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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2010–1055; Directorate Identifier 2010–NE–35–AD; Amendment 39–16801; AD 2011–18–19]**

**RIN 2120–AA64**

## Airworthiness Directives; Austro Engine GmbH Model E4 Diesel Piston Engines

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

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires frequent inspections of the fuel pressure supply for excessive oscillations to determine if high-pressure (HP) fuel pumps have been exposed to damaging pressure oscillations. Pumps that have been exposed require replacement before further flight. This new AD requires the initial and repetitive inspections of AD 2010–23–09, but also requires installing HP fuel pump part number (P/N) E4A–30–200–000, as mandatory terminating action to the repetitive inspections. We are issuing this AD to prevent engine power loss or in-flight shutdown, which could result in loss of control of the airplane.

**DATES:** This AD is effective October 6, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 22, 2010 (75 FR 68179, November 5, 2010).

**ADDRESSES:** For service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria, *phone:* +43 2622 23000; *fax:* +43 2622 23000–2711, or go to: *http://www.austroengine.at.* 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 address for the Docket Office (*phone:* 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7176; *fax:* 781–238–7199; *e-mail: james.lawrence@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2010–23–09, Amendment 39–16498 (75 FR 68179, November 5, 2010). That AD applies to the specified products. The NPRM published in the **Federal Register** on June 9, 2011 (76 FR 33660). That NPRM proposed to continue to require frequent inspections of the fuel pressure supply for excessive oscillations to determine if high-pressure fuel pumps have been exposed to damaging pressure oscillations. That NPRM also proposed to require installing HP fuel pump P/N E4A–30–200–000, as mandatory terminating action to the repetitive inspections.

### Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM.

### Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed.

### Costs of Compliance

Based on the service information, we estimate that this AD will affect about 32 model E4 diesel piston engines, installed on airplanes of US registry. We also estimate that it will take about 1 work-hour per engine to perform one inspection, and about 2 work-hours per engine to replace the HP fuel pump. The average labor rate is $85 per work-hour. Required parts will cost about $2,325 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $82,560.

### 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 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 removing airworthiness directive (AD) 2010–23–09, Amendment 39–16498 (75 FR 68179, November 5, 2010), and adding the following new AD:

**2011–18–19 Austro Engine GmbH:** Amendment 39–16801; Docket No. FAA–2010–1055; Directorate Identifier 2010–NE–35–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective October 6, 2011.

**Affected ADs**

(b) This AD supersedes AD 2010–23–09, Amendment 39–16498 (75 FR 68179, November 5, 2010).

**Applicability**

(c) This AD applies to Austro Engine GmbH model E4 diesel piston engines, with high-pressure (HP) fuel pump, part number (P/N) E4A–30–100–000, installed.

**Unsafe Condition**

(d) This AD was prompted by Austro Engine GmbH introducing a new P/N fuel pump as mandatory terminating action to the repetitive inspections required by AD 2010–23–09, Amendment 39–16498 (75 FR 68179, November 5, 2010). We are issuing this AD to prevent engine power loss or in-flight shutdown, which could result in loss of control of the airplane.

**Compliance**

(e) Comply with this AD within the compliance times specified, unless already done.

(1) Inspect the fuel pressure supply for excessive oscillations using the inspection schedule in Table 1 of this AD.

TABLE 1—INSPECTION SCHEDULE

| Accumulated Time-Since-New (TSN) or Time Since Last Inspection (TSLI): | Compliance time: |
|---|---|
| 45 flight hours or more | Within 10 flight hours after the effective date of this AD. |
| Fewer than 45 flight hours | Before 55 flight hours TSN or TSLI. |
| Repetitive inspections | Before 55 flight hours TSLI. |

(2) Use Austro Engine GmbH Work Instruction No. WI–MSB–E4–009, dated October 7, 2010, to do the inspections.

(3) Replace the HP fuel pump before further flight with a new HP fuel pump, P/N E4A–30–200–000, if the oscillations exceed 300mV (750hPa).

**Mandatory Terminating Action**

(4) As mandatory terminating action to the repetitive inspections, within 120 flight hours after the effective date of this AD, replace the HP fuel pump, P/N E4A–30–100–000, with a HP fuel pump, P/N E4A–30–200–000. Austro Engine GmbH Mandatory Service Bulletin (MSB) No. MSB–E4–009/2 contains guidance on replacing the HP fuel pump.

**Installation Prohibitions**

(f) After the effective date of this AD, do not install any HP fuel pump P/N E4A–30–100–000, onto any engine.

(g) After the effective date of this AD, do not install any engine equipped with HP fuel pump P/N E4A–30–100–000, onto any airplane.

**Alternative Methods of Compliance (AMOCs)**

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

**Related Information**

(i) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0039, dated March 8, 2011, and Austro Engine GmbH MSB No. MSB–E4–009/2, dated March 4, 2011, for related information.

(j) For more information about this AD, contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* 781–238–7176; fax: 781–238–7199; *e-mail: james.lawrence@faa.gov.*

**Material Incorporated by Reference**

(k) You must use Austro Engine GmbH Work Instruction No. WI–MSB–E4–009, dated October 7, 2010, to do the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51, as of November 22, 2010.

(l) For service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, A–2700 Weiner Neustadt, Austria, phone: +43 2622 23000; fax: +43 2622 23000–2711, or go to: *http://www.austroengine.at.* For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on August 24, 2011.

**Thomas A. Boudreau,**

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

[FR Doc. 2011–22347 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–13–P

## SECURITIES AND EXCHANGE COMMISSION

## 17 CFR PART 240

**[Release Nos. 33–9175A; 34–63741A; File No. S7–24–10]**

**RIN 3235–AK75**

## Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** We are making a technical correction to Rule 15Ga–1 adopted in Release No. 33–9175 (January 20, 2011), which was published in the **Federal Register** on January 26, 2011. The document contained an incorrect paragraph reference in an instruction to Rule 15Ga–1. This correction is being

published to correct the paragraph reference.

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Rolaine Bancroft, Senior Special Counsel, in the Office of Structured Finance, at (202) 551–3850, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are making the following correction to 17 CFR part 240, which was amended by Release No. 33–9175 (January 20, 2011), and was published in FR Doc. 2011–1504 on page 4489 in the **Federal Register** on January 26, 2011 (76 FR 4489).

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78 l, 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78 ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* and 18 U.S.C. 1350 and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

### § 240.15Ga–1 [Amended]

■ 2. Amend § 240.15Ga–1 by removing the phrase ''Instruction to paragraphs (a)(1)(vii) through (xi): For purposes of these paragraphs (a)(1)(vii) through (xi)'' and adding in its place ''Instruction to paragraphs (a)(1)(vi) through (xi): For purposes of these (a)(1)(vi) through (xi)''.

Dated: August 25, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–22257 Filed 8–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0734]**

**RIN 1625–AA00**

## Safety Zone; Thunder on the Gulf, Gulf of Mexico, Orange Beach, AL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for a portion of the Gulf of Mexico for the waters off Orange Beach, Alabama. This action is necessary for the protection of crews, vessels, persons, and spectators on navigable waters during the Thunder on the Gulf high speed boat races. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

**DATES:** This rule is effective from 10 a.m. October 6, 2011, until 4 p.m. October 9, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0734 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0734 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 and U.S. Coast Guard Sector Mobile (spw), Building 102, Brookley Complex South Broad Street Mobile, AL 36615, between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail LT Lenell J. Carson, Coast Guard Sector Mobile, Waterways Division; telephone 251–441–5940 or e-mail *Lenell.J.Carson@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 there is insufficient time to publish a NPRM. This recurring safety zone is included in a separate ongoing rulemaking project to update the list of recurring events and safety zones in the CFR. At this time, a NPRM could not be published without causing unnecessary delay for this year's occurrence of this event and need for a safety zone. Additionally, the Coast Guard received the application for a Marine Event Permit related to this event on July 19, 2011, from the Gulf Coast Powerboat Association, noting their intention to hold their Thunder on the Gulf high speed boat races starting on October 6, 2011. Publishing a NPRM is impracticable because it would unnecessarily delay the required safety zone's 2011 effective date. The safety zone is needed to protect persons and vessels from safety hazards associated with a high speed boat race and will be enforced with actual notice for short periods of time during the four day event.

### Basis and Purpose

The Gulf Coast Powerboat Association applied for a Marine Event Permit to conduct a high speed boat race on the Gulf of Mexico, south of Orange Beach, Alabama to occur from October 6, 2011 through October 9, 2011. This event will draw in a large number of pleasure crafts and the high speed boats pose a significant safety hazard to both vessels and mariners operating in or near the area. The COTP Mobile is establishing a temporary safety zone for a portion of the Gulf of Mexico, Orange Beach, Alabama to protect persons and vessels during the high speed boat races.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

### Discussion of Rule

The Coast Guard is establishing a temporary safety zone for a portion of the Gulf of Mexico for the waters off Orange Beach, Alabama, enclosed by a box starting at a point on the shore at approximately 30°15′39″ N, 087°36′42″

W, then south to 30°14′54″ N, 087°36′42″ W, then east, roughly parallel to the shore line to 30°15′22″ N, 087°33′31″ W, then north to a point on the shore at approximately 30°16′13″ N, 087°33′31″ W. This temporary safety zone will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period and enforcement times for the safety zone. This rule is effective from 10 a.m. October 6, 2011, until 4 p.m. October 9, 2011.

**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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that those Orders.

The temporary safety zone will restrict vessel traffic from entering, transiting or anchoring in a small portion of the Gulf of Mexico, south of Orange Beach, Alabama for short periods of time during the four day event. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through local notice to mariners and broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

*Small Entities*

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in affected portions of the Gulf of Mexico, south of Orange Beach, Alabama during the high speed boat races. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

*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 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 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, paragraph (34)(g), of the Instruction. This rule involves safety for the public and environment and is not expected to result in any significant adverse environmental impact as described in NEPA. An environmental analysis checklist and a categorical exclusion determination will be made available as directed under the **ADDRESSES** section.

**List of Subjects 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. 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 § 165.T08–0734 to read as follows:

**§ 165.T08–0734 Safety Zone; Thunder on the Gulf, Gulf of Mexico, Orange Beach, AL.**

(a) *Location.* The following area is a safety zone: a portion of the Gulf of Mexico for the waters off Orange Beach, Alabama, enclosed by a box starting at a point on the shore at approximately 30°15′39″ N, 087°36′42″ W, then south to 30°14′54″ N, 087°36′42″ W, then east, roughly parallel to the shore line to 30°15′22″ N, 087°33′31″ W, then north to a point on the shore at approximately 30°16′13″ N, 087°33′31″ W.

(b) *Enforcement dates.* This rule will be enforced daily from 10 a.m. until 4 p.m. on October 6, 2011 through October 9, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at 251–441–5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Designated representatives include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts:* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: August 4, 2011.

**D.J. Rose,**

*Captain, U.S. Coast Guard, Captain of the Port Mobile.*

[FR Doc. 2011–22354 Filed 8–31–11; 8:45 am]

BILLING CODE 9110–04–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket No. USCG–2011–0795]**

**RIN 1625–AA00**

## Safety Zone; Cleveland National Air Show, Lake Erie, Cleveland, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on Lake Erie, Cleveland, OH. This zone is intended to restrict vessels from a portion of Lake Erie during the Cleveland National Air Show. This safety zone is necessary to protect persons and vessels from the potential safety hazards associated with high speed, low altitude acrobatic and military aircraft.

**DATES:** This rule is effective from 7:30 a.m. to 6:30 p.m. daily starting on September 1, 2011 through September 5, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0795 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0795 in the ''Keyword'' box, and then clicking ''Search.'' This material is 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.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0795 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0795 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 Chris F. Mercurio, Waterways Management Division Chief, U.S. Coast Guard Sector

Buffalo, at Coast Guard; telephone 716–843–9343, *SectorBuffaloMarineSafety@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 doing so would be impracticable and contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property due to the hazards associated with an air show.

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**. For the same reasons discussed in the preceding paragraph, waiting for 30 day notice period run would be impracticable and contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

## Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels from the potential safety hazards associated with high speed, low altitude acrobatic and military aircraft. Further, the likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, present a significant risk of serious injuries or fatalities.

## Discussion of Rule

The Coast Guard is establishing a temporary safety zone for the Cleveland National Air Show. The safety zone will encompass all waters of Lake Erie and Cleveland Harbor (near Burke Lakefront Airport) bounded by a line drawn from position 41°30.34′ N, 081°42.33′ W; to 41°30.84′ N, 081°42.82′ W; then to 41°32.15′ N, 081°39.82′ W; then to 41°31.88′ N, 081°39.40′ W; then east to 41°31.71′ N, 081°39.76′ W; and then back to the point of origin. The event sponsor will establish marker buoys to outline the safety zone at regular intervals to assist vessels in recognizing this area as a safety zone during the times of enforcement. These coordinates are based upon North American Datum 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Sector Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

## 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue.

## Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the affected portion of the Lake Erie and Cleveland Harbor from 7:30 a.m. to 6:30 p.m. daily on September 1 through September 5, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone will be in enforced only part of each day of the effective period and vessel traffic can safely pass around the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Buffalo to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

## 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**

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that this rule and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a temporary safety zone, ships can safely pass around the zone, and the zone will be enforced only part of each day during the effective period. Therefore this rule is categorically excluded under paragraph 34(g) of the Instruction.

A final environmental analysis check list and categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

**Authority:** 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 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 § 165.T09–0795 to read as follows:

**§ 165.T09–0795 Safety Zone; Cleveland National Air Show, Lake Erie, Cleveland, OH.**

(a) *Location.* All waters of Lake Erie and Cleveland Harbor (near Burke Lakefront Airport) bounded by a line drawn from position 41°30.34′ N, 081°42.33′ W; to 41°30.84′ N, 081°42.82′ W; then to 41°32.15′ N, 081°39.82′ W; then to 41°31.88′ N, 081°39.40′ W; then east to 41°31.71′ N, 081°39.76′ W; and then back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective and Enforcement Period:* This rule is effective from 7:30 a.m. to 6:30 p.m. daily on September 1, 2011 through September 5, 2011. The event sponsor will establish marker buoys to outline the safety zone at regular intervals to assist vessels in recognizing this area as a safety zone during the times of enforcement.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned warrant or petty officer who has been designated

by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port Buffalo will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo or his on-scene representative.

Dated: August 18, 2011.

**S.M. Wischmann,**

*Captain, U.S. Coast Guard, Captain of the Port Buffalo.*

[FR Doc. 2011–22356 Filed 8–31–11; 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–2011–0719]**

**RIN 1625–AA00**

## Safety Zone; Suttons Bay Labor Day Fireworks, Suttons Bay, Grand Traverse Bay, MI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Captain of the Port Sault Sainte Marie zone. This zone is intended to restrict vessels from certain portions of water areas within Sector Sault Sainte Marie Captain of the Port zone, as defined by 33 CFR 3.45–45. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

**DATES:** This rule is effective from 8 until 11 p.m. on September 3, 2011.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are is part of docket USCG–2011–0719 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0719 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 MST3 Kevin Moe, Prevention Department, Coast Guard, Sector Sault Sainte Marie, MI, telephone (906) 253–2429, e-mail *Kevin.D.Moe@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 doing so would be impracticable and contrary to the public interest. Notice of this fireworks display was not received in sufficient time for the Coast Guard to solicit public comments before the start of the event. Thus, waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

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**. For the same reasons discussed in the preceding paragraph, waiting for a 30-day notice period to run would be impracticable and contrary to the public interest.

### Background and Purpose

On the evening of September 3, 2011, the Suttons Bay Chamber of Commerce will conduct a fireworks display to celebrate Labor Day. The celebration will take place next to Suttons Bay Marina Park in Suttons Bay, MI. The Captain of the Port Sault Sainte Marie has determined that the fireworks event poses various hazards to the public, including explosive dangers associated with fireworks, and debris falling into the water. To minimize these and other hazards, this rule will establish a temporary safety zone around the fireworks display.

### Discussion of Rule

To mitigate the risks associated with the Suttons Bay Labor Day Fireworks, the Captain of the Port, Sector Sault Sainte Marie will enforce a temporary safety zone in the vicinity of the launch site. This safety zone will encompass all waters of Suttons Bay, in the vicinity of the Municipal Marina, within the arc of a circle with a 500ft radius from the fireworks launch site located on a barge positioned 44°58′39.96″ N, 085°38′33.78″ W [DATUM: NAD 83].

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative. The Captain of the Port, Sector Sault Sainte Marie, or his or her on-scene representative may be contacted via VHF channel 16.

### 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. We conclude that this rule is not a ''significant'' regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit

through the safety zone when permitted by the Captain of the Port.

*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: The owners or operators of vessels intending to transit or anchor in a portion of Suttons Bay in the vicinity of the Municipal Marina.

This safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced for a short period of time. Vessels may safely pass outside the safety zone during the event. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Sault Sainte Marie, to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

*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 this rule so that 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 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 that 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 involves the establishment of a safety zone, and therefore, paragraph (34)(g) of figure 2–1 applies. A preliminary environmental analysis checklist supporting this preliminary determination will be available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

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

■ 2. Add § 165.T09–0719 to read as follows:

**§ 165.T09–0719 Safety Zone; Suttons Bay Labor Day Fireworks, Suttons Bay, Grand Traverse Bay, MI.**

(a) *Location.* The following area is a temporary safety zone: all waters of Lake Michigan within a 500-foot radius from the fireworks launch site, approximately 325 yards northwest of the Municipal Marina, at position 44°58′39.96″ N, 085°38′33.78″ W: [DATUM: NAD 83].

(b) *Effective and Enforcement period.* This regulation is effective and will be enforced from 8 p.m. until 11 p.m. on September 3, 2011. If the September 3 fireworks are cancelled due to inclement weather, then this section will be effective and enforced September 4 from 8 p.m. until 11 p.m.

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

(1) Designated representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Sault Sainte Marie to monitor these safety zones, permit entry into these safety zones, give legally enforceable orders to persons or vessels within these safety zones, or take other actions authorized by the Captain of the Port.

(2) Public vessel means a vessel owned, chartered, or operated by the United States or by a State or political subdivision thereof.

(d) *Regulations.* (1) The general regulations in 33 CFR 165.23 apply.

(2) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port Sault Sainte Marie or a designated representative. Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3) When the safety zone established by this section is being enforced, all vessels must obtain permission from the Captain of the Port Sault Sainte Marie or his designated representative to enter, move within, or exit that safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative. While within the safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

(4) The Captain of the Port, Sector Sault Sainte Marie may suspend at any time the enforcement of the safety zone established under this section.

(5) The Captain of the Port, Sector Sault Sainte Marie, will notify the public of the enforcement and suspension of enforcement of the safety zone established by this section via any means that will provide as much notice as possible to the public. These means might include some or all of those listed in 33 CFR 165.7(a). The primary method of notification, however, will be through Broadcast Notice to Mariners and local Notice to Mariners.

(e) *Exemption.* Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

Dated: August 16, 2011.

**J.C. McGuiness,**

*Captain, U.S. Coast Guard, Captain of the Port Sault Sainte Marie.*

[FR Doc. 2011–22357 Filed 8–31–11; 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–2011–0546]**

**RIN 1625–AA00**

## Safety Zone; Labor Day Fireworks, Ancarrows Landing Park, James River, Richmond, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a 420-foot radius safety zone on the navigable waters of James River in Richmond, VA in support of the Labor Day Fireworks event. This action is necessary to provide for the safety of life on navigable waters during the Labor Day Fireworks show. This action is intended to restrict vessel traffic movement to protect mariners and spectators from the hazards associated with aerial fireworks displays.

**DATES:** This rule will be effective from 8 p.m. until 9 p.m. on September 5, 2011.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2011–0546 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0546 in the ''Keyword'' box, and then clicking ''Search.'' This material is 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 LCDR Christopher A. O'Neal, Waterways Management Division Chief, Sector Hampton Roads, Coast Guard; telephone 757–668–5581, e-mail *Christopher.A.Oneal@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

On June 29, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Labor Day Fireworks, Ancarrows Landing Park, James River, Richmond, VA in the **Federal Register** (76 FR 125). We received 00 comments on the proposed rule. No public meeting was requested, and none was held.

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 is necessary to protect life, property and the environment during the fireworks event; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

### Background and Purpose

On September 5, 2011, the City of Richmond, Virginia will sponsor a fireworks display on the shoreline of the navigable waters of the James River centered on position 37°31′13.1″ N/

077°25′07.84″ W (NAD 1983). Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris, vessel traffic will be temporarily restricted within 420 feet of the fireworks launch site.

**Discussion of Comments and Changes**

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing a safety zone on specified waters on the James River, Richmond, Virginia.

**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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

**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 would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration, it is limited in size, and maritime advisories will be issued allowing the mariners to adjust their plans accordingly.

The rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the James River from 8 p.m. to 9 p.m. on September 5, 2011.

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), in the NPRM we offered to assist small entities in understanding the rule so that 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 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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that 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 a safety zone around a fireworks display and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

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

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

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

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

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

**Authority:** 33 U.S.C. 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 § 165.T05–0546 to read as follows:

**165.T05–0546 Safety Zone; Labor Day Fireworks, James River, Richmond, VA.**

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Captain of the Port Sector Hampton Roads zone, as defined in 33 CFR 3.25–10, in the vicinity of the James River in Richmond, VA and within 420 feet of position 337°31′13.1″ N/077°25′ 07.84″ W (NAD 1983).

(b) *Definition.* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65 Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period.* This regulation will be enforced from 8 p.m. until 9 p.m. on September 5, 2011.

Dated: August 19, 2011.

**Mark S. Ogle,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 2011–22355 Filed 8–31–11; 8:45 am]

BILLING CODE 9110–04–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

[EPA–R09–OAR–2011–0537; FRL–9457–6]

## California State Implementation Plan, South Coast Air Quality Management District; Withdrawal of Direct Final Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On July 15, 2011 (76 FR 41717), EPA published a direct final approval of a revision to the California State Implementation Plan (SIP). This revision concerned South Coast Air Quality Management District (SCAQMD) Rule 1143, Consumer Paint Thinner & Multi-Purpose Solvents and Rule 1144, Metal Working Fluids & Direct-Contact Lubricants. The direct final action was published without prior proposal because EPA anticipated no adverse comment. The direct final rule stated that if adverse comments were received by August 15, 2011, EPA would publish a timely withdrawal in the **Federal Register**. EPA received timely adverse comments. Consequently, with this revision we are withdrawing the direct final approval of SCAQMD Rules 1143 and 1144. EPA will either address the comments in a subsequent final action based on the parallel proposal also published on July 15, 2011 (76 FR 41745), or repropose an alternative action. As stated in the parallel proposal, EPA will not institute a second comment period on a subsequent final action. Accordingly, the amendment to 40 CFR 52.220 published in the **Federal Register** on July 15, 2011, (76 FR 41717) which was to become effective on September 13, 2011 is withdrawn.

**DATES:** *Effective Date:* The amendment to 40 CFR 52.220 which published at 76 FR 41717 on July 15, 2011 is withdrawn as of September 1, 2011.

**ADDRESSES:** EPA has established docket number EPA–R09–OAR–2011–0537 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the

hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Adrianne Borgia, EPA Region IX, (415) 97–3576, *Borgia.adrianne@epa.gov.*

**List of Subjects in 40 CFR Part 52**

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

Dated: August 19, 2011.

**Jared Blumenfeld,**

*Regional Administrator, Region IX.*

Accordingly, the amendment to 40 CFR 52.220 published in the **Federal Register** on July 15, 2011, (76 FR 41717) is withdrawn as of September 1, 2011.

[FR Doc. 2011–22289 Filed 8–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 110131079–1521–02]**

**RIN 0648–BA79**

## Fisheries of the Northeastern United States; Atlantic Herring Fishery; Regulatory Amendment

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

**ACTION:** Final rule.

**SUMMARY:** NMFS revises the reporting requirements for vessels issued Atlantic herring (herring) permits, because more timely catch information is necessary to monitor herring catch against the stock-wide herring annual catch limit (ACL) and herring management area sub-ACLs, to help prevent sub-ACLs overages and the chance of premature fishery closures. This action requires limited access herring vessels to report catch daily via vessel monitoring systems (VMS), open access herring vessels to report catch weekly via the interactive voice response (IVR) system, and all herring-permitted vessels to submit vessel trip reports (VTRs) weekly.

**DATES:** Effective September 8, 2011.

**ADDRESSES:** An Environmental Assessment (EA) was prepared for this regulatory amendment; it describes the proposed action and other considered alternatives, and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the regulatory amendment, including the EA, the Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA), are available from: NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to NMFS, at the address above, and to the Office of Management and Budget (OMB) by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

**FOR FURTHER INFORMATION CONTACT:** Carrie Nordeen, Fishery Policy Analyst, 978–281–9272, fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

### Background

The herring fishery in the United States is managed by a fishery management plan (FMP) developed by the New England Fishery Management Council (Council), and implemented by NMFS, in 2000. The harvest of herring is managed by a stock-wide ACL that is divided among three management areas, one of which has two sub-areas. Area 1 is located in the Gulf of Maine and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank. In order to monitor catch against management area quota allocations (*i.e.,* sub-ACLs), reporting requirements for the herring fishery were implemented as part of the original Herring FMP in 2000, and are specified at § 648.7. This action revises catch reporting requirements for owners/operators of vessels issued herring permits. A proposed rule revising reporting requirements for the herring fishery was published on June 15, 2011 (75 FR 34947), with a comment period ending June 30, 2011. Because the proposed rule included detailed information on the background and rationale for the revised reporting requirements, that information is only briefly summarized in this final rule.

