form CA–42. OWCP will then review the information provided by both the claim and form CA–42, and OWCP will attempt to identify all living survivors or alternate beneficiaries who may be eligible for payment of the gratuity.

(c) If OWCP determines that the evidence is not sufficient to meet the claimant's burden of proof, OWCP will notify the claimant of the additional evidence needed. The claimant will be allowed at least 30 days to submit the additional evidence required. OWCP may also request additional information from the employing agency.

(d) OWCP will review the information provided by the claimant and information provided by the employing agency to determine whether the claim satisfies all the requirements listed in § 10.912.

(e) OWCP will calculate the amount of the death gratuity payment and pay the beneficiaries as soon as possible after accepting the claim.

**§ 10.916 How is the amount of the death gratuity calculated?**

The death gratuity payment under this subpart equals $100,000 minus the amount of any death gratuity payments that have been paid under any other law of the United States based on the same death. A death gratuity payment is a payment in the nature of a gift, beyond reimbursement for death and funeral expenses, relocation costs, or other similar death benefits. Only other death gratuity payments will reduce the amount of the death gratuity provided in this subpart. For this reason, death benefits provided to the same employee's survivors such as those under 5 U.S.C. 8133 as well as benefits paid under 5 U.S.C. 8134 are not death gratuity payments, and therefore have no effect on the amount of the death gratuity provided under this subpart.

(a) A payment provided under section 413 of the Foreign Service Act of 1980 (22 U.S.C. 3973), is a death gratuity payment, and if a deceased employee's survivors received that payment for the employee's death, the amount of the death gratuity paid to the survivors under this subpart would be reduced by the amount of the Foreign Service Act death gratuity. Other death gratuities that would affect the calculation of the amount payable include but are not limited to: the gratuity provision in section 1603 of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234, June 15, 2006); the $10,000 death gratuity to the personal representative of civilian employees, at Title VI, Section 651 of the Omnibus Consolidated Appropriations Act of 1996 (Pub. L. 104–208, September 30, 1996); the death gratuity for members of the Armed Forces or any employee of the Department of Defense dying outside the United States while assigned to intelligence duties, at 10 U.S.C. 1489; and the death gratuity for employees of the Central Intelligence Agency, at 50 U.S.C. 403k.

(b) The amount of the death gratuity under this section will be calculated before it is disbursed to the employee's survivors or alternate beneficiaries, by taking into account any death gratuities paid by the time of disbursement. Therefore, any designations made by the employee under § 10.909 are only applicable to the amount of the death gratuity as described in paragraph (a) of this section. The following examples are intended to provide guidance in this administration of this subpart.

(1) *Example One.* An employee's survivors are entitled to the Foreign Service Act death gratuity; the employee's spouse received payment in the amount of $80,000 under that Act. A death gratuity is also payable under FECA; the amount of the FECA death gratuity that is payable is a total of $20,000. That employee, using Form CA–40 had designated 50% of the death gratuity under this subpart to be paid to his neighbor John Smith who is still living. So, 50% of the death gratuity will be paid to his spouse and the remaining 50% of the death gratuity paid under this subpart would be paid to John Smith. This means the surviving spouse will receive $10,000 and John Smith will receive $10,000.

(2) *Example Two.* Employee dies in circumstances that would qualify her for payment of the gratuity under this subpart; her agency has paid the $10,000 death gratuity pursuant to Public Law 104–208. The employee had not completed any designation form. The FECA death gratuity is reduced by the $10,000 death gratuity and employee's spouse receives $90,000.

(3) *Example Three.* An employee of the Foreign Service whose annual salary is $75,000 dies in circumstances that would qualify for payment of both the Foreign Service Act death gratuity and the death gratuity under this subpart. Before his death, the employee designated that 40% of the death gratuity under this subpart be paid to his cousin Jane Smith, pursuant to the alternate beneficiary designation provision at § 10.908 and that 10% be paid to his uncle John Doe who has since died. At the time of his death, the employee had no surviving spouse, children, parents, or siblings. Therefore, the Foreign Service Act death gratuity will not be paid, because no eligible survivors according to the Foreign Service Act provision exist. The death gratuity under this subpart would equal $100,000, because no other death gratuity has been paid, and Jane would receive $40,000 according to the employee's designation. As John Doe is deceased, no death gratuity may be paid pursuant to the designation of a share of the death gratuity to him.

■ 3. Part 25 is revised to read as follows:

## PART 25—COMPENSATION FOR DISABILITY AND DEATH OF NONCITIZEN FEDERAL EMPLOYEES OUTSIDE THE UNITED STATES

### Subpart A—General Provisions

Sec.

25.1 How are claims of Federal employees who are neither citizens nor residents adjudicated?
25.2 In general, what is the Director's policy regarding such claims?
25.3 What is the authority to settle and pay such claims?
25.4 What type of evidence is required to establish a claim under this part?
25.5 How does OWCP adjudicate claims of non-citizen residents of possessions or territories?

**Subpart B—The Special Schedule of Compensation**

25.100 What general provisions does OWCP apply to the Special Schedule?
25.101 How is compensation for disability paid?
25.102 How is compensation for death of a non-citizen non-resident employee paid?

**Subpart C—Extensions of the Special Schedule of Compensation**

25.200 How is the Special Schedule applied for employees in the Republic of the Philippines?
25.201 How is the Special Schedule applied for employees in Australia?
25.202 How is the Special Schedule applied for Japanese seamen?
25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?

**Authority:** 5 U.S.C. 301, 8137, 8145 and 8149; 1946 Reorganization Plan No. 2, sec. 3, 3 CFR 1943–1948 Comp., p. 1064; 60 Stat. 1095; Reorganization Plan No. 19 of 1950, sec. 1, 3 CFR 1943–1953 Comp., p. 1010; 64 Stat. 1271; Secretary of Labor's Order No. 10–2009, 74 FR 218.

## Subpart A—General Provisions

### § 25.1 How are claims of Federal employees who are neither citizens nor residents adjudicated?

This part describes how OWCP pays compensation under the FECA to employees of the United States who are neither citizens nor residents of the United States, any territory or Canada, as well as to any dependents of such employees. It has been determined that the compensation provided under the FECA is substantially disproportionate to the compensation for disability or death which is payable in similar cases under local law, regulation, custom or otherwise, in areas outside the United States, any territory or Canada and therefore a special schedule should apply to such cases This special schedule applies to any non-citizen non-resident Federal employee who is neither hired nor employed in the United States, Canada or in a possession or territory of the United States. Therefore, with respect to the claims of such employees whose injury (or injury resulting in death) has occurred subsequent to August 29, 2011, or may occur, the regulations in this part shall apply.

### § 25.2 In general, what is the Director's policy regarding such claims?

(a) Pursuant to 5 U.S.C. 8137(a)(2), a special schedule is established by subpart B of this part that applies to any non-citizen non-resident Federal employee who is neither hired nor employed in the United States, Canada or in a possession or territory of the United States (hereinafter non-citizen non-resident employees). The special schedule in subpart B of this part is subject to the exceptions set forth in paragraph (b) of this section. The special schedule set forth in subpart B of this part applies to claims of such employees whose injury (or injury resulting in death) occurred on or after August 29, 2011.

(b) This special schedule of compensation established by subpart B of this part shall apply to non-citizen non-resident employees outside of the United States unless:

(1) The injured employee receives compensation pursuant to a specific separate agreement between the United States and another government (or similar compensation from another sovereign government);

(2) The employee receives compensation pursuant to the special schedule under subpart C for the particular locality, or for a class of employees in that particular locality; or

(3) The employee otherwise establishes entitlement to compensation under local law pursuant to § 25.100(e).

(c) Compensation in all cases of such employees paid and closed prior to August 29, 2011 shall be deemed compromised and paid under 5 U.S.C. 8137. In all other cases, compensation may be adjusted to conform with the regulations in this part, or the beneficiary may by compromise or agreement with the Director have compensation continued on the basis of a previous adjustment of the claim.

(d) Compensation received by beneficiaries pursuant to 5 U.S.C. 8137 and the special schedule set forth in subpart B or as otherwise specified in paragraph (b) of this section is the exclusive measure of compensation in cases of injury (or death from injury) to non-citizen non-resident employees of the United States as specified in paragraph (a) of this section.

(e) Compensation for disability and death of non-citizen non-resident employees outside the United States under this part shall in no event exceed that generally payable under the FECA.

### § 25.3 What is the authority to settle and pay such claims?

In addition to the authority to receive, process and pay claims, when delegated such representative or agency receiving delegation of authority shall, in respect to cases adjudicated under this part, and when so authorized by the Director, have authority to make lump-sum awards (in the manner prescribed by 5 U.S.C. 8135) whenever such authorized representative shall deem such settlement to be for the best interest of the United States, and to compromise and pay claims for any benefits provided for under this part, including claims in which there is a dispute as to questions of fact or law. The Director shall, in instructions to the particular representative concerned, establish such procedures in respect to action under this section as he or she may deem necessary, and may specify the scope of any administrative review of such action.

### § 25.4 What type of evidence is required to establish a claim under this part?

Claims of non-citizen non-resident employees of the United States as specified in § 25.2(a), if otherwise compensable, shall be approved only upon evidence of the following nature without regard to the date of injury or death for which the claim is made:

(a) Appropriate certification by the Federal employing establishment; or

(b) An armed service's casualty or medical record; or

(c) Verification of the employment and casualty by Department of Defense personnel; or

(d) Recommendation of an armed service's ''Claim Service'' based on investigations conducted by it.

### § 25.5 How does OWCP adjudicate claims of non-citizen residents of possessions or territories?

An employee who is a bona fide permanent resident of any United States possession, territory, commonwealth, or trust territory will receive the full benefits of the FECA, as amended, except that the application of the minimum benefit provisions provided therein shall be governed by the restrictions set forth in 5 U.S.C. 8138.

## Subpart B—The Special Schedule of Compensation

### § 25.100 What general provisions does OWCP apply to the Special Schedule?

(a) The definitions of terms in the FECA, as amended, shall apply to terms used in this subpart.

(b) The provisions of the FECA, unless modified by this subpart or otherwise inapplicable, shall be applied

whenever possible in the application of this subpart.

(c) The provisions of the regulations for the administration of the FECA, as amended or supplemented from time to time by instructions applicable to this subpart, shall apply in the administration of compensation under this subpart, whenever they can reasonably be applied.

**§ 25.101 How is compensation for disability paid?**

Compensation for disability shall be paid to the non-citizen non-resident employee as follows:

(a) *Temporary total disability.* Where the injured employee is disabled and unable to earn wages equivalent to those earned at the time of injury for a period of time less than two years, the employee shall receive 50 percent of the monthly pay during the period of such disability.

(b) *Temporary partial disability.* Where the injured employee is disabled and unable to earn equivalent wages to those earned at the time of injury, but who is not totally disabled for work, the injured employee shall receive during the period of disability, that proportion of compensation for temporary total disability, as determined under paragraph (a) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(c) *Permanent total disability.* Where it is found that the injured employee is disabled and will be or has been unable to earn equivalent wages to those earned at the time of injury for greater than two years, the employee is deemed permanently disabled. Such employee shall receive a lump sum settlement based on compensation equaling 50 percent of the monthly pay or a percentage proportionate to the extent of disability. The lump sum award shall be made by the manner prescribed by 5 U.S.C. 8135.

(d) *Permanent partial disability.* Where there is permanent disability (impairment) involving the loss, or loss of use, of a member or function of the body, the injured employee is entitled to schedule compensation at 50 percent of the monthly pay to be paid in a lump sum according to 5 U.S.C. 8135, for the following losses and periods:

(1) Arm lost: 312 weeks' compensation.

(2) Leg lost: 288 weeks' compensation.

(3) Hand lost: 244 weeks' compensation.

(4) Foot lost: 205 weeks' compensation.

(5) Eye lost: 160 weeks' compensation.

(6) Thumb lost: 75 weeks' compensation.

(7) First finger lost: 46 weeks' compensation.

(8) Great toe lost: 38 weeks' compensation.

(9) Second finger lost: 30 weeks' compensation.

(10) Third finger lost: 25 weeks' compensation.

(11) Toe, other than great toe, lost: 16 weeks' compensation.

(12) Fourth finger lost: 15 weeks' compensation.

(13) Loss of hearing: One ear, 52 weeks' compensation; both ears, 200 weeks' compensation.

(14) Breast (one) lost: 52 weeks' compensation.

(15) Kidney (one) lost: 156 weeks' compensation.

(16) Larynx lost: 160 weeks' compensation.

(17) Lung (one) lost: 156 weeks' compensation.

(18) Penis lost: 205 weeks' compensation.

(19) Testicle (one) lost: 52 weeks' compensation.

(20) Tongue lost: 160 weeks' compensation.

(21) Ovary (one) lost: 52 weeks' compensation.

(22) Uterus/cervix and vulva/vagina lost: 205 weeks' compensation.

(23) Skin: 205 weeks' compensation.

(24) Phalanges: Compensation for loss of more than one phalanx of a digit shall be the same as for the loss of the entire digit. Compensation for loss of the first phalanx shall be one-half of the compensation for the loss of the entire digit.

(25) Amputated arm or leg: Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for the loss of the arm or leg; but, if amputated between the elbow and the wrist, or between the knee and the ankle, the compensation shall be the same as for the loss of the hand or the foot.

(26) Binocular vision or percent of vision: Compensation for loss of binocular vision, or for 80 percent or more of the vision of an eye shall be the same as for the loss of the eye.

(27) Two or more digits: Compensation for loss of two or more digits, one or more phalanges of two or more digits of a hand or foot may be proportioned to the loss of use of the hand or foot occasioned thereby, but shall not exceed the compensation for the loss of a hand or a foot.

(28) Total loss of use: Compensation for a permanent total loss of use of a member shall be the same as for loss of the member.

(29) Partial loss or partial loss of use: Compensation for permanent partial loss or loss of use of a member may be for proportionate loss of use of the member.

(30) Consecutive awards: In any case in which there occurs a loss or loss of use of more than one member or parts of more than one member set forth in paragraph (d) of this section, but not amounting to permanent total disability, the award of compensation shall be for the loss or loss of use of each such member or part thereof, which awards shall run consecutively.

(31) Other cases: In all other cases within this class of disability the compensation during the continuance of disability shall be that proportion of compensation for permanent total disability, as determined under paragraph (c) of this section, which is equal in percentage to the degree or percentage of physical impairment caused by the disability.

(32) Compensation under paragraph (d) of this section for permanent partial disability shall be in addition to any compensation for temporary total or temporary partial disability under this section, and awards for temporary total, temporary partial, and permanent partial disability shall run consecutively.

(e) In the event a beneficiary covered under subpart B can demonstrate that the amount payable under the special schedule would result in a payment that would be demonstrably less than the amount payable under the law of his home country, the Director retains the discretion to pay that amount of compensation under 5 U.S.C. 8137(a)(2)(A), not to exceed the amount payable under FECA. To request benefits under this paragraph, the beneficiary must submit the following:

(1) Translated copies of the applicable local statute as well as any regulations, policies and procedures the beneficiary avers are applicable; and

(2) A translated copy of an opinion rendered by an attorney licensed in that jurisdiction or an advisory opinion from a court or administrative tribunal that explains the benefits payable to the beneficiary.

**§ 25.102 How is compensation for death of a non-citizen non-resident employee paid?**

If the disability causes death, the compensation shall be payable in the amount and to or for the benefit of the following persons:

(a) To the undertaker or person entitled to reimbursement, reasonable funeral expenses not exceeding $800.

(b) To the surviving spouse, if there is no child, 30 percent of the monthly pay

until his or her death or remarriage subject to the lump sum provisions of 5 U.S.C. 8135.

(c) To the surviving spouse, if there is a child, the compensation payable under paragraph (b) of this section, and in addition thereto 10 percent of the monthly wage for each child, not to exceed a total of 50 percent of the monthly pay for such surviving spouse and children subject to the lump sum provisions of 5 U.S.C. 8135. If a child has a guardian other than the surviving spouse, the compensation payable on account of such child shall be paid to such guardian. The compensation entitlement of any child shall cease when he or she dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support.

(d) To the children, if there is no surviving spouse, 25 percent of the monthly pay for one child and 10 percent thereof for each additional child, not to exceed a total of 50 percent of the monthly pay thereof, divided among such children share and share alike subject to the lump sum provisions of 5 U.S.C. 8135. The compensation entitlement of each child shall cease when he or she dies, marries or reaches the age of 18, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a child under legal age shall be paid to its guardian, if there is one, otherwise to the person having the custody or care of such child, for such child, as the Director in his or her discretion shall determine.

(e) To the parents, if one is wholly dependent for support upon the deceased employee at the time of his or her death and the other is not dependent to any extent, 20 percent of the monthly pay; if both are wholly dependent, 10 percent thereof to each; if one is or both are partly dependent, a proportionate amount in the discretion of the Director. The compensation to a parent or parents in the percentages specified shall be paid if there is no surviving spouse or child, but if there is a surviving spouse or child, there shall be paid so much of such percentages for a parent or parents as, when added to the total of the percentages of the surviving spouse and children, will not exceed a total of 50 percent of the monthly pay. These payments are subject to the lump sum provision of 5 U.S.C. 8135.

(f) To the brothers, sisters, grandparents and grandchildren, if one is wholly dependent upon the deceased employee for support at the time of his or her death, 20 percent of the monthly pay to such dependent; if more than one are wholly dependent, 30 percent of such pay, divided among such dependents share and share alike; if there is no one of them wholly dependent, but one or more are partly dependent, 10 percent of such pay divided among such dependents share and share alike. The compensation to such beneficiaries shall be paid if there is no surviving spouse, child or dependent parent. If there is a surviving spouse, child or dependent parent, there shall be paid so much of the above percentages as, when added to the total of the percentages payable to the surviving spouse, children and dependent parents, will not exceed a total of 50 percent of such pay. These payments are subject to the lump sum provision of 5 U.S.C. 8135.