Fishing year 2010 was the first year that NMFS monitored herring catch against recently reduced herring management area allocations (reduced from 2009 levels by 20 to 60 percent). When catch is projected to reach 95 percent of a management area sub-ACL, NMFS implements a 2,000-lb (907.2-kg) possession limit for that management area, essentially closing that area to the directed herring fishery, to prevent the sub-ACL from being exceeded. In 2010, NMFS experienced difficulty projecting a closure date in Area 1B because of a pulse of fishing effort. NMFS had similar difficulties projecting a closure date in Area 1A, resulting in premature fishery closures, because bycatch rates were highly variable. Preliminary 2010 data indicate that catches from Area 1B and Area 1A exceeded their respective allocations. Overage determinations, and any subsequent overage deductions, will be determined when the 2010 herring catch data are finalized.

NMFS's monitoring experiences in 2010 illustrated the need for more timely catch reporting to better monitor herring catch against management area sub-ACLs, help prevent sub-ACL overages, and reduce the chance of premature fishery closures. The Council is in the process of developing Amendment 5 to the Herring FMP (Amendment 5), which considers revisions to catch reporting requirements for the herring fishery, but that amendment, if approved, is not anticipated to be implemented before 2013. NMFS recognizes the importance of timely catch information to monitor herring catch against management areas sub-ACLs in 2011 and beyond, as well as to help catch achieve, but not exceed, sub-ACLs. The Magnuson-Stevens Fishery Conservation and Management Act (MSA) section 402(a)(2), in conjunction with regulations at § 648.7, provide NMFS with the authority to revise fishery reporting requirements as necessary to monitor a FMP. Therefore, in this action, NMFS requires that: Limited access herring vessels report herring catch daily via VMS; open access herring vessels report catch weekly via IVR; and all herring-permitted vessels submit VTRs weekly.

*Reporting Requirements for Limited Access Herring Vessels*

To ensure timely catch data are available to better inform management decisions, NMFS requires owners/operators of vessels issued limited access herring permits to report herring catch, retained and discarded, daily via VMS. Daily catch reports would include the following information: Vessel name; VTR serial number; date; and the amount of herring retained and discarded from each management area. During a declared herring trip, catch reports would be required to be submitted via VMS by 9 a.m., eastern time, for herring caught the previous calendar day (0000–2400 hr). If no fish were caught on a particular day during

the trip, a negative report (0 lb) would be submitted.

In this action, NMFS also requires owners/operators of vessels issued limited access herring permits to submit VTRs on a weekly basis. VTRs would be due by midnight each Tuesday, eastern time, for the previous week (Sunday–Saturday). This requirement would increase the frequency of information reporting from status quo, but the required content of the VTR would be unchanged.

*Reporting Requirements for Open Access Herring Vessels*

In an effort to simplify reporting requirements, to improve the timeliness of herring catch data, and to more efficiently apportion catch to management areas, NMFS requires owners/operators of vessels issued open access herring permits to report catch, retained and discarded, weekly via the IVR system. An IVR report would be required by midnight each Tuesday, eastern time, for any herring caught the previous week (Sunday–Saturday). If no herring was caught during a week, no IVR report would be required.

Consistent with the VTR requirements for limited access vessels, NMFS requires owners/operators of vessels issued open access herring permits be required to submit VTRs on a weekly basis. VTRs would be due by midnight each Tuesday, eastern time, for the previous week (Sunday–Saturday). This requirement would increase the frequency of information reporting from status quo, but the required content of the VTR would be unchanged.

**Comments and Responses**

Seven comment letters were received on the proposed rule for this action; one from the Atlantic States Marine Fisheries Commission (ASMFC), two from herring fishing organizations (Lunds Fisheries Inc., O'Hara Corporation/Starlight Inc.), one from a fishing/environmental organization (CHOIR Coalition), one from an environmental advocacy group (Herring Alliance), one from the State of Maine, and one from a member of the public. All commenters expressed general support for the proposed measures because they think the measures will improve catch monitoring, but several commenters qualified their support with recommendations for revisions to the proposed measures.

*Comment 1:* The ASMFC supported measures in the proposed rule, because daily reporting will reduce the chance of premature closures and overages, which increase operational costs and reduce market stability, with little change to reporting burden. The ASMFC also commented that VMS reporting has been used successfully in the Northeast multispecies fishery, and that it is pleased to see consistent requirements for the herring fishery.

*Response:* While this action does increase the reporting burden on owners/operators of vessels issued herring permit, NMFS believes that the potential benefits of more frequent reporting, such as the decreased likelihood of sub-ACL overages and premature fishery closures, justifies the increase in reporting burden.

*Comment 2:* A member of the public commented that the proposed measures will allow for better enforcement of the ACL and more accountability and efficiency to herring monitoring with little change to the reporting burden on vessels.

*Response:* See response to Comment 1.

*Comment 3:* The Herring Alliance and CHOIR both expressed support for more timely catch reporting in the herring fishery, but believe this action is only an interim step, and that there is still a need to develop a comprehensive monitoring system, including independent, third-party monitoring, in Amendment 5.

*Response:* This action is intended to address the specific need for more timely catch reporting while Amendment 5 is being developed and implemented.

*Comment 4:* The Herring Alliance and CHOIR both commented that weekly IVR reporting is unnecessary for vessels issued open access permits. The Herring Alliance explained that, because open access vessels catch less than 1 percent of the herring harvest and contribute little to the problem of pulse fishing activities, simply requiring weekly VTRs seems sufficient to monitor herring catch from open access vessels. The Herring Alliance commented that the IVR system is reported to be complex, unreliable, and challenging. But it also suggested maintaining the current IVR requirement (*i.e.,* open access vessels submit weekly IVR reports only if catch is equal to or greater than 2,000 lb (907.2 kg) on a trip) rather than requiring open access vessels to report all catch weekly via IVR. Because the catch from open access vessels is only a percentage of the herring harvest, CHOIR commented that requiring weekly IVR reports from all open access vessels would lead to a large amount of reporting confusion for little benefit to herring management.

*Response:* VTRs do not allow herring catch to be reported by herring management area; instead, VTR catch information must be apportioned to management area using latitude and longitude. Given that these vessels land a low percentage of the total herring catch, it would create needless work to process a large amount of VTRs weekly. Therefore, at this time, IVR reporting is the most efficient and timely way to track the catch of open access vessels against management area sub-ACLs. In addition, there has been confusion with the existing 2,000-lb (907.2-kg) IVR reporting trigger (*i.e.,* is it a trip limit or a weekly limit?); and this misunderstanding likely affected IVR reporting compliance. This action simplifies the IVR reporting requirement by requiring a report if any herring are caught. If weekly IVR reporting by open access vessels proves to be unnecessary, the weekly IVR reporting requirement can be modified or eliminated in a future action.

*Comment 5:* Lunds opposed the proposed measures requiring open access vessels to report weekly via IVR and exempting open access vessels from submitting an IVR report if no fish were caught during a week. Instead, Lunds proposed that open access vessels be required to operate a VMS and submit daily VMS catch reports when they are directing fishing effort on herring.

*Response:* Currently, the Herring FMP does not require vessels with open access herring permits to operate a VMS, but many of these vessels possess a VMS as a result of other permit requirements. Because open access vessels catch such a small percentage of the total herring harvest, requiring open access vessels to obtain/operate a VMS and submit daily VMS catch reports was not considered in this action. At this time, NMFS believes that VMS catch reporting by limited access vessels and weekly IVR reporting by open assess vessels is the most efficient and cost effective way to monitor catch in the herring fishery.

*Comment 6:* Lunds, O'Hara/Starlight, and the State of Maine supported the proposed measure requiring daily VMS reporting for limited access vessels, but opposed the proposed 0900 hr reporting deadline and recommend that the reporting deadline be delayed until later in the day. The commenters explained that mornings are a busy time on the docks and vessels are often offloading their catch at 0900 hr. If the reporting deadline was later in the day (Lunds and O'Hara/Starlight recommended 1700 hr; the State of Maine recommended 1500 hr), vessels could complete their offloads before the catch reports were due, thereby improving the accuracy of catch reports and

compliance with the reporting requirement.

*Response:* The daily VMS catch report is intended to be a hail weight of the previous day's catch. Throughout a trip, limited access vessels will be submitting hail weights via VMS for each day's catch. The methods used to estimate a hail weight for the last day of a fishing trip should be similar to the methods used to estimate catch on the previous days. Vessels are not expected to verify catch estimates with offload information, and reporting need not occur at 0900 hr, it can occur any time between 0000 and 0900 hr. Additionally, as herring catch approaches management area sub-ACLs, daily adjustments to catch projections will likely be necessary. If catch reports are not due until the afternoon, catch projections will not include the previous day's catch. Because herring catch can be highly variable, catch projections incorporating the previous day's catch will likely be better at preventing overages and premature fishery closures.

*Comment 7:* Lunds commented that, if technological issues prevent a vessel from submitting a catch report, particularly while at sea, provisions should be made so that the report can be delayed without penalty.

*Response:* Rather than modify the regulations, any penalty for a delay in reporting should remain at the discretion of the NMFS Office of Law Enforcement, which can take extenuating circumstances, such as those described by the commenter, into account.

*Comment 8:* Lunds also commented that if a sub-ACL overage occurs, the amount of the overage should not be subsequently deducted from the corresponding sub-ACL unless the stock-wide herring ACL has been exceeded, consistent with accountability measures (AMs) for the Atlantic scallop fishery.

*Response:* Amendment 4 to the Herring FMP established an AM that provides for overage deductions. Once the total catch of herring for a fishing year is determined, using all available information, any ACL or sub-ACL overage would result in a reduction of the corresponding ACL/sub-ACL the following year. Adjusting this AM is beyond the scope of this rulemaking and would require action by the Council.

*Comment 9:* Because 2010 catch data for the herring fishery have not yet been finalized, the State of Maine questioned language in the proposed rule stating that 2010 herring catch exceeded quota allocations for Areas 1A and 1B, and that those overages will be deducted from the corresponding sub-ACLs in 2012.

*Response:* Preliminary NMFS data indicate that catch exceeded quota allocations for Areas 1A and 1B in 2010. Any overage determinations, and any subsequent overage deductions, will be determined when NMFS finalizes the 2010 herring catch data.

*Comment 10:* The Herring Alliance commented that, because herring discards are not adequately tracked against management area sub-ACLs, this action should implement a real-time protocol to use observer data to calculate a fishery-wide discard estimate and measures to address catch that is discarded without first being made available to the observer for sampling.

*Response:* Vessels with herring permits report herring catch (*i.e.,* retained and discarded) by management area and that catch is tracked against area sub-ACLs. With this action, limited access vessels will be reporting discards daily, rather than weekly, and open access vessels will be reporting discards weekly, rather than monthly. Measures to address catch that is discarded without being sampled by an observer are beyond the scope of this rulemaking, but such measures are being considered in Amendment 5.

*Comment 11:* The Herring Alliance commented that tracking catch from vessels fishing near and across management area boundaries is a monitoring challenge. Because vessels report herring catch by management area, the Herring Alliance is concerned about the potential for reporting confusion when vessels fish across management boundaries and in multiple management areas. Because inshore sub-ACLs are smaller than offshore sub-ACLs, Herring Alliance believes there may also be incentives for misreporting. The Herring Alliance recommends that VMS information be used to verify vessel catch reports and consider prohibiting towing across area boundaries.

*Response:* NMFS currently uses VMS information to verify vessel catch reports. Prohibiting fishing in multiple management areas was beyond the scope of this action, but those measures could be considered in Amendment 5.

*Comment 12:* The Herring Alliance commented that measures should have been included in this action to improve the tracking of groundfish caught by herring vessels fishing in groundfish closed areas by requiring vessels with Category A and Category B limited access herring permits to report groundfish catch daily via VMS.

*Response:* This action addresses the need for more frequent reporting of herring. The Northeast Multispecies (Multispecies) FMP contains measures for monitoring the catch of groundfish species, and revising those measures is beyond the scope of this action. Revisions to haddock reporting requirements for herring vessels fishing with midwater trawl gear are currently being considered in Framework 46 to the Multispecies FMP (Framework 46), and requirements for herring vessels fishing in groundfish closed areas are being considered in Amendment 5.

*Comment 13:* The Herring Alliance commented that the EA for this action does not adequately analyze the effect of the herring fishery on non-target stocks and contains incorrect stock status information for Atlantic mackerel (mackerel).

*Response:* This action is administrative and is not anticipated to result in changes in effort or fishing behavior beyond those analyzed as part of the 2010–2012 herring specifications. The analysis of non-target stocks in the EA is consistent with the scope of an administrative action. Framework 46 considers haddock bycatch in the herring fishery and Amendment 5 considers groundfish and river herring/shad bycatch in the herring fishery. In Section 3.1.2 of the EA, the status of mackerel is listed as not overfished and not subject to overfishing. This information is consistent with mackerel stock status described in the quarterly updates for the 2010 Report on the Status of U.S. Fisheries.

*Comment 14:* The Herring Alliance commented that the requirements for declaring into the herring fishery, and those associated with being on a declared herring trip, are unclear.

*Response:* On January 22, 2010, NMFS issued a permit holder letter that provided guidance on declaring into the herring fishery and being on a declared herring trip. The letter explained that, if a vessel has been issued a limited access herring permit, a vessel representative must activate the VMS and declare that the vessel is participating in the herring fishery, by entering the code ''HER'' prior to leaving port, otherwise that vessel may not harvest, possess, or land herring on that trip. This guidance will also be provided in the compliance guide for this action.

## Changes From the Proposed Rule

There are no changes from the proposed rule.

## Classification

The Administrator, Northeast Region, NMFS, determined that this regulatory

amendment is necessary for the conservation and management of the herring fishery and that it is consistent with the MSA and other applicable law.

There is good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this rule and establish an effective date 7 days after publication in the **Federal Register**. Fishing year 2010 was the first year that NMFS monitored herring catch against recently reduced herring management area quota allocations (reduced from 2009 levels by 20 to 60 percent). That year, a pulse of fishing effort in Area 1B made it difficult to project a closure date. NMFS had similar difficulties projecting a closure date in Area 1A, resulting in premature fishery closures, because catch rates were highly variable. Catch information needs to be available quickly to help prevent overages and reduce the likelihood of premature fishery closures. Premature fishing closures unnecessarily interrupt fishing and processing operations and likely result in increased operational costs to the industry, contrary to public interest. Preliminary data indicate that catch from Areas 1A and 1B exceeded their respective allocations. If catch did exceed area allocations, those overages will need to be deducted from the corresponding sub-ACLs in 2012. Overages in any management area can be detrimental to both the fish stock and the fishery and, therefore, also contrary to public interest. Herring is a relatively long-lived species (over 10 years) and multiple year classes are harvested by the fishery (typically ages 2 through 6x). These characteristics suggest that the herring stock may be robust to overage deductions. However, the health of a stock, size of an overage, and the frequency of overages could combine to affect the stock in the future. Additionally, overages result in lower sub-ACLs, thus harming the industry by reducing potential profits. To help prevent sub-ACL overages, subsequent sub-ACL deductions, and premature fishery closures, these reporting requirements need to be effective before the fishery becomes active in September 2011. This action revises the method and frequency of reporting, but maintains the content of existing reporting requirements.

This final rule has been determined to be not significant for purposes of Executive Orders 12866 and 13563.

A final regulatory flexibility analysis (FRFA) was prepared. The FRFA incorporates the IRFA and analyses contained in this regulatory amendment and its accompanying EA/RIR/IRFA. Copies of these analyses are available from NMFS (see **ADDRESSES**).

*Statement of Need*

This action is necessary because more timely catch information is needed to monitor herring catch against the stock-wide herring ACL and herring management area sub-ACLs, to help prevent sub-ACLs overages, and reduce the chance of premature fishery closures. A description of the action, why it was considered, and the legal authority for the action is contained in the preamble and not repeated here.

*A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments*

Seven comment letters were received during the comment periods on the proposed rule, but none of the comments were specifically directed to the IRFA.

*Description and Estimate of Number of Small Entities to Which the Rule Would Apply*

All participants in the herring fishery are small entities as defined by the Small Business Administration's size standards, as none grossed more than $4 million annually; therefore, there are no disproportionate economic impacts on small entities. In 2010, 42 vessels were issued Category A herring permits, 4 vessels were issued Category B herring permits, 55 vessels were issued Category C herring permits, and 2,258 vessels were issued Category D herring permits. A complete description of the number of small entities to which this rule applies is provided in Section 3.1.5 of this action's EA/RFA/IRFA (see **ADDRESSES**).

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

This action contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement was submitted to OMB for approval under Control Numbers 0648–0202 and 0648–0212. This action does not duplicate, overlap, or conflict with any other Federal rules.

*Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected*

This action directly affects all participants in the herring fishery because it increases the reporting burden for owners/operators of vessels issued herring permits. A complete description of the economic impacts associated with the proposed action and the non-selected alternatives is provided in Section 4.3 of action's EA/RFA/IRFA (see **ADDRESSES**).

In developing this rule, NMFS considered three alternatives: The no action alternative, which would require weekly IVR reporting by limited access vessels, weekly IVR reporting by open access vessels with catch equal to or greater than 2,000 lb (907.2 kg) on a trip, and monthly VTR reports from all herring-permitted vessels; this action, which requires daily VMS reporting by limited access vessels, weekly IVR reporting by open access vessels, and weekly VTR reports from all herring-permitted vessels; and a non-selected action alternative, which would require both limited access and open access-permitted vessels to provide NMFS with trip-by-trip IVR reports and weekly VTR reports.

This action increases reporting costs for herring fishery participants. VMS reporting and the submission of VTRs have a direct cost associated with the submission of the report. The cost of transmitting a catch report via VMS is $0.60 per transmission. In 2010, the average number of fishing days for a limited access herring vessel was 93. Therefore, the annual cost of daily VMS reporting is estimated to be $55.80 per vessel. The estimated annual VMS reporting burden (*i.e.,* time) is the submission of 93 reports per limited access vessel. Because the IVR system phone number is toll-free, there is no direct cost associated with reporting via the IVR system. The estimated annual IVR reporting burden is the submission of 52 reports per open access vessel. Additionally, this action requires weekly VTR submissions, which cost each vessel $17.60 annually. This cost was calculated by multiplying 40 (52 weeks in a year minus 12 (number of monthly reports)) by $0.44 (cost of a

postage stamp) to equal $17.60). The annual VTR reporting burden is the submission of 52 reports per vessel.

Adding these costs together, this action is estimated to have an annual increased reporting cost of approximately $73.40 per limited access herring vessel (submission of 145 VMS reports and VTRs), and approximately $17.60 per open access herring vessel (submission of 104 IVR reports and VTRs). The ex-vessel value of the herring fishery varies by permit category. For limited access vessels, this action increases reporting costs by less than 1.8 percent of the average ex-vessel value of the fishery (2008–2010). For vessels with open access herring permits, this action increases reporting costs by 7.2 percent of the average ex-vessel herring value. While the increased reporting costs associated with this action may seem high for open access vessels, open access vessels typically operate in several fisheries and revenue from herring catch is likely only a small portion of their total ex-vessel value. Additionally, the majority of vessels issued open access herring permits (92 percent) are already paying these increased reporting costs, because they also possess a Northeast multispecies permit that requires weekly submission of VTRs, so they will not experience an increase in overall costs.

Under this action, catch data are updated more frequently and will likely better inform catch projections. If catch projections are less uncertain, ACL/sub-ACL overages, and the subsequent overage deduction, may become less likely. Additionally, the fleet may be allowed to harvest up to the 95 percent sub-ACL closure threshold without the management area being prematurely closed and herring potentially left unharvested. For limited access vessels, reporting via VMS is more flexible (reports can be made from sea or from land) than reporting via IVR (reports usually made only from land). For open access vessels, reporting weekly rather than trip-by-trip still provides timely catch data, but likely results in a lower reporting burden. For these reasons, there may be indirect positive impacts for fishery participants associated with this action.

As compared to this action, the reporting burden under the no action alternative would be less. The no action alternative would require weekly reporting via IVR for limited access vessels, weekly reporting via IVR for open access vessels when catch was greater than 2,000 lb (907.2 kg) per trip, and monthly submission of VTRs for all vessels issued herring permits. Because the IVR system phone number is toll-free, there is no direct cost associated with reporting via the IVR system. The no action alternative is estimated to have an annual reporting cost of approximately $5.28 per limited access herring vessel (submission of 64 reports) and approximately $5.28 per open access herring vessel (submission of 19 reports). Under the no action alternative, there is the possibility that catch data may not be timely enough to inform catch projections increasing the likelihood of either an ACL/sub-ACL overage or a premature implementation of a reduced possession limit. Because of issues with phone reception, reporting via IVR is often not possible while at sea. Therefore, reporting for limited access vessels would be less flexible under the no action alternative than under this action. For these reasons, there may be indirect negative economic impacts to fishery participants resulting from the no action alternative, including overage deductions, increased operational costs if fishing activities are interrupted by a premature closure, and the potential risk that a premature closure may result in a percentage of a management area sub-ACL left unharvested.

The reporting burden under the non-selected action alternative would be less costly than reporting under this action (because IVR is less costly than VMS), but the number of reports submitted may be higher than under this action (because trip-by-trip reporting would likely result in the submission of more reports than weekly reporting). The non-selected action alternative would require trip-by-trip reporting via IVR and weekly submission of VTRs for all vessels issued herring permits. The non-selected action alternative is estimated to have an annual reporting cost of approximately $17.60 per herring vessel. Because trips can vary in length from 1 day to several days, the frequency of trip-by-trip reporting would be variable. Under the non-selected action alternative, IVR reporting and weekly VTR submission would result in a minimum annual submission of 104 reports per vessel. The ex-vessel value of the herring fishery varies by permit category. For limited access vessels, the non-selected action alternative would have increased reporting costs that are less than 0.0007 percent of the average ex-vessel value of the fishery (2008–2010). The non-selected action alternative would have increased reporting costs of 7.2 percent of the average ex-vessel value of the herring fishery for open access vessels. While the increased reporting costs associated with the non-selected action alternative may seem high for open access vessels, open assess vessels typically operate in several fisheries and revenue from herring catch is likely only a small portion of their total ex-vessel value. Additionally, the majority of vessels issued open access herring permits (92 percent) are already paying these increased reporting costs, because they also possess a Northeast multispecies permit that requires weekly submission of VTRs.

Similar to this action, catch data under the non-selected action alternative would be updated frequently and would likely be sufficient to inform catch projections. If catch projections contained less uncertainty, ACL/sub-ACL overages, and the subsequent overage deduction, may be less likely. Additionally, the fleet may be allowed to harvest up to the 95-percent sub-ACL closure threshold without the management area being prematurely closed and herring potentially left unharvested. For limited access vessels, reporting via IVR is less flexible than reporting via VMS, so reporting for limited access vessels would be less flexible under the non-selected action alternative than under this action. For these reasons, there may be both indirect positive and indirect negative impacts for fishery participants under the non-selected action alternative.

This final rule contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by the Office of Management and Budget (OMB) under control numbers 0648–0202 and 0648–0212. Public reporting burden for catch reporting is estimated to average 5 min per individual per VMS response, 7 min per individual per IVR response, and 5 min per individual per VTR response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these, or any other aspects of the collection of information, to NMFS,

Northeast Regional Office (see **ADDRESSES**) and to the OMB by e-mail at *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 26, 2011.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.7, paragraphs (b)(2)(i) and (f)(2)(i) are revised, and paragraph (b)(3) is added to read as follows:

### § 648.7 Recordkeeping and reporting requirements.

* * * * *

(b) * * *

(2) * * *

(i) *Atlantic herring owners or operators issued an open access permit.* The owner or operator of a vessel issued an open access permit to fish for herring must report catch (retained and discarded) of herring to an IVR system for each week herring was caught, unless exempted by the Regional Administrator. IVR reports are not required for weeks when no herring was caught. The report shall include at least the following information, and any other information required by the Regional Administrator: Vessel identification; week in which herring are caught; management areas fished; and pounds retained and pounds discarded of herring caught in each management area. The IVR reporting week begins on Sunday at 0001 hr (12:01 a.m.) local time and ends Saturday at 2400 hr (12 midnight). Weekly Atlantic herring catch reports must be submitted via the IVR system by midnight each Tuesday, eastern time, for the previous week. Reports are required even if herring caught during the week has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) Atlantic herring IVR reports are not required from Atlantic herring carrier vessels.

(B) *Reporting requirements for vessels transferring herring at sea.* A vessel that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all transfers weekly via the IVR system and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued open access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a weekly IVR report for the amount of herring each vessel lands.

* * * * *

(3) *VMS Catch Reports.* (i) *Atlantic herring owners or operators issued a limited access permit.* The owner or operator of a vessel issued a limited access permit to fish for herring must report catches (retained and discarded) of herring daily via VMS, unless exempted by the Regional Administrator. The report shall include at least the following information, and any other information required by the Regional Administrator: Fishing Vessel Trip Report serial number; month and day herring was caught; pounds retained for each herring management area; and pounds discarded for each herring management area. Daily Atlantic herring VMS catch reports must be submitted in 24-hr intervals for each day and must be submitted by 0900 hr of the following day. Reports are required even if herring caught that day has not yet been landed. This report does not exempt the owner or operator from other applicable reporting requirements of this section.

(A) The owner or operator of any vessel issued a limited access herring permit must submit an Atlantic herring catch report via VMS each day, regardless of how much herring is caught (including days when no herring is caught), unless exempted from this requirement by the Regional Administrator.

(B) Atlantic herring VMS reports are not required from Atlantic herring carrier vessels.

(C) *Reporting requirements for vessels transferring herring at sea.* The owner or operator of a vessel issued a limited access permit to fish for herring that transfers herring at sea must comply with these requirements in addition to those specified at § 648.13(f).

(*1*) A vessel that transfers herring at sea to a vessel that receives it for personal use as bait must report all transfers on the Fishing Vessel Trip Report.

(*2*) A vessel that transfers herring at sea to an authorized carrier vessel must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the carrier vessel is defined as a trip for the purposes of reporting requirements and possession allowances.

(*3*) A vessel that transfers herring at sea to an at-sea processor must report all catch daily via VMS and must report all transfers on the Fishing Vessel Trip Report. Each time the vessel offloads to the at-sea processing vessel is defined as a trip for the purposes of the reporting requirements and possession allowances. For each trip, the vessel must submit a Fishing Vessel Trip Report and the at-sea processing vessel must submit the detailed dealer report specified in paragraph (a)(1) of this section.

(*4*) A transfer between two vessels issued limited access permits requires each vessel to submit a Fishing Vessel Trip Report, filled out as required by the LOA to transfer herring at sea, and a daily VMS catch report for the amount of herring each vessel catches.

(ii) [Reserved]

* * * * *

(f) * * *

(2) * * *

(i) For any vessel not issued a NE multispecies or Atlantic herring permit, fishing vessel log reports, required by paragraph (b)(1)(i) of this section, must be postmarked or received by NMFS

within 15 days after the end of the reporting month. If no fishing trip is made during a particular month for such a vessel, a report stating so must be submitted, as instructed by the Regional Administrator. For any vessel issued a NE multispecies or Atlantic herring permit, Fishing Vessel Trip Reports must be postmarked or received by midnight of the first Tuesday following the end of the reporting week. If no fishing trip is made during a reporting week for such a vessel, a report stating so must be submitted and received by NMFS by midnight of the first Tuesday following the end of the reporting week, as instructed by the Regional Administrator. For the purposes of this paragraph (f)(2)(i), the date when fish are offloaded will establish the reporting week or month that the Fishing Vessel Trip Report must be submitted to NMFS, as appropriate. Any fishing activity during a particular reporting week (*i.e.,* starting a trip, landing, or offloading catch) will constitute fishing during that reporting week and will eliminate the need to submit a negative fishing report to NMFS for that reporting week. For example, if a vessel issued a NE multispecies or Atlantic herring permit begins a fishing trip on Wednesday, but returns to port and offloads its catch on the following Thursday (*i.e.,* after a trip lasting 8 days), the VTR for the fishing trip would need to be submitted by midnight Tuesday of the third week, but a negative report (*i.e.,* a ''did not fish'' report) would not be required for either week.

* * * * *

[FR Doc. 2011–22436 Filed 8–31–11; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 76, No. 170
Thursday, September 1, 2011

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 2

**[Docket No. APHIS–2009–0053]**

**RIN 0579–AD23**

## Animal Welfare; Importation of Live Dogs

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations to implement an amendment to the Animal Welfare Act (AWA). The Food, Conservation, and Energy Act of 2008 added a new section to the AWA to restrict the importation of certain live dogs. Consistent with this amendment, this proposed rule would, with certain limited exceptions, prohibit the importation of dogs from any part of the world into the continental United States or Hawaii for purposes of resale, research, or veterinary treatment, unless the dogs are in good health, have received all necessary vaccinations, and are at least 6 months of age. This proposed rule is necessary to implement the amendment to the AWA and would help to ensure the welfare of imported dogs.

**DATES:** We will consider all comments that we receive on or before October 31, 2011.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2009-0053-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2009–0053, 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-2009-0053* 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.

*Other Information:* Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Gerald Rushin, Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 734–0954.

**SUPPLEMENTARY INFORMATION:**

### Background

Under the Animal Welfare Act (AWA or the Act, 7 U.S.C. 2131 *et seq.*), the Secretary of Agriculture is authorized to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, operators of auction sales, and carriers and intermediate handlers. The Secretary has delegated responsibility for administering the AWA to the Administrator of U.S. Department of Agriculture's (USDA) Animal and Plant Health Inspection Service (APHIS). Within APHIS, the responsibility for administering the AWA has been delegated to the Deputy Administrator for Animal Care (AC). Regulations and standards are established under the AWA and are contained in the Code of Federal Regulations (CFR) in 9 CFR parts 1, 2, and 3 (referred to below as the regulations). Part 2 provides administrative requirements and sets forth institutional responsibilities for regulated parties.

The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246, signed into law on June 18, 2008) added a new section to the Animal Welfare Act (7 U.S.C. 2148) to restrict the importation of certain live dogs. As amended, the AWA now prohibits the importation of dogs into the United States for resale purposes, unless the Secretary determines that the dogs are in good health, have received all necessary vaccinations, and are at least 6 months of age. The AWA further provides that the Secretary, by regulation, must provide an exception to these requirements in any case in which a dog is imported for research purposes or veterinary treatment. An exception to the at least 6-month age requirement is also provided in Section 18 of the AWA for dogs that are lawfully imported into Hawaii from the British Isles, Australia, Guam, or New Zealand in compliance with the applicable regulations of Hawaii, provided the dogs are not transported out of Hawaii for purposes of resale at less than 6 months of age. Persons who fail to comply with these provisions are subject to any penalties under Section 18 of the AWA and must provide for the cost of the care, forfeiture, and adoption of each applicable dog, at his or her expense.

The AWA, as amended, directs the Secretary and the Secretaries of Health and Human Services (HHS), Commerce, and Homeland Security to promulgate such regulations as are necessary to implement and enforce these new provisions of the AWA. After close consultation and cooperation among those Federal departments, APHIS is proposing to add a new subpart to the regulations, subpart J in 9 CFR part 2, that would contain the new requirements for the importation of certain live dogs. The proposed requirements are described in detail below.

### Import Permit

We are proposing to require that live dogs imported into the continental United States (i.e., the contiguous 48 States and Alaska) or Hawaii for purposes of resale, research, or veterinary treatment be accompanied by an import permit issued by APHIS. Proposed § 2.150(a) would require the importation to occur within 30 days after the proposed date of arrival stated in the import permit. The import permit would help ensure that the requirements for importing live dogs under the proposed subpart are understood and met by the importer.

We propose to require that any person desiring to import live dogs for purposes of resale, research, or veterinary treatment complete an application for an import permit and submit it to the Animal and Plant Health Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234 or

through Animal Care's Web site at: *http://www.aphis.usda.gov/animal_welfare.* Paper application forms for import permits may be obtained from Animal Care at the address listed above.

The application must include the name and address of the person intending to export the dog(s) to the continental United States or Hawaii; the name and address of the person intending to import the dog(s) into the continental United States or Hawaii; the number of dogs to be imported and the breed, sex, age, color, markings, and other identifying information of each dog; the purpose of the importation; the port of embarkation and the mode of transportation; the port of entry in the continental United States or Hawaii; the proposed date of arrival in the continental United States or Hawaii; and the name and address of the person to whom the dog(s) will be delivered in the continental United States or Hawaii and, if the dog(s) is imported for research purposes, the USDA registration number of the research facility where the dog will be used for research, tests, or experiments. The information required for completion of an application for importation helps APHIS determine whether the dogs appear eligible for importation, to respond to an applicant, to identify the dogs at the port of entry, and to contact appropriate persons if any questions arise concerning the importation.

APHIS will review the application and, if the application is complete, an import permit may be issued. Note that an import permit does not guarantee that any dog will be allowed entry into the continental United States or Hawaii; the dogs will be allowed entry only if they meet all applicable requirements of subpart J as well as any other applicable regulations or statutory requirements. We note, in particular, that: (1) All dogs imported into the United States are currently subject to restrictions established by HHS' Centers for Disease Control and Prevention (CDC) in 42 CFR part 71; and (2) dogs imported into the United States from screwworm-affected regions and dogs that are used to handle livestock and are imported from any part of the world except Canada, Mexico, Central America, and the West Indies are currently subject to restrictions established by APHIS' Veterinary Services program in 9 CFR part 93.

**Certifications**

We would require that live dogs imported into the continental United States or Hawaii for purposes of resale, research, or veterinary treatment be accompanied by two certificates: An original health certificate and a valid rabies vaccination certificate. As discussed below under the heading ''Exceptions,'' we would provide limited exceptions to these requirements for dogs imported for certain research studies or veterinary treatment, as well as dogs imported into Hawaii from certain regions of the world.

*Original Health Certificate*

This proposed section would require that an original health certificate be issued in English by a veterinarian with a valid license to practice veterinary medicine in the country of export and bear the signature and license number of the veterinarian issuing the certificate. These requirements would help ensure that the veterinarian who issues the health certificate is authorized to do so.

This proposed section would also require that the health certificate specify the name and address of the person intending to import the dog into the continental United States or Hawaii. This information would allow APHIS to contact the appropriate person if any questions arise during importation. Further, we propose to require specific information and statements to be included in the health certificate. The health certificate would have to identify the dog on the basis of breed, sex, age, color, markings, and other identifying information and state that: (1) The dog is at least 6 months of age; (2) the dog was vaccinated, not more than 12 months before the date of arrival at the U.S. port, for distemper, hepatitis, leptospirosis, parvovirus, and parainfluenza virus (DHLPP) [1] at a frequency that provides continuous protection of the dog from those diseases and is in accordance with currently accepted practices as cited in veterinary medicine reference guides; and (3) the dog is in good health (i.e., free of any infectious disease or physical abnormality which would endanger the dog or other animals or endanger public health, including, but not limited to, parasitic infection, emaciation, lesions of the skin, nervous system disturbances, jaundice, or diarrhea).

The health certificate would help personnel at the port of entry determine if the dog meets the requirements set forth in proposed subpart J. The statements contained in the health certificate would help ensure, among other things, that the dog is in good health, has received vaccinations necessary to protect against DHLPP, and is at least 6 months of age.

*Rabies Vaccination Certificate*

Proposed § 2.151(a)(2) sets forth the rabies vaccination certificate requirements for live dogs offered for entry into the continental United States or Hawaii for purposes of resale, research, or veterinary treatment. Like the original health certificate, this proposed section would require that the rabies vaccination certificate be issued in English by a veterinarian with a valid license to practice veterinary medicine in the country of export and bear the signature and license number of the veterinarian issuing the certificate. These requirements would help ensure that the veterinarian who issues the rabies vaccination certificate is authorized to do so. This requirement could also be met by providing an exact copy of the rabies vaccination certificate if so required under the Public Health Service regulations in 42 CFR 71.51.

Dogs that are less than 3 months of age are too young to be vaccinated against rabies. Therefore, this proposed section would provide that the dogs would have to be accompanied by a rabies vaccination certificate that was issued for the dog at not less than 3 months of age at the time of vaccination.

This proposed section would also require that the health certificate specify the name and address of the person intending to import the dogs into the continental United States or Hawaii, as well as identify the dog on the basis of breed, sex, age, color, markings, and other identifying information. This information would allow APHIS to contact the appropriate person (i.e., the person intending to import the dog) if any questions arise during importation and to confirm that the health certificate and rabies vaccination certificates were issued for the same dog that was specified on the import permit. Further, proposed § 2.151(a)(2) would require specific statements to be included in the rabies vaccination certificate. Paragraphs (a)(2)(iii) through (a)(2)(iv) provide that the rabies vaccination certificate would have to specify: (1) A date of rabies vaccination at least 30 days before the date of arrival of the dog at a U.S. port; and (2) a date of expiration of the vaccination which is after the date of arrival of the dog at a U.S. port. If no date of expiration is specified, then the date of vaccination would be no more than 12 months before the date of arrival at a U.S. port. These requirements would help to ensure that the dog has been properly

[1] Distemper is an airborne viral disease of the lungs, intestines and brain; infectious canine hepatitis is a viral disease of the liver; leptospirosis is a bacterial disease of the urinary tract; parainfluenza is an infectious bronchitis; and parvovirus is a viral disease of the intestines.

vaccinated against rabies and that the vaccination has not expired.

The rabies vaccination certificate would help personnel at the port of entry determine if the dog meets the requirements set forth in proposed subpart J. The statements contained in the health certificate would help ensure that the dog has been appropriately vaccinated against rabies.

*Exceptions*

Section 18 of the AWA directs the Secretary to provide, by regulation, an exception to the good health, vaccination, and at least 6-month age requirements in any case in which a dog is imported for research purposes or veterinary treatment. An exception to the at least 6-month age requirement is also provided in the AWA for dogs that are lawfully imported into Hawaii from the British Isles, Australia, Guam, or New Zealand in compliance with the applicable regulations of Hawaii, provided the dogs are not transported out of Hawaii for purposes of resale at less than 6 months of age. The legislative history suggests that this exception was adopted in recognition of Hawaii's unique situation arising out of its current quarantine regulations. Notably, Hawaii is the only State that is entirely rabies-free and all dogs transported into Hawaii, regardless of age or purpose, must comply with its import requirements.

We propose to provide a limited exception for persons intending to import a live dog into the continental United States or Hawaii for use in research, tests, or experiments at a research facility, as defined in § 1.1 of the regulations, provided that three conditions are met. First, we would require that the dog be accompanied by an import permit for the reasons discussed above. Second, the dog would have to be accompanied by a valid rabies vaccination certificate and/or an original health certificate that states that the dog is at least 6 months of age, in good health, and/or has been vaccinated against DHLPP, unless the person intending to import the dog submits satisfactory evidence to Animal Care at the time of his or her application for an import permit that the specific provision at issue (age, health, or vaccination) would interfere with the dog's use in such research, tests, or experiments in accordance with a research protocol and that the proposal has been approved by the research facility's Institutional Animal Care and Use Committee (IACUC). In such cases, no rabies vaccination certificate would be required, and/or the health certificate would not have to include the specific statement at issue, as appropriate. This exception is limited to IACUC-approved protocols that require the use of imported dogs that are less than 6 months of age, are not in good health, and/or have not been vaccinated against DHLPP or rabies. It does not apply to research studies that simply require the use of imported dogs.

Proposed § 2.151(b)(2) would provide a limited exception for persons intending to import one or more dogs into the continental United States or Hawaii for purposes of veterinary treatment by a licensed veterinarian, as defined in § 1.1 of the regulations, provided that three conditions are met. First, we would require that the dog be accompanied by import permit as discussed above. Second, the dog would have to be accompanied by the original health certificate. The health certificate would not have to state that the dog is at least 6 months of age, in good health, and has been vaccinated against DHLPP. However, the veterinarian would have to state on the health certificate that the dog is in need of veterinary treatment that cannot be obtained in the country of export and specify the name and address of the licensed veterinarian in the continental United States or Hawaii who intends to provide the dog such veterinary treatment. No rabies vaccination certificate would be required for dogs so imported. Third, the person who imports the dog would have to complete a veterinary treatment agreement with Animal Care at the time of application for an import permit and confine the dog until the conditions specified in the agreement are met. Such conditions may include determinations by the licensed veterinarian in the continental United States or Hawaii that the dog is in good health, has been adequately vaccinated against DHLPP and rabies, and is at least 6 months of age. The person importing the dog would bear the expense of veterinary treatment and confinement. These requirements are necessary to validate that dogs offered for entry into the continental United States or Hawaii for veterinary treatment are in need of treatment by a veterinarian in the United States and can be safely released from confinement into the United States.

Finally, proposed § 2.151(b)(3) would provide an exception to the at least 6-month age requirement for any person who lawfully imports a live dog into the State of Hawaii from the British Isles, Australia, Guam, or New Zealand in compliance with the applicable regulations of the State of Hawaii, provided that the dog is not transported out of the State of Hawaii for purposes of resale at less than 6 months of age. Dogs so imported would need to be accompanied at the port of entry by an import permit, a health certificate, and a rabies vaccination certificate, except that the veterinarian need not certify on the health certificate that the dog is at least 6 months of age. This exception is necessary to implement section 18(b)(2)(B) of the AWA.

All of the above proposed exceptions are necessary to implement the statute.

**Notification of Arrival**

Proposed § 2.152 requires that, upon the arrival of a dog at the port of first arrival in the continental United States or Hawaii, the person wishing to import the dog, or his or her agent, would have to present the import permit and any applicable certificates and veterinary treatment agreement to the collector of customs for use at that port. This proposed requirement is necessary to ensure that the dogs are eligible for importation.

**Dogs Refused Entry**

Proposed § 2.153 would specify that any dog refused entry into the continental United States or Hawaii for noncompliance with the requirements of this subpart may be removed from the United States or may be seized by an APHIS official and the person intending to import the dog shall provide for the cost of the care (including appropriate veterinary care), forfeiture, and adoption of the dog, at his or her expense. This proposed section clarifies the measures that may be taken when a dog is refused entry into the continental United States or Hawaii. These measures are in addition to any penalties that may be assessed to any person for failure to comply with the proposed subpart and section 18 of the AWA.

These proposed regulations would help to ensure the welfare of certain live dogs imported from any part of the world into the continental United States and Hawaii.

**Executive Orders 12866 and 13563 and Regulatory Flexibility Act**

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

We have prepared an economic analysis for this rule. The economic analysis provides a cost-benefit analysis, as required by Executive Order 12866, and an initial regulatory flexibility analysis that examines the potential economic effects of this proposed rule on small entities, as required by the Regulatory Flexibility Act. The

economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The full economic analysis examines impacts for U.S. small entities this proposed rule, which would amend the AWA regulations to prohibit, with certain exceptions, the importation of dogs for purposes of resale, research, or veterinary treatment, unless they are in good health, have all necessary vaccinations, and are 6 months of age or older. The vaccinations are rabies vaccination (which is already required by CDC for imported dogs in most instances) and DHLPP vaccination. The rule would include limited exceptions for (1) dogs imported for certain research studies or veterinary treatment, and (2) dogs lawfully imported into the State of Hawaii from the British Isles, Australia, Guam, or New Zealand in compliance with applicable regulations of the State of Hawaii, provided the dogs are not transported out of the State of Hawaii for resale at less than 6 months of age.

The rule would promote the humane treatment of certain imported dogs and benefit most U.S. dog importers and dealers by ensuring that these dogs are in good health, vaccinated, and not too young. In addition, there could be a positive economic impact for U.S. commercial dog breeding facilities, given that puppies currently imported at less than 6 months of age compete for the same market, but at lower prices. The only entities that may be adversely affected are those that currently import dogs, or purchase imported dogs, that do not meet the new requirements, particularly those that import or purchase from importers dogs that are less than 6 months of age.

The requirements of this proposed rule may mean additional costs for vaccines, veterinary care and paperwork for some entities. The cost of a complete series of DHLPP vaccinations could be between $50 and $105 per dog. Because rabies vaccinations are already required in most instances by CDC, we do not expect increased costs associated with that requirement. The cost of vaccinations is negligible when compared to the costs that can result from importing a diseased dog. The costs associated with a single rabid dog recently imported from Iraq, for example, are estimated to have totaled more than $28,000. Veterinary care and vaccinations are regular responsibilities of owning a companion animal in the United States and these requirements of the proposed rule are therefore normal for the care of a dog.

According to the U.S. Bureau of Census, the United States imported an average of about 17,000 dogs per year between 2005 and 2010. Assuming that none of these imported dogs received DHLPP vaccinations and all were at least 6 months of age, and the range of vaccination costs above, the total cost of providing the vaccinations required under this proposed rule could have ranged from $850,000 to $1.8 million. APHIS believes, however, that many of the dogs affected by this rule already receive the DHLPP vaccination as a matter of course and so will not bear any additional costs as a result of this rule. Although there may be costs associated with obtaining a health certificate, providing the required vaccinations is likely to be the largest additional cost associated with the rule. Because shipments with a fair market value of less than $2,000 are not included in these statistics, the number of dogs potentially covered by this rule may be underestimated.

The Small Business Administration (SBA) has established guidelines for determining firms considered to be small under the Regulatory Flexibility Act. Importers of live dogs for resale, research, and veterinary treatment would be directly affected by this proposed rule. While the exact number and size of affected entities is not known, in 2007 there were about 12,600 establishments in the generalized category of other miscellaneous nondurable goods merchant wholesalers (NAICS 424990), which includes importers of dogs, and about 99 percent of those establishments were considered small. Importers may face increased vaccination and care costs abroad, unless they already vaccinate against DHLPP (as mentioned, rabies vaccinations are already required in most instances by CDC) or they qualify for the narrow exceptions for dogs imported for certain research studies or veterinary treatment. Any increase in costs for importers may be passed on to entities buying the imported dogs. On the other hand, such entities might be positively affected due to the greater assurance that an imported dog is in good health and of an eligible age.

Theoretically, any change in the number of imported dogs into the United States could affect the demand for foreign veterinary services and domestic veterinary services, dog products and dog food. However, we expect that any impact of the proposed rule on these industries would be negligible. Imported dogs comprise a very small fraction of the U.S. dog population, well under one percent. It is therefore highly unlikely that any change in the number of imported dogs would significantly affect those domestic markets.

We believe that the benefits of this rule, including the unquantifiable enhancement of animal welfare, justify the costs. Benefits of the rule include promoting the humane treatment of covered imported dogs in keeping with the requirements of the Animal Welfare Act (AWA) and with standard health practices for dogs in the United States. The rule could potentially also yield benefits by preventing the spread of diseases in the United States. Unvaccinated dogs imported into the United States could potentially spread communicable diseases to other dogs or human beings.

Because there is uncertainty surrounding the number of dogs potentially covered by this rule and the cost of providing the necessary vaccines and health certificates for imported dogs, APHIS welcomes information that the public may provide on the number of imported dogs and possible impacts of the rule. Similarly, there are no available data regarding the age of dogs that are currently imported for resale, so we are unable to estimate the effects of the AWA prohibition on the importation, for resale purposes, of dogs less than 6 months of age. We welcome any information that potentially affected entities or the general public could provide in that regard. APHIS also welcomes information that the public may provide concerning the size distribution of entities that import dogs for resale, research, and veterinary treatment, and any other comments on the rule's possible impacts.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The Act does not provide administrative procedures which must be exhausted prior to a

judicial challenge to the provisions of this rule.

**Paperwork Reduction Act**

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2009–0053. Please send a copy of your comments to: (1) Docket No. APHIS–2009–0053, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, Room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the regulations to implement an amendment to the AWA. The Food, Conservation, and Energy Act of 2008 added a new section to the AWA to restrict the importation of certain live dogs for resale. Consistent with this amendment, this proposed rule would, with certain exceptions, prohibit the importation of dogs from any part of the world into the continental United States or Hawaii for purposes of resale, research, or veterinary treatment, unless the dogs are in good health, have received all necessary vaccinations, and are at least 6 months of age.

The proposed regulations include information collection activities for import permits, health certificates, and rabies vaccination certificates for certain dogs so imported. The proposed regulations include certain exceptions to the rabies vaccination certificate requirements for dogs imported for research purposes and veterinary treatment, but require a veterinary treatment agreement for dogs so imported for veterinary treatment.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, 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 information collection on those who are to respond (such as 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).

*Estimate of burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

*Respondents:* Importers of live dogs and veterinarians.

*Estimated annual number of respondents:* 150,000.

*Estimated annual number of responses per respondent:* 2.893333.

*Estimated annual number of responses:* 434,000.

*Estimated total annual burden on respondents:* 108,500 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**E-Government Act Compliance**

The Animal and Plant Health Inspection Service is committed to compliance 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. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

**List of Subjects in 9 CFR Part 2**

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

## PART 2—REGULATIONS

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

**Authority:** 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. A new subpart J, consisting of §§ 2.150 through 2.153, is added to read as follows:

**Subpart J—Importation of Live Dogs**

2.150 Import permit.
2.151 Certifications.
2.152 Notification of arrival.
2.153 Dogs refused entry.

## Subpart J—Importation of Live Dogs

**§ 2.150 Import permit.**

(a) No person shall import a live dog from any part of the world into the continental United States or Hawaii for purposes of resale, research, or veterinary treatment unless the dog is accompanied by an import permit issued by APHIS and unless imported into the continental United States or Hawaii within 30 days after the proposed date of arrival stated in the import permit.

(b) An application for an import permit must be submitted to the Animal and Plant Health Inspection Service, Animal Care, 4700 River Road Unit 84, Riverdale, MD 20737–1234 or though Animal Care's Web site (*http://www.aphis.usda.gov/animal_welfare/*). Paper application forms for import permits may be obtained from Animal Care at the address listed above.

(c) The completed application must include the following information:

(1) The name and address of the person intending to export the dog(s) to the continental United States or Hawaii;

(2) The name and address of the person intending to import the dog(s) into the continental United States or Hawaii;

(3) The number of dogs to be imported and the breed, sex, age, color, markings, and other identifying information of each dog;

(4) The purpose of the importation;

(5) The port of embarkation and the mode of transportation;

(6) The port of entry in the continental United States or Hawaii;

(7) The proposed date of arrival in the continental United States or Hawaii; and

(8) The name and address of the person to whom the dog(s) will be delivered in the continental United States or Hawaii and, if the dog(s) is or are imported for research purposes, the USDA registration number of the research facility where the dog will be used for research, tests, or experiments.

(d) After receipt and review of the application by APHIS, an import permit indicating the applicable conditions for importation under this subpart may be issued for the importation of the dog(s) described in the application if such dog(s) appears to be eligible to be

imported. Even though an import permit has been issued for the importation of a dog, the dog may only be imported if all applicable requirements of this subpart and any other applicable regulations of this subchapter and any other statute or regulation of any State or of the United States are met.

**§ 2.151 Certifications.**

(a) Except as provided in paragraph (b) of this section, no person shall import a live dog from any part of the world into the continental United States or Hawaii for purposes of resale, research, or veterinary treatment unless the following conditions are met:

(1) *Health certificate.* Each dog is accompanied by an original health certificate issued in English by a licensed veterinarian with a valid license to practice veterinary medicine in the country of export that:

(i) Specifies the name and address of the person intending to import the dog into the continental United States or Hawaii;

(ii) Identifies the dog on the basis of breed, sex, age, color, markings, and other identifying information;

(iii) States that the dog is at least 6 months of age;

(iv) States that the dog was vaccinated, not more than 12 months before the date of arrival at the U.S. port, for distemper, hepatitis, leptospirosis, parvovirus, and parainfluenza virus at a frequency that provides continuous protection of the dog from those diseases and is in accordance with currently accepted practices as cited in veterinary medicine reference guides;

(v) States that the dog is in good health (i.e., free of any infectious disease or physical abnormality which would endanger the dog or other animals or endanger public health, including, but not limited to, parasitic infection, emaciation, lesions of the skin, nervous system disturbances, jaundice, or diarrhea); and

(vi) Bears the signature and the license number of the veterinarian issuing the certificate.