(g) The compensation entitlement of each beneficiary under paragraphs (e) and (f) of this section shall be paid until he or she, if a parent or grandparent, dies, marries or ceases to be dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of 18 years, or if over such age and incapable of self-support, becomes capable of self-support. The compensation of a brother, sister or grandchild under legal age shall be paid to his or her guardian, if there is one, otherwise to the person having the custody or care of such person, for such person, as the Director in his or her discretion shall determine.

(h) Upon the cessation of any person's compensation for death under this subpart, the compensation of any remaining person entitled to continuing compensation in the same case shall remain the same so that the continuing compensation shall be at the same rate each person previously received.

(i) In cases where there are two or more classes of persons entitled to compensation for death under this subpart, and the apportionment of such compensation as provided in this section would result in injustice, the Director may in his or her discretion modify the apportionments to meet the requirements of the case.

(j) Compensation for death shall be paid where practicable in a lump sum pursuant to section 8135.

(k) In the event a beneficiary eligible for death benefits covered under subpart B can demonstrate that the amount payable under the special schedule would result in a payment that would be demonstrably less than the amount payable under the law of his home country, the Director retains the discretion to pay that amount of compensation under 5 U.S.C. 8137(a)(2)(A), not to exceed the amount payable under FECA. To request benefits under this paragraph, the beneficiary must submit the following:

(1) Translated copies of the applicable local statute as well as any regulations, policies and procedures the beneficiary asserts are applicable; and

(2) A translated copy of an opinion rendered by an attorney licensed in that jurisdiction or an advisory opinion from a court or administrative tribunal that explains the benefits payable to the beneficiary.

(l) A FECA death gratuity of $65,000 may be payable for the death of a non-citizen non-resident employee should the death be a result of injury incurred in connection with service with an Armed Force in a contingency operation as set forth in subpart J of part 10.

## Subpart C—Extensions of the Special Schedule of Compensation

### § 25.200 How is the Special Schedule applied for employees in the Republic of the Philippines?

(a) *Modified special schedule of compensation.* Except for injury or death of direct-hire employees of the U.S. Military Forces covered by the Philippine Medical Care Program and the Employees' Compensation Program pursuant to the agreement signed by the United States and the Republic of the Philippines on March 10, 1982 who are also members of the Philippine Social Security System, the special schedule of compensation established in subpart B of this part shall apply, with the modifications or additions specified in paragraphs (b) through (k) of this section, in the Republic of the Philippines, to injury or death occurring on or after July 1, 1968, with the following limitations:

(1) *Temporary disability.* Benefits for payments accruing on and after July 1, 1969, for injuries causing temporary disability and which occurred on and after July 1, 1968, shall be payable at the rates in the special schedule as modified in this section.

(2) *Permanent disability and death.* Benefits for injuries occurring on and after July 1, 1968, which cause permanent disability or death, shall be payable at the rates specified in the special schedule as modified in this section for all awards not paid in full before July 1, 1969, and any award paid in full prior to July 1, 1969: Provided, that application for adjustment is made, and the adjustment will result in additional benefits of at least $10. In the case of injuries or death occurring on or after December 8, 1941 and prior to July 1, 1968, the special schedule as modified in this section may be applied to prospective awards for permanent

disability or death, provided that the monthly and aggregate maximum provisions in effect at the time of injury or death shall prevail. These maxima are $50 and $4,000, respectively.

(b) *Death benefits.* 400 weeks' compensation at two-thirds of the weekly wage rate, shared equally by the eligible survivors in the same class.

(c) *Death beneficiaries.* Benefits are payable to the survivors in the following order of priority (all beneficiaries in the highest applicable classes are entitled to share equally):

(1) Surviving spouse and unmarried children under 18, or over 18 and totally incapable of self-support.

(2) Dependent parents.

(3) Dependent grandparents.

(4) Dependent grandchildren, brothers and sisters who are unmarried and under 18, or over 18 and totally incapable of self-support.

(d) *Burial allowance.* 14 weeks' wages or $400, whichever is less, payable to the eligible survivor(s), regardless of the actual expense. If there is no eligible survivor, actual burial expenses may be paid or reimbursed, in an amount not to exceed what would be paid to an eligible survivor.

(e) *Permanent total disability.* 400 weeks' compensation at two-thirds of the weekly wage rate.

(f) *Permanent partial disability.* Where applicable, the compensation provided in § 25.100(c)(1) through (19) subject to an aggregate limitation of 400 weeks' compensation. In all other cases, provided for permanent total disability that proportion of the compensation (paragraph (e) of this section) which is equivalent to the degree or percentage of physical impairment caused by the disability.

(g) *Temporary partial disability.* Two-thirds of the weekly loss of wage-earning capacity.

(h) *Compensation period for temporary disability.* Compensation for temporary disability is payable for a maximum period of 80 weeks.

(i) *Maximum compensation.* The total aggregate compensation payable in any case, for injury or death or both, shall not exceed $8,000, exclusive of medical costs and burial allowance. The weekly rate of compensation for disability or death shall not exceed $35.

(j) *Method of payment.* Only compensation for temporary disability shall be payable periodically. Compensation for permanent disability and death shall be payable in full at the time the extent of entitlement is established.

(k) *Exceptions.* The Director in his or her discretion may make exceptions to the regulations in this section by:

(1) Reapportioning death benefits, for the sake of equity.

(2) Excluding from consideration potential death beneficiaries who are not available to receive payment.

(3) Paying compensation for permanent disability or death on a periodic basis, where this method of payment is considered to be in the best interest of the beneficiary.

### § 25.201 How is the Special Schedule applied for employees in Australia?

(a) The special schedule of compensation established by subpart B of this part shall apply in Australia with the modifications or additions specified in paragraph (b) of this section, as of December 8, 1941, in all cases of injury (or death from injury) which occurred between December 8, 1941 and December 31, 1961, inclusive, and shall be applied retrospectively in all such cases of injury (or death from injury). Compensation in all such cases pending as of July 15, 1946, shall be readjusted accordingly, with credit taken in the amount of compensation paid prior to such date. Refund of compensation shall not be required if the amount of compensation paid in any such case, otherwise than through fraud, misrepresentation or mistake, and prior to July 15, 1946, exceeds the amount provided for under this paragraph, and such case shall be deemed compromised and paid under 5 U.S.C. 8137.

(b) The total aggregate compensation payable in any case under paragraph (a) of this section, for injury or death or both, shall not exceed the sum of $4,000, exclusive of medical costs. The maximum monthly rate of compensation in any such case shall not exceed the sum of $50.

(c) The benefit amounts payable under the provisions of the Commonwealth Employees' Compensation Act of 1930–1964, Australia, shall apply as of January 1, 1962, in Australia, as the exclusive measure of compensation in cases of injury (or death from injury) according on and after January 1, 1962, and shall be applied retrospectively in all such cases, occurring on and after such date: Provided, that the compensation payable under the provisions of this paragraph shall in no event exceed that payable under the FECA.

### § 25.202 How is the Special Schedule applied for Japanese seamen?

(a) *General.* The special schedule of compensation established by subpart B of this part shall apply as of November 1, 1971, with the modifications or additions specified in paragraphs (b) through (i) of this section, to injuries sustained outside the continental United States or Canada by direct-hire Japanese seamen who are neither citizens nor residents of the United States or Canada and who are employed by the Military Sealift Command in Japan.

(b) *Temporary total disability.* Weekly compensation shall be paid at 75 percent of the weekly wage rate.

(c) *Temporary partial disability.* Weekly compensation shall be paid at 75 percent of the weekly loss of wage-earning capacity.

(d) *Permanent total disability.* Compensation shall be paid in a lump sum equivalent to 360 weeks' wages.

(e) *Permanent partial disability.* (1) The provisions of § 25.101 of this part shall apply to the types of permanent partial disability listed in paragraphs (d)(1) through (13) and (d)(24) through (29) of that section: Provided that weekly compensation shall be paid at 75 percent of the weekly wage rate and that the number of weeks allowed for specified losses shall be changed as follows:

(i) Arm lost: 312 weeks.

(ii) Leg lost: 288 weeks.

(iii) Hand lost: 244 weeks.

(iv) Foot lost: 205 weeks.

(v) Eye lost: 160 weeks.

(vi) Thumb lost: 75 weeks.

(vii) First finger lost: 46 weeks.

(viii) Second finger lost: 30 weeks.

(ix) Third finger lost: 25 weeks.

(x) Fourth finger lost: 15 weeks.

(xi) Great toe lost: 38 weeks.

(xii) Toe, other than great toe lost: 16 weeks.

(2) In all other cases, that proportion of the compensation provided for permanent total disability in paragraph (d) of this section which is equivalent to the degree or percentage of physical impairment caused by the injury.

(f) *Death.* If there are two or more eligible survivors, compensation equivalent to 360 weeks' wages shall be paid to the survivors, share and share alike. If there is only one eligible survivor, compensation equivalent to 300 weeks' wages shall be paid. The following survivors are eligible for death benefits:

(1) Spouse who lived with or was dependent upon the employee.

(2) Unmarried children under 21 who lived with or were dependent upon the employee.

(3) Adult children who were dependent upon the employee by reason of physical or mental disability.

(4) Dependent parents, grandparents and grandchildren.

(g) *Burial allowance.* $1,000 payable to the eligible survivor(s), regardless of actual expenses. If there are no eligible

survivors, actual expenses may be paid or reimbursed, up to $1,000.

(h) *Method of payment.* Only compensation for temporary disability shall be payable periodically, as entitlement accrues. Compensation for permanent disability and death shall be payable in a lump sum.

(i) *Maxima.* In all cases, the maximum weekly benefit shall be $130. Also, except in cases of permanent total disability and death, the aggregate maximum compensation payable for any injury shall be $51,000. This amount will be adjusted annually on March 1 in accordance with the percentage amount determined by the cost of living adjustment under 5 U.S.C. 8146a.

(j) *Prior injury.* In cases where injury or death occurred prior to November 1, 1971, benefits will be paid in accordance with regulations promulgated, contained in 20 CFR parts 1–399, edition revised as of January 1, 1971.

**§ 25.203 How is the Special Schedule applied to non-resident aliens in the Territory of Guam?**

The special schedule of compensation established by subpart B of this part shall apply to an injury or death occurring on or after August 29, 2011 in the Territory of Guam to non-resident alien employees recruited in foreign countries for employment by the military departments in the Territory of Guam. This schedule shall not apply to any employee who becomes a bona fide permanent resident as such claims will be decided in accordance with § 25.5.

Signed at Washington, DC this 8th of June, 2011.

**Gary A. Steinberg,**

*Acting Director, Office of Workers' Compensation Programs.*

[FR Doc. 2011–14915 Filed 6–27–11; 8:45 am]

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Part III

## Environmental Protection Agency

40 CFR Parts 60, 1039, 1042 *et al.*

Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 60, 1039, 1042, 1065, 1068**

**[EPA–HQ–OAR–2010–0295, FRL–9319–5]**

**RIN 2060–AP67**

## Standards of Performance for Stationary Compression Ignition and Spark Ignition Internal Combustion Engines

**AGENCY:** The Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is finalizing revisions to the standards of performance for new stationary compression ignition internal combustion engines under section 111(b) of the Clean Air Act. The final rule requires more stringent standards for stationary compression ignition engines with displacement greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder, consistent with recent revisions to standards for similar mobile source marine engines. In addition, the action revises the requirements for engines with displacement at or above 30 liters per cylinder to align more closely with recent standards for similar mobile source marine engines, and for engines in remote portions of Alaska that are not accessible by the Federal Aid Highway System. The action also provides additional flexibility to owners and operators of affected engines, and corrects minor mistakes in the original standards of performance. Finally, the action makes minor revisions to the standards of performance for new stationary spark ignition internal combustion engines to correct minor errors and to mirror certain revisions finalized for compression ignition engines, which provides consistency where appropriate for the regulation of stationary internal combustion engines. The final standards will reduce nitrogen oxides by an estimated 1,100 tons per year, particulate matter by an estimated 38 tons per year, and hydrocarbons by an estimated 18 tons per year in the year 2030.

**DATES:** This final rule is effective on August 29, 2011.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0295. The EPA also relies on materials in Docket ID Nos. EPA–HQ–OAR–2005–0029 and EPA–HQ–OAR–2003–0190, and incorporates those dockets into the record for this final rule. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melanie King, Energy Strategies Group, Sector Policies and Programs Division (D243–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541–2469; facsimile number (919) 541–5450; e-mail address *king.melanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** *Background Information Document.* On June 8, 2010 (75 FR 32612), the EPA proposed amendments to the standards of performance for stationary compression ignition and spark ignition engines. A summary of the public comments on the proposal and the EPA's responses to the comments, as well as the Economic Impact and Small Business Analysis Report, are available in Docket ID No. EPA–HQ–OAR–2010–0295.

*Organization of This Document.* The following outline is provided to aid in locating information in the preamble.

I. General Information
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II. Background
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- B. Standards for Engines With Displacement Greater Than or Equal to 30 l/cyl
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- D. Temporary Replacement Engines
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- A. What are the air quality impacts?
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- A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
- B. Paperwork Reduction Act
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- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Congressional Review Act

## I. General Information

### *A. Does this action apply to me?*

*Regulated Entities.* Categories and entities potentially regulated by this action include:

| Category | NAICS [1] | Examples of regulated entities |
|---|---|---|
| Any manufacturer that produces or any industry using a stationary internal combustion engine as defined in the final rule. | 2211 | Electric power generation, transmission, or distribution. |
| | 622110 | Medical and surgical hospitals. |
| | 335312 | Motor and generator manufacturing. |
| | 33391 | Pump and compressor manufacturing. |
| | 333992 | Welding and soldering equipment manufacturing. |

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine is regulated by this action, you should examine the applicability criteria of this final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*B. Where can I get a copy of this document?*

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/*. The TTN provides information and technology exchange in various areas of air pollution control.

*C. Judicial Review*

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by August 29, 2011. Under section 307(d)(7)(B) of the CAA, only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that ''[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.'' This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

## II. Background

This action promulgates revisions to the new source performance standards (NSPS) for new compression ignition (CI) stationary internal combustion engines (ICE). The NSPS were originally promulgated on July 11, 2006 (71 FR 39153). New source performance standards implement section 111(b) of the CAA, and are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The standards apply to new stationary sources of emissions, *i.e.,* sources whose construction, reconstruction, or modification begins after a standard for those sources is proposed.

For the first time, the NSPS put Federal restrictions on emissions of particulate matter (PM), oxides of nitrogen ($NO_X$), non-methane hydrocarbons (NMHC) and carbon monoxide (CO) from new stationary CI engines. The NSPS also restricted the level of sulfur permitted in diesel fuel used in new stationary CI engines. The levels in the NSPS were generally based on standards promulgated in previous rules for similar nonroad (*i.e.,* mobile off-highway) engines. For larger engines with displacement greater than or equal to 10 liters per cylinder (l/cyl) and less than 30 l/cyl, the levels were based on standards for similar marine engines. For engines with displacement greater than or equal to 30 l/cyl, the standards were based on evidence collected for those specified engines.

Following promulgation of the initial NSPS, the EPA received several comments from interested parties regarding aspects of the final rule. In particular, the Engine Manufacturers Association (EMA) stated its belief that the standards promulgated for engines with displacement greater than or equal to 30 l/cyl were not feasible, especially for those engines located in areas without requirements for low sulfur diesel fuel. Engine manufacturers also noted some minor errors in the standards as published. The American Petroleum Institute (API) petitioned for review of the final NSPS, and stated to the EPA that, among other concerns, API believed that the compliance requirements did not allow owner and operators enough flexibility to use operation and maintenance procedures that were different from those recommended by manufacturers, yet would still provide good emission control practice for minimizing emissions. API also had other comments regarding the final rule, including concerns regarding use of the term ''useful life'' in the stationary engine context, and concerns that temporary portable engines would be treated as subject to NSPS requirements beyond the requirements for nonroad engines. These amendments address the comments received from EMA and API.

Additionally, on June 30, 2008, the EPA published more stringent standards for new locomotives and for new CI marine vessels under 40 CFR parts 1033 and 1042, respectively, including marine vessel engines with displacement greater than or equal to 10 l/cyl and less than 30 l/cyl (73 FR 37095). The rule promulgated two new tiers of standards for newly manufactured marine CI engines at or above 600 kilowatt (KW) (800 horsepower (HP)), the second of which was based on the application of catalytic aftertreatment technology. Further, on April 30, 2010, the EPA promulgated final fuel requirements and standards regulating emissions from marine

engines with displacement above 30 l/cyl (75 FR 22896). These requirements are equivalent to the limits adopted by the International Maritime Organization (IMO) in October 2008 as an amendment to Annex VI of the International Convention for the Prevention of Pollution from Ships (also called MARPOL Annex VI). The EPA is revising the NSPS for stationary CI engines with a displacement greater than or equal to 10 l/cyl to align them with the standards for similar marine engines.

Also, on October 31, 2008, the State of Alaska, pursuant to the provision in the final NSPS for CI engines allowing it to request alternative provisions for remote Alaska, requested that the EPA make certain changes in its requirements to account for circumstances in remote Alaska that are different from those in the rest of the United States. These amendments revise the NSPS for stationary CI engines to address issues raised by the State of Alaska in its request.

On January 18, 2008, the EPA published a final rule containing separate standards of performance for stationary spark ignition (SI) engines (73 FR 3567). While these regulations are distinct from the standards of performance for CI engines, certain aspects of these regulations, particularly regarding compliance and definitions, are intended to be consistent with the regulations promulgated for CI engines. Therefore, the EPA is making minor revisions to the NSPS for stationary SI engines to maintain consistency with the NSPS for stationary CI engines. In addition, the EPA received comments indicating minor errors in the regulations for SI engines. While the EPA is not making any significant changes to the SI regulations in this rule, except for those to maintain consistency, the EPA is correcting certain minor errors in the NSPS for stationary SI engines in this rule.