(2) *Rabies vaccination certificate.* Each dog is accompanied by a valid rabies vaccination certificate [6] that was issued in English by a licensed veterinarian with a valid license to practice veterinary medicine in the country of export for the dog not less than 3 months of age at the time of vaccination that:

(i) Specifies the name and address of the person intending to import the dog into the continental United States or Hawaii;

(ii) Identifies the dog on the basis of breed, sex, age, color, markings, and other identifying information;

(iii) Specifies a date of rabies vaccination at least 30 days before the date of arrival of the dog at a U.S. port;

(iv) Specifies a date of expiration of the vaccination which is after the date of arrival of the dog at a U.S. port. If no date of expiration is specified, then the date of vaccination shall be no more than 12 months before the date of arrival at a U.S. port; and

(v) Bears the signature and the license number of the veterinarian issuing the certificate.

(b) *Exceptions.* (1) The provisions of paragraphs (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and/or (a)(2) of this section do not apply to any person who imports a live dog from any part of the world into the continental United States or Hawaii for use in research, tests, or experiments at a research facility, provided that: Such person submits satisfactory evidence to Animal Care at the time of his or her application for an import permit that the specific provision(s) would interfere with the dog's use in such research, tests, or experiments in accordance with a research proposal and the proposal has been approved by the research facility IACUC.

(2) The provisions of paragraphs (a)(1)(iii) through (a)(1)(v) and (a)(2) of this section do not apply to any person who imports a live dog from any part of the world into the continental United States or Hawaii for veterinary treatment by a licensed veterinarian, provided that:

(i) The original health certificate required in paragraph (a)(1) of this section states that the dog is in need of veterinary treatment that cannot be obtained in the country of export and states the name and address of the licensed veterinarian in the continental United States or Hawaii who intends to provide the dog such veterinary treatment; and

(ii) The person who imports the dog completes a veterinary treatment agreement with Animal Care at the time of application for an import permit and confines the animal until the conditions specified in the agreement are met. Such conditions may include determinations by the licensed veterinarian in the continental United States or Hawaii that the dog is in good health, has been adequately vaccinated against DHLPP and rabies, and is at least 6 months of age. The person importing the dog shall bear the expense of veterinary treatment and confinement.

(3) The provisions of paragraph (a)(1)(iii) of this section do not apply to any person who lawfully imports a live dog into the State of Hawaii from the British Isles, Australia, Guam, or New Zealand in compliance with the applicable regulations of the State of Hawaii, provided that the dog is not transported out of the State of Hawaii for purposes of resale at less than 6 months of age.

**§ 2.152 Notification of arrival.**

Upon the arrival of a dog at the port of first arrival in the continental United States or Hawaii, the person intending to import the dog, or his or her agent, must present the import permit and any applicable certifications and veterinary treatment agreement required by this subpart to the collector of customs for use at that port.

**§ 2.153 Dogs refused entry.**

Any dog refused entry into the continental United States or Hawaii for noncompliance with the requirements of this subpart may be removed from the continental United States and Hawaii or may be seized and the person intending to import the dog shall provide for the cost of the care (including appropriate veterinary care), forfeiture, and adoption of the dog, at his or her expense.

Done in Washington, DC, this 29th day of August 2011.

**Edward Avalos,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2011–22413 Filed 8–31–11; 8:45 am]

BILLING CODE 3410–34–P

[6] Alternatively, this requirement can be met by providing an exact copy of the rabies vaccination certificate if so required under the Public Health Service regulations in 42 CFR 71.51.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–0533; Directorate Identifier 2011–NE–16–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Lycoming Engines (Type Certificate Previously Held by Textron Lycoming) Reciprocating Engines

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require removing certain

''machined-from-billet'' Volare LLC (formerly Precision Airmotive Corporation, formerly Facet Aerospace Products Company, formerly Marvel-Schebler (BorgWarner)) HA–6 carburetors, inspecting for a loose mixture control sleeve or for a sleeve that may become loose, repairing the carburetor, or replacing the carburetor with one eligible for installation. This proposed AD was prompted by a report of a ''machined-from-billet'' HA–6 carburetor having a loose mixture control sleeve that rotated in the carburetor body causing restriction of fuel and power loss. We are proposing this AD to prevent engine in-flight shutdown, power loss, and reduced control of the airplane.

**DATES:** We must receive comments on this proposed AD by October 17, 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 Marvel-Schebler Aircraft Carburetors LLC, 125 Piedmont Avenue, Gibsonville NC 27249; *phone:* 336–446–0002; *fax:* 336–446–0007; *e-mail: customerservice@msacarbs.com;* Web site: *http://www.msacarbs.com.* 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 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 proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0533; Directorate Identifier 2011–NE–16–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

Volare Carburetors, LLC recently informed us of an airplane experiencing power loss. Volare reported that the airplane engine's carburetor, formerly known as a Precision Airmotive ''machined-from-billet'' HA–6 carburetor, had a loose mixture control sleeve that rotated in the carburetor body. That rotation restricted fuel flow and caused power loss. Volare also reported that the sleeve rotation was a manufacturing defect.

In 2008, a similar power loss event occurred. At that time, the manufacturer recovered five carburetors, which represented all known discrepant carburetors. With this recent failure, however, the population of five affected carburetors is too small, and must be expanded.

This condition, if not corrected, could result in in-flight shutdown or power loss, possibly resulting in reduced control of the airplane.

## Relevant Service Information

We reviewed Marvel-Schebler Aircraft Carburetors LLC Emergency Service Bulletin (SB) No. SB–18, dated October 14, 2010. The SB identifies the affected population of HA–6 carburetors.

## 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 accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

## Differences Between the Proposed AD and the Service Information

This proposed AD has a compliance time of within 50 flight hours after the effective date of the AD. The Marvel-Schebler Aircraft Carburetors LLC Emergency SB No. SB–18, dated October 14, 2010, has a compliance time of before further flight.

This proposed AD would not require returning the carburetor to the manufacturer. The SB does.

## Costs of Compliance

We estimate that this proposed AD affects 10,700 engines installed on aircraft of U.S. registry. We also estimate that it would take about 0.5 work-hour per aircraft to perform the proposed inspection, and that about 409 carburetors would need repair. Approximately 2 work-hours per carburetor are required to repair the carburetor. The average labor rate is $85 per work-hour. Required parts would cost about $600 per carburetor. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $769,680. 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 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):

**Lycoming Engines (Type Certificate previously held by Textron Lycoming) Reciprocating Engines:** Docket No. FAA–2011–0533; Directorate Identifier 2011–NE–16–AD.

**Comments Due Date**

(a) We must receive comments by October 17, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to the Lycoming Engines reciprocating engines listed in Table 1 of this AD, with carburetor part numbers listed in Table 2 of this AD.

TABLE 1—AFFECTED LYCOMING ENGINE MODELS

| | | |
|---|---|---|
| O–320–D1D | O–360–A1G6D | O–360–A1H6 |
| O–360–A2G | O–360–A4G | O–360–A4J |
| O–360–A4K | O–360–C4F | O–360–E1A6D |
| O–360–F1A6 | HO–360–C1A | LO–360–A1G6D |
| LO–360–A1H6 | LO–360–E1A6D | TO–360–C1A6D |
| O–540–J3C5D | O–540–L3C5D | N/A |

TABLE 2—PART NUMBERS (INCLUDING ALL DASH NUMBERS) OF KNOWN AFFECTED HA–6 MODEL CARBURETORS

| | | | | |
|---|---|---|---|---|
| 10–5219–XX | 10–5224–XX | 10–5230–XX | 10–5235–XX | 10–5253–XX |
| 10–5255–XX | 10–5283–XX | 10–6001–XX | 10–6019–XX | 10–6030–XX |

**Unsafe Condition**

(d) This AD was prompted by a report of a ''machined-from-billet'' HA–6 carburetor having a loose mixture control sleeve that rotated in the carburetor body causing restriction of fuel and power loss. We are issuing this AD to prevent engine in-flight shutdown, power loss, and reduced control of the airplane.

**Compliance**

(e) Comply with this AD within 50 flight hours after the effective date of this AD, unless already done.

**Inspection**

(f) Inspect the carburetor to determine the type of body the carburetor has. Use Marvel-Schebler Emergency Service Bulletin (SB) No. SB–18, dated October 14, 2010, Figure (3) to determine which type of body is used.

(g) If the carburetor has a die-cast body, no further action is required.

(h) If the carburetor has an affected ''machined-from-billet'' body, remove the carburetor; and replace the carburetor with:

(i) An HA–6 carburetor not listed in Table 2 of this AD; or

(ii) An HA–6 carburetor that is listed in Table 2 but is exempted as described in paragraphs 1.A. and 1.B of Marvel-Schebler Emergency SB No. SB–18, dated October 14, 2010; or that has already been repaired using that Emergency SB.

**Alternative Methods of Compliance (AMOCs)**

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

**Related Information**

(j) 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.*

(k) For service information identified in this AD, contact Marvel-Schebler Aircraft Carburetors LLC, 125 Piedmont Avenue, Gibsonville, NC 27249; *phone:* 336–446–0002; *fax:* 336–446–0007; *e-mail: customerservice@msacarbs.com;* Web site: *http://www.msacarbs.com.* 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.

Issued in Burlington, Massachusetts, on August 24, 2011.

**Thomas A. Boudreau,**

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

[FR Doc. 2011–22351 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0914; Directorate Identifier 2010–NM–166–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 737–200, –200C, –300, –400, and –500 Series Airplanes

**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 Model 737–300,

–400, and –500 series airplanes. The existing AD currently requires repetitive external non-destructive inspections to detect cracks in the fuselage skin along the chem-mill step at stringers S–1 and S–2 right, between station (STA) 827 and STA 847, and repair if necessary. Since we issued that AD, we have received reports of additional crack findings of the fuselage crown skin at the chem-milled steps. This proposed AD would add inspections for cracking in additional fuselage crown skin locations, and repair if necessary. This proposed AD would also reduce the inspection thresholds for certain airplanes, extend certain repetitive inspection intervals, and add airplanes to the applicability of the existing AD. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-milled steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by October 17, 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 AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6447; *fax:* 425–917–6590; *e-mail: wayne.lockett@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–2011–0914; Directorate Identifier 2010–NM–166–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 December 21, 2009, we issued AD 2010–01–09, Amendment 39–16167 (75 FR 1527, January 12, 2010), for certain Model 737–300, −400, and −500 series airplanes. That AD requires repetitive external non-destructive inspections to detect cracks in the fuselage skin along the chem-mill step at stringers S–1 and S–2 right, between STA 827 and STA 847, and repair if necessary. That AD resulted from a report of a hole in the fuselage skin common to stringers S–1 and S–2 left, between STA 827 and STA 847, on an airplane that diverted to an alternate airport due to cabin depressurization and subsequent deployment of the oxygen masks. We issued that AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-milled steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

## Actions Since Existing AD Was Issued

Since we issued AD 2010–01–09, we have received reports of new findings of cracking in the fuselage crown skin at the horizontal chem-milled steps at locations between body stations 259.5 and 1016 and between stringers S–10L and S–10R. The cause of the cracking is under investigation.

## Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011. Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009, was referred to for accomplishing the actions in the existing AD. We also reviewed Boeing Alert Service Bulletin 737–53A1301, Revision 1, dated June 7, 2010. Revision 1 of this service bulletin adds inspections for cracking in additional fuselage crown skin locations, and repair if necessary; it reduces the inspection threshold for certain airplanes; extends certain repetitive inspection intervals; and adds airplanes to the effectivity (Model 737–200 and −200C series airplanes, and Model 737–300, −400, and −500 series without ELT antenna provisions). The new inspection types specified in Revision 1 of this service bulletin are detailed inspections, and optional external nondestructive: ultrasonic phased array inspections. Revision 1 of this service bulletin also recommends contacting Boeing for inspection instructions for Group 26 airplanes. Revision 2 of this service bulletin specifies that no more work is necessary on airplanes changed as specified in Revision 1 of this service bulletin. Revision 2 of this service bulletin only includes minor editorial changes.

Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011; and Boeing Alert Service Bulletin 737–53A1301, Revision 1, dated June 7, 2010; specify that the compliance times for the initial inspections for Groups 2, 8, and 10 airplanes at the ELT antenna provision at stringers S–1 and S–2R between BS 827 and BS 847, are at the latest of the following: Prior to the accumulation of 35,000 total flight cycles, or, depending on inspection locations, within 1,800 flight cycles after the issue date of the original issue or Revision 1 of this service bulletin, or within 1,800 flight cycles after the most recent inspection done in accordance with Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009. For Groups 1 through 12 airplanes, at the new inspection locations, the compliance times are prior to the accumulation of 35,000 total flight

cycles, or within 1,800 flight cycles after the issue date of Revision 1 of this service bulletin. For groups 1 through 12, the repetitive inspection interval is 1,800 flight cycles (for Option 1 inspections) and 2,400 flight cycles (for Option 2 inspections). For airplanes on which the inspection procedure is changed from Option 2 to Option 1, the first Option 1 inspection must be done within 2,400 flight cycles after doing the Option 2 inspection. For airplanes on which the inspection procedure is changed from Option 1 to Option 2, the first two Option 2 inspections must be done within 1,800 flight cycles.

Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011; specifies that the compliance times for the initial inspections for Groups 13 through 18 and 21 through 25 airplanes at the ELT antenna provision at stringers S–1 and S–2R, between BS 827 and BS 847, are as follows:

• For airplanes on which the inspections specified in Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009; or Revision 1, dated June 7, 2010; have been done: At the latest of the following, prior to the accumulation of 33,000 total flight cycles, or within 500 flight cycles after the most recent inspection done in accordance with Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009; or Revision 1, dated June 7, 2010.

• For airplanes on which the inspections specified in Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009; or Revision 1, dated June 7, 2010; have not been done: Prior to the accumulation of 33,000 total flight cycles, or within 500 flight cycles after the issue date of Revision 2 of this service bulletin, whichever occurs later.

For Groups 13 through 25, Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011; specifies that the compliance times for the initial inspections for Groups 13 through 25 airplanes at the new inspection locations are as follows: Prior to the accumulation of 33,000 total flight cycles, or within 500 flight cycles after the issue date of Revision 1 of Boeing Alert Service Bulletin 737–53A1301, whichever occurs later.

For Groups 13 through 25, Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011; specifies that the repetitive inspection interval is 500 flight cycles (for Option 1) and 1,000 flight cycles (for Option 2). For airplanes on which the inspection procedure is changed from Option 2 to Option 1, the first Option 1 inspection must be done within 1,000 flight cycles after doing the Option 2 inspection. For airplanes on which the inspection procedure is changed from Option 1 to Option 2, the first two Option 2 inspections must be done within 500 flight cycles.

For Group 26 airplanes, Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011, specifies contacting Boeing to obtain engineering and accomplishment instructions for certain inspections.

**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 the requirements of AD 2010–01–09, and would add inspections for cracking in additional fuselage crown skin locations, and repair if necessary. This proposed AD would also reduce the inspection thresholds for certain airplanes, extend certain repetitive inspection intervals, and add airplanes to the applicability of AD 2010–01–09. This proposed AD would require accomplishing the actions specified in the service information described previously.

**Interim Action**

We consider this proposed AD interim action. If final action is later identified, we might consider further rulemaking then.

**Costs of Compliance**

We estimate that this proposed AD affects 654 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Inspection in AD 2010–01–09. | 2 | $85 | $170 per inspection cycle | 135 | $22,950 per inspection cycle. |
| New inspection in this proposed AD. | Between 2 and 30 | 85 | Between $170 and $2,550 per inspection cycle. | 654 | Between $111,180 and $1,667,700 per inspection cycle. |

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

We 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, 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 removing airworthiness directive (AD) 2010–01–09, Amendment 39–16167 (75 FR 1527, January 12, 2010), and adding the following new AD:

**The Boeing Company:** Docket No. FAA–2011–0914; Directorate Identifier 2010–NM–166–AD.

**Comments Due Date**

(a) The FAA must receive comments on this AD action by October 17, 2011.

*Affected ADs*

(b) This AD supersedes AD 2010–01–09, Amendment 39–16167.

**Applicability**

(c) This AD applies to all The Boeing Company Model 737–200, −200C, −300, −400, and −500 series airplanes, certificated in any category.

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

**Unsafe Condition**

(e) This AD was prompted by reports of additional crack findings of the fuselage crown skin at the chem-milled steps. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin panels at the chem-milled steps, which could result in sudden fracture and failure of the fuselage skin panels, and consequent rapid decompression of the airplane.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Restatement of Requirements of AD 2010–01–09, Amendment 39–16167**

**Initial and Repetitive Inspections**

(g) For airplanes identified in Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009: Before the accumulation of 35,000 total flight cycles, or within 500 flight cycles after February 16, 2010 (the effective date of AD 2010–01–09), whichever occurs later, except as provided by paragraph (i) of this AD, do an external non-destructive inspection (NDI) to detect cracks in the fuselage skin along the chem-mill steps at stringers S–1 and S–2 right, between station (STA) 827 and STA 847, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009; or Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 500 flight cycles; except as provided by paragraphs (i) and (n) of this AD. Accomplishing the inspections required by paragraph (j) of this AD terminates the inspections required by this paragraph.

**Repair**

(h) If any crack is found during any inspection required by paragraph (g) of this AD, and Boeing Alert Service Bulletin 737–53A1301, dated September 3, 2009; or Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011; specifies to contact Boeing for repair instructions: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

**Optional Terminating Action for Repetitive Inspections in Paragraph (g) of This AD**

(i) Installing an external repair doubler along the chem-milled steps at stringers S–1 and S–2 right, between STA 827 and STA 847, constitutes terminating action for the repetitive inspections required by paragraph (g) of this AD for the repaired area only, provided all of the conditions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD are met.

(1) The repair is installed after September 3, 2009;

(2) The repair was approved by the FAA or by a Boeing Company Authorized Representative or the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) to make such findings; and

(3) The repair extends a minimum of three rows of fasteners on each side of the chem-mill line in the circumferential direction.

**New Inspections Including Additional Locations and Reduced Inspection Intervals**

**Groups 1 Through 25: Initial and Repetitive Inspections**

(j) For Groups 1 through 25 airplanes identified in Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011: Except as provided by paragraph (k) of this AD, at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011, do the applicable inspections required by paragraphs (j)(1) and (j)(2) of this AD, in accordance with paragraphs 3.B.1 through 3.B.25 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011. If no cracking is found, repeat the applicable inspections thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011; except as provided by paragraphs (m) and (n) of this AD. Doing the inspections required by this paragraph terminates the inspections required by paragraph (g) of this AD.

(1) For Groups 2, 8, 10, 13 through 18, and 21 through 25 airplanes: Do a detailed inspection and an external non-destructive inspection (NDI) (medium frequency eddy current inspection, magneto optical imaging inspection, c-scan inspection, or ultrasonic phased array inspection) for cracking in the fuselage skin at the chem-mill steps at S–1 and S–2R between STA 827 and STA 847, as identified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011.

(2) For Groups 1 through 25 airplanes: Do a detailed inspection and an external NDI (medium frequency eddy current inspection; magneto optical imaging inspection, c-scan inspection, or ultrasonic phased array inspection) for cracking in the fuselage skin at the chem-mill steps at the specified locations other than at S–1 and S–2R between STA 827 and STA 847, as identified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011.

**Note 1:** Option 1 of Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011, specifies a detailed inspection, and one additional inspection (external NDI, medium frequency eddy current inspection, magneto optical imaging inspection, or c-scan inspection). Option 2 specifies a detailed inspection and an external ultrasonic phased array inspection. These options have different compliance times after the initial inspection.

(k) Where Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011, specifies a compliance time after ''the date of Revision 1,'' or ''the date of Revision 2'' of that service bulletin, this AD requires compliance within the specified time after the effective date of this AD.

**Repair**

(l) If any crack is found during any inspection required by paragraph (j) of this AD: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD. Doing the repair ends the repetitive inspections required by paragraph (j) for the repaired area only.

**Optional Terminating Action for Repetitive Inspections**

(m) Installing an external repair doubler along the chem-milled steps at any location identified in Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011, constitutes terminating action for the repetitive inspections required by paragraph (j) of this AD for the repaired area only, provided all of the conditions specified in

paragraphs (m)(1), (m)(2), and (m)(3) of this AD are met.

(1) The repair is installed after the applicable date specified in paragraph (m)(1)(i) and (m)(1)(ii) of this AD.

(i) For repairs at S–1 and S–2R between STA 827 and STA 847: Installed after September 3, 2009.

(ii) For repairs at locations other than at S–1 and S–2R between STA 827 and STA 847: Installed after June 7, 2010.

(2) The repair was approved by the FAA or by a Boeing Company Authorized Representative or the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle Aircraft Certification Office (ACO) to make such findings; and

(3) The repair extends a minimum of three rows of fasteners on each side of the chem-mill line in the circumferential direction.

(n) Accomplishing a modification of the chem-milled steps at any location identified in Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011, using a method approved in accordance with the procedures specified in paragraph (q)(1) of this AD, terminates the repetitive inspections required by paragraphs (g) and (j) of this AD for the modified area only.

**Group 26 Airplanes**

(o) For Group 26 airplanes identified in Boeing Alert Service Bulletin 737–53A1301, Revision 2, dated April 25, 2011: Within 1,800 flight cycles after the effective date of this AD, accomplish applicable inspections and corrective action, as identified in the service bulletin, using a method approved in accordance with the procedures specified in paragraph (q)(1) of this AD.

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

(p) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–53A1301, Revision 1, dated June 7, 2010, are acceptable for compliance with the corresponding requirements of this AD.

**Alternative Methods of Compliance (AMOCs)**

(q)(1) The Manager, Seattle 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. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

**Related Information**

(r) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6447; *fax:* 425–917–6590; *e-mail: wayne.lockett@faa.gov.*

(s) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 25, 2011.

**Ali Bahrami,**

*Manager Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2011–22370 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0954; Directorate Identifier 2011–CE–028–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 Airplanes

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

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

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

Some lock sleeves (part number (P/N) 114146681), which were installed in some Main Landing Gear (MLG) actuators, had been incorrectly manufactured.

If left uncorrected, this condition could lead to failure to lock the MLG actuator or to its unlock from the correct position, with subsequent possible damage to the aeroplane and injuries to occupants during landing.

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

**DATES:** We must receive comments on this proposed AD by October 17, 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 proposed AD, contact Piaggio Aero Industries S.p.A Airworthiness Office; Via Luigi Cibrario, 4–16154 Genova–Italy; *telephone:* +39 010 6481353; *fax:* +39 010 6481881; *E-mail: airworthiness@piaggioaero.it.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090; *e-mail: mike.kiesov@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–2011–0954; Directorate Identifier 2011–CE–028–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://regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

**Discussion**

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2011–0133, dated July 12, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Some lock sleeves (part number (P/N) 114146681), which were installed in some Main Landing Gear (MLG) actuators, had been incorrectly manufactured.

If left uncorrected, this condition could lead to failure to lock the MLG actuator or to its unlock from the correct position, with subsequent possible damage to the aeroplane and injuries to occupants during landing.

This AD requires replacing defective MLG actuators with serviceable ones.

Defective actuators can be repaired by the manufacturer and identified with the ''P180–32–29'' marking on the name plate.

**Relevant Service Information**

Piaggio Aero Industries S.p.A. has issued Mandatory Service Bulletin No. 80–0304, dated July 9, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

**FAA's Determination and Requirements of the Proposed AD**

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

**Differences Between This Proposed AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

We estimate that this proposed AD will affect 102 products of U.S. registry. We also estimate that it would take about .5 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,335, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $64,822, for a cost of $65,417 per product. There are a maximum of 17 actuators that are identified by the manufacturer that will be required to be replace. We have no way of determining the number of affected airplanes on the U.S. registry that may have these actuators that may have to be replaced by these actions.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

There is a warranty expiration date for the replacement of the actuators. The FAA recommends owners/operators that have affected main landing gear actuators contact the manufacturer immediately and replace the actuators under warranty.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

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

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

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Piaggio Aero Industries S.p.A:** Docket No. FAA–2011–0954; Directorate Identifier 2011–CE–028–AD.

**Comments Due Date**

(a) We must receive comments by October 17, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) have installed any of the following main landing gear (MLG) actuators:

(i) *Messier-Dowty Part Number (P/N) 114346003 (left hand side):* with serial number (S/N) SA0706275, SA0706276, SA0706726, SA0706727, SA0706728, SA0706729, SA0706738, SA0706739,SA0707243, SA0707864, or SA0708072; or

(ii) *Messier-Dowty P/N 114346004 (right hand side):* with S/N SA0703800, SA0703801, SA0705520, SA0706219, SA0706960, or SA0706961.

**Subject**

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

**Reason**

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

Some lock sleeves (part number (P/N) 114146681), which were installed in some Main Landing Gear (MLG) actuators, had been incorrectly manufactured.

If left uncorrected, this condition could lead to failure to lock the MLG actuator or to its unlock from the correct position, with subsequent possible damage to the aeroplane and injuries to occupants during landing.

This AD requires replacing defective MLG actuators with serviceable ones.

Defective actuators can be repaired by the manufacturer and identified with the ''P180–32–29'' marking on the name plate.

**Actions and Compliance**

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

(1) Within 25 hours time-in-service (TIS) after the effective date of this AD, inspect both installed MLG actuators to determine if an affected P/N and S/N actuator is installed.