## III. Summary of the Final Amendments

### *A. Standards for New Engines With Displacement Greater Than or Equal to 10 l/cyl and Less Than 30 l/cyl*

The EPA is incorporating the standards for new marine engines that were promulgated on June 30, 2008 (73 FR 37095), into the NSPS for new stationary CI ICE with displacement greater than or equal to 10 l/cyl and less than 30 l/cyl. The standards were found to be feasible for the marine engines covered by those requirements. As discussed in the original NSPS final rule, stationary engines in this displacement range are similar in design to marine CI engines and are generally certified to marine standards. The EPA is, therefore, basing the standards for non-emergency stationary CI ICE with a displacement between 10 l/cyl and 30 l/cyl on the technologies identified in the June 30, 2008, rulemaking that are expected to be used to meet the emission standards for marine CI engines.

The final standards would not take effect until 2013, at the earliest. The standards are summarized in Tables 1 and 2 in this preamble.

TABLE 1—FIRST TIER STANDARDS FOR STATIONARY CI ENGINES WITH A DISPLACEMENT ≥10 AND <30 LITERS PER CYLINDER [A]

| Engine displacement (liters per cylinder) | Maximum engine power | PM g/HP-hr (g/KW-hr) | $NO_X$+HC g/HP-hr (g/KW-hr) | Model year |
|---|---|---|---|---|
| 10.0≤displacement<15.0 | <2,000 KW | 0.10 (0.14) | 4.6 (6.2) | 2013+ |
| 10.0≤displacement<15.0 | 2,000≤KW<3,700 | 0.10 (0.14) | 5.8 (7.8) | 2013+ |
| 15.0≤displacement<20.0 | <2,000 KW | 0.25 (0.34) | 5.2 (7.0) | 2014+ |
| 20.0≤displacement<25.0 | <2,000 KW | 0.20 (0.27) | 7.3 (9.8) | 2014+ |
| 25.0≤displacement<30.0 | <2,000 KW | 0.20 (0.27) | 8.2 (11.0) | 2014+ |

[a] See note (b) of Table 2 for optional standards.

TABLE 2—SECOND TIER STANDARDS FOR STATIONARY CI ENGINES WITH A DISPLACEMENT ≥10 AND <30 LITERS PER CYLINDER

| Engine displacement (liters per cylinder) | Maximum engine power | PM g/HP-hr (g/KW-hr) | $NO_X$ g/HP-hr (g/KW-hr) | HC g/HP-hr (g/KW-hr) | Model year |
|---|---|---|---|---|---|
| All | 600≤KW<1,400 | 0.03 (0.04) | 1.3 (1.8) | 0.14 (0.19) | 2017+ [a] |
| All | 1,400≤KW<2,000 | 0.03 (0.04) | 1.3 (1.8) | 0.14 (0.19) | 2016+ [b] |
| All | 2,000≤KW<3,700 | 0.03[c] (0.04) | 1.3 (1.8) | 0.14 (0.19) | 2014+ [b] |
| <15.0 | | 0.09 (0.12) | 1.3 (1.8) | 0.14 (0.19) | 2014–2015 [b] |
| 15.0≤displacement <30.0 | ≥3,700 KW | 0.19 (0.25) | 1.3 (1.8) | 0.14 (0.19) | 2014–2015 [b] |
| All | | 0.04 (0.06) | 1.3 (1.8) | 0.14 (0.19) | 2016+ [a] |

[a] Optional compliance start dates can be used within these model years; see 40 CFR 1042.101(a)(8).
[b] *Option:* 1st Tier PM/$NO_X$+HC at 0.10/5.8 g/HP-hr (0.14/7.8 g/KW-hr) in 2012, and 2nd Tier in 2015.

[c] Interim Tier 4 PM standards for 2014 and 2015 model year engines with a displacement at or above 15 liters per cylinder are 0.25 g/HP-hr (0.34 g/KW-hr) for engines 2,000≤KW<3,300 and 0.20 g/HP-hr (0.27 g/KW-hr) for engines 3,300≤KW<3,700.

The first tier of standards is based on engine-based technologies already in use or expected to be used for other mobile and stationary engines (*e.g.,* improved fuel injection, engine mapping, and calibration optimization), as well as the use of ultra low sulfur (*i.e.,* 15 parts per million (ppm) sulfur) diesel (ULSD). The second tier of standards is expected to be met with the use of catalytic exhaust aftertreatment that has already been used for other similar mobile and stationary engines, like catalyzed diesel particulate filters (CDPF) and selective catalytic reduction (SCR).

*B. Standards for Engines With Displacement Greater Than or Equal to 30 l/cyl*

In the initial final NSPS, the EPA required owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 l/cyl to reduce $NO_X$ emissions by 90 percent or more, or alternatively they had to limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to 1.6 grams per KW-hour (g/KW-hr) (1.2 grams per HP-hour (g/HP-hr)). Owners and operators were also required to reduce PM emissions by 60 percent or more, or alternatively they had to limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.15 g/KW-hr (0.11 g/HP-hr). These standards were applicable in all areas, including areas in the Pacific (*e.g.,* Guam) and remote areas of Alaska that were exempted, at least temporarily, from using low sulfur fuel. The standards were also applicable to all engines in this displacement category, whether they were used for emergency or non-emergency purposes.

Following completion of the original rule, the EPA received comments from engine manufacturers stating that the standards would be infeasible in areas where low sulfur fuel was not used. The engine manufacturers recommended less stringent standards for areas where low sulfur fuel is not required. The EPA also received later comments indicating that the standards were also infeasible for engines in areas with access to lower sulfur fuel, and that the standards should instead be harmonized with the IMO standards for similar engines in marine vessels. These comments also requested that the EPA take the same approach to emergency engines with displacement greater than or equal to 30 l/cyl as the EPA takes for smaller emergency engines. For other emergency engines, the EPA promulgated emission standards that do not require the use of aftertreatment, given the limited use of the engines, the ineffectiveness of the aftertreatment during startup, and the need for safe, reliable and immediate operation of the engine during emergencies. The comments stated that engines of this size have been used as emergency generators at nuclear power plants in order to assure the safe shut-down of the reactor in case of emergency due to their excellent performance and reliability.

Regarding the $NO_X$ standard for these engines, the EPA agrees that it is appropriate to adjust the stringency of the $NO_X$ standard to match the worldwide $NO_X$ standard approved in the IMO's Annex VI and promulgated by the EPA on April 30, 2010 (75 FR 22896), for marine engines with displacement at or above 30 l/cyl. While the technology required by the existing NSPS has been used on other stationary engines, the EPA realizes the need to provide lead time for the technology to transfer to the largest of engines. The final IMO $NO_X$ standard is comparable to the existing NSPS $NO_X$ standard, but provides more lead time for final implementation. Revising the standard to match the standard for marine engines allows manufacturers to design a single type of engine for both uses. This standard has been substantially reviewed by the EPA and other governments and has been found to be feasible in the time provided. For engines installed prior to January 1, 2012, the standard is 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 revolutions per minute (rpm); $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when n (maximum engine speed) is 130 or more, but less than 2,000 rpm; 9.8 g/KW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more. For engines installed after January 1, 2012, the EPA is finalizing a more stringent standard of 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm; $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) where n (maximum engine speed) is 130 or more but less than 2,000 rpm; and 7.7 g/KW-hr (5.7 g/HP-hr) where maximum engine speed is greater than or equal to 2,000 rpm. For engines installed after January 1, 2016, the EPA is finalizing a more stringent standard that presumes the use of aftertreatment. The levels are 3.4 g/KW-hr (2.5 g/HP-hr) when maximum engine speed is less than 130 rpm; $9.0 \cdot n^{-0.20}$ g/KW-hr ($6.7 \cdot n^{-0.20}$ g/HP-hr) where n (maximum engine speed) is 130 or more but less than 2,000 rpm; and 2.0 g/KW-hr (1.5 g/HP-hr) where maximum engine speed is greater than or equal to 2,000 rpm.

For engines installed in Pacific island areas that are not required to use lower sulfur fuel, while the EPA believes that SCR can be installed on such engines even where high sulfur fuel is being used, the EPA agrees that the use of high sulfur fuel, and the presence of other impurities in this type of fuel (*i.e.,* heavy fuel oil), as well as different density and viscosity, make it difficult to achieve similar results from SCR as would occur with lower sulfur fuel. Maintenance of high $NO_X$ reduction levels is also more difficult when using high sulfur fuel. The use of higher sulfur heavy fuel oil also increases engine-out $NO_X$ emissions because of the increased levels of contaminants in the fuel. The EPA also notes that the areas in question do not have any significant ozone problem. The EPA, therefore, is not requiring the more stringent standards that would otherwise apply beginning in 2016 in these areas.

Similarly, the EPA is not requiring the more stringent, aftertreatment-forcing $NO_X$ standards for emergency engines with displacement at or above 30 l/cyl. As the commenters noted, the EPA did not require aftertreatment-forcing requirements for other emergency engines due to the limited use of the engines, the ineffectiveness of the aftertreatment during startup, and the need for safe, reliable and immediate operation of the engine during emergencies. The EPA agrees that similar concerns are present for emergency engines in this power category.

The EPA is also modifying its fuel requirements for engines with displacement at or above 30 l/cyl. The final rule promulgated by the EPA for marine engines with displacement above 30 l/cyl required those engines to use fuel meeting a 1,000 ppm sulfur level beginning in 2014, and also made other revisions to the mobile source fuel requirements that will likely have the effect of making 1,000 ppm sulfur fuel the outlet for diesel fuel that does not meet the 15 ppm sulfur standard generally required for mobile source fuel. The EPA is revising the fuel sulfur standards for stationary CI engines with displacement at or above 30 l/cyl to a 1,000 ppm sulfur level beginning on June 1, 2012.

The EPA agrees that the numerical standards for PM promulgated in the original final rule would be very difficult, if not impossible, to achieve using high sulfur fuel. The EPA therefore agrees that it is appropriate to revise the concentration limit for PM for stationary CI ICE with a displacement of greater than or equal to 30 l/cyl in areas where low sulfur fuel is not required. The EPA is finalizing a standard of 0.40 g/KW-hr (0.30 g/HP-hr). Given the substantial health concerns associated with diesel PM emissions, the EPA believes it is appropriate to require this level for all engines where low sulfur fuel is not required. Similarly, the EPA is revising the PM standard for emergency engines to 0.40 g/kW-hr (0.30 g/HP-hr), for the reasons provided above regarding $NO_X$ standards for such engines.

The EPA is not changing the PM standard for non-emergency engines in areas where the lower sulfur fuel is available. As the EPA explained in the original NSPS, the EPA believes this standard is achievable for engines using existing technology and low sulfur fuel. The substantial health risks associated with diesel PM require that these stringent standards remain in place.

*C. Compliance Requirements for Owners and Operators*

In the original final NSPS for stationary CI ICE, the EPA required all engines to be installed, configured, operated, and maintained according to the specifications and instructions provided by the engine manufacturer. The EPA also allowed the option for owners and operators to follow procedures developed by the owner or operator that have been approved by the engine manufacturer for cases where site-specific conditions may require changes to the manufacturer's typical guidelines.

Several parties objected to this requirement. According to the parties, this requirement restricts owners and operators from using the most appropriate methods for installing, operating and maintaining engines in the field. The parties claim that owners and operators are in the best position to determine the most appropriate method of installing, operating and maintaining engines in the field and have more experience in doing so than engine manufacturers, and that operation and maintenance provisions in manufacturer manuals are often too stringent and inflexible to be required in binding regulations.

Based on the comments and information received during and after the rulemakings for NSPS for both CI and SI ICE, the EPA believes in this circumstance and with certain safeguards, it is appropriate to provide flexibility to owners and operators to follow alternative operation and maintenance procedures. Therefore, the EPA is revising the regulations to allow owners and operators to develop their own operation and maintenance plans as an alternative to following manufacturer operation and maintenance procedures. However, if an owner/operator decides to take this approach, the EPA will need greater assurance that the engine is meeting emission requirements because the owner/operator will not be operating according to the operation and maintenance instructions included in the engine manufacturer's certification. Thus, owner/operators using this approach will generally be subject to further testing of their engines and will be required to keep maintenance plans and records. Engines greater than 500 HP are required to conduct a performance test within 1 year of startup (or within 1 year after an engine and control device is no longer installed, configured, operated, and maintained in accordance with the manufacturer's emission-related written instructions) to demonstrate compliance with the emission standards, and also have to conduct subsequent performance testing every 8,760 hours or 3 years (whichever comes first) thereafter. These engines are also required to keep a maintenance plan and records of conducted maintenance.

Engines greater than or equal to 100 HP and less than or equal to 500 HP are required to conduct a performance test within 1 year of startup (or within 1 year after an engine and control device is no longer installed, configured, operated, and maintained in accordance with the manufacturer's emission-related written instructions) to demonstrate compliance with the emission standards and in addition are required to keep a maintenance plan and records of conducted maintenance. Engines below 100 HP operating in a non-certified manner do not have to conduct further performance testing, but are required to keep a maintenance plan and records, and if the owner/operator does not install and configure the engine and control device according to the manufacturer's emission-related written instructions, then the owner/operator must conduct a performance test to demonstrate compliance with the applicable emission standards within 1 year of such action.

Owners and operators have the ability to adjust engine settings outside of manufacturer settings as long as they demonstrate the engines comply with the standards at those settings with a performance test. Parties also noted that the operation and maintenance requirements extended beyond emission-related operation and maintenance and extended to operation and maintenance of all aspects of the engine, which the parties believed should be beyond the scope of the regulation. The EPA agrees that the operation and maintenance requirements of the NSPS should be restricted to emission-related operation and maintenance, and is revising the regulations accordingly.

The EPA notes that if the engine settings are adjusted outside of the manufacturer's specifications, the engine is no longer considered to be a certified engine. The engine manufacturer is no longer considered responsible for the engine being in compliance with the applicable emission standards, and the emissions warranty for the engine becomes void.

*D. Temporary Replacement Engines*

The EPA received comments during and after the initial CI NSPS rulemaking and during the SI NSPS rulemaking indicating that there was some confusion regarding the status of temporary engines (*i.e.,* generally engines in one location for less than 1 year) under the EPA's regulations. Further, there was concern that for those temporary engines that were considered stationary under the definitions of stationary and nonroad engine, because they replaced other stationary engines during periods when the main engines were off-line (*e.g.,* for maintenance work), owners and operators of major sources would have little or no ability to oversee the operations of these temporary engines, as they were generally owned and maintained by other entities.

The EPA notes that except for certain instances (*e.g.,* engines at seasonal sources or engines that replace stationary engines at a location), engines in one location for less than 1 year are generally considered to be mobile nonroad engines under the EPA's regulatory definitions of nonroad engine and stationary engine, and, therefore, the NSPS and other regulations applicable to stationary engines are not applicable to such engines. Examples of such nonroad engines are engines that are brought to a stationary major source for less than 1 year for purposes of general maintenance or construction.

Portable engines that replace existing stationary engines at the same location on a temporary basis and that are intended to perform the same or similar

functions are considered stationary engines. This provision allows the permitting authority to count the emissions of the temporary unit in the emissions from the stationary source, as it would for the permanent unit. This prevents sources from avoiding the counting of such units in its projected or actual emissions. The EPA agrees with comments that with regard to temporary replacement engines, which are generally portable and moved from place to place, it is most appropriate that these engines, though considered stationary, should be allowed under the NSPS to meet requirements for mobile nonroad engines. These sources are not under the long-term control (or in many cases the short-term control) of the local source, and, therefore, it is appropriate to hold them to the requirements for similar sources that are mobile in character. The EPA also notes that under the pre-existing general provisions for 40 CFR part 60, the fact that an engine moves from place to place does not, by the sole basis of that movement, make the engine a ''new'' engine for the purposes of the NSPS.

*E. Requirements for Engines Located in Remote Areas of Alaska*

In the original final NSPS, the EPA agreed to delay the sulfur requirements for diesel fuel intended for stationary ICE in remote areas of Alaska not accessible by the Federal Aid Highway System (FAHS) (''remote Alaska'') until December 1, 2010, except that any 2011 model year and later stationary CI engines operating in remote Alaska prior to December 1, 2010, would be required to meet the 15 ppm sulfur requirement for diesel fuel. This approach was consistent with the approach that was used for nonroad and highway engines in remote Alaska. The EPA also included a special section in the final rule that specified that until December 1, 2010, owners and operators of stationary CI engines located in Alaska should refer to 40 CFR part 69 to determine the diesel fuel requirements applicable to such engines.

In addition, the original final regulations included language that allowed Alaska to submit for the EPA approval through rulemaking process an alternative plan for implementing the requirements of this regulation for public-sector electrical utilities located in remote areas of Alaska not accessible by the FAHS. The alternative plan needed to be based on the requirements of section 111 of the CAA including any increased risks to human health and the environment, and also needed to be based on the unique circumstances related to remote power generation, climatic conditions, and serious economic impacts resulting from implementation of the final NSPS.

The EPA also included an option in the original final NSPS for stationary CI engines that allowed owners and operators of pre-2011 model year engines located in remote areas of Alaska to petition the Administrator to use any fuels mixed with used oil that do not meet the fuel requirements in § 60.4207 of the final rule beyond the required fuel deadlines. The owner or operator was required to show that there is no other place to burn the used oil. Each petition, if approved, was valid for a period of up to 6 months.

The EPA communicated with officials from the State of Alaska on several occasions following the promulgation of the final rule, and gave the State of Alaska an extension from the original deadline of January 11, 2008, to provide its alternative plan for remote Alaska to the EPA. On October 31, 2008, the EPA received Alaska's request for several revisions to the NSPS as it pertains to engines located in the remote part of Alaska not served by the FAHS.

In particular, the State of Alaska requested the following:

- Allow NSPS owner/operator requirements to apply only to model year 2011 and later engines.
- Maintain a December 1, 2010, deadline for transition of regulated engines to ULSD.
- Authorize continued use of single circuit jacketwater marine diesel engines for prime power applications.
- Remove limitations on using fuels mixed with used lubricating oil that do not meet the fuel requirements of 40 CFR part 60, subpart IIII.
- Review emission control design requirements needed to meet new NSPS emission standards, including the possibility of removing or delaying emissions standards requiring advanced exhaust gas emissions aftertreatment technologies until the technology is proven for remote and arctic applications.