(2) If any affected P/N and S/N actuator is identified with the ''P180–32–29'' marking on the name plate, no further action is required by this AD on that actuator.

(3) If one or both affected MLG actuators are not identified with the ''P180–32–29'' marking on the name plate, before reaching a total of 3,000 hours TIS on the actuator or within the next 150 hours TIS after the effective date of this AD, whichever occurs later, replace the affected actuator(s) with serviceable parts following Part B of the Accomplishment Instructions of Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0304, dated July 9, 2010.

(4) After the effective date of this AD, do not install any MLG actuator having an affected P/N and S/N, unless it is identified with the ''P180–32–29'' marking on the name plate.

**Note 1:** There is a warranty expiration date for the replacement of the actuators. The FAA recommends owners/operators that have affected main landing gear actuators contact the manufacturer immediately and replace the actuators under warranty.

**FAA AD Differences**

**Note 2:** This AD differs from the MCAI and/or service information as follows: The compliance times of the MCAI are presented in flight cycles (landings). When doing the conversion for these airplanes from flight cycles to hours TIS, the FAA has estimated that 1 flight cycle is equal to 1 hour TIS based on the utility of this class of airplane. Since operators of aircraft of U.S. registry are required to keep track of hours TIS, the compliance time of this AD is in hours TIS.

**Other FAA AD Provisions**

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4144; *fax:* (816) 329–4090; *e-mail: mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

**Related Information**

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0133, dated July 12, 2011; and Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0304, dated July 9, 2010, for related information. For service information related to this AD, contact Piaggio Aero Industries S.p.A Airworthiness Office; Via Luigi Cibrario, 4–16154 Genova–Italy; *telephone:* +39 010 6481353; *fax:* +39 010 6481881; *E-mail: airworthiness@piaggioaero.it.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on August 26, 2011.

**Earl Lawrence,**

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

[FR Doc. 2011–22387 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2011–0915; Directorate Identifier 2011–NM–020–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Model 747 Airplanes

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

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

**SUMMARY:** We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require repetitive general visual inspections for broken or missing latch pins of the lower sills of the forward and aft lower lobe cargo doors; repetitive detailed inspections for cracking of the latch pins; and corrective actions if necessary. This proposed AD was prompted by reports of fractured latch pins found in service; investigation revealed that the cracking and subsequent fracture were initiated by fatigue and propagated by a combination of fatigue and stress corrosion. We are proposing this AD to detect and correct fractured or broken latch pins, which could result in a forward or aft lower lobe cargo door opening and detaching during flight, and consequent rapid decompression of the airplane.

**DATES:** We must receive comments on this proposed AD by October 17, 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 Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; *fax* 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

## Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket 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:** Nathan Weigand, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6428; *fax:* (425) 917–6590; *e-mail: nathan.p.weigand@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–2011–0915; Directorate Identifier 2011–NM–020–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 have received reports of fractured latch pins found in service; investigation revealed that the cracking and subsequent fracture were initiated by fatigue and propagated by a combination of fatigue and stress corrosion. One operator reported a fractured latch pin of the lower sill of the aft lower lobe cargo door; the fracture initiated from a crack on the pin's internal diameter. Part of the pin was found on the ground during an airplane walk-around. The airplane had accumulated 75,495 total flight hours and 9,393 total flight cycles. A dye penetrant inspection of the remaining seven latch pins in the lower sill was done with no defects found. This condition, if not corrected, could result in a forward or aft lower lobe cargo door opening and detaching during flight, and consequent rapid decompression of the airplane.

## Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–53A2835, original, dated October 28, 2010. The service information describes procedures for repetitive general visual inspections for broken or missing latch pins of the lower sills of the forward and aft lower lobe cargo doors; repetitive detailed inspections of the replaced latch pins for broken or missing latch pins; and corrective actions if necessary.

For Groups 1 and 2 airplanes, Configurations 1 and 2; and for Group 3 airplanes; the corrective actions include replacing any broken or missing latch pin, and the latch pins at the adjacent latch fitting locations, with new latch pins; and replacing any cracked latch pins with new latch pins.

For Group 1 airplanes, Configurations 3 and 4, there are two options for corrective actions:

- Replacing any broken or missing latch pin, and the latch pins at the adjacent latch fitting locations, with new latch pins (with identical part numbers); and replacing any cracked latch pins with new latch pins (with identical part numbers).
- Modifying or replacing the latch pins and bearing plates; replacing any broken or missing latch pin, and the latch pins at the adjacent latch fitting locations, with new latch pins (with alternative part numbers); and replacing any cracked latch pins with new latch pins (with alternative part numbers).

For airplanes on which all latch pins are replaced, the first repetitive inspection interval is within 6,000 flight cycles after replacement. For airplanes on which not all of the latch pins are replaced, the first repetitive inspection interval is 1,600 flight cycles after inspecting. For all airplanes, the repetitive interval for subsequent inspections is 1,600 flight cycles.

## 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 these same type designs.

## Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

## Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

## Costs of Compliance

We estimate that this proposed AD affects 228 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 |
|---|---|---|---|---|
| Inspection ..... | 3 work-hours × $85 per hour = $255 per inspection cycle. | $0 | $255 per inspection cycle ..... | $58,140 per inspection cycle. |

We estimate the following costs to do any necessary replacements/modifications that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

| Action | Labor cost | Parts cost | Cost per product |
|---|---|---|---|
| Replacement of latch pins | 8 work-hours × $85 per hour = $680 | $0 | $680 |
| Modification of latch fittings | 36 hours × $85 per work-hours = $3,060 | 0 | 3,060 |

## 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):

**The Boeing Company:** Docket No. FAA–2011–0915; Directorate Identifier 2011–NM–020–AD.

**Comments Due Date**

(a) We must receive comments by October 17, 2011.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; certificated in any category.

**Subject**

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53: Fuselage.

**Unsafe Condition**

(e) This AD was prompted by reports of fractured latch pins found in service; investigation revealed that the cracking and subsequent fracture were initiated by fatigue and propagated by a combination of fatigue and stress corrosion. We are issuing this AD to detect and correct fractured or broken latch pins, which could result in a forward or aft lower lobe cargo door opening and detaching during flight, and consequent rapid decompression of the airplane.

**Compliance**

(f) Comply with this AD within the compliance times specified, unless already done.

**Inspections**

(g) Before the accumulation of 6,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later: Do a general visual inspection for broken or missing latch pins of the lower sills of the forward and aft lower lobe cargo doors, and a detailed inspection for cracking of the latch pins, in accordance with paragraph 3.B., ''Work Instructions,'' of Boeing Alert Service Bulletin 747–53A2835, original, dated October 28, 2010. Repeat the inspections thereafter at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2835, original, dated October 28, 2010. Before further flight, do all applicable corrective actions, in accordance with paragraph 3.B., ''Work Instructions,'' of Boeing Alert Service Bulletin 747–53A2835, original, dated October 28, 2010.

**Special Flight Permits**

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided the cabin is not pressurized.

**Alternative Methods of Compliance (AMOCs)**

(i)(1) The Manager, Seattle 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. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes ODA that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane.

**Related Information**

(j) For more information about this AD, contact Nathan Weigand, Aerospace

Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* (425) 917–6428; *fax:* (425) 917–6590; *e-mail: nathan.p.weigand@faa.gov.*

(k) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; e-mail *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on August 25, 2011.

**Ali Bahrami,**

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

[FR Doc. 2011–22371 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### 45 CFR Parts 46, 160, and 164

### Food and Drug Administration

### 21 CFR Parts 50 and 56

### Human Subjects Research Protections: Enhancing Protections for Research Subjects and Reducing Burden, Delay, and Ambiguity for Investigators; Extension of Comment Period

**AGENCIES:** The Office of the Secretary, HHS, and the Food and Drug Administration, HHS.

**ACTION:** Advance notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Office of the Secretary of the Department of Health and Human Services (HHS) in coordination with the Office of Science and Technology Policy (OSTP) is extending the comment period for an advance notice of proposed rulemaking (ANPRM) requesting comment on how current regulations for protecting human subjects who participate in research might be modernized and revised to be more effective. That ANPRM was published in the **Federal Register** on July 26, 2011.

**DATES:** The comment period for the proposed rule published July 26, 2011, at 76 FR 44512 is extended. Comments will be received through October 26, 2011.

**ADDRESSES:** You may submit comments, identified by docket ID number HHS–OPHS–2011–0005, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Enter the above docket ID number in the ''Enter Keyword or ID'' field and click on ''Search.'' On the next web page, click on ''Submit a Comment'' action and follow the instructions.
- *Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions] to:* Jerry Menikoff, M.D., J.D., OHRP, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852.

Comments received, including any personal information, will be posted without change to *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Jerry Menikoff, M.D., J.D., Office for Human Research Protections (OHRP), Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; *telephone:* 240–453–6900 or 1–866–447–4777; *facsimile:* 301–402–2071; *e-mail: jerry.menikoff@hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The ANPRM was published in the **Federal Register** on July 26, 2011 (Volume 76, Number 143, page 44512) with a deadline for comments of September 26, 2011. The ANPRM requests comments on how current regulations for protecting human subjects who participate in research might be modernized and revised to be more effective and how to better protect human subjects who are involved in research, while facilitating valuable research and reducing burden, delay, and ambiguity for investigators. Since the ANPRM was published the Department has received requests to extend the comment period to allow sufficient time for a full review of the ANPRM. HHS and OSTP are committed to affording the public a meaningful opportunity to comment on the ANPRM and welcome comments.

Dated: August 26, 2011.

**Kathleen Sebelius,**

*Secretary.*

[FR Doc. 2011–22341 Filed 8–31–11; 8:45 am]

**BILLING CODE 4150–28–P**

## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

### 25 CFR Chapter III

### Regulatory Review Schedule

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Notice of cancellation of consultation meeting.

**SUMMARY:** The purpose of this document is to cancel ten tribal consultations scheduled during November 2011, December 2011, January 2012, and February 2012 and to modify the dates for six tribal consultations scheduled during September 2011, October 2011 and November 2011.

**DATES:** See **SUPPLEMENTARY INFORMATION** below for dates and locations of cancelled consultations.

**FOR FURTHER INFORMATION CONTACT:** Lael Echo-Hawk, National Indian Gaming Commission, 1441 L Street, NW., Suite 9100, Washington, DC 20005. Telephone: 202–632–7003; e-mail: *reg.review@nigc.gov.*

**SUPPLEMENTARY INFORMATION:** On November 18, 2010, the National Indian Gaming Commission (NIGC) issued a Notice of Inquiry and Notice of Consultation advising the public that it was conducting a review of its regulations promulgated to implement 25 U.S.C. 2701–2721 of the Indian Gaming Regulatory Act (IGRA) and requesting public comment on the process for conducting the regulatory review. On April 4, 2011, after holding eight consultations and reviewing all comments, NIGC published a Notice of Regulatory Review Schedule in the **Federal Register** setting out consultation schedules and review processes. (76 FR 18457, April 4, 2011).

The Commission's regulatory review process established a tribal consultation schedule with a description of the regulation groups to be covered during consultation.

Group 1 included a review of:

(a) A Buy Indian Act regulation;

(b) Part 523—Review and Approval of Existing Ordinances or Resolutions;

(c) Part 514—Fees;

(d) Part 559—Facility License Notifications, Renewals, and Submissions; and

(e) Part 542—Minimum Internal Control Standards.

Group 2 included a review of:

(a) Part 573—Enforcement; and

(b) Regulations concerning proceedings before the Commission, including: Parts 519—Service, Part 524—Appeals, Part 539—Appeals, and

Part 577—Appeals Before the Commission.

Group 3 included a review of:

(a) Part 543—Minimum Internal Control Standards for Class II Gaming; and

(b) Part 547—Minimum Technical Standards for Gaming Equipment Used with the Play of Class II Games.

Group 4 included a review of:

(a) Part 556—Background Investigations for Primary Management Officials and Key Employees;

(b) Part 558—Gaming Licenses for Key Employees and Primary Management Officials;

(c) Part 571—Monitoring and Investigations;

(d) Part 531—Collateral Agreements;

(e) Part 537—Background Investigations for Persons or Entities With a Financial Interest in, or Having Management Responsibility for, a Management Contract; and

(f) Part 502—Definitions.

Group 5 included a review of:

(a) Part 518—Self Regulation of Class II Gaming;

(b) A Sole Proprietary Interest regulation; and

(c) Class III MICS.

The Commission has conducted 12 consultations since April 2011 and will continue consultations on the regulations, however, the Commission has removed Group 3 regulations (Class II MICS and Technical Standards) and Class III MICS from the current consultation schedule. A Tribal Advisory Committee will review those regulations during a separate meeting schedule. The Commission intends to consult with Tribes on Group 3 regulations and Class III MICS after completion of the Tribal Advisory Committee process.

This document advises the public that the following two day consultations have been changed to one day consultations.

| Consultation date | Event | Location | Regulation group(s) |
|---|---|---|---|
| September 16, 2011 | National Tribal Gaming Commissioner/Regulator Association Fall Meeting. | Chukchansi Gold Resort & Casino Coarsegold, CA. | 1, 2, 4, 5 |
| October 6, 2011 | G2E—National | Sands Expo and Convention Center Las Vegas, NV. | 1, 2, 4, 5 |
| November 3, 2011 | NCAI Annual Conference | Portland, OR | 1, 2, 4, 5 |
| November 14, 2011 | NIGC Consultation | TBD, Great Plains Region | 1, 2, 4, 5 |
| December 5, 2011 | NIGC Consultation | Clearwater Casino Resort Suquamish, WA. | 1, 2, 4, 5 |
| December 13, 2011 | NIGC Consultation | DOI South Auditorium Washington, DC. | 1, 2, 4, 5 |

This document advises the public that the following 10 tribal consultation meetings have been cancelled.

| Consultation date | Event | Location | Regulation group(s) |
|---|---|---|---|
| November 17–18, 2011 | NIGC Consultation | Fort McDowell Casino Scottsdale, AZ | 5 |
| November 30–December 1, 2011 | NIGC Consultation | Quapaw Casino Miami, OK | 5 |
| December 8–9, 2011 | NIGC Consultation | Turtle Creek Casino & Hotel Williamsburg, MI. | 5 |
| January 11–12, 2012 | NIGC Consultation | Wind Creek Casino Atmore, AL | 3 |
| January 18–19, 2012 | NIGC Consultation | Crowne Plaza Billings, MT | 3 |
| January 23–24, 2012 | NIGC Consultation | Win-River Casino Redding, CA | 3 |
| January 26–27, 2012 | NIGC Consultation | 7 Feathers Casino Canyonville, OR | 3 |
| January 30–31, 2012 | NIGC Consultation | Cherokee Hard Rock Tulsa, OK | 3 |
| February 2–3, 2012 | NIGC Consultation | Isleta Hard Rock Casino Resort, Albuquerque, NM. | 3 |
| February 7–8, 2012 | NIGC Consultation | Radisson Hotel Rapid City, SD | 3 |

For additional information on consultation locations and times, please refer to the Web site of the National Indian Gaming Commission, *http://www.nigc.gov.*

**Tracie L. Stevens,**

*Chairwoman.*

**Daniel J. Little,**

*Associate Commissioner.*

[FR Doc. 2011–22445 Filed 8–31–11; 8:45 am]

BILLING CODE 7565–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[Docket No. REG–126519–11]**

**RIN 1545–BK41**

## Determining the Amount of Taxes Paid for Purposes of the Foreign Tax Credit; Correction

*Correction*

Proposed Rule document 2011–22067 was inadvertently published in the Rules section of the issue of August 30, 2011, beginning on page 53818. It should have appeared in the Proposed Rules section.

[FR Doc. 2011–22523 Filed 8–31–11; 8:45 am]

BILLING CODE 1505–01–D

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R03–OAR–2010–0159; FRL–9458–8]**

# Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve submittals from the Commonwealth of Pennsylvania pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This proposed action is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof; and the following infrastructure elements for the 2006 $PM_{2.5}$ NAAQS: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

**DATES:** Written comments must be received on or before October 3, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0159 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0159, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0159. 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.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Ruth Knapp, (215) 814–2191, or by e-mail at *knapp.ruth@epa.gov mailto:.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS (62 FR 38856) and a new $PM_{2.5}$ NAAQS (62 FR 38652). The revised ozone NAAQS is based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based $PM_{2.5}$ standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations and a 24-hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ on October 17, 2006 (71 FR 61144).

Section 110(a) of the CAA requires states to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. In March of 2004, Earthjustice initiated a lawsuit against EPA for failure to take action against states that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, *i.e.*, failure to make a ''finding of failure to submit the required SIP 110(a) SIP elements.'' On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether states have made required complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made such findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS.

These completeness findings did not include findings relating to: (1) Section 110(a)(2)(C) to the extent that such subsection refers to a permit program as required by Part D of Title I of the CAA; (2) section 110(a)(2)(I); and (3) section 110(a)(2)(D)(i)(I). Therefore, this action does not cover these specific elements. This action also does not include the portion of D(i)(II) that pertains to visibility.

For the geographic area of Allegheny County, these completeness findings noted Pennsylvania's failure to submit a SIP revision addressing the portion of

110(a)(2)(C) relating to the part C permit programs. EPA recognizes that such requirement has already been addressed by a Federal Implementation Plan (FIP) that remains in place, and concludes that the finding of incompleteness does not trigger any additional FIP obligations for Pennsylvania. For all other areas of Pennsylvania, the Commonwealth has a SIP approved PSD program in place and EPA has found that the 110(a)(2) submittals at issue were complete. Therefore, EPA's proposed action addresses the Commonwealth's compliance with the portion of 110(a)(2) relating to the part C permit programs for all geographic areas except Allegheny County.

## II. Summary of State Submittal

Pennsylvania provided multiple submittals to satisfy the section 110(a)(2) requirements that are the subject of this proposed action for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. The submittals shown in Table 1 address the infrastructure elements, or portions thereof, identified in section 110(a)(2) that EPA is proposing to approve.

TABLE 1—110(a)(2) ELEMENTS, OR PORTIONS THEREOF, EPA IS PROPOSING TO APPROVE FOR THE 1997 OZONE AND $PM_{2.5}$ NAAQS AND THE 2006 $PM_{2.5}$ NAAQS FOR PENNSYLVANIA

| Submittal date | 1997 8-Hour ozone | 1997 $PM_{2.5}$ | 2006 $PM_{2.5}$ |
|---|---|---|---|
| December 7, 2007 | A, B, C, D(ii), E, F, G, H, J, K, L, M. | A, B, C, D(ii), E, F, G, H, J , K, L, M. | |
| December 7, 2007 | D(i)(II)PSD | D(i)(II)PSD. | |
| June 6, 2008 | C, D(i)(II)PSD, J | C, D(i)(II)PSD, J. | |
| June 6, 2008 | | K. | |
| April 26, 2010 | | G | A, B,C, E, F, G, H, J, K, L, M. |
| May 24, 2011 | | | D(i)(II)PSD, D(ii). |

EPA will take separate action on the portions of section 110(a)(2)(C) which pertain to a permit program in part D Title I of the CAA as well as the portions of section 110(a)(2)(D)(i)(II) relating to visibility.

EPA analyzed the above identified submissions and is proposing to make a determination that such submittals meet the requirements of section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. A detailed summary of EPA's review of, and rationale for approving Pennsylvania's submittals may be found in the Technical Support Document (TSD) for this action, which is available online at *http://www.regulations.gov*, Docket number EPA–R03–OAR–2010–0159.

## III. Proposed Action

EPA is proposing to approve the Commonwealth of Pennsylvania's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

## IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule, pertaining to Pennsylvania's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 22, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011–22451 Filed 8–31–11; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

**[EPA–R03–OAR–2011–0681; FRL–9458–9]**

## Determination of Nonattainment and Reclassification of the Baltimore 1997 8-Hour Ozone Nonattainment Area; MD

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to determine that the Baltimore moderate 8-hour ozone nonattainment area (the Baltimore Area) did not attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) by its June 15, 2011, attainment date. The attainment date for moderate ozone nonattainment areas was June 15, 2010. However, the Baltimore Area qualified for a 1-year extension of its attainment date. Therefore, EPA extended the area's attainment date to June 15, 2011. This proposal is based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008–2010 monitoring period that are available in the EPA Air Quality System (AQS) database. If EPA finalizes this determination, the Baltimore Area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. The serious area attainment date for the Baltimore Area would be as expeditiously as practicable, but not later than June 15, 2013. Once reclassified, the State of Maryland must submit State Implementation Plan (SIP) revisions for the Baltimore Area to meet the Clean Air Act (CAA) requirements for serious ozone nonattainment areas. In this action, EPA is also proposing that the State of Maryland submit the necessary SIP revisions to EPA by no later than September 30, 2012. This action is being taken under the CAA.

**DATES:** Written comments must be received on or before October 3, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R03–OAR–2011–0681 by one of the following methods:

A. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2011–0681, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2011–0681. 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.

*Docket:* All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

**FOR FURTHER INFORMATION CONTACT:** Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The following outline is provided to aid in locating information in this action.

I. What action is EPA proposing?
II. What is the background for this action?
III. Proposed Action
IV. Statutory and Executive Order Reviews

### I. What action is EPA proposing?

EPA is proposing to determine that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. This proposal is based on EPA's review of complete, quality assured, and certified ambient air quality monitoring data for the 2008–2010 monitoring period that are available in AQS. If EPA finalizes this determination, the Baltimore Area will be reclassified by operation of law as a serious 8-hour ozone nonattainment area for the 1997 8-hour ozone standard. The serious area attainment date for the Baltimore Area would be as expeditiously as practicable, but not later than June 15, 2013. (See 40 CFR 51.903.) Once reclassified, the State of Maryland must submit SIP revisions for the Baltimore Area that meet the 1997 8-hour ozone nonattainment requirements for serious areas as required by the CAA. In this action, EPA is also proposing that the State of Maryland submit SIP revisions to EPA by no later than September 30, 2012 for any measures required under the CAA for serious ozone nonattainment areas which have not already been approved into Maryland's SIP for the Baltimore Area.

### II. What is the background for this action?

#### *A. The 1997 8-Hour Ozone NAAQS*

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA again addressed

this 2008 revised standard and proposed to set the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA is working to complete reconsideration of the standard and thereafter will proceed with attainment/nonattainment area designations. This proposed rulemaking relates only to a determination of nonattainment for the 1997 8-hour ozone standard and is not affected by the ongoing process of reconsidering the revised 2008 standard. This action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address any subsequently revised 8-hour ozone standard.

*B. The Baltimore Area*

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Baltimore moderate nonattainment area. This area includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, all in Maryland. On March 11, 2011, EPA approved a 1-year extension of the Baltimore Area's attainment date, from June 15, 2010 to June 15, 2011. The extension was based on the complete, certified ambient air quality data for the 2009 ozone season. (See 76 FR 13289.)

On June 4, 2010, EPA approved a Maryland SIP revision to meet the 2002 base year emissions inventory requirement and certain moderate area requirements, including reasonable further progress (RFP), RFP contingency measures, and reasonably available control measure (RACM) for the Baltimore Area. EPA also approved the transportation conformity motor vehicle emissions budgets (MVEBs) associated with the revision. (See 75 FR 31709.)

*C. Requirement To Determine Attainment by the Attainment Date*

Under CAA sections 179(c) and 181(b)(2), EPA is required to make a determination that a nonattainment area has attained by its attainment date, and publish that determination in the **Federal Register**. Under CAA section 181(b)(2), which is specific to ozone nonattainment areas, if EPA determines that an area failed to attain the ozone NAAQS by its attainment date, EPA is required to reclassify that area to a higher classification.

*D. EPA's Analysis of the Relevant Air Quality Data*

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2008 through 2010 for the Baltimore Area, as recorded in AQS. The data that EPA relied on for this proposed action is included in the docket for this rulemaking, which can be viewed at *http://www.regulations.gov.*

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm (*i.e.,* 0.084 ppm, based on the rounding convention in 40 CFR part 50, appendix I). This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm at each monitoring site within the area, then the area is meeting the NAAQS.

Also, the data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in appendix I of 40 CFR part 50.

Table 1 shows the ozone design values for each monitor in the Baltimore Area for the years 2008–2010. In order to attain the NAAQS, all 2008–2010 design values must be below 0.084 ppm, and all monitors must meet the data completeness requirements. However, monitor number 240251001 in Harford County has a design value of 0.089 ppm. Therefore, the Baltimore Area has not attained the 1997 8-hour ozone NAAQS, considering 2008–2010 data.

TABLE 1—2008–2010 BALTIMORE AREA 1997 8-HOUR OZONE DESIGN VALUES

| County | Monitor ID | 2008–2010 Average % data completeness | 2008–2010 Design value (ppm) |
|---|---|---|---|
| Anne Arundel | 240030014 | 96 | 0.079 |
| Baltimore | 240051007 | 100 | 0.077 |
| | 240053001 | 94 | 0.078 |
| Carroll | 240130001 | 98 | 0.076 |
| Harford | 240251001 | 94 | 0.089 |
| | 240259001 | 99 | 0.078 |
| Baltimore (City) | 245100054 | 93 | 0.067 |

EPA's regulations at 40 CFR 51.907 set forth how a nonattainment area for the 1997 8-hour ozone NAAQS can qualify for an extension of its attainment date. Under 40 CFR 51.907, an area will qualify for a 1-year extensions of the attainment date if:

(a) For the first one-year extension, the area's 4th highest daily 8-hour average in the attainment year is 0.084 ppm or less,

(b) For the second one-year extension, the area's 4th highest daily 8-hour value, averaged over both the original attainment year and the first extension year, is 0.084 ppm or less.

(c) For purposes of paragraphs (a) and (b) of this section, the area's 4th highest daily 8-hour average shall be from the monitor with the highest 4th highest daily 8-hour average of all the monitors that represent that area.

For the Baltimore Area, the original attainment year was 2009 and the first extension year was 2010. Table 2, below, show the 2009 and 2010 highest 4th highest daily 8-hour values for the Baltimore Area, and the 4th highest daily 8-hour values averaged over 2009 and 2010. The 4th highest daily 8-hour values averaged over 2009 and 2010 for monitor number 240251001 in Harford County is greater than 0.084 ppm (0.090 ppm). Therefore, the Baltimore Area does not qualify for a second extension of its attainment date.

TABLE 2—BALTIMORE AREA 2009–2010 AVERAGE 4TH HIGHEST DAILY 8-HOUR OZONE VALUES

| County | Monitor ID | 2009 4th highest daily value | 2010 4th highest daily value | 2009–2010 Average 4th highest daily value |
|---|---|---|---|---|
| Anne Arundel | 240030014 | 0.070 | 0.087 | 0.079 |
| Baltimore | 240051007 | 0.068 | 0.078 | 0.073 |
| | 240053001 | 0.071 | 0.084 | 0.078 |
| Carroll | 240130001 | 0.068 | 0.083 | 0.076 |
| Harford | 240251001 | 0.083 | 0.096 | 0.090 |
| | 240259001 | 0.069 | 0.080 | 0.075 |
| Baltimore (City) | 245100054 | 0.066 | 0.074 | 0.070 |

*E. Determination of Nonattainment/ Ambient Air Quality Monitoring Data*

Complete, quality assured, certified 8-hour ozone air quality monitoring data from 2008 through 2010 show that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its June 15, 2011 attainment date. In addition, as stated above, the area does not qualify for a second 1-year extension of its attainment date.

*F. Serious Nonattainment Area SIP Requirements*

The SIP requirements for a serious nonattainment area are set out in section 182(c) of the CAA. The requirements for serious ozone nonattainment areas include, but are not limited to: (1) Attainment and reasonable further progress demonstrations (CAA section 182(c)(2), 40 CFR 51.908 and 40 CFR 51.910); (2) an enhanced monitoring program (CAA section 182(c)(1) and 40 CFR 58.10); (3) an enhanced vehicle inspection and maintenance (I/M) program (CAA section 182(c)(3) and 40 CFR 51.350); (4) clean fuel vehicle programs (CAA section 182(c)(4)); (5) transportation control (CAA section 182(c)(5)); (6) a 50 ton-per-year (tpy) major source threshold (CAA section 182(c) and 40 CFR 51.165); (7) more stringent new source review requirements (CAA section 182(c)(6) and 40 CFR 51.165); (8) special rules for modification of sources (CAA sections 182(c)(7) and 182(c)(8), and 40 CFR 51.165); (9) contingency provisions (CAA section 182(c)(9)); and (10) increased offsets (CAA section 182(c)(10) and 40 CFR 51.165). See also the requirements for serious ozone nonattainment areas set forth in section 182(c) of the CAA.

Because the Baltimore Area was designated as a severe-15 nonattainment area under the 1-hour ozone NAAQS (40 CFR 81.321), the State of Maryland has already implemented severe area requirements. These measures have been approved into Maryland's SIP for the Baltimore Area. The Baltimore Area is subject to ''anti-backsliding'' provisions of 40 CFR 51.905(a)(1) as an area that was nonattainment for the 1-hour ozone NAAQS that became a nonattainment area for the 1997 8-hour ozone NAAQS. Anti-backsliding provisions require measures approved into Maryland's SIP for the 1-hour ozone NAAQS remain in the SIP for the 1997 8-hour NAAQS. The applicable requirements are specified in 40 CFR 51.900(f) and include enhanced vehicle inspection and maintenance, clean fuel fleets, enhanced monitoring, and a 25 tpy major source threshold for volatile organic compounds (VOC) and oxides of nitrogen ($NO_X$). In addition, the anti-backsliding provisions require that the new source review (NSR) requirements based on the Baltimore Area's 1-hour severe nonattainment classification continue to apply. (See *South Coast Air Quality Management Dist.* v. *EPA,* 489 F.3d 1295 (DC Cir. 2007).)

Because severe area measures are more stringent than serious area measures, the Baltimore Area already meets many of the required serious area measures. Table 3, below, summarizes the serious nonattainment area requirements and their SIP approval status. The State of Maryland is only required to submit SIP revisions for any outstanding serious area measures for the 1997 8-hour NAAQS.

TABLE 3—STATUS OF SERIOUS AREA REQUIREMENTS IN THE MARYLAND SIP FOR THE BALTIMORE AREA

| Requirement CAA section | SIP status |
|---|---|
| 50 tpy threshold for VOC and $NO_X$ § 182(c). | COMAR 26.11.02.01 approved into SIP on 02/27/2003 (68 FR 9012). |
| Enhanced monitoring § 182(c)(1) | Photochemical Assessment Monitoring Stations (PAMS) Program approved into SIP on 9/11/1995 (60 FR 47084). |
| Attainment Demonstration § 182(c)(2)(A) | Must be submitted to EPA for approval by 9/30/2012. |
| RFP Demonstration § 182(c)(2)(B)/ § 182(c)(2)(C). | Must be submitted to EPA for approval by 9/30/2012. |
| Enhanced vehicle I/M program § 182(c)(3). | COMAR 11.14.08: Approved into the Maryland SIP on 10/29/1999 (64 FR 58340), revisions approved on 1/16/2003 (68 FR 2208). |
| Clean-fuel vehicle programs § 182(c)(4) | COMAR 26.11.20.04, National Low Emission Vehicle program (NLEV), approved into the SIP on 12/28/1999 (64 FR 72564). Maryland opted into NLEV as a substitute measure under § 182(c)(4). Upon expiration of NLEV, Maryland reverted to the Federal Tier 2 motor vehicle standards, and subsequently adopted and implemented California's Low Emission Vehicle Program. |
| Transportation control § 182(c)(5) | Compliance is ongoing through annual submission of Transportation Plans with accompanying conformity demonstrations. |
| *De minimis* rule § 182(c)(6) | NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170). |
| Special rule for modifications of sources emitting less than 100 tons § 182(c)(7). | NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170). |

TABLE 3—STATUS OF SERIOUS AREA REQUIREMENTS IN THE MARYLAND SIP FOR THE BALTIMORE AREA—Continued

| Requirement CAA section | SIP status |
|---|---|
| Special rule for modifications of sources emitting 100 tons or more § 182(c)(8). | NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170). |
| Contingency provisions § 182(c)(9) | Must be submitted to EPA for approval by 9/30/2012. |
| Offsets of 1.2 to 1 § 182(c)(10) | NSR regulations, COMAR 26.11.17, approved into SIP on 2/12/2001 (66 FR 56170), revisions approved on 9/20/2004 (69 FR 56170). |

## III. Proposed Action

Pursuant to section 181(b)(2) of the CAA, EPA is proposing to determine, based on certified, quality-assured monitoring data for 2008–2010, that the Baltimore Area did not attain the 1997 8-hour ozone standard by its June 15, 2011 attainment date. If EPA finalizes this determination, upon the effective date of the final determination, the Baltimore Area will be reclassified by operation of law as a serious 1997 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is also proposing the schedule for submittal of the SIP revisions required for serious areas once the Baltimore Area is reclassified. Because the Baltimore Area was designated as a severe-15 nonattainment area under the 1-hour ozone NAAQS (40 CFR 81.321), the State of Maryland has already implemented severe area requirements, and these measures have been approved into Maryland's SIP for the Baltimore Area. The Baltimore Area is subject to ''anti-backsliding'' provisions which require that the measures approved into Maryland's SIP for the 1-hour NAAQS remain in the SIP. Because severe area measures are more stringent than serious area measures, the Baltimore Area already meets many of the required serious area measures. Therefore, the State of Maryland is only required to submit SIP revisions for any outstanding serious area measures for the 1997 8-hour ozone NAAQS. EPA is proposing that the State of Maryland submit the required SIP revisions to EPA by September 30, 2012.

## IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed determination that the Baltimore Area did not attain the 1997 8-hour ozone NAAQS by its applicable attainment date does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this proposed action is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

### List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: August 22, 2011.

**W.C. Early,**

*Acting Regional Administrator, Region III.*

[FR Doc. 2011–22449 Filed 8–31–11; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket ID FEMA–2008–0020; Docket No. FEMA–B–1043]**

## Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule; correction.

**SUMMARY:** On March 25, 2009, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This document provides corrections to that table, to be used in lieu of the information published. The table provided in this document represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Cumberland County, Kentucky, and Incorporated Areas. Specifically, it addresses the following flooding sources: Bear Creek (backwater effects from Cumberland River), Big Renox Creek (backwater effects from Cumberland River), Big Whetstone Creek (backwater effects from Cumberland River), Big Willis Creek (backwater effects from Cumberland River), Brush Creek (backwater effects from Cumberland River), Carter Branch West (backwater effects from Cumberland River), Casey Branch (backwater effects from Dale Hollow Lake), Cedar Creek North (backwater effects from Cumberland River), Clover

Creek (backwater effects from Cumberland River), Cumberland River, Cumberland River Tributary 32 (backwater effects from Cumberland River), Cumberland River Tributary 55 (backwater effects from Cumberland River), Cumberland River Tributary 57 (backwater effects from Cumberland River), Dale Hollow Lake (Obey River), Fanny's Creek (backwater effects from Dale Hollow Lake), Galloway Creek (backwater effects from Cumberland River), Galloway Creek Tributary 3 (backwater effects from Cumberland River), Goose Creek (backwater effects from Cumberland River), Haggard Branch (backwater effects from Cumberland River), Hendricks Creek (backwater effects from Dale Hollow Lake), Hoot Branch (backwater effects from Dale Hollow Lake), Hoot Branch Tributary 1 (backwater effects from Dale Hollow Lake), Judio Creek (backwater effects from Cumberland River), Lewis Creek (backwater effects from Cumberland River), Lewis Creek Tributary 5 (backwater effects from Cumberland River), Little Whetstone Creek (backwater effects from Cumberland River), Little Willis Creek (backwater effects from Cumberland River), Little Willis Creek Tributary 1 (backwater effects from Cumberland River), Marrowbone Creek (backwater effects from Cumberland River), Mud Camp Creek (backwater effects from Cumberland River), Otter Creek (backwater effects from Cumberland River), Perry Cary Hollow (backwater effects from Cumberland River), Potters Creek (backwater effects from Cumberland River), Raft Creek (backwater effects from Cumberland River), Riddle Prong (backwater effects from Dale Hollow Lake), Sulphur Creek (backwater effects from Dale Hollow Lake), and Williams Creek (backwater effects from Dale Hollow Lake).

**DATES:** Comments are to be submitted on or before November 30, 2011.

**ADDRESSES:** You may submit comments, identified by Docket No. FEMA–B–1043, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

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

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

## Corrections

In the proposed rule published at 74 FR 12807 in the March 25, 2009, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Cumberland County, Kentucky and Incorporated Areas,'' addressed the flooding sources Cumberland River and Dale Hollow Lake (Obey River). That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for those flooding sources. In addition, it did not include the following flooding sources: Bear Creek (backwater effects from Cumberland River), Big Renox Creek (backwater effects from Cumberland River), Big Whetstone Creek (backwater effects from Cumberland River), Big Willis Creek (backwater effects from Cumberland River), Brush Creek (backwater effects from Cumberland River), Carter Branch West (backwater effects from Cumberland River), Casey Branch (backwater effects from Dale Hollow Lake), Cedar Creek North (backwater effects from Cumberland River), Clover Creek (backwater effects from Cumberland River), Cumberland River Tributary 32 (backwater effects from Cumberland River), Cumberland River Tributary 55 (backwater effects from Cumberland River), Cumberland River Tributary 57 (backwater effects from Cumberland River), Fanny's Creek (backwater effects from Dale Hollow Lake), Galloway Creek (backwater effects from Cumberland River), Galloway Creek Tributary 3 (backwater effects from Cumberland River), Goose Creek (backwater effects from Cumberland River), Haggard Branch (backwater effects from Cumberland River), Hendricks Creek (backwater effects from Dale Hollow Lake), Hoot Branch (backwater effects from Dale Hollow Lake), Hoot Branch Tributary 1 (backwater effects from Dale Hollow Lake), Judio Creek (backwater effects from Cumberland River), Lewis Creek (backwater effects from Cumberland River), Lewis Creek Tributary 5 (backwater effects from Cumberland River), Little Whetstone Creek (backwater effects from Cumberland River), Little Willis Creek (backwater effects from Cumberland River), Little Willis Creek Tributary 1 (backwater effects from Cumberland River), Marrowbone Creek (backwater effects from Cumberland River), Mud Camp Creek (backwater effects from Cumberland River), Otter Creek (backwater effects from Cumberland River), Perry Cary Hollow (backwater effects from Cumberland River), Potters Creek (backwater effects from Cumberland River), Raft Creek (backwater effects from Cumberland River), Riddle Prong (backwater effects from Dale Hollow Lake), Sulphur Creek (backwater effects from Dale Hollow Lake), and Williams Creek (backwater effects from Dale Hollow Lake). In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published for Cumberland County.

| Flooding source(s) | Location of referenced elevation** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| **Cumberland County, Kentucky, and Incorporated Areas** | | | | |
| Bear Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.9 mile upstream of the Cumberland River confluence. | None | +551 | Unincorporated Areas of Cumberland County. |
| Big Renox Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.8 mile upstream of the Cumberland River confluence. | None | +556 | Unincorporated Areas of Cumberland County. |
| Big Whetstone Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence. | None | +562 | Unincorporated Areas of Cumberland County. |
| Big Willis Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 1.5 miles upstream of the Cumberland River confluence. | None | +563 | Unincorporated Areas of Cumberland County. |
| Brush Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence. | None | +558 | Unincorporated Areas of Cumberland County. |
| Carter Branch West (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence. | None | +540 | Unincorporated Areas of Cumberland County. |
| Casey Branch (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 0.5 mile upstream of the Dale Hollow Lake confluence. | None | +663 | Unincorporated Areas of Cumberland County. |
| Cedar Creek North (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence. | None | +552 | Unincorporated Areas of Cumberland County. |
| Clover Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.4 mile upstream of the Cumberland River confluence. | None | +550 | Unincorporated Areas of Cumberland County. |
| Cumberland River ..... | Approximately 3,300 feet downstream of the Judio Creek confluence. | None | +533 | City of Burkesville, Unincorporated Areas of Cumberland County. |
| | Approximately 1,500 feet upstream of the Crow Creek confluence. | None | +568 | |
| Cumberland River Tributary 32 (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence. | None | +555 | Unincorporated Areas of Cumberland County. |
| Cumberland River Tributary 55 (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 1,900 feet upstream of the Cumberland River confluence. | None | +541 | Unincorporated Areas of Cumberland County. |
| Cumberland River Tributary 57 (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.6 mile upstream of the Cumberland River confluence. | None | +540 | Unincorporated Areas of Cumberland County. |
| Dale Hollow Lake (Obey River). | Entire shoreline within community ..... | None | +663 | Unincorporated Areas of Cumberland County. |
| Fanny's Creek (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 1,400 feet upstream of the Dale Hollow Lake confluence. | None | +633 | Unincorporated Areas of Cumberland County. |
| Galloway Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence. | None | +544 | Unincorporated Areas of Cumberland County. |
| Galloway Creek Tributary 3 (backwater effects from Cumberland River). | From the Galloway Creek confluence to approximately 1,400 feet upstream of the Galloway Creek confluence. | None | +544 | Unincorporated Areas of Cumberland County. |
| Goose Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.9 mile upstream of the Cumberland River confluence. | None | +555 | Unincorporated Areas of Cumberland County. |
| Haggard Branch (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.9 mile upstream of the Cumberland River confluence. | None | +547 | Unincorporated Areas of Cumberland County. |
| Hendricks Creek (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 600 feet upstream of the Dale Hollow Lake confluence. | None | +663 | Unincorporated Areas of Cumberland County. |
| Hoot Branch (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 950 feet upstream of the Dale Hollow Lake confluence. | None | +663 | Unincorporated Areas of Cumberland County. |

| Flooding source(s) | Location of referenced elevation** | * Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) | | Communities affected |
|---|---|---|---|---|
| | | Effective | Modified | |
| Hoot Branch Tributary 1 (backwater effects from Dale Hollow Lake). | From the Hoot Branch confluence to approximately 1,000 feet upstream of the Hoot Branch confluence. | None | +663 | Unincorporated Areas of Cumberland County. |
| Judio Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence. | None | +533 | Unincorporated Areas of Cumberland County. |
| Lewis Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 1.6 miles upstream of the Cumberland River confluence. | None | +554 | Unincorporated Areas of Cumberland County. |
| Lewis Creek Tributary 5 (backwater effects from Cumberland River). | From the Lewis Creek confluence to approximately 1,200 feet upstream of the Lewis Creek confluence. | None | +554 | City of Burkesville, Unincorporated Areas of Cumberland County. |
| Little Whetstone Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence. | None | +562 | Unincorporated Areas of Cumberland County. |
| Little Willis Creek (backwater effects from Cumberland River). | From the Big Willis Creek confluence to approximately 0.7 mile upstream of the Big Willis Creek confluence. | None | +563 | Unincorporated Areas of Cumberland County. |
| Little Willis Creek Tributary 1 (backwater effects from Cumberland River). | From the Little Willis Creek confluence to approximately 800 feet upstream of the Little Willis Creek confluence. | None | +563 | Unincorporated Areas of Cumberland County. |
| Marrowbone Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 1,200 feet upstream of the Cumberland River confluence. | None | +547 | Unincorporated Areas of Cumberland County. |
| Mud Camp Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 1.1 miles upstream of the Cumberland River confluence. | None | +539 | Unincorporated Areas of Cumberland County. |
| Otter Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.5 mile upstream of the Cumberland River confluence. | None | +551 | Unincorporated Areas of Cumberland County. |
| Perry Cary Hollow (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 1,600 feet upstream of the Cumberland River confluence. | None | +534 | Unincorporated Areas of Cumberland County. |
| Potters Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.7 mile upstream of the Cumberland River confluence. | None | +545 | Unincorporated Areas of Cumberland County. |
| Raft Creek (backwater effects from Cumberland River). | From the Cumberland River confluence to approximately 0.4 mile upstream of the Cumberland River confluence. | None | +551 | Unincorporated Areas of Cumberland County. |
| Riddle Prong (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 0.6 mile upstream of the Dale Hollow Lake confluence. | None | +663 | Unincorporated Areas of Cumberland County. |
| Sulphur Creek (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 0.6 mile upstream of the Dale Hollow Lake confluence. | None | +663 | Unincorporated Areas of Cumberland County. |
| Williams Creek (backwater effects from Dale Hollow Lake). | From the Dale Hollow Lake confluence to approximately 0.5 mile upstream of the Dale Hollow Lake confluence. | None | +633 | Unincorporated Areas of Cumberland County. |

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES**

**City of Burkesville**

Maps are available for inspection at City Hall, 214 Upper River Street, Burkesville, KY 42717.

**Unincorporated Areas of Cumberland County**

Maps are available for inspection at the Cumberland County Courthouse, 600 Courthouse Square, Burkesville, KY 42717.

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

Dated: August 19, 2011.

**Sandra K. Knight,**

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

[FR Doc. 2011–22443 Filed 8–31–11; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 46 CFR Part 8

**[Docket No. USCG–2011–0745]**

**RIN 1625–AB79**

## International Anti-Fouling System Certificate

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its vessel inspection regulations to add the International Anti-fouling System (IAFS) Certificate to the list of certificates a recognized classification society may issue on behalf of the Coast Guard. This action is being taken in response to recently enacted legislation implementing the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001. This proposed rule would enable recognized classification societies to apply to the Coast Guard for authorization to issue IAFS Certificates to vessel owners on behalf of the Coast Guard.

**DATES:** Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before October 3, 2011 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by docket number USCG–2011–0745 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 rule, e-mail or call Mr. John Meehan, Environmental Standards Division, Coast Guard, e-mail *john.a.meehan@uscg.mil*, telephone 202–372–1429. 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:**

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### I. 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.

*A. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0745), 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, or by fax, mail, or hand delivery, but please use only one of these means. 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 comments online, go to *http://www.regulations.gov* and 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–2011–0745'' 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 this proposed rule based on your comments.

*B. 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* and click on the ''Read Comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert ''USCG–2011–0745'' and click ''Search.'' Click the ''Open Docket Folder'' option in the ''Actions'' column. If you do not have access to the Internet, you may view the docket online by visiting 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.

*C. Privacy Act*

Anyone can 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*D. Public Meeting*

We do not now plan to hold a public meeting. However, you may submit a public meeting request to the docket using one of the methods specified under **ADDRESSES**. In your request, explain why you believe a public meeting would be beneficial. If we determine that holding a public meeting

would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

## II. Abbreviations

CFR: Code of Federal Regulations.
DHS: Department of Homeland Security.
FR: **Federal Register**.
IAFS: International Anti-fouling System
NAICS: North American Industry Classification System.
NPRM: Notice of proposed rulemaking.
§ : Section.
U.S.C.: United States Code.

### *III. Background*

The Coast Guard Authorization Act of 2010 at Title X, Public Law 111–281, 124 Stat. 3023, 33 U.S.C. 3801 to 3857 (Oct. 15, 2010), directs the Secretary of Homeland Security to administer and enforce the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (Convention). Section 1021 of Title X (33 U.S.C. 3821) and Regulation 2 of Annex 4 of the Convention call for U.S. Government officials, or an organization identified by the United States, to issue International Anti-fouling System (IAFS) Certificates to ships whose anti-fouling systems fully comply with the Convention.

Under the Convention, an ''anti-fouling system'' is defined as a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms. The Convention is currently focused on reducing pollution caused by organotin compounds used in anti-fouling systems.

Since the mid-1990s, under authority of 46 U.S.C. 3103, 3306, 3316 and 3703, and regulations in 46 CFR part 8, the Coast Guard has authorized recognized classification societies to issue international certificates to vessels. The United States currently recognizes six classification societies for purposes of issuing international certificates: the American Bureau of Shipping (ABS, United States), Det Norske Veritas (DNV, Norway), Lloyd's Register (LR, Great Britain), Germanischer Lloyd (GL, Germany), Bureau Veritas (BV, France), and RINA, S.p.A. (RINA, Italy).

The list of international certificates the Coast Guard may authorize a recognized classification society to issue appears in 46 CFR 8.320. That list currently includes 12 certificates, but does not include the IAFS Certificate.

## IV. Discussion of the Proposed Rule

The Coast Guard proposes to amend 46 CFR 8.320(b) by adding the IAFS Certificate to the current list of international convention certificates included in that paragraph. Adding the IAFS Certificate to § 8.320(b) would allow the Coast Guard to authorize recognized classification societies to issue IAFS Certificates. Authorization would be based on the Coast Guard's review of applicable class rules and applicable classification society procedures. *See* 46 CFR 8.320(a). The Coast Guard would then enter into a written agreement with a recognized classification society authorized to issue international convention certificates. The agreement would define the scope, terms, conditions, and requirements of that delegation. *See* 46 CFR 8.320(c).

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

### *A. Regulatory Planning and Review*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 notice of proposed rulemaking (NPRM) has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows.

Under the authority of 46 U.S.C. 3103, 3306, 3316, and 3703, the Coast Guard proposes to amend 46 CFR 8.320, to enable the Coast Guard to delegate the activity of issuing IAFS Certificates to a recognized classification society which would act on behalf of the Coast Guard. The intent of this proposed rule is only to allow for the delegation of IAFS Certification to recognized class societies; it does not impose mandatory actions on the U.S. maritime industry.

This proposed rule initiates the process that may allow recognized classification societies to issue IAFS Certificates on behalf of the Coast Guard. Any recognized classification society that wishes to issue IAFS Certificates on the Coast Guard's behalf would be required to request a delegation of authority from the Coast Guard pursuant to the procedures in 46 CFR part 8. In response, the Coast Guard would evaluate the application, and review the applicant's applicable class rules and applicable classification society procedures, before deciding whether to issue a delegation of authority to the applicant.

Although requesting the delegation of authority to conduct IAFS surveys, inspections, and certifications is voluntary, classification societies may incur minor costs associated with this process. The Coast Guard may incur costs associated with the evaluation of these requests and the issuance of delegations of authority to recognized classification societies.

The Coast Guard estimates that this proposed rule would potentially affect six classification societies which may request a delegation of authority to issue IAFS Certificates. The Coast Guard used OMB-approved collections of information (1625–0101, 1625–0095, 1625–0093, and 1625–0041) to estimate the costs and burden.

The Coast Guard estimates that it will take classification society employees about 5.25 hours to review the rulemaking requirements and prepare the delegation request, at an average one-time cost of $458.50 per classification society (3.5 hours at $112 per hour for a director and 1.75 hours at $38 per hour for a secretary). The total one-time cost for all six classification societies is estimated to be $2,800 (rounded).

In addition, the Coast Guard estimates that it will incur a one-time cost to review and approve the requests for delegation. Based on the OMB-approved collections of information discussed above, the Coast Guard estimates that it will take about 5 hours to review, approve, and issue an order to delegate authority, at an average cost of $360 per event (3.5 hours for reviewing/approving and 1.5 hours for issuing at $72 per hour for a lieutenant). The Coast Guard estimates a total one-time Government cost of $2,200 (rounded) based on OMB-approved collection of information estimates.

The Coast Guard estimates the total one-time cost of this proposed rule to be $5,000 (non-discounted) for classification societies and the Government combined.