The EPA notes the following information provided by the State of Alaska in its request. In general, the State noted that over 180 remote communities in Alaska that are not accessible by the FAHS rely on diesel engines and fuel for electricity. These communities are scattered over long distances in remote areas and are not connected to population centers by road or power grid. These communities are located in the most severe arctic environments in the United States.

Regarding the request that owners and operator requirements apply only to model year 2011 and later engines, the State of Alaska focused on two particular requirements for pre-2011 engines: The requirement that pre-2011 engines that are manufactured after April 1, 2006, use ULSD beginning on December 1, 2010; and the requirement that after December 31, 2008, owners and operators may not install engines that do not meet the applicable requirements for 2007 model year engines.

The State of Alaska noted that Alaska village power plants are typically operated by a single part-time operator with an alternate, that there is a high rate of turnover among plant operators, and that operators have limited training, expertise or resources. The State of Alaska notes that pre-2011 engines will all be fueled, prior to December 1, 2011, with the same fuel. The State of Alaska stated that it would greatly simplify operations to coordinate the fuel requirements with the introduction of 2011 model year engines, rather than retroactively requiring some, but not all, earlier engines to meet the fuel requirements. It would also facilitate the smoother transition to ULSD fuel, rather than requiring numerous engines to all meet the requirements at the same time. The State of Alaska noted that there is no technological requirement for pre-model year 2011 engines to use aftertreatment, and thus no technological need to use ULSD. The EPA agrees that the requested revision will reduce the complexity of the regulations and that ULSD is not technologically necessary for engines that are not required to meet the Tier 4 emission standards for PM. As discussed in section V.C., in response to comments during this rulemaking requesting relief from the requirement to meet Tier 4-equivalent PM standards, the EPA is requiring new engines in remote areas of Alaska to meet the more stringent PM standards and use ULSD beginning with 2014 model year engines. Therefore, the EPA is finalizing a requirement that 2014 model year and later engines use ULSD, rather than 2011 model year and later that was proposed. The EPA also notes that the requirement to use ULSD for 2014 and later model year engines will eventually lead to a complete turnover of the fuel used in the remote villages.

The State of Alaska notes that the planning, construction and operation of engines in remote Alaska is complex. The timeframe for these projects, which are coordinated among several governmental entities, typically exceeds 3 years. The State of Alaska notes that several projects that were designed and funded based on pre-2007 model year

engines were not installed prior to December 31, 2008. Therefore, the State of Alaska requested that the deadline be moved to December 2010. While the EPA understands that some extra time may be needed to allow for these pre-existing projects to go forward with pre-2007 engines, the EPA does not believe the State of Alaska has justified a 2-year extension, beyond the 2 years already provided in the regulations. However, the EPA believes that a 1-year extension would be appropriate. The EPA is, therefore, finalizing a 1-year extension for owners and operators in remote Alaska to install pre-2007 model year engines.

Regarding its request for continued use of single circuit jacketwater marine diesel engines for prime power applications, the State of Alaska notes that remote villages in Alaska use combined heat and power cogeneration plants, which are vital to their economy, given the high cost of fuel and the substantial need for heat in that climate. Heat recovery systems are used with diesel engines in remote communities to provide heat to community facilities and schools. Marine-jacketed diesel engines are used wherever possible because of their superior heat recovery and thermal efficiency. The State of Alaska has noticed great reductions in heat recovery when using Tier 3 non-marine engines. The State notes that reductions in fuel efficiency will lead to greater fuel use and greater emissions from burning extra heating oil. The EPA agrees with the State that there are significant benefits from using marine engines, and is finalizing a revision that will allow engines in remote Alaska to use marine-certified engines. However, as the State of Alaska notes, marine-certified engines, particularly those below 800 HP, are not required to meet more stringent requirements for reduction of PM emissions, which is the most significant pollutant of concern in these areas. Therefore, the EPA is requiring that owners and operators of 2014 model year and later engines must either be certified to Tier 4 standards (whether land-based nonroad or marine) or must install PM reduction technologies on their engines to achieve at least 85 percent reduction in PM.

Regarding the issue of using aftertreatment technologies that the State of Alaska says have not been tested in remote arctic climates, the EPA notes that the original request from the State of Alaska was particularly concerned with $NO_X$ standards that would likely entail the use of SCR in remote Alaska. $NO_X$ reductions are particularly important in areas where ozone is a concern, because $NO_X$ is a precursor to ozone. However, the State of Alaska, and remote Alaska in particular, does not have any significant ozone problems. Moreover, the use of SCR entails the supply, storage and use of a chemical reductant, usually urea, that needs to be used properly in order to achieve the expected emissions reductions, and that may have additional operational problems in remote arctic climates. As noted above, these villages are not accessible by the FAHS and are scattered over long distances in remote areas and are not connected to population centers by road or power grid. The villages are located in the most severe arctic environments in the United States and they rely on stationary diesel engines and fuel for electricity and heating, and these engines need to be in working condition, particularly in the winter. While the availability of reductant is not a problem in the areas on the highway system, its availability in remote villages, particularly in the early years of the Tier 4 program, may be an issue, which is notable given the importance of the stationary engines in these villages. Furthermore, the costs for the acquisition, storage and handling of the chemical reductant would be greater than for engines located elsewhere in the United States due to the remote location and severe arctic climate of the villages. In order to maintain proper availability of the chemical reductant during the harsh winter months, new heated storage vessels may be needed at each engine facility, further increasing the compliance costs for these remote villages. Given the issues that would need to be addressed if SCR were required, and the associated costs of this technology when analyzed under NSPS guidelines, the EPA understands the State of Alaska's argument that it is inappropriate to require such standards for stationary engines in remote Alaska.[1] Therefore, the EPA is not requiring owners and operators of new stationary engines to meet the Tier 4 standards for $NO_X$ in these areas. However, owners and operators of model year 2014 and later engines that do not meet the Tier 4 PM standards would be required to use PM aftertreatment, as discussed above. The use of PM aftertreatment will also achieve reductions in CO and hydrocarbons (HC).

[1] Note that this action applies to stationary engines only; it is unlikely that such an approach would be appropriate for mobile engines, given that they are less permanent in a village and can move in and out of areas as work requires, and because the EPA has less ability to enforce such an approach for mobile sources, where the EPA does not regulate the owner or operator directly.

Finally, regarding allowing owners and operators to blend up to 1.75 percent used oil into the fuel system, the State notes that there are no permitted used oil disposal facilities in remote Alaskan communities. The State has developed a cost-effective and reliable used-oil blending system that is currently being used in many remote Alaskan communities, disposing of the oil in an environmentally beneficial manner and capturing the energy content of the used oil. The absence of allowable blending would necessitate the shipping out of the used oil and would risk improper disposal and storage, as well as spills.

According to the State, blending waste oil at 1.75 percent or less will keep the fuel within American Society for Testing and Materials (ASTM) specifications if the sulfur content of the waste oil is below 200 ppm. The State acknowledges the need for engines equipped with aftertreatment devices to use fuel meeting the sulfur requirements. The EPA agrees that the limited blending of used oil into the diesel fuel used by stationary engines in remote Alaska is an environmentally beneficial manner of disposing of such oil and is of little to no concern when kept within appropriate limits. Therefore, the EPA is finalizing amendments that permit the blending of fuel oil at such levels for engines in remote Alaska. The used oil must be ''on-spec,'' *i.e.,* it must meet the on-specification levels and properties in 40 CFR 279.11.

The EPA agrees that the circumstances in remote Alaska require special rules. The EPA is, therefore, promulgating several amendments for engines used in remote Alaska:

- Exempting all pre-2014 model year engines from diesel fuel sulfur requirements;
- Allowing owners and operators of stationary CI engines located in remote areas of Alaska to use engines certified to marine engine standards, rather than land-based nonroad engine standards; and
- Removing requirements to use aftertreatment devices for $NO_X$, in particular, SCR, for engines used in remote Alaska;
- Removing requirements to use aftertreatment devices for PM until the 2014 model year; and
- Allowing the blending of used lubricating oil, in volumes of up to 1.75 percent of the total fuel, if the sulfur content of the used lubricating oil is less than 200 ppm and the used lubricating oil is ''on-spec,'' *i.e.,* it meets the on-specification levels and properties of 40 CFR 279.11.

*F. Reconstruction*

The EPA is also finalizing amendments to the NSPS that require reconstructed engines to meet the emission standards for the model year in which the reconstruction occurs if the reconstructed engine meets either of the following criteria:

- The fixed capital cost of the new and refurbished components exceeds 75 percent of the fixed capital cost of a comparable new engine; or
- The reconstructed engine consists of a previously used engine block with all new components.

The final rule also clarifies that the provisions for modified and reconstructed engines apply to anyone who modifies or reconstructs an engine, including engine owners/operators, engine manufacturers, and anyone else. The final rule also adds additional clarification regarding what standards are applicable for modified or reconstructed engines.

*G. Minor Corrections and Revisions*

The EPA is making several minor revisions in this rule to correct mistakes in the initial rule or to clarify the rule. The revisions are listed below:

- Replacing the term ''useful life'' with ''certified emissions life,'' for purposes of clarity;
- Revising Table 3 in the in 40 CFR part 60, subpart IIII to account for a mistake in how Table 3 characterized the certification requirements for high speed fire pump engines in the original final rule;
- Revising the definition of ''emergency stationary internal combustion engine'' in the NSPS for stationary CI ICE to include the allowance for 50 hours of non-emergency operation, to be consistent with the definition of emergency stationary internal combustion engine in the NSPS for stationary SI ICE and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Stationary Reciprocating Internal Combustion Engines (RICE) (40 CFR part 63, subpart ZZZZ);
- Revising the requirement for emergency engines to install non-resettable hour meters such that emergency engines that meet the requirements for non-emergency engines do not have to install the hour meters;
- Revising the applicability provisions to make clearer the EPA's requirement that all owners and operators of new sources must meet the deadlines for installation of compliant stationary engines;
- Revising certain provisions of the NSPS for stationary SI engines, particularly concerning definitions and compliance by owners and operators of such engines, to correct clear errors and to ensure consistency where appropriate for the regulation of stationary ICE; and
- Adding a definition of ''installed'' to provide clarity to the provisions regarding installing engines produced in previous model years.

## IV. Summary of Significant Changes Since Proposal

*A. Definitions*

The EPA proposed to add a definition for ''reconstruct'' that was specific for the NSPS for stationary ICE. In the final rule, the EPA is not including the proposed definition for reconstruct, and, instead, will continue to use the definition for reconstruction found in the General Provisions of 40 CFR part 60, specifically at 60.15 of that part. The EPA also proposed to add a definition for ''date of manufacture'' that would have assigned a new date of manufacture for reconstructed engines if any of the following criteria were met: the crankshaft was removed as part of the reconstruction; the fixed capital cost of the new and refurbished components exceeded 75 percent of the fixed capital cost for a comparable new engine; the engine serial number was removed; or the engine was produced using all new components except for the engine block. The definition for ''date of manufacture'' that the EPA is finalizing specifies that a new date of manufacture is assigned for a reconstructed engine if the fixed capital cost of the new and refurbished components exceeded 75 percent of the fixed capital cost for a comparable entirely new facility, or if the engine was produced using all new components except for the engine block.

The definition for ''installed'' that the EPA is finalizing is also different from the proposed definition. The definition that the EPA proposed stated that an engine is considered installed when it is placed and secured at the location where it is intended to be operated; piping and wiring for exhaust, fuel, controls, *etc.* are installed and all connections are made; and the engine is capable of being started. The definition for ''installed'' in the final rule does not include the conditions that the piping and wiring are installed and the engine is capable of being started.

The EPA is also correcting a typographical error in the definition for ''liquefied petroleum gas'' in the NSPS for stationary SI ICE, 40 CFR part 60, subpart JJJJ. The definition should have the word ''or'' instead of the word ''of'' after the phrase ''* * * obtained as a by-product in petroleum refining. * * *'' This final rule corrects that typographical error.

*B. Emission Standards and Fuel Requirements*

In the final rule, the EPA is revising the fuel requirements for engines subject to the NSPS for stationary CI ICE. The rule as originally promulgated required owners and operators of stationary CI ICE to use diesel fuel that meets the requirements of 40 CFR 80.510(b) for nonroad diesel fuel beginning on October 1, 2010. Facilities could petition for approval to use existing inventories of non-compliant fuel for a period of up to 6 months at a time. Facilities were required to submit a new petition if additional time was needed. The EPA received a number of petitions for extensions of the October 1, 2010, deadline from facilities that operate emergency engines that are subject to the NSPS for stationary CI ICE. In the petitions, the facilities indicated that they only operate the engines for a few hours each year, and that it may take a period of years to use up the existing fuel in their tanks, since they keep a supply of fuel on hand that would be adequate for the engines in the event of an emergency. Petitioners also noted the great expense of draining the remaining fuel and purchasing replacement fuel, while the drained fuel would likely be used in other applications that did not need to meet the fuel requirements of the NSPS. A petitioner requested that the EPA change the rule so that facilities were required to purchase diesel fuel that was compliant with 40 CFR 80.510(b) after October 1, 2010, but could use any fuel remaining in its tanks until it was depleted. Based on the information provided in the petitions, the EPA is revising the fuel requirement for stationary CI ICE subject to the NSPS. The final rule amends the requirement to specify that owners and operators must purchase fuel that meets the requirements of 40 CFR 80.510(b) beginning on October 1, 2010.

The EPA is also finalizing a different deadline than proposed for engines with a displacement greater than or equal to 30 l/cyl to transition to fuel with a sulfur content of 1,000 ppm. The EPA proposed to allow owners and operators of these engines to begin using 1,000 ppm sulfur content fuel beginning on January 1, 2014. The final rule allows owners and operators to begin using 1,000 ppm sulfur content fuel beginning June 1, 2012.

Finally, the EPA is finalizing a different deadline for new engines in remote areas of Alaska to begin using ULSD than was proposed. The EPA proposed to require the use of ULSD

beginning with 2011 model year engines; the final rule requires the use of ULSD beginning with 2014 model year engines. The EPA is also providing additional time before requiring stationary engines located in remote areas of Alaska to meet more stringent PM standards that are based on the use of aftertreatment.

*C. Requirements for Emergency Engines*

The EPA proposed to amend the definition for ''emergency stationary internal combustion engine'' and the allowances for maintenance/testing and non-emergency operation for such engines to be consistent with the provisions promulgated in the NESHAP for existing stationary RICE at 40 CFR part 63, subpart ZZZZ. The EPA is only finalizing a portion of the proposed revisions to the emergency engine definition. The EPA is finalizing the provision allowing 50 hours of non-emergency service for stationary CI engines subject to the NSPS, in order to make the emergency engine provisions for new CI engines consistent with those for new SI engines and existing CI and SI engines. At this time, the EPA is not finalizing the proposed provision allowing 15 hours for demand response operation for emergency stationary engines. The EPA included a similar provision for emergency engines in the March 3, 2010, amendments to the stationary RICE NESHAP (75 FR 9648), and subsequently proposed to amend the stationary engine NSPS to be consistent with the stationary RICE NESHAP. The EPA received two petitions for reconsideration of the 15-hour allowance for demand response in the stationary RICE NESHAP, and is currently reconsidering its decision to allow emergency engines to operate for 15 hours per year as part of an emergency demand response program. The EPA is deferring taking final action on including this provision in the stationary ICE NSPS pending the resolution of the reconsideration process on the stationary RICE NESHAP. The EPA will address this issue as it affects the CI and SI engine NSPS emergency engine provisions as part of that reconsideration process.

*D. Other*

In the proposed rule, the EPA requested comment on the need for stationary engines in marine offshore settings to use engines meeting the marine engine standards, rather than land-based engine standards. The comments that were received in response to the EPA's request all supported allowing stationary engines in marine offshore settings to use engines meeting the marine engine standards. In the final rule, the EPA is including provisions that would allow stationary engines used in marine offshore settings to meet marine engine standards.

The EPA received comments on the proposed amendments requesting several changes to 40 CFR part 60, subpart JJJJ that were not related to this rule. While the EPA is generally not making these changes, as they are beyond the scope of this rule and would require substantive analysis, the EPA is making certain revisions to correct clear errors (*e.g.,* changing > signs to < signs where appropriate) and clarifying that determining the exhaust flowrate is not required if the engine is being tested to show compliance with the concentration-based (ppm) standards for $NO_X$, CO, and VOC.

## V. Summary of Responses to Major Comments

*A. Fuel Requirements for Engines With a Displacement Greater Than or Equal to 30 L/Cyl*

*Comment:* One commenter supported a fuel limit of 1,000 ppm sulfur content for engines with a displacement at or above 30 l/cyl. The commenter agreed that it is appropriate to align fuel requirements for stationary engines with a displacement at or above 30 l/cyl with those that are in the IMO marine engine standards, since the stationary engine emission standards are also being aligned with IMO marine engine standards. However, the commenter asked that the EPA require that this limit become effective immediately and not in 2014, as proposed. The commenter claimed that 500 ppm sulfur fuel, which is the sulfur level stationary engines at or above 30 l/cyl currently must meet for the fuel they use, will become very limited and perhaps unavailable after the 15 ppm sulfur fuel requirements take effect in October 2010 for most mobile and stationary engines. Engines of large displacement are not designed to operate on 15 ppm sulfur fuel, the commenter argued, therefore, appropriate fuel for these engines may not be available, or if it is, will be significantly more costly. To ensure the availability of appropriate fuel, the commenter asked that the EPA allow engines with a displacement at or above 30 l/cyl to use 1,000 ppm sulfur fuel immediately.

*Response:* The EPA agrees that it would be appropriate to require that stationary engines with a displacement of 30 l/cyl or more limit the sulfur content in the fuel to 1,000 ppm beginning earlier than 2014, which is the timeframe that was proposed. However, the EPA disagrees with the commenter's logic and that the requirement should become effective immediately. Diesel fuel containing 500 ppm sulfur will be the designated off-spec fuel within the diesel stream until 2014 and should be available at least for locomotives and marine engines until June 1, 2012. Therefore, the EPA believes it is appropriate to finalize the 1,000 ppm fuel requirement for large displacement engines, but require that these engines begin using this fuel on June 1, 2012.

*B. Operating and Maintenance Requirements*

*Comment:* One commenter expressed concern about the proposal that for certified engines, owners and operators would be allowed to develop and follow their own operation and maintenance (O&M) procedures as an alternative to following the manufacturer's O&M procedures. The commenter recommended that engines that do not follow the manufacturer's O&M procedures be considered as operating in a non-certified manner and subject to initial performance testing requirements. The commenter indicated that it is supportive of providing additional flexibility, but that in those cases where an owner or operator opts to take an alternative O&M approach, which differs from what the manufacturer recommends for the engine, the engine manufacturer or certificate holder should no longer be responsible for emissions compliance. According to the commenter, the EPA should make that clarification as to who is responsible for the emissions from the engine and if operated differently than recommended by the manufacturer, the engine should no longer be classified as a certified engine.

*Response:* The EPA agrees that the engine manufacturer should not be held responsible once owners and operators of a certified engine no longer operate and maintain the engine and control device according to the manufacturer's O&M procedures. This is consistent with the language in section 207 of the CAA and 40 CFR 1068.505, regarding mobile source engines, that specifies the EPA not require a recall of engines by the manufacturer unless the EPA determines that a substantial number of engines, although properly maintained and used, do not conform to emission regulations. The EPA thinks that it is clear in the rule language that the owner/operator, not the manufacturer, is required to show compliance in such situations, as was specifically laid out in 60.4211(g) of the proposed rule. Further,

the EPA stated in the preamble to the proposed rule that engines operated in this manner would be considered non-certified engines and generally subject to performance testing (see 75 FR 32615, middle column).

*C. Engines Located in Remote Alaska*

*Comment:* One commenter supported allowing used oil blending under the CI NSPS. Blending used oil for burning in the facility's own engine is important and decreases risks related to disposal and spills in areas that have limited resources available to deal with such costs, the commenter said. According to the commenter, a significant environmental concern in remote Alaska is the improper disposal of used oil. In most remote Alaska communities, there are no permitted used oil disposal facilities and the cost of exporting used oil is burdensome and can be the same price or more than purchasing new oil, the commenter noted. The commenter recommended that used fuel blending be allowed in the rule at a maximum blend level of 1.75 percent.

*Response:* The EPA agrees that the limited blending of used oil into the diesel fuel used by stationary engines in remote areas of Alaska is an environmentally beneficial manner of disposing of such oil. Therefore, the EPA has included a provision in the final rule that allows the blending of fuel oil for engines in remote Alaska, in volumes of up to 1.75 percent of the total fuel. The sulfur content of the used lubricating oil must be less than 200 ppm, and the used lubricating oil must be is ''on-spec,'' *i.e.,* it must meet the on-specification levels and properties in 40 CFR 279.11.

*Comment:* One commenter expressed concern over the proposed requirements for small remote power plants in Alaska that would necessitate aftertreatment in order to meet the PM limits. The commenter's concern regarding aftertreatment for PM is based on the majority of small remote power plans being un-staffed and the technical capability of staff being minimal and including only basic maintenance tasks such as maintaining the oil, filter, belts and hoses. In addition, the commenter was concerned that the exhaust aftertreatment used to reduce PM would limit the ability to burn used oil in the engine, and could also pose a risk to the reliability of the engine. The commenter also believed that the installation and maintenance costs for PM aftertreatment were unreasonable.

*Response:* The EPA disagrees with the commenter that PM limits that necessitate the use of aftertreatment like CDPF should not be required at all for stationary CI engines located in remote areas of Alaska. The need for PM control was in the commenter's original request to the EPA, noting that PM is the most significant pollutant of concern in remote areas of Alaska. Stationary CI engines are often in very close proximity to the towns and the diesel PM emissions, which are highly toxic, can fall on the towns. Substantial health impacts are associated with diesel PM emissions and the EPA does not believe it is appropriate to reduce the stringency of PM requirements in remote Alaska.

Regarding the concerns raised by the State of Alaska regarding the feasibility and cost of installing and operating CDPF in remote villages, the EPA is providing additional time in the final rule before new stationary engines in remote areas of Alaska are required to meet PM standards that would require CDPF. The use of CDPF for new nonroad and stationary diesel engines in the United States will be phased in from 2011 to 2015. Waiting until there is more widespread experience with operating and maintaining CDPF would allow time for Alaska's concerns regarding the feasibility of maintaining CDPF on engines in remote areas to be addressed. The type of engines most often used to power the remote villages is currently required by the NSPS to meet PM standards based on the use of CDPF beginning with the 2011 or 2012 model year, depending on the engine size. Providing a delay until the 2014 model year for engines located in remote Alaskan villages would provide State with 2 to 3 years to gain experience with the operation of the controls and develop the equipment infrastructure needed to properly operate and maintain the CDPF. In response to this comment, the EPA consulted with vendors of CDPF, who indicated that the installation and maintenance costs for the systems are not as high as the estimates provided by the State of Alaska.[2]

The EPA recognizes that the blending of used oil into diesel fuel is a concern for engines equipped with CDPF; however, the EPA believes that given the restrictions in the rule for used oil blending (no more than 1.75 percent of total fuel and no more than 200 ppm sulfur in the oil), the increase in sulfur caused by the blending should not be a significant concern for the operation of CDPF-equipped engines.

[2] See memorandum titled ''Summary of Calls with Vendors of Diesel Particulate Filters (DPF)'' in docket EPA–HQ–OAR–2010–0295.

*D. Emission Standards for Marine Engines*

*Comment:* Several commenters provided recommendations on how to treat stationary engines used in marine offshore settings. The commenters said that marine engines should not be subject to land-based standards and indicated support for revisions to allow the use of marine based standards as opposed to NSPS for offshore platform installations. The commenters indicated that these engines are normally nonroad engines that are subject to marine engine standards. The commenters said that if the marine engine is used in a stationary manner, the commenters were supportive of language being added to indicate that stationary engines in marine offshore settings may comply with applicable marine engine standards as opposed to the land-based standards.

*Response:* The EPA requested comment on the need for stationary engines in marine offshore settings to use engines meeting the marine engine standards, rather than land-based engine standards. Based on comments received on this issue, the EPA agrees that it would be appropriate to allow stationary engines used in marine offshore settings to meet marine engine standards. The EPA understands that engines used in these settings are generally certified to marine standards and that it may not be possible to know how an engine will be used throughout its life when it is first used. The EPA does not see a need to require engines utilized in the same marine offshore setting to be certified to different standards based solely on the time an engine remains in one location. It therefore is appropriate to require engines used in both mobile and stationary marine offshore applications to be able to meet the same standard.

*E. Test Methods*

*Comment:* One commenter said that the test method for stationary engines with a displacement at or above 30 l/cyl needs to be changed from Method 5 to Method 5B or Method 17. The main reason the commenter believes Method 5 is not suitable is because it requires the use of glass fiber filters maintained at 120 degrees Celsius (°C) [250 degrees Fahrenheit (°F)]. The method also requires that in sources that have sulfur dioxide ($SO_2$) or sulfur trioxide ($SO_3$) that the filter material be unreactive to these pollutants and International Organization for Standardization (ISO) method 9096 2003 does not recommend glass fiber filter use where this reaction occurs. The commenter went on to say

that the temperature required by Method 5 is generally much lower than normal exhaust temperatures from large displacement engines. This necessitates cooling of the exhaust gas in order to use Method 5, the commenter said, which would lead to the formation of additional condensation particles that would affect the sampling results. The commenter argued that the method would not yield reproducible results and recommended that due to inconsistencies, the EPA should allow alternative methods. The commenter recommended that the EPA raise the PM sampling temperature in Method 5 to a minimum of 160 °C, which essentially means changing Method 5 to Method 5B, and also allow stationary engines to use Method 17 as an alternative.

*Response:* The EPA disagrees with the comment that EPA Method 5 does not provide accurate and precise measurements of PM. The statements in EPA Method 5 and ISO 9096 2003 regarding the selection of filtration media that are unreactive to $SO_3$ are intended to ensure that the proper filter media are used. When acceptable filter media are selected, including glass fiber filters that are unreactive to $SO_2$ or $SO_3$, EPA Method 5 has been shown to provide reproducible results irrespective of the filtration temperature chosen.

The EPA also disagrees that EPA Method 5 cannot achieve a filtration temperature of 120 °C (250 °F) since there are no procedures for cooling the sample gas from the stack temperature to the required filtration temperature. EPA Method 5 is silent on the method for cooling the sample gas, as this is left to the discretion of the source test individual. The method employed depends upon the stack gas temperature, the required filtration temperature, and the equipment available to the individual test contractor. In most situations, no special procedures are required since sufficient cooling is achieved by normal air exposure of the probe and filter holder. Where filtration temperature is likely to exceed the method specified temperature, contractors have used specially constructed air cooled or water cooled probes to achieve the proper temperature.

*F. Definitions*

*Comment:* Several commenters were concerned with the proposed definition of ''reconstruct.'' According to the commenters, the proposed definition would result in stationary engines currently not subject to the rule becoming subject to NSPS after conducting routine maintenance, repair, rework, and overhaul. Several commenters stated that the EPA has not provided sufficient rationale for adding this new definition and the term is significantly different from other NSPS definitions and applicability determinations regarding reconstruction. Two commenters said that the proposed definition excludes the cost of fundamental components from the fixed capital costs, such as the engineering costs, construction and site installation and startup costs, and the costs associated with auxiliary components that service or that are critical to the engine's operation. Commenters requested that the EPA maintain the definitions in 40 CFR 60.15(b) and 40 CFR 60.15(c), for reconstruction and fixed capital cost, respectively, in the final NSPS for stationary CI and SI engines.

*Response:* The EPA proposed to add a definition of ''reconstruct'' to the CI and SI NSPS as an attempt to clarify the meaning of reconstruction. The EPA's objective with the proposal was to provide a more specific definition applicable to stationary engines rather than the broader definition provided in the General Provisions of 40 CFR part 60. The proposed definition was intended to clarify how to conduct the reconstruction analysis by specifically proposing to include a definition that would be applicable to stationary engines subject to NSPS. The EPA believed that providing a specific definition applicable only to stationary engines would be beneficial by bringing clarity to how reconstruction is determined in the stationary engine setting.

The EPA did not expect the proposed change to be controversial nor did the EPA anticipate that the proposed change would cause such significant concern among affected sources. However, as illustrated in the summary of comments on this issue, several affected stakeholders strongly opposed the EPA's suggested changes to the historical definition of reconstruction. Based on the extensive concerns provided by commenters and subsequent information the EPA has received from stakeholders after the proposal, the EPA determined that it is appropriate to not include the proposed definition of ''reconstruct'' in the final rule. Instead, the EPA is finalizing the rule using the definition of ''reconstruction'' from the General Provisions of 40 CFR part 60. Again, the EPA intended to provide more guidance than what was originally provided in the rule on reconstruction; however, it is nearly impossible to capture all potential situations in a definition. The EPA believes it is appropriate to continue to rely on the definition in 40 CFR 60.15. Therefore, the EPA is not finalizing the proposed definition of ''reconstruct.''

*Comment:* A number of commenters took issue with the criteria in the proposed definition of the ''date of manufacture'' and asked that the definition either be removed or revised. Commenters said that the proposed changes to the date of manufacture definition constitute significant concern for industry because of the cost and operational impacts, plus regulatory confusion the commenters believe the changes create. Commenters indicated that the criteria in the definition are flawed and inconsistent with previous definitions of reconstruction. Several commenters were of the opinion that it is not appropriate to include the removal of the crankshaft as criteria for designating an engine being subject to new standards. This component is frequently removed during inspection and maintenance, according to the commenters, who suggested that the criteria related to the crankshaft be removed entirely. According to the commenters, removal of the crankshaft is sometimes necessary to access components, but this should not constitute replacement. Commenters said that the removal of the serial number from the engine should not necessitate the need to comply with new engine standards. Commenters indicated that the serial number could be inadvertently knocked off during transportation or use, and asked that it also not be included as a criterion in the final rule.

*Response:* As with the EPA's proposed definition of ''reconstruct,'' the proposal to add a definition for the ''date of manufacture'' led to a significant concern with affected stakeholders as reflected in this comment summary. Commenters were generally not opposed to having a definition for the ''date of manufacture,'' but were against some of the criteria used in the proposed definition.

Based on the comments related to removal of the crankshaft, the EPA agrees that including the engine crankshaft language in the definition of ''date of manufacture'' would not be appropriate. The EPA does not wish to trigger more stringent standards for engines that are simply undergoing regular maintenance. Notably, solely removing the engine crankshaft is not an indication that a substantial amount of work has been conducted on the engine to the extent that it should have to meet to more stringent emission standards. Consequently, the EPA is not including the crankshaft criteria in the definition

of ''date of manufacture'' in the final rule.

Regarding comments opposing the inclusion of the serial number in the definition of ''date of manufacture,'' the EPA agrees that it would be appropriate to exclude that specific criterion in the final rule. The EPA does not wish to require more stringent standards for reconstructed engines solely due to the possibility that in some cases, the serial number might not be available, for instance, it may have been knocked off during transportation, use or maintenance, or if the engine was acquired and it did not have a tag. The EPA is not interested in penalizing affected sources, where information simply is not available or missing based on a technicality, by subjecting them to more stringent standards. Importantly, the lack of the engine serial number is not an indicator that the engine has undergone significant modification to the point where it should be subject to more stringent standards. Therefore, in the final rule, the EPA has not included the serial number criteria in the definition of ''date of manufacture.''

The EPA believes that finalizing a cost threshold of 75 percent of the cost of a new facility in the definition of ''date of manufacture'' is appropriate. Based on the comments received, it appears that the majority of the issues surrounding the date of manufacture concept were related to the crankshaft being included in the definition. Since the EPA is not including the engine crankshaft as a determining factor for assigning an engine a new date of manufacture, the EPA believes that most of the issues brought up by commenters would be resolved.

*Comment:* One commenter thought that the definition of ''installed'' in sections 60.4248 and 60.4219 of the proposed NSPS amendments should be modified. The commenter indicated that part of the definition is appropriate, *i.e.,* in terms of having the engine ''placed and secured at a location where it is intended to operate'' for defining ''installed.'' However, the commenter did not agree with the rest of the definition as that states ''* * * the piping and wiring for exhaust, fuel, controls, *etc.,* is installed and all connections are made; and the engine is capable of being started.'' The commenter recommended that the final definition read as follows: ''Installed means the engine is placed and secured at the location where it is intended to be operated.'' According to the commenter, because stationary engines are often part of a larger facility, the engines may be placed at the location in advance of completing the rest of the facility and this could be significantly prior to utilities being completed (including local permits and building inspections). In the commenter's opinion, creating the foundation and placing the engine at the location indicates major commitment by the owner, and the commenter did not believe that it is necessary to finalize the remaining connections in order to demonstrate the owner's intent, and such connections are typically more related to the larger construction project than the engine itself.

*Response:* The EPA agrees with the commenter's recommendations regarding the definition of ''installed.'' The EPA agrees that installation should be defined as the engine has been placed and secured where it is intended to be operated, and that the engine does not have to be capable of being started before it can be considered installed, since the final piping and wiring may not be completed until well after the engine is secured in its permanent location.

## VI. Summary of Environmental, Energy and Economic Impacts

### *A. What are the air quality impacts?*

The final rule would reduce $NO_X$ emissions from stationary CI ICE with a displacement between 10 and 30 l/cyl by an estimated 300 tons per year (tpy), PM emissions by about 8 tpy, and HC emissions by about 4 tpy, in the year 2018. The EPA estimated emissions reductions for the year 2018 because the year 2018 is the first year the emission standards would be fully implemented for stationary CI engines between 10 and 30 l/cyl. In the year 2030, the final rule would reduce $NO_X$ emissions from stationary CI ICE between 10 and 30 l/cyl by an estimated 1,100 tpy, PM emissions by about 38 tpy, and HC emissions by about 18 tpy. Emissions reductions were estimated for the year 2030 to provide an estimate of what the reductions would be once there has been substantial turnover in the engine fleet. The EPA expects very few stationary CI ICE with a displacement of 30 l/cyl or more to be installed per year, and no emissions reductions have been estimated for these engines.

### *B. What are the cost impacts?*

The total costs of the final rule are based on the cost associated with purchasing and installing controls on non-emergency stationary CI ICE with a displacement between 10 and 30 l/cyl. The costs of aftertreatment were based on information developed for CI marine engines. Further information on how the EPA estimated the total costs of the final rule can be found in a memorandum included in the docket (Docket ID. No. EPA–HQ–OAR–2010–0295).

The total national capital cost for the final rule is estimated to be approximately $236,000 in the year 2018, with a total national annual cost of $142,000 in the year 2018. The year 2018 is the first year the emission standards would be fully implemented for stationary CI engines between 10 and 30 l/cyl. The total national capital cost for the final rule in the year 2030 is $235,000, with a total national annual cost of $711,000. All of these costs are in 2009 dollars.

### *C. What are the economic impacts?*

The EPA expects that there will be less than a 0.001 percent increase in price and a similar decrease in product demand associated with this final rule for producers and consumers in 2018. For more information, please refer to the economic impact analysis for this rulemaking in the docket.

### *D. What are the non-air health, environmental and energy impacts?*

The EPA does not anticipate any significant non-air health, environmental or energy impacts as a result of this final rule.