This proposed rule may result in several benefits to the U.S. maritime industry. First, it may result in a reduction of potential wait time for IAFS Certificates. In the absence of delegation of authority to classification societies, vessel owners and operators may experience delays while the Coast Guard processes and issues IAFS

Certificates. Combined with the Coast Guard's other activities and responsibilities, such a process could result in an unnecessary and burdensome wait for vessels. The Coast Guard might also have to redirect resources that could be used for other missions, resulting in a less efficient use of Government resources. Finally, this proposed rule may mitigate potential consequences to U.S. flag vessels due to non-compliance with the Convention, including costly vessel detentions in foreign ports.

*B. Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has 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.

Classification societies affected by this proposed rule would be classified under one of the following North American Industry Classification System (NAICS) 6-digit codes for water transportation: 488330—Navigation Services to Shipping, 488390—Other Support Activities for Water Transportation, or 541611—Administrative Management and General Management Consulting Services.

The Coast Guard did not find any classification societies directly affected by this rule that are small businesses or governments with populations of less than 50,000. The only predominate U.S. classification society is the American Bureau of Shipping (ABS). ABS is a privately owned non-profit organization that is dominant in its field (Source: 2011 Hoovers, *http://www.hoovers.com/company/American_Bureau_of_Shipping_Inc/rfsksji-1.html*). Based on publicly available information, ABS has more than 3,000 employees and an annual revenue of more than $800 million (Source: 2011 Bloomberg, *http://investing.businessweek.com/research/stocks/private/person.asp?personId=28915205&privcapId=4217113&previousCapId=764755&previousTitle=ABS%20Group%20of%20Companies,%20Inc*). We do not consider ABS to be a small entity under the Regulatory Flexibility Act. The other classification societies affected by this rule are foreign owned and operated.

The Coast Guard expects that this proposed rule will not have a significant economic impact on a substantial number of small entities. As described in section V.A. of this preamble, ''Regulatory Planning and Review,'' the anticipated cost of this rule, per class society, is less than $500. This proposed rule is not mandatory, and classification societies, regardless of size, will choose to participate only if the benefits are greater than the costs.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, will 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 rule will have a significant economic impact on it, please submit a comment using one of the methods listed under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants 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 consult Mr. John Meehan, Environmental Standards Division, Coast Guard, telephone 202–372–1429 or e-mail *john.a.meehan@uscg.mil.* 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.

*D. 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) because the Coast Guard expects that the number of applications will be less than 10 in any given year.

*E. 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.

*F. Unfunded Mandates Reform Act*

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

*G. Taking of Private Property*

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

*H. 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.

*I. Protection of Children*

The Coast Guard has analyzed this rule under Executive Order 13045 Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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.

*J. Indian Tribal Governments*

This proposed 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.

*K. Energy Effects*

The Coast Guard has analyzed this proposed rule under Executive Order 13211 Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Coast Guard has determined that this proposed rule is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866, supplemented by Executive Order 13563, 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 this proposed rule as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

*L. Technical Standards*

The National Technology Transfer and Advancement Act (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, the Coast Guard did not consider the use of voluntary consensus standards.

*M. Environment*

The Coast Guard has 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 (42 U.S.C. 4321–4370f), and has 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 the ''Public Participation and Request for Comments'' section of this preamble. This proposed rule involves the delegation of authority, the inspection and documentation of vessels, and congressionally-mandated regulations designed to improve or protect the environment. This action falls under section 2.B.2, figure 2–1, paragraphs (34)(b) and (d), of the Instruction, and under section 6(b) of the ''Appendix to National Environmental Policy Act: Coast Guard Procedures for Categorical Exclusions, Notice of Final Agency Policy'' (67 FR 48243, July 23, 2002). The Coast Guard seeks any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

**List of Subjects for 46 CFR Part 8**

Administrative practice and procedure, Incorporation by reference, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 46 CFR part 8 as follows:

## PART 8—VESSEL INSPECTION ALTERNATIVES

1. The authority citation for part 8 is revised to read as follows:

**Authority:** 33 U.S.C. 3803 and 3821; 46 U.S.C. 3103, 3306, 3316, 3703; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 8.320 as follows:

a. In paragraph (b)(11), remove the word ''and'';

b. In paragraph (b)(12), remove the period at the end of the sentence and add, in its place, the text ''; and''; and

c. Add paragraph (b)(13) to read as follows:

**§ 8.320 Classification society authorization to issue international certificates.**

* * * * *

(b) * * *

(13) International Anti-fouling System Certificate.

* * * * *

Dated: August 25, 2011.

**F.J. Sturm,**

*Acting Director of Commercial Regulations and Standards, U.S. Coast Guard.*

[FR Doc. 2011–22361 Filed 8–31–11; 8:45 am]

**BILLING CODE 9110–04–P**

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 1

**[WT Docket No. 08–61; WT Docket No. 03–187; DA 11–1455]**

## Programmatic Environmental Assessment

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission seeks comment on a draft programmatic environmental assessment (PEA) of the Antenna Structure Registration (ASR) program. The purpose of the PEA is to evaluate the potential environmental effects of the Commission's ASR program. Owners of structures that are taller than 200 feet above ground level or that may interfere with the flight path of a nearby airport must register those structures with the FCC. The antenna structure owner must obtain painting and lighting specifications from the Federal Aviation Administration and include those specifications in its registration prior to construction.

**DATES:** There will be a public meeting in the Federal Communications Commission's Meeting Room, 445 12th St., SW., Washington, DC on September 20, 2011, from 2:30 p.m. until 5 p.m., Eastern Time. Interested parties may file comments no later than October 3, 2011.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 08–61; WT Docket No. 03–187, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (''ECFS''): *http://www.fcc.gov/cgb/ecfs/*, through a link on the PEA Web site, *http://www.fcc.gov/pea*, or via the Federal eRulemaking Portal: *http://www.regulations.gov*.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building. The filing hours are 8 a.m. to 7 p.m.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

*Availability of Documents.* Comments and *ex parte* submissions will be available for public inspection during

regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

*Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Aaron Goldschmidt, Wireless Telecommunications Bureau, (202) 418–7146, or e-mail *Aaron.Goldschmidt@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** The FCC has established a Web site, *http://www.fcc.gov/pea*, which contains information and downloadable documents relating to the PEA process, including the Draft PEA. The Web site also allows individuals to contact the Commission.

Audio/video coverage of the September 20 public meeting will be broadcast live with open captioning over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The FCC's Web cast is free to the public. Those who watch the live video stream of the event may e-mail event-related questions to *PEAquestions@fcc.gov*. Depending on the volume of questions and time constraints, FCC representatives will respond to as many questions as possible during the workshop.

Federal Communications Commission.

**Matthew Nodine,**

*Chief of Staff, Wireless Telecommunications Bureau.*

[FR Doc. 2011–22437 Filed 8–31–11; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**[Docket No. FWS–R9–ES–2010–0086; MO 92210–1111F113 B6]**

## Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List All Chimpanzees (Pan troglodytes) as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce a 90-day finding on a petition to list all chimpanzees (*Pan troglodytes*) as endangered under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing all chimpanzees as endangered may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the entire species as endangered is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before October 31, 2011.

**ADDRESSES:** You may submit information by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Search for Docket No. FWS–R9–ES–2010–0086 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R9–IA–2008–0123; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information received on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Information Solicited section below for more details).

**FOR FURTHER INFORMATION CONTACT:** Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Information Solicited

Under the Act, when we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species. To ensure that our status review of the chimpanzee is complete and based on the best available scientific and commercial information, we need certain information. We request scientific and commercial information from the public, concerned governmental agencies, the scientific community, industry, or any other interested parties on the status of the chimpanzee throughout its range, including but not limited to:

(1) Information on taxonomy, distribution, habitat selection, diet, and population abundance and trends of this species.

(2) Information on the effects of habitat loss and changing land uses on the distribution and abundance of this species and its principal food sources over the short and long term.

(3) Information on whether changing climatic conditions are affecting the species, its habitat, or its prey base.

(4) Information on the effects of other potential threat factors, including live capture and collection, domestic and international trade, predation by other animals, and diseases of this species.

(5) Information on management programs for chimpanzee conservation, including mitigation measures related to conservation programs, and any other private or governmental conservation programs that benefit this species.

(6) Information relevant to whether any populations of this species may qualify as distinct population segments.

(7) Information on captive breeding and domestic trade of this species in the United States.

(8) Genetics and taxonomy.

(9) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

We will base our status review on the best scientific and commercial information available, including all information we receive during the public comment period. Please note that comments merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be part of the basis of this determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.'' At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

## Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly review the status of the species, which is subsequently summarized in our status review (also referred to as a 12-month finding).

### *Petition History*

On March 16, 2010, we received a petition dated the same day, from Meyer Glitzenstein & Crystal on behalf of The Humane Society of the United States, the American Association of Zoological Parks and Aquariums, the Jane Goodall Institute, the Wildlife Conservation Society, the Pan African Sanctuary Alliance, the Fund for Animals, Humane Society International, and the New England Anti-Vivisection Society (hereafter referred to as ''petitioners'') requesting that captive chimpanzees (*Pan troglodytes*) be reclassified as endangered under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). The petition contained information on what the petitioners reported as potential threats to the species from habitat loss, poaching and trafficking, disease, and inadequate regulatory mechanisms. In a September 15, 2010, letter to Katherine Meyer, we responded that we were currently required to complete a significant number of listing and critical habitat actions in fiscal year 2010, including complying with court orders and court-approved settlement agreements, listing actions with absolute statutory deadlines, and high-priority listing actions, that required nearly all of our listing and critical habitat funding for fiscal year 2010. We also stated that we anticipated making an initial finding during fiscal year 2011, as to whether the petition contained substantial information indicating that the action may be warranted.

On October 12, 2010, we received a letter from Anna Frostic, Staff Attorney with the Humane Society of the United States, on behalf of the petitioners clarifying that the March 16, 2010, petition was a petition to list the entire species (*Pan troglodytes*) as endangered, whether in the wild or in captivity, pursuant to the Act. We acknowledged receipt of this letter in a letter to Ms. Frostic dated October 15, 2010. This finding addresses the petition.

### *Previous Federal Action(s)*

On October 19, 1976, we published in the **Federal Register** a rule listing the chimpanzee and 25 other species of primates under the Act (41 FR 45990); the chimpanzee and 13 of the other primate species were listed as threatened. The chimpanzee was found to be threatened based on (1) Commercial logging and clearing of forests for agriculture and the use of arboricides; (2) capture and exportation for use in research labs and zoos; (3) diseases, such as malaria, hepatitis, and tuberculosis contracted from humans; and (4) ineffectiveness of existing regulatory mechanisms. We simultaneously issued a special rule that the general prohibitions provided to the threatened species would apply except for live animals of these species held in captivity in the United States on the effective date of the rulemaking, progeny of such animals, or to the progeny of animals legally imported in the United States after the effective date of the rulemaking.

On November 4, 1987, we received a petition from the Humane Society of the United States, World Wildlife Fund, and Jane Goodall Institute, requesting that the chimpanzee be reclassified from threatened to endangered. On March 23, 1988 (53 FR 9460), we published in the **Federal Register** a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted and initiated a status review. We opened a comment period, which closed July 21, 1988, to allow all interested parties to submit comments and information.

On December 28, 1988 (53 FR 52452), we published in the **Federal Register** a finding that the requested reclassification was warranted with respect to chimpanzees in the wild. This decision was based on the petition and subsequent supporting comments which dealt primarily with the status of the species in the wild and not with the viability of captive populations. Furthermore, we found that the special rule exempting captive chimpanzees in the United States from the general prohibitions may encourage

propagation, providing surplus animals and reducing the incentive to remove animals from the wild. On February 24, 1989 (54 FR 8152), we published in the **Federal Register** a proposed rule to implement such reclassification. We did not propose reclassification of captive chimpanzees. Following publication of the proposed rule, we opened a 60-day comment period to allow all interested parties to submit comments and information.

On March 12, 1990, we published in the **Federal Register** (55 FR 9129) a final rule reclassifying the wild populations of the chimpanzees as endangered. The captive chimpanzees remained classified as threatened, and those within the United States continued to be covered by the special rule allowing activities otherwise prohibited.

## Finding

On the basis of information provided in the petition we find that the petition presents substantial scientific or commercial information indicating that listing the entire species of chimpanzee as endangered may be warranted. Therefore, we will initiate a status review to determine if listing the species in its entirety is warranted. To ensure that the status review is comprehensive, we are soliciting scientific and commercial information regarding this species (see Information Solicited).

It is important to note that the ''substantial information'' standard for a 90-day finding is in contrast to the Act's ''best scientific and commercial data'' standard that applies to a 12-month finding as to whether a petitioned action is warranted. A 90-day finding is not a status assessment of the species and does not constitute a status review under the Act. Our final determination as to whether a petitioned action is warranted is not made until we have completed a thorough review of the status of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

## Author

The primary authors of this notice are the staff members of the Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 22, 2011.

**Gregory E. Siekaniec,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2011–22372 Filed 8–31–11; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

Federal Register

Vol. 76, No. 170

Thursday, September 1, 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 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:* Bureau of Industry and Security (BIS).

*Title:* Competitive Enhancement Needs Assessment Survey Program.

*OMB Control Number:* 0694–0083.

*Form Number(s):* N/A.

*Type of Request:* Regular submission (extension of a currently approved information collection).

*Burden Hours:* 2,400.

*Number of Respondents:* 2,400.

*Average Hours per Response:* 1 hour.

*Needs and Uses:* The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense. They also develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from voluntary surveys will be used to assist small and medium in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal laboratories. The goal is to improve regions of the country adversely affected by cutbacks in defense spending and military base closures.

*Affected Public:* Business or other for-profit organizations.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 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 Jasmeet Seehra, Office of Management and Budget (OMB), by e-mail to *jseehra@omb.eop.gov,* or by fax to (202) 395–7285.

Dated: August 26, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–22369 Filed 8–31–11; 8:45 am]

BILLING CODE 3510–33–P

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Meeting of the National Advisory Council on Innovation and Entrepreneurship

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice of an open meeting.

**SUMMARY:** The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, Sept 13, 2011. The open meeting will be conducted from 10 a.m. to 12 p.m. (EDT). A limited number of seats are available to members of the public who would like to attend the meeting in person. The public can also dial in to the meeting via a listen-only conference number 888–942–9574, passcode 6315042. The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

**DATES:** Sept. 13, 2011.

**TIME:** 10 a.m.–12 p.m. (EDT).

**ADDRESSES:** The meeting will be held in Building 101 at the Philadelphia Navy Yard at 4747 South Broad Street, Philadelphia, PA 19112. For in person or audio only participation, please specify any requests for reasonable accommodation of auxiliary aids at least five business days in advance of the meeting. Last minute requests will be accommodated based on capacity limitations.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to provide a progress report on outcomes related to NACIE's earlier work on access to capital and technology commercialization; update the council on ongoing Administration priorities, including Startup America and the President's Council on Jobs and Competitiveness; and continue work focusing on regional innovation ecosystems, technology commercialization, and high-growth entrepreneurship. The agenda may change to accommodate NACIE business. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/nacie*.

Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to Darryl Scott at the contact information indicated below. Copies of meeting minutes will be available within 90 days of the meeting at *http://www.eda.gov/NACIE.*

**FOR FURTHER INFORMATION CONTACT:** Darryl Scott, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–3309, *e-mail: dscott@eda.doc.gov.* Please reference, ''NACIE September 13, 2011'' in the subject line of your e-mail.

Dated: August 26, 2011.

**Paul J. Corson,**

*Office of Innovation and Entrepreneurship, U.S. Department of Commerce.*

[FR Doc. 2011–22404 Filed 8–31–11; 8:45 am]

BILLING CODE 3510–03–P

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**[Docket No. 110722412–1428–01]**

### Effects of Foreign Policy-Based Export Controls

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

**ACTION:** Request for comments.

**SUMMARY:** The Bureau of Industry and Security (BIS) seeks public comments on the effect of existing foreign policy-

based export controls in the Export Administration Regulations. BIS requests comments to comply with the requirements of Section 6 of the Export Administration Act (EAA) which requires BIS to consult with industry on the effect of such controls and report to Congress the results of that consultation. Comments from all interested persons are welcome. All comments will be made available for public inspection and copying and included in a report to be submitted to Congress.

**DATES:** Comments must be received by October 3, 2011.

**ADDRESSES:** Comments may be sent by e-mail to *publiccomments@bis.doc.gov* or on paper to Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230. Include the phrase ''FPBEC Comment'' in the subject line of the e-mail message or on the envelope if submitting comments on paper. All comments must be in writing (either e-mail or on paper). All comments, including Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter, will be a matter of public record and will be available for public inspection and copying. Do not submit confidential business information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Anthony Christino, Director, Foreign Policy Division, Office of Nonproliferation Controls and Treaty Compliance, Bureau of Industry and Security, telephone 202–482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/news/2011/2011_fpreport.pdf,* and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

**SUPPLEMENTARY INFORMATION:** Foreign policy-based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended, (50 U.S.C. app. sections 2401–2420 (2000)) (EAA). The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR (15 CFR parts 730–774), including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Other Special Controls). These controls apply to a range of countries, items, activities and persons, including:

- Entities acting contrary to the national security or foreign policy interests of the United States (§ 744.11);
- Certain general purpose microprocessors for ''military end-uses'' and ''military end-users'' (§ 744.17);
- Significant items (SI):
- Hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14);
- Encryption items (§ 742.15);
- Crime control and detection items (§ 742.7);
- Specially designed implements of torture (§ 742.11);
- Certain firearms and related items based on the Organization of American States Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Munitions included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17);
- Regional stability items (§ 742.6);
- Equipment and related technical data used in the design, development, production, or use of certain rocket systems and unmanned air vehicles (§§ 742.5 and 744.3);
- Chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§§ 742.2 and 744.4) and various chemicals included on the list of those chemicals controlled pursuant to the Chemical Weapons Convention (§ 742.18);
- Nuclear propulsion (§ 744.5);
- Aircraft and vessels (§ 744.7);
- Restrictions on exports and reexports to certain persons designated as proliferators of weapons of mass destruction (§ 744.8);
- Communication intercepting devices, software and technology (§ 742.13);
- Embargoed countries (part 746);
- Countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 746.2, 746.4, 746.7, and 746.9);
- Certain entities in Russia (§ 744.10);
- Individual terrorists and terrorist organizations (§§ 744.12, 744.13 and 744.14);
- Certain persons designated by Executive Order 13315 (''Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members'') (§ 744.18);
- Certain sanctioned entities (§ 744.20); and
- Certain cameras to be used by military end-users or incorporated into a military commodity (§ 744.9).

In addition, the EAR impose foreign policy controls on nuclear-related commodities, technology, end-uses and end-users (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act (42 U.S.C. 2139a).

Under the provisions of Section 6 of the EAA, export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)). The Department of Commerce, as appropriate, continues to comply with the provisions of section 6 of the EAA by reviewing its foreign policy-based export controls, requesting public comments on such controls, and preparing a report to be submitted to Congress. In January 2011, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect. BIS now solicits public comment on the effects of extending the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to extend U.S. foreign policy based export controls are the following:

1. The likelihood that such controls will achieve their intended foreign policy purposes, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;
2. Whether the foreign policy objective of such controls can be achieved through negotiations or other alternative means;
3. The compatibility of the controls with the foreign policy objectives of the United States and with overall U.S. policy toward the country subject to the controls;
4. Whether the reaction of other countries to the extension of such controls is not likely to render the controls ineffective in achieving the intended foreign policy objective or be counterproductive to U.S. foreign policy interests;
5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export

performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to effectively enforce the controls.

BIS is particularly interested in receiving comments on the economic impact of proliferation controls. BIS is also interested in information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.,* those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do U.S. trade partners have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners that are similar to U.S. foreign policy based export controls, including license review criteria, use of conditions, and requirements for pre- and post-shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for bringing foreign policy-based export controls more into line with multilateral practice.

5. Comments or suggestions to make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on trade or acquisitions by intended targets of the controls.

7. Data or other information on the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions for measuring the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals. BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and in developing the report to Congress. All comments received in response to this notice will be displayed on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* All comments will be included in a report to Congress to comply with the requirement of Section 6 of the EAA, which directs that BIS report to Congress the results of its consultations with industry on the effects of foreign policy controls.

Dated: August 2, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2011–21646 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**Background**

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1394.

**Upcoming Sunset Reviews for October 2011**

There are no Sunset Reviews scheduled for initiation in October 2011.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3, *Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Dated: August 25, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–22470 Filed 8–31–11; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[Docket No. 110729450–1450–01]**

### Call for Applications for the International Buyer Program Calendar Year 2013

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice and Call for Applications.

**SUMMARY:** This notice sets forth objectives, procedures and application review criteria associated with support for domestic trade shows by the International Buyer Program (IBP) of the U.S. Department of Commerce (DOC). This announcement covers selection for International Buyer Program participation for calendar year 2013 (January 1, 2013 through December 31, 2013). The purpose of the IBP program is to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential.

**DATES:** Applications must be received by October 31, 2011.

**ADDRESSES:** The application may be downloaded from *http://www.export.gov/IBP.* Applications may be submitted by any of the following methods: (1) Mail/Hand Delivery Service: International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, Ronald Reagan Building, 1300 Pennsylvania Ave., Suite 800M—Mezzanine Level—Atrium North, Washington DC 20004. Telephone (202) 482–4207; (2) *Facsimile:* (202) 482–7800; or (3) *e-mail: IBP2013@trade.gov.* Facsimile and e-mail applications will be accepted as interim applications, but must be followed by a signed original application that is received by the program no later than five (5) business

days after the application deadline. To ensure that applications are timely received by the deadline, applicants are strongly urged to send applications by hand delivery service (*e.g.,* U.S. Postal Service Express Delivery, Federal Express, UPS, *etc.*).

**FOR FURTHER INFORMATION CONTACT:** Blanche Ziv, Director, International Buyer Program, Trade Promotion Programs, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce, 1300 Pennsylvania Ave., Ronald Reagan Building, Suite 800M—Mezzanine Level—Atrium North, Washington DC 20004; Telephone (202) 482–4207; *Facsimile:* (202) 482–7800; *E-mail: IBP2013@trade.gov.*

**SUPPLEMENTARY INFORMATION:** The International Buyer Program was established to bring international buyers together with U.S. firms by promoting leading U.S. trade shows in industries with high export potential. The International Buyer Program emphasizes cooperation between the DOC and trade show organizers to benefit U.S. firms exhibiting at selected events and provides practical, hands-on assistance such as export counseling and market analysis to U.S. companies interested in exporting. The assistance provided to show organizers includes worldwide overseas promotion of selected shows to potential international buyers, end-users, representatives and distributors. The worldwide promotion is executed through the offices of the DOC U.S. and Foreign Commercial Service (hereinafter referred to as the Commercial Service) in more than 76 countries representing the United States' major trading partners, and also in U.S. Embassies in countries where the Commercial Service does not maintain offices.

The Commercial Service is accepting applications for the International Buyer Program for trade events taking place between January 1, 2013 and December 31, 2013. Selection of a trade show is valid for one event, *i.e.,* a trade show organizer seeking selection for a recurring event must submit a new application for selection for each occurrence of the event. Even if the event occurs more than once in the 12-month period covered by this announcement, the trade show organizer must submit a separate application for each event.

The Commercial Service expects to select approximately 35 events from among applicants to the program for the January 1, 2013 through December 31, 2013 period. The Commercial Service will select those events that are determined to most clearly meet the Commercial Service's statutory mandate to promote U.S. exports, especially those of small- and medium-sized enterprises, and that best meet the selection criteria articulated below. Shows selected for the International Buyer Program will provide a venue for U.S. companies interested in expanding their sales into international markets. Successful show organizer applicants will be required to enter into a Memorandum of Agreement (MOA) with the DOC. The MOA constitutes an agreement between the DOC and the show organizer specifying which responsibilities are to be undertaken by the DOC as part of the International Buyer Program and, in turn, which responsibilities are to be undertaken by the show organizer. Anyone requesting application information will be sent a sample copy of the MOA along with the application and a copy of this **Federal Register** Notice. Applicants are encouraged to review the MOA closely as IBP participants are required to comply with all terms and conditions in the MOA, including construction of an international business center at the trade show and producing an export interest directory. The responsibilities to be undertaken by the DOC will be carried out by the Commercial Service.

There is no fee required to submit an application. If accepted into the program, a participation fee of $8,000 for shows of five days or less is required within 45 days of written notification of acceptance into the program. For trade shows more than five days in duration, or requiring more than one International Business Center, a participation fee of $14,000 is required. For trade shows ten days or more in duration, and/or requiring more than two International Business Centers, the participation fee will be negotiated, but shall not be less than $19,500.

The DOC selects trade shows to be International Buyer Program partners that it determines to be leading international trade shows appropriate for participation by U.S. exporting firms and for promotion in overseas markets by U.S. Embassies and Consulates. Selection as an International Buyer Program partner does not constitute a guarantee by the U.S. Government of the show's success. International Buyer Program partnership status is not an endorsement of the show organizer except as to its international buyer activities. Non-selection should not be viewed as a finding that the event will not be successful in the promotion of U.S. exports.

*Exclusions:* Trade shows that are either first-time or horizontal (non-industry specific) events generally will not be considered.

*Eligibility:* All 2013 U.S. trade events are eligible to apply.

*General Evaluation Criteria:* The Commercial Service will evaluate shows to be International Buyer Program partners using the following criteria:

(a) *Level of Intellectual Property Rights Protection:* The trade show organizer includes in the terms and conditions of its exhibitor contracts provisions for the protection of intellectual property rights (IPR); has procedures in place at the trade show to address IPR infringement, which, at a minimum, provides information to help U.S. exhibitors procure legal representation during the trade show; and agrees to assist the DOC to reach and educate U.S. exhibitors on the Strategy Targeting Organized Piracy (STOP!), IPR protection measures available during the show, and the means to protect IPR in overseas markets, as well as in the United States.