## VII. Statutory and Executive Order Reviews

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose any new information collection burden. This action does not impose an information collection burden because the Agency is not requiring any additional recordkeeping, reporting, notification or other requirements in this final rule. The changes being finalized in this action do not affect information collection, but include revisions to emission standards and other minor issues. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 60 subpart A) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0590. The OMB

control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

For the electric power generation industry (NAICS 2211), the small business size standard is an ultimate parent entity defined as having a total electric output of 4 million megawatt-hours in the previous fiscal year. The specific SBA size standard is identified for each affected industry within the Economic Impact Analysis for the final rule. In this case, the EPA presumes the affected engines will all be located in the electric power generation industry.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE). The EPA estimates that only three firms are expected to incur costs associated with this final rule, and only one of these firms is a small entity. This small entity is expected to have annualized costs that are less than 0.001 percent of its sales. Hence, the EPA concludes that there is no SISNOSE for this rule.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. When developing the revised standards, EPA conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. The final rule requires the minimum level of testing, monitoring, recordkeeping, and reporting to affected stationary ICE sources necessary to ensure compliance. For more information on the small entity impacts associated with the final rule, please refer to the Economic Impact Analysis in the public docket at *http://www.regulations.gov.* (Docket ID No. EPA–HQ–OAR–2010–0295).

*D. Unfunded Mandates Reform Act of 1995*

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Only minimal changes are being finalized by the Agency in this action and where compliance costs are incurred, only a nominal number of stationary CI engines will experience a compliance cost expense. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. The changes being finalized in this action by the Agency are minimal and mostly affect stationary CI engine manufacturers and will not affect small governments.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action primarily affects private industry, and does not impose significant economic costs on State or local governments. Thus, Executive Order 13132 does not apply to this action.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This final rule does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is based solely on technology performance.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs,

policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The changes the Agency is finalizing in this action will reduce emissions from certain stationary CI engines, which were previously not controlled as stringently as now. Other changes the Agency is finalizing have minimal effect on emissions.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will be effective on August 29, 2011.

**List of Subjects**

*40 CFR Part 60*

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping.

*40 CFR Part 1039*

Administrative practice and procedure, Air pollution control.

*40 CFR Part 1042*

Administrative practice and procedure, Air pollution control.

*40 CFR Part 1065*

Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Research.

*40 CFR Part 1068*

Administrative practice and procedure, Air pollution control, Imports, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Warranties.

Dated: June 8, 2011.

**Lisa P. Jackson,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended to read as follows:

## PART 60—[AMENDED]

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

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

## Subpart IIII—[AMENDED]

■ 2. Section 60.4200 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

### § 60.4200 Am I subject to this subpart?

(a) The provisions of this subpart are applicable to manufacturers, owners, and operators of stationary compression ignition (CI) internal combustion engines (ICE) and other persons as specified in paragraphs (a)(1) through (4) of this section. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.

(1) Manufacturers of stationary CI ICE with a displacement of less than 30 liters per cylinder where the model year is:

(i) 2007 or later, for engines that are not fire pump engines;

(ii) The model year listed in Table 3 to this subpart or later model year, for fire pump engines.

(2) Owners and operators of stationary CI ICE that commence construction after July 11, 2005, where the stationary CI ICE are:

(i) Manufactured after April 1, 2006, and are not fire pump engines, or

(ii) Manufactured as a certified National Fire Protection Association (NFPA) fire pump engine after July 1, 2006.

(3) Owners and operators of any stationary CI ICE that are modified or reconstructed after July 11, 2005 and any person that modifies or reconstructs any stationary CI ICE after July 11, 2005.

(4) The provisions of § 60.4208 of this subpart are applicable to all owners and operators of stationary CI ICE that commence construction after July 11, 2005.

* * * * *

(e) Owners and operators of facilities with CI ICE that are acting as temporary replacement units and that are located at a stationary source for less than 1 year and that have been properly certified as meeting the standards that would be applicable to such engine under the appropriate nonroad engine provisions, are not required to meet any other provisions under this subpart with regard to such engines.

■ 3. Section 60.4201 is amended by revising paragraph (d) and adding paragraphs (e) through (g) to read as follows:

### § 60.4201 What emission standards must I meet for non-emergency engines if I am a stationary CI internal combustion engine manufacturer?

* * * * *

(d) Stationary CI internal combustion engine manufacturers must certify the following non-emergency stationary CI ICE to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2007 model year through 2012 non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder;

(2) Their 2013 model year non-emergency stationary CI ICE with a maximum engine power greater than or equal to 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(3) Their 2013 model year non-emergency stationary CI ICE with a displacement of greater than or equal to 15 liters per cylinder and less than 30 liters per cylinder.

(e) Stationary CI internal combustion engine manufacturers must certify the following non-emergency stationary CI ICE to the certification emission standards and other requirements for new marine CI engines in 40 CFR 1042.101, 40 CFR 1042.107, 40 CFR 1042.110, 40 CFR 1042.115, 40 CFR 1042.120, and 40 CFR 1042.145, as applicable, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2013 model year non-emergency stationary CI ICE with a maximum engine power less than 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(2) Their 2014 model year and later non-emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder.

(f) Notwithstanding the requirements in paragraphs (a) through (c) of this section, stationary non-emergency CI ICE identified in paragraphs (a) and (c) may be certified to the provisions of 40 CFR part 94 or, if Table 1 to 40 CFR 1042.1 identifies 40 CFR part 1042 as

being applicable, 40 CFR part 1042, if the engines will be used solely in either or both of the following locations:

(1) Areas of Alaska not accessible by the Federal Aid Highway System (FAHS); and

(2) Marine offshore installations.

(g) Notwithstanding the requirements in paragraphs (a) through (f) of this section, stationary CI internal combustion engine manufacturers are not required to certify reconstructed engines; however manufacturers may elect to do so. The reconstructed engine must be certified to the emission standards specified in paragraphs (a) through (e) of this section that are applicable to the model year, maximum engine power, and displacement of the reconstructed stationary CI ICE.

4. Section 60.4202 is amended by removing and reserving paragraph (c) and adding paragraphs (e) through (h) to read as follows:

**§ 60.4202 What emission standards must I meet for emergency engines if I am a stationary CI internal combustion engine manufacturer?**

* * * * *

(c) [RESERVED]

* * * * *

(e) Stationary CI internal combustion engine manufacturers must certify the following emergency stationary CI ICE that are not fire pump engines to the certification emission standards for new marine CI engines in 40 CFR 94.8, as applicable, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2007 model year through 2012 emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder;

(2) Their 2013 model year and later emergency stationary CI ICE with a maximum engine power greater than or equal to 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder;

(3) Their 2013 model year emergency stationary CI ICE with a displacement of greater than or equal to 15 liters per cylinder and less than 30 liters per cylinder; and

(4) Their 2014 model year and later emergency stationary CI ICE with a maximum engine power greater than or equal to 2,000 KW (2,682 HP) and a displacement of greater than or equal to 15 liters per cylinder and less than 30 liters per cylinder.

(f) Stationary CI internal combustion engine manufacturers must certify the following emergency stationary CI ICE to the certification emission standards and other requirements applicable to Tier 3 new marine CI engines in 40 CFR 1042.101, 40 CFR 1042.107, 40 CFR 1042.115, 40 CFR 1042.120, and 40 CFR 1042.145, for all pollutants, for the same displacement and maximum engine power:

(1) Their 2013 model year and later emergency stationary CI ICE with a maximum engine power less than 3,700 KW (4,958 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 15 liters per cylinder; and

(2) Their 2014 model year and later emergency stationary CI ICE with a maximum engine power less than 2,000 KW (2,682 HP) and a displacement of greater than or equal to 15 liters per cylinder and less than 30 liters per cylinder.

(g) Notwithstanding the requirements in paragraphs (a) through (d) of this section, stationary emergency CI internal combustion engines identified in paragraphs (a) and (c) may be certified to the provisions of 40 CFR part 94 or, if Table 2 to 40 CFR 1042.101 identifies Tier 3 standards as being applicable, the requirements applicable to Tier 3 engines in 40 CFR part 1042, if the engines will be used solely in either or both of the following locations:

(1) Areas of Alaska not accessible by the FAHS; and

(2) Marine offshore installations.

(h) Notwithstanding the requirements in paragraphs (a) through (f) of this section, stationary CI internal combustion engine manufacturers are not required to certify reconstructed engines; however manufacturers may elect to do so. The reconstructed engine must be certified to the emission standards specified in paragraphs (a) through (f) of this section that are applicable to the model year, maximum engine power and displacement of the reconstructed emergency stationary CI ICE.

■ 5. Section 60.4203 is revised to read as follows:

**§ 60.4203 How long must my engines meet the emission standards if I am a manufacturer of stationary CI internal combustion engines?**

Engines manufactured by stationary CI internal combustion engine manufacturers must meet the emission standards as required in §§ 60.4201 and 60.4202 during the certified emissions life of the engines.

■ 6. Section 60.4204 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

**§ 60.4204 What emission standards must I meet for non-emergency engines if I am an owner or operator of a stationary CI internal combustion engine?**

* * * * *

(c) Owners and operators of non-emergency stationary CI engines with a displacement of greater than or equal to 30 liters per cylinder must meet the following requirements:

(1) For engines installed prior to January 1, 2012, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 17.0 grams per kilowatt-hour (g/KW-hr) (12.7 grams per horsepower-hr (g/HP-hr)) when maximum engine speed is less than 130 revolutions per minute (rpm);

(ii) $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when maximum engine speed is 130 or more but less than 2,000 rpm, where n is maximum engine speed; and

(iii) 9.8 g/KW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more.

(2) For engines installed on or after January 1, 2012 and before January 1, 2016, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) when maximum engine speed is greater than or equal to 130 but less than 2,000 rpm and where n is maximum engine speed; and

(iii) 7.7 g/KW-hr (5.7 g/HP-hr) when maximum engine speed is greater than or equal to 2,000 rpm.

(3) For engines installed on or after January 1, 2016, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 3.4 g/KW-hr (2.5 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $9.0 \cdot n^{-0.20}$ g/KW-hr ($6.7 \cdot n^{-0.20}$ g/HP-hr) where n (maximum engine speed) is 130 or more but less than 2,000 rpm; and

(iii) 2.0 g/KW-hr (1.5 g/HP-hr) where maximum engine speed is greater than or equal to 2,000 rpm.

(4) Reduce particulate matter (PM) emissions by 60 percent or more, or limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.15 g/KW-hr (0.11 g/HP-hr).

(d) Owners and operators of non-emergency stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests

in-use must meet the not-to-exceed (NTE) standards as indicated in § 60.4212.

(e) Owners and operators of any modified or reconstructed non-emergency stationary CI ICE subject to this subpart must meet the emission standards applicable to the model year, maximum engine power, and displacement of the modified or reconstructed non-emergency stationary CI ICE that are specified in paragraphs (a) through (d) of this section.

■ 7. Section 60.4205 is amended by revising paragraphs (a) and (d) and adding paragraphs (e) and (f) to read as follows:

**§ 60.4205 What emission standards must I meet for emergency engines if I am an owner or operator of a stationary CI internal combustion engine?**

(a) Owners and operators of pre-2007 model year emergency stationary CI ICE with a displacement of less than 10 liters per cylinder that are not fire pump engines must comply with the emission standards in Table 1 to this subpart. Owners and operators of pre-2007 model year emergency stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder that are not fire pump engines must comply with the emission standards in 40 CFR 94.8(a)(1).

* * * * *

(d) Owners and operators of emergency stationary CI engines with a displacement of greater than or equal to 30 liters per cylinder must meet the requirements in this section.

(1) For engines installed prior to January 1, 2012, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when maximum engine speed is 130 or more but less than 2,000 rpm, where n is maximum engine speed; and

(iii) 9.8 g/kW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more.

(2) For engines installed on or after January 1, 2012, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) when maximum engine speed is greater than or equal to 130 but less than 2,000 rpm and where n is maximum engine speed; and

(iii) 7.7 g/KW-hr (5.7 g/HP-hr) when maximum engine speed is greater than or equal to 2,000 rpm.

(3) Limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.40 g/KW-hr (0.30 g/HP-hr).

(e) Owners and operators of emergency stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests in-use must meet the NTE standards as indicated in § 60.4212.

(f) Owners and operators of any modified or reconstructed emergency stationary CI ICE subject to this subpart must meet the emission standards applicable to the model year, maximum engine power, and displacement of the modified or reconstructed CI ICE that are specified in paragraphs (a) through (e) of this section.

■ 8. Section 60.4206 is revised to read as follows:

**§ 60.4206 How long must I meet the emission standards if I am an owner or operator of a stationary CI internal combustion engine?**

Owners and operators of stationary CI ICE must operate and maintain stationary CI ICE that achieve the emission standards as required in §§ 60.4204 and 60.4205 over the entire life of the engine.

■ 9. Section 60.4207 is amended by revising paragraph (b), removing and reserving paragraph (c), and revising paragraph (d) to read as follows:

**§ 60.4207 What fuel requirements must I meet if I am an owner or operator of a stationary CI internal combustion engine subject to this subpart?**

* * * * *

(b) Beginning October 1, 2010, owners and operators of stationary CI ICE subject to this subpart with a displacement of less than 30 liters per cylinder that use diesel fuel must purchase diesel fuel that meets the requirements of 40 CFR 80.510(b) for nonroad diesel fuel.

(c) [RESERVED]

(d) Beginning June 1, 2012, owners and operators of stationary CI ICE subject to this subpart with a displacement of greater than or equal to 30 liters per cylinder are no longer subject to the requirements of paragraph (a) of this section, and must use fuel that meets a maximum per-gallon sulfur content of 1,000 parts per million (ppm).

* * * * *

■ 10. Section 60.4208 is amended by revising the section heading, revising paragraphs (g) and (h), and adding paragraph (i) to read as follows:

**§ 60.4208 What is the deadline for importing or installing stationary CI ICE produced in previous model years?**

* * * * *

(g) After December 31, 2018, owners and operators may not install non-emergency stationary CI ICE with a maximum engine power greater than or equal to 600 KW (804 HP) and less than 2,000 KW (2,680 HP) and a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder that do not meet the applicable requirements for 2017 model year non-emergency engines.

(h) In addition to the requirements specified in §§ 60.4201, 60.4202, 60.4204, and 60.4205, it is prohibited to import stationary CI ICE with a displacement of less than 30 liters per cylinder that do not meet the applicable requirements specified in paragraphs (a) through (g) of this section after the dates specified in paragraphs (a) through (g) of this section.

(i) The requirements of this section do not apply to owners or operators of stationary CI ICE that have been modified, reconstructed, and do not apply to engines that were removed from one existing location and reinstalled at a new location.

■ 11. Section 60.4209 is amended by revising paragraph (a) to read as follows:

**§ 60.4209 What are the monitoring requirements if I am an owner or operator of a stationary CI internal combustion engine?**

* * * * *

(a) If you are an owner or operator of an emergency stationary CI internal combustion engine that does not meet the standards applicable to non-emergency engines, you must install a non-resettable hour meter prior to startup of the engine.

* * * * *

■ 12. Section 60.4210 is amended by:
■ (a) Revising paragraph (b);
■ (b) Revising paragraph (c) introductory text;
■ (c) Revising paragraph (c)(3)(i);
■ (d) Revising paragraph (c)(3)(ii); and
■ (e) Revising paragraph (d) to read as follows:

**§ 60.4210 What are my compliance requirements if I am a stationary CI internal combustion engine manufacturer?**

* * * * *

(b) Stationary CI internal combustion engine manufacturers must certify their stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per

cylinder to the emission standards specified in § 60.4201(d) and (e) and § 60.4202(e) and (f) using the certification procedures required in 40 CFR part 94, subpart C, or 40 CFR part 1042, subpart C, as applicable, and must test their engines as specified in 40 CFR part 94 or 1042, as applicable.

(c) Stationary CI internal combustion engine manufacturers must meet the requirements of 40 CFR 1039.120, 1039.125, 1039.130, and 1039.135, and 40 CFR part 1068 for engines that are certified to the emission standards in 40 CFR part 1039. Stationary CI internal combustion engine manufacturers must meet the corresponding provisions of 40 CFR part 89, 40 CFR part 94 or 40 CFR part 1042 for engines that would be covered by that part if they were nonroad (including marine) engines. Labels on such engines must refer to stationary engines, rather than or in addition to nonroad or marine engines, as appropriate. Stationary CI internal combustion engine manufacturers must label their engines according to paragraphs (c)(1) through (3) of this section.

* * * * *

(3) * * *

(i) Stationary CI internal combustion engines that meet the requirements of this subpart and the corresponding requirements for nonroad (including marine) engines of the same model year and HP must be labeled according to the provisions in 40 CFR parts 89, 94, 1039 or 1042, as appropriate.

(ii) Stationary CI internal combustion engines that meet the requirements of this subpart, but are not certified to the standards applicable to nonroad (including marine) engines of the same model year and HP must be labeled according to the provisions in 40 CFR parts 89, 94, 1039 or 1042, as appropriate, but the words ''stationary'' must be included instead of ''nonroad'' or ''marine'' on the label. In addition, such engines must be labeled according to 40 CFR 1039.20.

* * * * *

(d) An engine manufacturer certifying an engine family or families to standards under this subpart that are identical to standards applicable under 40 CFR parts 89, 94, 1039 or 1042 for that model year may certify any such family that contains both nonroad (including marine) and stationary engines as a single engine family and/or may include any such family containing stationary engines in the averaging, banking and trading provisions applicable for such engines under those parts.

■ 13. Section 60.4211 is amended:

■ (a) By revising paragraph (a);

■ (b) By revising the second sentence in paragraph (c);

■ (c) By redesignating paragraph (e) as paragraph (f);

■ (d) By adding a new paragraph (e);

■ (e) By revising newly redesignated paragraph (f); and

■ (f) By adding paragraph (g) to read as follows:

**§ 60.4211 What are my compliance requirements if I am an owner or operator of a stationary CI internal combustion engine?**

(a) If you are an owner or operator and must comply with the emission standards specified in this subpart, you must do all of the following, except as permitted under paragraph (g) of this section:

(1) Operate and maintain the stationary CI internal combustion engine and control device according to the manufacturer's emission-related written instructions;

(2) Change only those emission-related settings that are permitted by the manufacturer; and

(3) Meet the requirements of 40 CFR parts 89, 94 and/or 1068, as they apply to you.

* * * * *

(c) * * * The engine must be installed and configured according to the manufacturer's emission-related specifications, except as permitted in paragraph (g) of this section.

* * * * *

(e) If you are an owner or operator of a modified or reconstructed stationary CI internal combustion engine and must comply with the emission standards specified in § 60.4204(e) or § 60.4205(f), you must demonstrate compliance according to one of the methods specified in paragraphs (e)(1) or (2) of this section.

(1) Purchasing, or otherwise owning or operating, an engine certified to the emission standards in § 60.4204(e) or § 60.4205(f), as applicable.

(2) Conducting a performance test to demonstrate initial compliance with the emission standards according to the requirements specified in § 60.4212 or § 60.4213, as appropriate. The test must be conducted within 60 days after the engine commences operation after the modification or reconstruction.

(f) Emergency stationary ICE may be operated for the purpose of maintenance checks and readiness testing, provided that the tests are recommended by Federal, State or local government, the manufacturer, the vendor, or the insurance company associated with the engine. Maintenance checks and readiness testing of such units is limited to 100 hours per year. There is no time limit on the use of emergency stationary ICE in emergency situations. The owner or operator may petition the Administrator for approval of additional hours to be used for maintenance checks and readiness testing, but a petition is not required if the owner or operator maintains records indicating that Federal, State, or local standards require maintenance and testing of emergency ICE beyond 100 hours per year. Emergency stationary ICE may operate up to 50 hours per year in non-emergency situations, but those 50 hours are counted towards the 100 hours per year provided for maintenance and testing. The 50 hours per year for non-emergency situations cannot be used for peak shaving or to generate income for a facility to supply power to an electric grid or otherwise supply non-emergency power as part of a financial arrangement with another entity. For owners and operators of emergency engines, any operation other than emergency operation, maintenance and testing, and operation in non-emergency situations for 50 hours per year, as permitted in this section, is prohibited.

(g) If you do not install, configure, operate, and maintain your engine and control device according to the manufacturer's emission-related written instructions, or you change emission-related settings in a way that is not permitted by the manufacturer, you must demonstrate compliance as follows:

(1) If you are an owner or operator of a stationary CI internal combustion engine with maximum engine power less than 100 HP, you must keep a maintenance plan and records of conducted maintenance to demonstrate compliance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, if you do not install and configure the engine and control device according to the manufacturer's emission-related written instructions, or you change the emission-related settings in a way that is not permitted by the manufacturer, you must conduct an initial performance test to demonstrate compliance with the applicable emission standards within 1 year of such action.

(2) If you are an owner or operator of a stationary CI internal combustion engine greater than or equal to 100 HP and less than or equal to 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain

and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test to demonstrate compliance with the applicable emission standards within 1 year of startup, or within 1 year after an engine and control device is no longer installed, configured, operated, and maintained in accordance with the manufacturer's emission-related written instructions, or within 1 year after you change emission-related settings in a way that is not permitted by the manufacturer.

(3) If you are an owner or operator of a stationary CI internal combustion engine greater than 500 HP, you must keep a maintenance plan and records of conducted maintenance and must, to the extent practicable, maintain and operate the engine in a manner consistent with good air pollution control practice for minimizing emissions. In addition, you must conduct an initial performance test to demonstrate compliance with the applicable emission standards within 1 year of startup, or within 1 year after an engine and control device is no longer installed, configured, operated, and maintained in accordance with the manufacturer's emission-related written instructions, or within 1 year after you change emission-related settings in a way that is not permitted by the manufacturer. You must conduct subsequent performance testing every 8,760 hours of engine operation or 3 years, whichever comes first, thereafter to demonstrate compliance with the applicable emission standards.

■ 14. Section 60.4212 is amended by revising the introductory text and paragraph (a) and adding paragraph (e) to read as follows:

**§ 60.4212 What test methods and other procedures must I use if I am an owner or operator of a stationary CI internal combustion engine with a displacement of less than 30 liters per cylinder?**

Owners and operators of stationary CI ICE with a displacement of less than 30 liters per cylinder who conduct performance tests pursuant to this subpart must do so according to paragraphs (a) through (e) of this section.

(a) The performance test must be conducted according to the in-use testing procedures in 40 CFR part 1039, subpart F, for stationary CI ICE with a displacement of less than 10 liters per cylinder, and according to 40 CFR part 1042, subpart F, for stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder.

* * * * *

(e) Exhaust emissions from stationary CI ICE that are complying with the emission standards for new CI engines in 40 CFR part 1042 must not exceed the NTE standards for the same model year and maximum engine power as required in 40 CFR 1042.101(c).

■ 15. Section 60.4213 is amended by revising the introductory text to read as follows:

**§ 60.4213 What test methods and other procedures must I use if I am an owner or operator of a stationary CI internal combustion engine with a displacement of greater than or equal to 30 liters per cylinder?**

Owners and operators of stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder must conduct performance tests according to paragraphs (a) through (f) of this section.

* * * * *

■ 16. Section 60.4215 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

**§ 60.4215 What requirements must I meet for engines used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands?**

(a) Stationary CI ICE with a displacement of less than 30 liters per cylinder that are used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are required to meet the applicable emission standards in §§ 60.4202 and 60.4205.

* * * * *

(c) Stationary CI ICE with a displacement of greater than or equal to 30 liters per cylinder that are used in Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands are required to meet the following emission standards:

(1) For engines installed prior to January 1, 2012, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 17.0 g/KW-hr (12.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $45 \cdot n^{-0.2}$ g/KW-hr ($34 \cdot n^{-0.2}$ g/HP-hr) when maximum engine speed is 130 or more but less than 2,000 rpm, where n is maximum engine speed; and

(iii) 9.8 g/KW-hr (7.3 g/HP-hr) when maximum engine speed is 2,000 rpm or more.

(2) For engines installed on or after January 1, 2012, limit the emissions of $NO_X$ in the stationary CI internal combustion engine exhaust to the following:

(i) 14.4 g/KW-hr (10.7 g/HP-hr) when maximum engine speed is less than 130 rpm;

(ii) $44 \cdot n^{-0.23}$ g/KW-hr ($33 \cdot n^{-0.23}$ g/HP-hr) when maximum engine speed is greater than or equal to 130 but less than 2,000 rpm and where n is maximum engine speed; and

(iii) 7.7 g/KW-hr (5.7 g/HP-hr) when maximum engine speed is greater than or equal to 2,000 rpm.

(3) Limit the emissions of PM in the stationary CI internal combustion engine exhaust to 0.40 g/KW-hr (0.30 g/HP-hr).

■ 17. Section 60.4216 is amended by revising paragraphs (a) and (b) and adding paragraphs (c) through (f) to read as follows:

**§ 60.4216 What requirements must I meet for engines used in Alaska?**

(a) Prior to December 1, 2010, owners and operators of stationary CI ICE with a displacement of less than 30 liters per cylinder located in areas of Alaska not accessible by the FAHS should refer to 40 CFR part 69 to determine the diesel fuel requirements applicable to such engines.

(b) Except as indicated in paragraph (c) of this section, manufacturers, owners and operators of stationary CI ICE with a displacement of less than 10 liters per cylinder located in areas of Alaska not accessible by the FAHS may meet the requirements of this subpart by manufacturing and installing engines meeting the requirements of 40 CFR parts 94 or 1042, as appropriate, rather than the otherwise applicable requirements of 40 CFR parts 89 and 1039, as indicated in sections §§ 60.4201(f) and 60.4202(g) of this subpart.

(c) Manufacturers, owners and operators of stationary CI ICE that are located in areas of Alaska not accessible by the FAHS may choose to meet the applicable emission standards for emergency engines in § 60.4202 and § 60.4205, and not those for non-emergency engines in § 60.4201 and § 60.4204, except that for 2014 model year and later non-emergency CI ICE, the owner or operator of any such engine that was not certified as meeting Tier 4 PM standards, must meet the applicable requirements for PM in § 60.4201 and § 60.4204 or install a PM emission control device that achieves PM emission reductions of 85 percent, or 60 percent for engines with a displacement of greater than or equal to 30 liters per cylinder, compared to engine-out emissions.

(d) The provisions of § 60.4207 do not apply to owners and operators of pre-2014 model year stationary CI ICE subject to this subpart that are located in areas of Alaska not accessible by the FAHS.

(e) The provisions of § 60.4208(a) do not apply to owners and operators of stationary CI ICE subject to this subpart that are located in areas of Alaska not accessible by the FAHS until after December 31, 2009.

(f) The provisions of this section and § 60.4207 do not prevent owners and operators of stationary CI ICE subject to this subpart that are located in areas of Alaska not accessible by the FAHS from using fuels mixed with used lubricating oil, in volumes of up to 1.75 percent of the total fuel. The sulfur content of the used lubricating oil must be less than 200 parts per million. The used lubricating oil must meet the on-specification levels and properties for used oil in 40 CFR 279.11.

■ 18. Section 60.4217 is revised to read as follows:

**§ 60.4217 What emission standards must I meet if I am an owner or operator of a stationary internal combustion engine using special fuels?**

Owners and operators of stationary CI ICE that do not use diesel fuel may petition the Administrator for approval of alternative emission standards, if they can demonstrate that they use a fuel that is not the fuel on which the manufacturer of the engine certified the engine and that the engine cannot meet the applicable standards required in § 60.4204 or § 60.4205 using such fuels and that use of such fuel is appropriate and reasonably necessary, considering cost, energy, technical feasibility, human health and environmental, and other factors, for the operation of the engine.

■ 19. Section 60.4219 is amended by:

■ (a) Adding definitions of ''Certified emissions life'' and ''Date of manufacture'' in alphabetical order;

■ (b) Adding a definition of ''Freshly manufactured engine'' in alphabetical order;

■ (c) Adding a definition of ''Installed'' in alphabetical order;

■ (d) Revising the definition of ''Model year'';

■ (e) Revising the definition of ''Stationary internal combustion engine''; and

■ (f) Removing the definition of ''Useful life'' to read as follows.

**§ 60.4219 What definitions apply to this subpart?**

* * * * *

*Certified emissions life* means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. The values for certified emissions life for stationary CI ICE with a displacement of less than 10 liters per cylinder are given in 40 CFR 1039.101(g). The values for certified emissions life for stationary CI ICE with a displacement of greater than or equal to 10 liters per cylinder and less than 30 liters per cylinder are given in 40 CFR 94.9(a).

* * * * *

*Date of manufacture* means one of the following things:

(1) For freshly manufactured engines and modified engines, date of manufacture means the date the engine is originally produced.

(2) For reconstructed engines, date of manufacture means the date the engine was originally produced, except as specified in paragraph (3) of this definition.

(3) Reconstructed engines are assigned a new date of manufacture if the fixed capital cost of the new and refurbished components exceeds 75 percent of the fixed capital cost of a comparable entirely new facility. An engine that is produced from a previously used engine block does not retain the date of manufacture of the engine in which the engine block was previously used if the engine is produced using all new components except for the engine block. In these cases, the date of manufacture is the date of reconstruction or the date the new engine is produced.

* * * * *

*Freshly manufactured engine* means an engine that has not been placed into service. An engine becomes freshly manufactured when it is originally produced.

* * * * *

*Installed* means the engine is placed and secured at the location where it is intended to be operated.

* * * * *

*Model year* means the calendar year in which an engine is manufactured (see ''date of manufacture''), except as follows:

(1) Model year means the annual new model production period of the engine manufacturer in which an engine is manufactured (see ''date of manufacture''), if the annual new model production period is different than the calendar year and includes January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a stationary engine after being placed into service as a nonroad or other non-stationary engine, model year means the calendar year or new model production period in which the engine was manufactured (see ''date of manufacture'').

* * * * *

*Stationary internal combustion engine* means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30 (excluding paragraph (2)(ii) of that definition), and is not used to propel a motor vehicle, aircraft, or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

* * * * *

■ 20. Table 3 to Subpart IIII of Part 60 is revised to read as follows:

As stated in § 60.4202(d), you must certify new stationary fire pump engines beginning with the following model years:

TABLE 3 TO SUBPART IIII OF PART 60—CERTIFICATION REQUIREMENTS FOR STATIONARY FIRE PUMP ENGINES

| Engine power | Starting model year engine manufacturers must certify new stationary fire pump engines according to § 60.4202(d)[1] |
|---|---|
| KW<75 (HP<100) | 2011 |
| 75≤KW<130 (100≤HP<175) | 2010 |
| 130≤KW≤560 (175≤HP≤750) | 2009 |
| KW>560 (HP>750) | 2008 |

[1]Manufacturers of fire pump stationary CI ICE with a maximum engine power greater than or equal to 37 kW (50 HP) and less than 450 KW (600 HP) and a rated speed of greater than 2,650 revolutions per minute (rpm) are not required to certify such engines until three model years following the model year indicated in this Table 3 for engines in the applicable engine power category.

## Subpart JJJJ—[AMENDED]

■ 21. Section 60.4230 is amended by revising paragraphs (a) introductory text

and (a)(5) and adding paragraph (a)(6) to read as follows:

**§ 60.4230 Am I subject to this subpart?**

(a) The provisions of this subpart are applicable to manufacturers, owners, and operators of stationary spark ignition (SI) internal combustion engines (ICE) as specified in paragraphs (a)(1) through (6) of this section. For the purposes of this subpart, the date that construction commences is the date the engine is ordered by the owner or operator.

* * * * *

(5) Owners and operators of stationary SI ICE that are modified or reconstructed after June 12, 2006, and any person that modifies or reconstructs any stationary SI ICE after June 12, 2006.

(6) The provisions of § 60.4236 of this subpart are applicable to all owners and operators of stationary SI ICE that commence construction after June 12, 2006.

* * * * *

■ 22. Section 60.4231 is amended by revising paragraph (a) and adding paragraph (g) to read as follows:

**§ 60.4231 What emissions standards must I meet if I am a manufacturer of stationary SI internal combustion engines or equipment containing such engines?**

(a) Stationary SI internal combustion engine manufacturers must certify their stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) manufactured on or after July 1, 2008 to the certification emission standards and other requirements for new nonroad SI engines in 40 CFR part 90 or 1054, as follows:

| If engine displacement is * * * | and manufacturing dates are * * * | the engine must meet emission standards and related requirements for nonhandheld engines under * * * |
|---|---|---|
| (1) below 225 cc | July 1, 2008 to December 31, 2011 | 40 CFR part 90. |
| (2) below 225 cc | January 1, 2012 or later | 40 CFR part 1054. |
| (3) at or above 225 cc | July 1, 2008 to December 31, 2010 | 40 CFR part 90. |
| (4) at or above 225 cc | January 1, 2011 or later | 40 CFR part 1054. |

(g) Notwithstanding the requirements in paragraphs (a) through (c) of this section, stationary SI internal combustion engine manufacturers are not required to certify reconstructed engines; however manufacturers may elect to do so. The reconstructed engine must be certified to the emission standards specified in paragraphs (a) through (e) of this section that are applicable to the model year, maximum engine power and displacement of the reconstructed stationary SI ICE.

■ 23. Section 60.4233 is amended by revising paragraph (f) to read as follows:

**§ 60.4233 What emission standards must I meet if I am an owner or operator of a stationary SI internal combustion engine?**

* * * * *

(f) Owners and operators of any modified or reconstructed stationary SI ICE subject to this subpart must meet the requirements as specified in paragraphs (f)(1) through (5) of this section.

(1) Owners and operators of stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with emission standards in § 60.4231(a) for their stationary SI ICE. Engines with a date of manufacture prior to July 1, 2008 must comply with the emission standards specified in § 60.4231(a) applicable to engines manufactured on July 1, 2008.

(2) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are gasoline engines and are modified or reconstructed after June 12, 2006, must comply with the emission standards in § 60.4231(b) for their stationary SI ICE. Engines with a date of manufacture prior to July 1, 2008 (or January 1, 2009 for emergency engines) must comply with the emission standards specified in § 60.4231(b) applicable to engines manufactured on July 1, 2008 (or January 1, 2009 for emergency engines).

(3) Owners and operators of stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) that are rich burn engines that use LPG, that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in § 60.4231(c). Engines with a date of manufacture prior to July 1, 2008 (or January 1, 2009 for emergency engines) must comply with the emission standards specified in § 60.4231(c) applicable to engines manufactured on July 1, 2008 (or January 1, 2009 for emergency engines).

(4) Owners and operators of stationary SI natural gas and lean burn LPG engines with a maximum engine power greater than 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (d) or (e) of this section, except that such owners and operators of non-emergency engines and emergency engines greater than or equal to 130 HP must meet a nitrogen oxides ($NO_X$) emission standard of 3.0 grams per HP-hour (g/HP-hr), a CO emission standard of 4.0 g/HP-hr (5.0 g/HP-hr for non-emergency engines less than 100 HP), and a volatile organic compounds (VOC) emission standard of 1.0 g/HP-hr, or a $NO_X$ emission standard of 250 ppmvd at 15 percent oxygen ($O_2$), a CO emission standard 540 ppmvd at 15 percent $O_2$ (675 ppmvd at 15 percent $O_2$ for non-emergency engines less than 100 HP), and a VOC emission standard of 86 ppmvd at 15 percent $O_2$, where the date of manufacture of the engine is:

(i) Prior to July 1, 2007, for non-emergency engines with a maximum engine power greater than or equal to 500 HP (except lean burn natural gas engines and LPG engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP);

(ii) Prior to July 1, 2008, for non-emergency engines with a maximum engine power less than 500 HP;

(iii) Prior to January 1, 2009, for emergency engines;

(iv) Prior to January 1, 2008, for non-emergency lean burn natural gas engines and LPG engines with a maximum engine power greater than or equal to 500 HP and less than 1,350 HP.

(5) Owners and operators of stationary SI landfill/digester gas ICE engines with a maximum engine power greater than 19 KW (25 HP), that are modified or reconstructed after June 12, 2006, must comply with the same emission standards as those specified in paragraph (e) of this section for stationary landfill/digester gas engines. Engines with maximum engine power less than 500 HP and a date of manufacture prior to July 1, 2008 must comply with the emission standards specified in paragraph (e) of this section for stationary landfill/digester gas ICE

with a maximum engine power less than 500 HP manufactured on July 1, 2008. Engines with a maximum engine power greater than or equal to 500 HP (except lean burn engines greater than or equal to 500 HP and less than 1,350 HP) and a date of manufacture prior to July 1, 2007 must comply with the emission standards specified in paragraph (e) of this section for stationary landfill/digester gas ICE with a maximum engine power greater than or equal to 500 HP (except lean burn engines greater than or equal to 500 HP and less than 1,350 HP) manufactured on July 1, 2007. Lean burn engines greater than or equal to 500 HP and less than 1,350 HP with a date of manufacture prior to January 1, 2008 must comply with the emission standards specified in paragraph (e) of this section for stationary landfill/digester gas ICE that are lean burn engines greater than or equal to 500 HP and less than 1,350 HP and manufactured on January 1, 2008.

* * * * *

■ 24. Section 60.4236 is amended by revising the section heading to read as follows:

**§ 60.4236 What is the deadline for importing or installing stationary SI ICE produced in previous model years?**

* * * * *

■ 25. Section 60.4241 is amended by revising the first sentence in paragraph (b) to read as follows:

**§ 60.4241 What are my compliance requirements if I am a manufacturer of stationary SI internal combustion engines participating in the voluntary certification program?**

* * * * *

(b) Manufacturers of engines other than those certified to standards in 40 CFR part 90 or 40 CFR part 1054 must certify their stationary SI ICE using the certification procedures required in 40 CFR part 1048, subpart C, and must follow the same test procedures that apply to large SI nonroad engines under 40 CFR part 1048, but must use the D–1 cycle of International Organization of Standardization 8178–4: 1996(E) (incorporated by reference, see 40 CFR 60.17) or the test cycle requirements specified in Table 3 to 40 CFR 1048.505, except that Table 3 of 40 CFR 1048.505 applies to high load engines only. * * *

* * * * *

■ 26. Section 60.4243 is amended by revising paragraph (a) introductory text, revising paragraph (a)(1), and adding paragraph (i) to read as follows:

**§ 60.4243 What are my compliance requirements if I am an owner or operator of a stationary SI internal combustion engine?**

(a) If you are an owner or operator of a stationary SI internal combustion engine that is manufactured after July 1, 2008, and must comply with the emission standards specified in § 60.4233(a) through (c), you must comply by purchasing an engine certified to the emission standards in § 60.4231(a) through (c), as applicable, for the same engine class and maximum engine power. In addition, you must meet one of the requirements specified in (a)(1) and (2) of this section.

(1) If you operate and maintain the certified stationary SI internal combustion engine and control device according to the manufacturer's emission-related written instructions, you must keep records of conducted maintenance to demonstrate compliance, but no performance testing is required if you are an owner or operator. You must also meet the requirements as specified in 40 CFR part 1068, subparts A through D, as they apply to you. If you adjust engine settings according to and consistent with the manufacturer's instructions, your stationary SI internal combustion engine will not be considered out of compliance.

* * * * *

(i) If you are an owner or operator of a modified or reconstructed stationary SI internal combustion engine and must comply with the emission standards specified in § 60.4233(f), you must demonstrate compliance according to one of the methods specified in paragraphs (i)(1) or (2) of this section.

(1) Purchasing, or otherwise owning or operating, an engine certified to the emission standards in § 60.4233(f), as applicable.

(2) Conducting a performance test to demonstrate initial compliance with the emission standards according to the requirements specified in § 60.4244. The test must be conducted within 60 days after the engine commences operation after the modification or reconstruction.

■ 27. Section 60.4248 is amended by:

■ (a) Revising the definition of ''Certified emissions life'';

■ (b) Adding a definition for ''Date of manufacture'' in alphabetical order;

■ (c) Adding a definition for ''Freshly manufactured engine'' in alphabetical order;

■ (d) Adding a definition for ''Installed'' in alphabetical order;

■ (e) Revising the definition of ''Liquefied petroleum gas'';

■ (f) Revising the definition of ''Model year'';

■ (g) Revising the definition of ''Stationary internal combustion engine''; and

■ (h) Revising the definition of ''Stationary internal combustion engine test cell/stand'' to read as follows:

**§ 60.4248 What definitions apply to this subpart?**

* * * * *

*Certified emissions life* means the period during which the engine is designed to properly function in terms of reliability and fuel consumption, without being remanufactured, specified as a number of hours of operation or calendar years, whichever comes first. The values for certified emissions life for stationary SI ICE with a maximum engine power less than or equal to 19 KW (25 HP) are given in 40 CFR 90.105, 40 CFR 1054.107, and 40 CFR 1060.101, as appropriate. The values for certified emissions life for stationary SI ICE with a maximum engine power greater than 19 KW (25 HP) certified to 40 CFR part 1048 are given in 40 CFR 1048.101(g). The certified emissions life for stationary SI ICE with a maximum engine power greater than 75 KW (100 HP) certified under the voluntary manufacturer certification program of this subpart is 5,000 hours or 7 years, whichever comes first. You may request in your application for certification that we approve a shorter certified emissions life for an engine family. We may approve a shorter certified emissions life, in hours of engine operation but not in years, if we determine that these engines will rarely operate longer than the shorter certified emissions life. If engines identical to those in the engine family have already been produced and are in use, your demonstration must include documentation from such in-use engines. In other cases, your demonstration must include an engineering analysis of information equivalent to such in-use data, such as data from research engines or similar engine models that are already in production. Your demonstration must also include any overhaul interval that you recommend, any mechanical warranty that you offer for the engine or its components, and any relevant customer design specifications. Your demonstration may include any other relevant information. The certified emissions life value may not be shorter than any of the following:

(i) 1,000 hours of operation.

(ii) Your recommended overhaul interval.

(iii) Your mechanical warranty for the engine.

* * * * *

*Date of manufacture* means one of the following things:

(1) For freshly manufactured engines and modified engines, date of manufacture means the date the engine is originally produced.

(2) For reconstructed engines, date of manufacture means the date the engine was originally produced, except as specified in paragraph (3) of this definition.

(3) Reconstructed engines are assigned a new date of manufacture if the fixed capital cost of the new and refurbished components exceeds 75 percent of the fixed capital cost of a comparable entirely new facility. An engine that is produced from a previously used engine block does not retain the date of manufacture of the engine in which the engine block was previously used if the engine is produced using all new components except for the engine block. In these cases, the date of manufacture is the date of reconstruction or the date the new engine is produced.

* * * * *

*Freshly manufactured engine* means an engine that has not been placed into service. An engine becomes freshly manufactured when it is originally produced.

* * * * *

*Installed* means the engine is placed and secured at the location where it is intended to be operated.

* * * * *

*Liquefied petroleum gas* means any liquefied hydrocarbon gas obtained as a by-product in petroleum refining or natural gas production.

*Model year* means the calendar year in which an engine is manufactured (see ''date of manufacture''), except as follows:

(1) Model year means the annual new model production period of the engine manufacturer in which an engine is manufactured (see ''date of manufacture''), if the annual new model production period is different than the calendar year and includes January 1 of the calendar year for which the model year is named. It may not begin before January 2 of the previous calendar year and it must end by December 31 of the named calendar year.

(2) For an engine that is converted to a stationary engine after being placed into service as a nonroad or other non-stationary engine, model year means the calendar year or new model production period in which the engine was manufactured (see ''date of manufacture'').

* * * * *

*Stationary internal combustion engine* means any internal combustion engine, except combustion turbines, that converts heat energy into mechanical work and is not mobile. Stationary ICE differ from mobile ICE in that a stationary internal combustion engine is not a nonroad engine as defined at 40 CFR 1068.30 (excluding paragraph (2)(ii) of that definition), and is not used to propel a motor vehicle, aircraft, or a vehicle used solely for competition. Stationary ICE include reciprocating ICE, rotary ICE, and other ICE, except combustion turbines.

*Stationary internal combustion engine test cell/stand* means an engine test cell/stand, as defined in 40 CFR part 63, subpart PPPPP, that tests stationary ICE.

* * * * *

■ 28. Table 1 to Subpart JJJJ of Part 60 is revised to read as follows:

TABLE 1 TO SUBPART JJJJ OF PART 60—$NO_X$, CO, AND VOC EMISSION STANDARDS FOR STATIONARY NON-EMERGENCY SI ENGINES ≥100 HP (EXCEPT GASOLINE AND RICH BURN LPG), STATIONARY SI LANDFILL/DIGESTER GAS ENGINES, AND STATIONARY EMERGENCY ENGINES >25 HP

| Engine type and fuel | Maximum engine power | Manufacture date | Emission standards [a] | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | g/HP-hr | | | ppmvd at 15% $O_2$ | | |
| | | | $NO_X$ | CO | VOC [d] | $NO_X$ | CO | VOC [d] |
| Non-Emergency SI Natural Gas [b] and Non-Emergency SI Lean Burn LPG [b]. | 100≤HP<500 | 7/1/2008 | 2.0 | 4.0 | 1.0 | 160 | 540 | 86 |
| | | 1/1/2011 | 1.0 | 2.0 | 0.7 | 82 | 270 | 60 |
| Non-Emergency SI Lean Burn Natural Gas and LPG | 500≤HP<1,350 | 1/1/2008 | 2.0 | 4.0 | 1.0 | 160 | 540 | 86 |
| | | 7/1/2010 | 1.0 | 2.0 | 0.7 | 82 | 270 | 60 |
| Non-Emergency SI Natural Gas and Non-Emergency SI Lean Burn LPG (except lean burn 500≤HP<1,350). | HP≥500 | 7/1/2007 | 2.0 | 4.0 | 1.0 | 160 | 540 | 86 |
| | HP≥500 | 7/1/2010 | 1.0 | 2.0 | 0.7 | 82 | 270 | 60 |
| Landfill/Digester Gas (except lean burn 500≤HP<1,350) | HP<500 | 7/1/2008 | 3.0 | 5.0 | 1.0 | 220 | 610 | 80 |
| | | 1/1/2011 | 2.0 | 5.0 | 1.0 | 150 | 610 | 80 |
| | HP≥500 | 7/1/2007 | 3.0 | 5.0 | 1.0 | 220 | 610 | 80 |
| | | 7/1/2010 | 2.0 | 5.0 | 1.0 | 150 | 610 | 80 |
| Landfill/Digester Gas Lean Burn | 500≤HP<1,350 | 1/1/2008 | 3.0 | 5.0 | 1.0 | 220 | 610 | 80 |
| | | 7/1/2010 | 2.0 | 5.0 | 1.0 | 150 | 610 | 80 |
| Emergency | 25<HP<130 | 1/1/2009 | [c] 10 | 387 | N/A | N/A | N/A | N/A |
| | HP≥130 | | 2.0 | 4.0 | 1.0 | 160 | 540 | 86 |

[a] Owners and operators of stationary non-certified SI engines may choose to comply with the emission standards in units of either g/HP-hr or ppmvd at 15 percent $O_2$.

[b] Owners and operators of new or reconstructed non-emergency lean burn SI stationary engines with a site rating of greater than or equal to 250 brake HP located at a major source that are meeting the requirements of 40 CFR part 63, subpart ZZZZ, Table 2a do not have to comply with the CO emission standards of Table 1 of this subpart.

[c] The emission standards applicable to emergency engines between 25 HP and 130 HP are in terms of $NO_X$ + HC.

[d] For purposes of this subpart, when calculating emissions of volatile organic compounds, emissions of formaldehyde should not be included.

■ 29. Table 2 to Subpart JJJJ of Part 60 is revised to read as follows:

As stated in § 60.4244, you must comply with the following requirements for performance tests within 10 percent of 100 percent peak (or the highest achievable) load:

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS

| For each | Complying with the requirement to | You must | Using | According to the following requirements |
|---|---|---|---|---|
| 1. Stationary SI internal combustion engine demonstrating compliance according to § 60.4244. | a. limit the concentration of $NO_X$ in the stationary SI internal combustion engine exhaust. | i. Select the sampling port location and the number of traverse points; | (1) Method 1 or 1A of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005)[a]. | (a) If using a control device, the sampling site must be located at the outlet of the control device. |
| | | ii. Determine the $O_2$ concentration of the stationary internal combustion engine exhaust at the sampling port location; | (2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005)[a]. | (b) Measurements to determine $O_2$ concentration must be made at the same time as the measurements for $NO_X$ concentration. |
| | | iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust; | (3) Method 2 or 19 of 40 CFR part 60. | |
| | | iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and | (4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17). | (c) Measurements to determine moisture must be made at the same time as the measurement for $NO_X$ concentration. |
| | | v. Measure $NO_X$ at the exhaust of the stationary internal combustion engine. | (5) Method 7E of 40 CFR part 60, appendix A, Method D6522–00(2005)[a], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17). | (d) Results of this test consist of the average of the three 1-hour or longer runs. |
| | b. limit the concentration of CO in the stationary SI internal combustion engine exhaust. | i. Select the sampling port location and the number of traverse points; | (1) Method 1 or 1A of 40 CFR part 60, Appendix A or ASTM Method D6522–00(2005)[a]. | (a) If using a control device, the sampling site must be located at the outlet of the control device. |
| | | ii. Determine the $O_2$ concentration of the stationary internal combustion engine exhaust at the sampling port location; | (2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005)[a]. | (b) Measurements to determine $O_2$ concentration must be made at the same time as the measurements for CO concentration. |
| | | iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust; | (3) Method 2 or 19 of 40 CFR part 60. | |
| | | iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and | (4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17). | (c) Measurements to determine moisture must be made at the same time as the measurement for CO concentration. |
| | | v. Measure CO at the exhaust of the stationary internal combustion engine. | (5) Method 10 of 40 CFR part 60, appendix A, ASTM Method D6522–00(2005)[a], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17). | (d) Results of this test consist of the average of the three 1-hour or longer runs. |
| | c. limit the concentration of VOC in the stationary SI internal combustion engine exhaust. | i. Select the sampling port location and the number of traverse points; | (1) Method 1 or 1A of 40 CFR part 60, Appendix A. | (a) If using a control device, the sampling site must be located at the outlet of the control device. |

TABLE 2 TO SUBPART JJJJ OF PART 60—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

| For each | Complying with the requirement to | You must | Using | According to the following requirements |
|---|---|---|---|---|
| | | ii. Determine the $O_2$ concentration of the stationary internal combustion engine exhaust at the sampling port location; | (2) Method 3, 3A, or 3B[b] of 40 CFR part 60, appendix A or ASTM Method D6522–00(2005)[a]. | (b) Measurements to determine $O_2$ concentration must be made at the same time as the measurements for VOC concentration. |
| | | iii. If necessary, determine the exhaust flowrate of the stationary internal combustion engine exhaust; | (3) Method 2 or 19 of 40 CFR part 60. | |
| | | iv. If necessary, measure moisture content of the stationary internal combustion engine exhaust at the sampling port location; and | (4) Method 4 of 40 CFR part 60, appendix A, Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17). | (c) Measurements to determine moisture must be made at the same time as the measurement for VOC concentration. |
| | | v. Measure VOC at the exhaust of the stationary internal combustion engine. | (5) Methods 25A and 18 of 40 CFR part 60, appendix A, Method 25A with the use of a methane cutter as described in 40 CFR 1065.265, Method 18 or 40 CFR part 60, appendix A[c,d], Method 320 of 40 CFR part 63, appendix A, or ASTM D 6348–03 (incorporated by reference, see § 60.17). | (d) Results of this test consist of the average of the three 1-hour or longer runs. |

## PART 1039—[AMENDED]

■ 30. The authority citation for part 1039 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 31. Section 1039.20 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

### § 1039.20 What requirements from this part apply to excluded stationary engines?

* * * * *

(a) You must add a permanent label or tag to each new engine you produce or import that is excluded under § 1039.1(c) as a stationary engine and is not required by 40 CFR part 60, subpart IIII, to meet the requirements of this part 1039, or the requirements of 40 CFR parts 89, 94 or 1042, that are equivalent to the requirements applicable to marine or land-based nonroad engines for the same model year. To meet labeling requirements, you must do the following things:

* * * * *

(c) Stationary engines required by 40 CFR part 60, subpart IIII, to meet the requirements of this part 1039, or part 89, 94 or 1042, must meet the labeling requirements of 40 CFR 60.4210.

## PART 1042—[AMENDED]

■ 32. The authority citation for part 1042 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 33. Section 1042.1 is amended by adding paragraph (h) to read as follows:

### § 1042.1 Applicability

* * * * *

(h) Starting with the model years noted in Table 1 of this section, all of the subparts of this part, except subpart I, apply as specified in 40 CFR part 60, subpart IIII, to freshly manufactured stationary compression-ignition engines subject to the standards of 40 CFR part 60, subpart IIII, that have a per-cylinder displacement at or above 10 liters and below 30 liters per cylinder. Such engines are considered Category 2 engines for purposes of this part 1042.

## PART 1065—[AMENDED]

■ 34. The authority citation for part 1065 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 35. Section 1065.1 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

### § 1065.1 Applicability

(a) * * *

(3) Nonroad diesel engines we regulate under 40 CFR part 1039 and stationary compression-ignition engines that are certified to the standards in 40 CFR part 1039, as specified in 40 CFR part 60, subpart IIII. For earlier model years, manufacturers may use the test procedures in this part or those specified in 40 CFR part 89 according to § 1065.10.

(4) Marine diesel engines we regulate under 40 CFR part 1042 and stationary compression-ignition engines that are certified to the standards in 40 CFR part 1042, as specified in 40 CFR part 60, subpart IIII. For earlier model years, manufacturers may use the test procedures in this part or those specified in 40 CFR part 94 according to § 1065.10.

* * * * *

## PART 1068—[AMENDED]

■ 36. The authority citation for part 1068 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 37. Section 1068.1 is amended by revising paragraph (a)(3) to read as follows:

**§ 1068.1 Does this part apply to me?**

(a) * * *

(3) Stationary compression-ignition engines certified using the provisions of 40 CFR parts 1039 or 1042, as indicated in 40 CFR part 60, subpart IIII.

* * * * *

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**S.J. Res. 7/P.L. 112–19**
Providing for the reappointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution. (June 24, 2011; 125 Stat. 231)

**S.J. Res. 9/P.L. 112–20**
Providing for the reappointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution. (June 24, 2011; 125 Stat. 232)

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