(b) *Export Potential:* The trade show promotes products and services from U.S. industries that have high export potential, as determined by DOC sources, *e.g.,* Commercial Service best prospects lists and U.S. export statistics (certain industries are rated as priorities by our domestic and international commercial officers in their Country Commercial Guides, available through the Web site, *http://www.export.gov*).

(c) *Level of International Interest:* The trade show meets the needs of a significant number of overseas markets and corresponds to marketing opportunities as identified by the posts in their Country Commercial Guides (*e.g.,* best prospect lists). Previous international attendance at the show may be used as an indicator.

(d) *Scope of the Show:* The event must offer a broad spectrum of U.S. made products and services for the subject industry. Trade shows with a majority of U.S. firms as exhibitors are given priority.

(e) *U.S. Content of Show Exhibitors:* Trade shows with exhibitors featuring a high percentage of products produced in the United States or products with a high degree of U.S. content will be preferred.

(f) *Stature of the Show:* The trade show is clearly recognized by the industry it covers as a leading event for the promotion of that industry's products and services both domestically and internationally, and as a showplace for the latest technology or services in that industry.

(g) *Level of Exhibitor Interest:* There is demonstrated interest on the part of U.S. exhibitors in receiving international

business visitors during the trade show. A significant number of U.S. exhibitors should be new-to-export (NTE) or seeking to expand their sales into additional export markets.

(h) *Level of Overseas Marketing:* There has been a demonstrated effort to market prior shows overseas. In addition, the applicant should describe in detail the international marketing program to be conducted for the event, and explain how efforts should increase individual and group international attendance. (Planned cooperation with Visit USA Committees overseas is desirable. For more information on Visit USA Committees go to: *http://www.visitusa.com*)

(i) *Logistics:* The trade show site, facilities, transportation services, and availability of accommodations at the site of the exhibition must be capable of accommodating large numbers of attendees whose native language will not be English.

(j) *Level of Cooperation:* The applicant demonstrates a willingness to cooperate with the Commercial Service to fulfill the program's goals and adhere to the target dates set out in the MOA and in the event timetables, both of which are available from the program office (see the ''**FOR FURTHER INFORMATION CONTACT**'' section above). Past experience in the International Buyer Program will be taken into account in evaluating the applications received for the January 1, 2013 through December 31, 2013 period.

(k) *Delegation Incentives:* Show organizers should offer a range of incentives to be offered to delegations and/or delegation leaders recruited by the Commercial Service overseas posts. Examples of incentives to international visitors and to organized delegations include, but are not limited to: Waived or reduced admission fees; special organized events, such as receptions, meetings with association executives, briefings, and site tours; and complimentary accommodations for delegation leaders. Waived or reduced admission fees are required for international attendees who are members of Commercial Service recruited delegations under this program. Delegation leaders also must be provided complimentary admission to the event.

*Application Requirements:* Show organizers submitting applications for the 2013 International Buyer Program are requested to submit: (1) A narrative statement addressing each question in the application, Form ITA–4102P; (2) a signed statement that ''The above information provided is correct and the applicant will abide by the terms set forth in this Call for Applications for the 2013 International Buyer Program (January 1, 2013 through December 31, 2013)''; and (3) two copies of the application, on company letterhead, and one electronic copy submitted on a CD-RW (preferably in Microsoft Word® format), on or before the deadline noted above. There is no fee required to apply. The DOC expects to issue the results of this process in April 2012.

*Legal Authority:* The Commercial Service has the legal authority to enter into MOAs with show organizers (partners) under the provisions of the Mutual Educational and Cultural Exchange Act of 1961 (MECEA), as amended (22 U.S.C. sections 2455(f) and 2458(c)). MECEA allows the Commercial Service to accept contributions of funds and services from firms for the purposes of furthering its mission. The statutory program authority for the Commercial Service to conduct the International Buyer Program is 15 U.S.C. 4724.

The Office of Management and Budget (OMB) has approved the information collection requirements of the application to this program (Form ITA–4102P) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (OMB Control No. 0625–0151).

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.

Dated: August 24, 2011.

**Blanche Ziv,**

*Director, International Buyer Program, U.S. and Foreign Commercial Service, International Trade Administration, U.S. Department of Commerce.*

[FR Doc. 2011–22157 Filed 8–31–11; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Five-Year (''Sunset'') Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating a five-year review (''Sunset Review'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing *Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998).

### Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

| DOC Case No. | ITC Case No. | Country | Product | Department contact |
|---|---|---|---|---|
| A–821–807 | 731–TA–702 | Russia | Ferrovanadium and Nitrided Vanadium (3rd Review). | David Goldberger (202) 482–4136. |
| A–570–831 | 731–TA–683 | PRC | Fresh Garlic (3rd Review) | Dana Mermelstein (202) 482–1391. |
| A–570–835 | 731–TA–703 | PRC | Furfuryl Alcohol (3rd Review) | Julia Hancock (202) 482–1394. |

**Filing Information**

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: *http://ia.ita.doc.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules can be found at 19 CFR 351.303.

This notice serves as a reminder that any party submitting factual information in an AD/CVD 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 AD/CVD investigations or 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) & (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 investigations/proceedings initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

**Information Required From Interested Parties**

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

*See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that *all parties* wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 25, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–22465 Filed 8–31–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Renewable Energy and Energy Efficiency Advisory Committee

**AGENCY:** International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of an Open Meeting.

**SUMMARY:** The Renewable Energy and Energy Efficiency Advisory Committee (RE&EEAC) will hold a meeting to deliver 11 recommendations to the Secretary of Commerce and other U.S. agencies' officials regarding the development and administration of programs and policies to enhance the competitiveness of the U.S. renewable energy and energy efficiency industries, including specific challenges associated with exporting. The Committee will also discuss its workplan for the remainder of its 2011–2012 charter.

**DATES:** September 15, 2011, from 8 a.m. to 3:30 p.m. Eastern Daylight Time (E.D.T.).

**ADDRESSES:** The meeting will be held at the U.S. Department of Commerce, Room 3407, 1401 Constitution Avenue, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Brian O'Hanlon, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, U.S. Department of Commerce at (202) 482–3492; *e-mail: brian.ohanlon@trade.gov.* This meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to OEEI at (202) 482–3492.

**SUPPLEMENTARY INFORMATION:**

*Background:* The Secretary of Commerce established the RE&EEAC pursuant to his discretionary authority and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) on July 14, 2010. The RE&EEAC provides the Secretary of Commerce with consensus advice from the private sector on the development and administration of programs and policies to enhance the international competitiveness of the U.S. renewable energy and energy efficiency industries. The RE&EEAC held its first meeting on December 7, 2010 and subsequent meetings on March 1, 2011, May 31–June 1, 2011, and August 19, 2011.

The meeting is open to the public and the room is disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Brian O'Hanlon at

the contact information above by 5 p.m. E.D.T. on Friday, September 9, in order to pre-register for clearance into the building. Please specify any request for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill. A limited amount of time, from 3 p.m. until 3:30 p.m., will be available for pertinent brief oral comments from members of the public attending the meeting.

Any member of the public may submit pertinent written comments concerning the RE&EEAC's affairs at any time before or after the meeting. Comments may be submitted to brian.ohanlon@trade.gov or to the Renewable Energy and Energy Efficiency Advisory Committee, Office of Energy and Environmental Technologies Industries (OEEI), International Trade Administration, Room 3407; 1401 Constitution Avenue, NW., Washington, DC 20230. To be considered during the meeting, comments must be received no later than 5 p.m. E.D.T. on Friday, September 9, 2011, to ensure transmission to the Committee prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of RE&EEAC meeting minutes will be available within 30 days of the meeting.

**Edward A. O'Malley,**

*Director, Office of Energy and Environmental Industries.*

[FR Doc. 2011–22333 Filed 8–31–11; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Fishery Capacity Reduction Program Buyback Requests

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before October 31, 2011.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Paul Marx, (301) 427–8771 or *Paul.Marx@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

This request is for an extension of a current information collection.

NOAA has established a program to reduce excess fishing capacity by paying fishermen to (1) surrender their fishing permits or (2) surrender their permits, and either scrap their vessels or restrict vessel titles to prevent fishing. These fishing capacity reduction programs, or buybacks, can be funded by a Federal loan to the industry or by direct Federal or other funding. These buybacks are conducted pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, and the Magnuson-Stevens Reauthorization Act (Pub. L. 109–479). The regulations implementing the buybacks are at 50 CFR part 600.

Depending upon the type of buyback involved, the program can entail the submission of buyback requests by industry, the submission of bids, referenda of fishery participants, and reporting of the collection of fees to repay a Federal loan. For buybacks involving State-managed fisheries, the State may need to develop the buyback plan and comply with other information requirements. The information collected by NMFS is required to request a buyback, submit supporting data for requested buybacks, to submit bids, and to conduct referenda of fishery participants.

The recordkeeping and reporting requirements at 50 CFR parts 600.1013 through 600.1017 form the basis for this collection of information on fee payment and collection. NMFS requests information from participating buyback participants. This information, upon receipt, tracks the repayment of the Federal loans that are issued as part of the buybacks, and ensures accurate management and monitoring of the loans during the repayment term.

### II. Method of Collection

Paper reports or electronic reports are required from buyback participants. Methods of submittal include mailing of paper forms, submission of forms via the Internet, and/or facsimile transmission of paper forms.

### III. Data

*OMB Control Number:* 0648–0376.

*Form Number:* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations; individuals or households; and State, Local, or Tribal government.

*Estimated Number of Respondents:* 1,200.

*Estimated Time per Response:* 6,634 hours for an implementation plan, 4 hours for a referenda vote, 4 hours for an invitation to bid, 10 minutes to complete fish ticket data, 2 hours for the monthly buyer fee collection report, 4 hours for the annual buyer fee collection report, potentially 270 hours for a state approval of plans and amendments to state fishery management plan, and 1 hour for advising of any holder or owner claims that conflict with accepted bidders' representations about reduction permit ownership or reduction vessel ownership.

*Estimated Total Annual Burden Hours:* 18,874.

*Estimated Total Annual Cost to Public:* $2,115.

### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 26, 2011.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2011–22368 Filed 8–31–11; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA665**

### New England 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 New England Fishery Management Council (Council) is scheduling and revising a public meeting of its Joint Skate/Whiting Committee and Whiting Advisory Panel on September 14, 2011 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Wednesday, September 14, 2011 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Hilton Providence, 21 Atwells Avenue, Providence, RI 02903; *telephone:* (401) 831–3900; *fax:* (407) 751–0007.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The original meeting notice published on August 26, 2011, (76 FR 53417). The meetings were to be held on September 14 and 15, however, the meeting for September 15th is cancelled.

### Wednesday, September 14, 2011

The Oversight Committee will review a Draft Final Skate Specifications Package for the 2012–13 fishing years and develop final recommendations for the September 2011 Council meeting. Beginning at 11 a.m., the Oversight Committee will meet jointly with the Whiting Advisory Panel to finalize and recommend potential management alternatives for Multispecies FMP Amendment 19 for the small mesh fishery (red hake, silver hake, offshore hake). These alternatives will include Annual Catch Limit (ACL) measures (allocations, buffers for management uncertainty, landings limits), Accountability Measures (AM), and possibly other measures to regulate the fishery and prevent catches from exceeding the ACL. Committee recommendations to include alternatives in Draft Amendment 19 will be made at the September 26–29 Council meeting.

If necessary, the Whiting Advisory Panel may meet separately during the meeting. The Skate/Whiting Oversight Committee will also review a final draft skate specifications package and make recommendations at the Council meeting. The Oversight Committee may discuss other business regarding whiting and skate management.

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 Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at 978–465–0492, at least 5 days prior to the meeting date.

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

Dated: August 29, 2011.

**Tracey L. Thompson,**

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

[FR Doc. 2011–22427 Filed 8–31–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA568**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey in the Arctic Ocean, September–October 2011

**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 Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to the University of Alaska Geophysics Institute (UAGI) to take marine mammals, by harassment, incidental to conducting a marine geophysical seismic survey in the Arctic Ocean during September–October 2011.

**DATES:** Effective September 5, 2011, through October 23, 2011.

**ADDRESSES:** A copy of the IHA and application may be obtained by writing to P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

The National Science Foundation (NSF), which is providing funding to UAGI to conduct the survey, prepared an ''Environmental Assessment of a Marine Geophysical Survey by the *R/V Marcus G. Langseth* in the Arctic Ocean, September–October 2011,'' prepared by LGL Ltd., Environmental Research Associates (LGL), on behalf of UAGI and NSF, which is also available at the same internet address. NMFS prepared its own Finding of No Significant Impact (FONSI), which is available at the same internet address. Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Candace Nachman, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of

such takings are set forth. 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 established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) 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 marine mammals. Within 45 days of the close of the 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**

NMFS received an application on March 4, 2011, from UAGI for the taking, by harassment, of marine mammals incidental to conducting a marine geophysical seismic survey in the Arctic Ocean. NMFS reviewed UAGI's application and identified a number of issues requiring further clarification. After addressing comments from NMFS, UAGI modified its application and submitted a revised application on May 10, 2011. The May 10, 2011, application was the one made available for public comment (see **ADDRESSES**) and considered by NMFS for this IHA.

UAGI proposes to conduct a 2D seismic survey in the Arctic Ocean, Chukchi Sea, in both international waters and within the U.S. Exclusive Economic Zone (EEZ) in water depths ranging from 30–3,800 m (98–12,467 ft). UAGI plans to conduct the seismic survey from September 5 through October 9, 2011, which includes vessel transit time from Dutch Harbor.

UAGI plans to use one source vessel, the R/V *Marcus G. Langseth* (*Langseth*) and a seismic airgun array to collect seismic reflection data across the transition from the Chukchi Shelf to the Chukchi Borderland to define the apparent change in structure between two large continental blocks. In addition to the operation of the seismic airgun array, UAGI intends to operate a multibeam echosounder (MBES) and a sub-bottom profiler (SBP) continuously throughout the survey. A 75-kilohertz (kHz) acoustic Doppler current profiler (ADCP) may also be used.

Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause a short-term behavioral disturbance for marine mammals in the survey area. This is the principal means of marine mammal taking associated with these activities, and UAGI requested and NMFS authorized the take of 11 species of marine mammals by Level B harassment in this IHA. These species are: Bowhead whale; gray whale; humpback whale; minke whale; fin whale; beluga whale; killer whale; bearded seal; spotted seal; ringed seal; and ribbon seal. Take is not expected to result from the use of the MBES or SBP; nor is take expected to result from collision with the vessel because it is a single vessel moving at a relatively slow speed during seismic acquisition within the survey, for a relatively short period of time (approximately 35 days). It is likely that any marine mammal would be able to avoid the vessel.

**Description of the Specified Activity**

UAGI's survey is proposed to occur in the area 72.5–77° N. and 160–175° W. in international waters and within the U.S. EEZ (see Figure 1 in UAGI's application). The project is scheduled to occur from September 5–October 9, 2011. Some minor deviation from these dates is possible, depending on logistics and weather. Therefore, the period of validity of the IHA is from September 5–October 23, 2011. The vessel will not be able to remain in the area once ice begins to form, as the *Langseth* is not an icebreaker. The *Langseth* would depart from Dutch Harbor on September 5, 2011, and sail northeast to arrive at approximately 72.5° N., 162° W., where the seismic survey will begin, more than 200 km (124 mi) from Barrow. The entire cruise would last for approximately 35 days, and it is estimated that the total seismic survey time will be approximately 25 days, depending on ice conditions. Seismic survey work is scheduled to terminate near the starting point at approximately 72.4° N., 164° W. on October 6; the vessel would then sail south to Dutch Harbor for arrival on October 9. There could be extra days of seismic shooting, if the collected data are of substandard quality.

The survey will include collection of seismic reflection data across the transition from the Chukchi Shelf to the Chukchi Borderland to define the apparent change in structure between two large continental blocks. This study will test existing tectonic models and develop new constraints on the development of the Amerasian Basin and will substantially advance our understanding of the Mesozoic history of this basin. In addition, these data will enable the formulation of new tectonic models for the history of this region, which will improve our understanding of the surrounding continents.

The survey will involve one source vessel, the *Langseth,* which is operated by Lamont-Doherty Earth Observatory (L–DEO), a part of Columbia University, under a cooperative agreement with NSF. The *Langseth* will deploy an array of 10 airguns (1,830 $in^3$) as an energy source at a tow depth of 6 m (19.7 ft). The receiving system will consist of a 2-km (1.2-mi) long hydrophone streamer. As the airgun array is towed along the survey lines, the hydrophone streamer will receive the returning acoustic signals and transfer the data to the on-board processing system. In addition, at least 72 sonobuoys will be deployed in order to record seismic refraction data. The *Langseth* will be avoiding the ice edge, and an ice expert will be available to provide daily guidance and to predict ice movements.

The program will consist of a total of approximately 5,502 km (3,419 mi) of survey lines, not including transits to and from the survey area when airguns will not be in use (see Figure 1 in UAGI's application). Water depths within the study area range from approximately 30–3,800 m (98–12,467). Just over half of the survey effort (55%) will occur in water 100–1,000 m (328–3,281 ft) deep, 32% will take place in water >1,000 m (3,281 ft) deep, and 13% will occur in water depths <100 m (328 ft). There will be additional seismic operations in the survey area associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard. In addition to the operations of the airgun array, a Kongsberg EM 122 MBES and a Knudsen 320B SBP will also be operated from the *Langseth* continuously throughout the cruise. A 75-kHz ADCP may also be used.

All planned geophysical data acquisition activities will be conducted by L–DEO with on-board assistance by the scientists who have proposed the study. The Principal Investigator (PI) is Dr. Bernard Coakley of UAGI. The

vessel will be self-contained, and the crew will live aboard the vessel for the entire cruise.

Table 1 in this document and Table 1 in UAGI's application show the distances at which three rms sound levels are expected to be received from the 10-airgun array and a single airgun. For the 10-airgun array, distances were modeled at seven sites; the distances in Table 1 are the averages from the sites in each depth range.

TABLE 1—MAXIMUM PREDICTED DISTANCES TO WHICH SOUND LEVELS ≥190, 180, AND 160 DB RE 1 μPA (RMS) COULD BE RECEIVED IN VARIOUS WATER-DEPTH CATEGORIES DURING THE PROPOSED SURVEY IN THE ARCTIC OCEAN

[The distances for the 10-airgun array are the averages of modeled 95% percentile distances at modeling sites in each depth range]

| Source and volume | Tow depth (m) | Water depth | Predicted RMS Radii (m) | | |
|---|---|---|---|---|---|
| | | | 190 dB | 180 dB | 160 dB |
| Single Bolt airgun 40 in$^3$ | 6 | Deep (>1000 m) | 12 | 40 | 385 |
| | | Intermediate (100–1000 m) | 18 | 60 | 578 |
| | | Shallow (<100) | 150 | 296 | 1050 |
| 1 string 10 airguns 1830 in$^3$ | 6 | Deep (>1000 m) | 130 | 425 | 14,070 |
| | | Intermediate (200–1000 m) | 130 | 1400 | 13,980 |
| | | Shallow (<200) | 190 | 1870 | 14,730 |

* The tow depth has minimal effect on the maximum near-field output and the shape of the frequency spectrum for the single 40 in$^3$ airgun; thus, the predicted safety radii are essentially the same at any tow depth.

NMFS expects that acoustic stimuli resulting from operation of the single airgun or the 10 airgun array has the potential to harass marine mammals, incidental to the conduct of the proposed seismic survey. NMFS expects these disturbances to be temporary and result, at worst, in a temporary modification in behavior and/or low-level physiological effects (Level B harassment) of small numbers of certain species of marine mammals. NMFS does not expect that the movement of the *Langseth,* during the conduct of the seismic survey, has the potential to harass marine mammals because of the relatively slow operation speed of the vessel (4–5 kts [7.4 to 9.3 km/hr]) during seismic data acquisition.

Additional details on the purpose of the survey program and details of the vessel, acoustic equipment to be deployed and predicted sound radii are contained in NMFS' Notice of Proposed IHA (76 FR 41463, July 14, 2011). The activities to be conducted have not changed between the proposed notice and this final issuance notice. The reader should refer to the proposed notice and documents referenced earlier in this notice for further details (see **ADDRESSES**).

## Comments and Responses

A Notice of Proposed IHA published in the **Federal Register** on July 14, 2011 (76 FR 41463) for public comment. During the 30-day public comment period, NMFS received two comment letters from the following: The Marine Mammal Commission (MMC) and the North Slope Borough (NSB). All of the public comment letters are available on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Following are the public comments and NMFS' responses.

*Comment 1:* The NSB recommends modifying the timing of the survey tracklines so that all of the proposed survey area closest to the Chukchi Sea coast is surveyed in mid-September and the farthest points or areas are sampled at the end of the survey period in October. This approach will help to mitigate possible impacts to the availability of marine mammals, most notably bowhead whales, to subsistence communities by moving the airgun array as far away from the communities as possible just before and during hunts.

*Response:* Both UAGI and L–DEO considered this request and reviewed the constraints of operating the *Langseth* in the survey region during the proposed time frame. The *Langseth* is not an ice strengthened vessel, and, therefore, it must avoid working in areas with ice. In addition, for safety reasons, the vessel must prevent towed seismic equipment from becoming entangled with ice. The safety of both the vessel and its crew is foremost when planning surveys, especially in the proposed challenging operational area. In the past few years, the freshly formed sea ice crowds in from the west, thus the *Langseth* will need to begin the survey during the low ice period in the far northwestern quadrant and work in a southeastern direction to avoid ice possibly being in the survey area. Further various ice-dependent mammals like walrus, polar bears and several species of seal will be avoided by avoiding encroaching ice flows.

The closest survey lines in the lower southeastern portion of the survey area are approximately 250 km (155 mi) from the Chukchi Sea coast. Subsistence whaling typically occurs nearshore. In the Chukchi Sea region, the fall hunt is generally conducted in an area that extends 16 km (10 mi) west of Barrow to 48 km (30 mi) north of Barrow. This information is confirmed by the Alaska Eskimo Whaling Commission (AEWC) in a recent letter to NMFS on a separate action, which states that ''[s]ubsistence hunters have a limited hunting range and prefer to take whales close to shore so as to avoid hauling a harvested whale a long distance over which the whale could spoil. During the fall, however, subsistence hunters in the Chukchi Sea will pursue bowhead whales as far as 50 miles (80 km) from the coast in small, fiberglass boats.'' Even if whaling crews venture out 80 km (50 mi), the *Langseth* would still be a minimum of 170 km (105.6 mi) from the hunting grounds at its closest point. Additionally, a local Barrow resident with knowledge about the marine mammals and fish of the area is expected to be included as an observer aboard the *Langseth.* This person will be able to act as a liaison with hunters if they are encountered at sea. In its 2011 Conflict Avoidance Agreement, the AEWC noted that geophysical activity should not occur within 48 km (30 mi) of the Chukchi Sea coast during the fall hunting season and any vessel operating within 96.5 km (60 mi) of the Chukchi Sea coast should participate in the Communication Centers. Neither of these triggers will be met during the UAGI survey; however, UAGI and L–DEO have agreed to communicate with Chukchi Sea hunters via the radio onboard the vessel. Based on this considerable distance from the traditional whale hunting grounds and the fact that the vessel will not come into any of the Chukchi Sea villages during the hunting season for resupply

or crew changes, NMFS has determined that there will not be an unmitigable adverse impact on the availability of marine mammals for subsistence uses, even if the southeastern portion of the project area is surveyed in late September/early October. NMFS must also weigh the practicability of applicant implementation when requiring mitigation measures. Because changing the survey design could potentially make it impossible to survey the area or compromise the vessel or its crew, NMFS has determined that it is not feasible to change the survey design.

*Comment 2:* The MMC recommends that NMFS require UAGI to re-estimate the proposed exclusion and buffer zones for the mitigation airgun using operational and site-specific environmental parameters and the modeled developed by Marine Acoustics, Inc. (MAI). If NMFS does not follow this recommendation, then the MMC recommends that NMFS provide a detailed justification for basing the exclusion and buffer zones for the proposed survey in the Chukchi Sea and Arctic Ocean on modeling that relies on measurements from the Gulf of Mexico and that is inconsistent with the modeling approach used for the 10-airgun array.

*Response:* NMFS is satisfied that the data supplied are sufficient for NMFS to conduct its analysis and make any determinations and therefore no further effort is needed by the applicant. While exposures of marine mammals to acoustic stimuli are difficult to estimate, NMFS is confident that the levels of take provided by L–DEO in their IHA application and EA, and authorized herein are estimated based upon the best available scientific information and estimation methodology.

Although L–DEO has modeled a variety of source configurations typically used on the *Langseth,* for this survey, the PI requested a small energy source and unique source configuration to conduct the proposed research (i.e., 10-airgun array with a discharge volume of 1,830 in$^3$). L–DEO did not have a model result for this source/configuration available for use or the capability within L–DEO at the time to prepare one. As a result, MAI was contracted by L–DEO to model the unique source and configuration for this survey. For that reason, a model capable of accounting for site-specific environmental parameters was used to estimate the various sound isopleths for the 10-gun array.

The proposed mitigation gun is considered a low-energy source, a single bolt 40 in$^3$ airgun. While the model for the mitigation gun does not account for site-specific environmental conditions in the Arctic, given the small source, it was viewed as unnecessary to run an additional model incorporating environmental context for this survey. Model results for the mitigation gun do not appear inconsistent with results produced by MAI for the larger array. Additionally, sound source verification (SSV) tests have been conducted for several small airgun sources in the Beaufort and Chukchi Seas in recent years. Although tests have not been conducted on a single bolt 40 in$^3$ airgun, SSV tests were conducted in 2008 on a 4 x 10 in$^3$ airgun array (total discharge volume of 40 in$^3$) and in 2009 on two 2 x 10 in$^3$ airgun array (total discharge volume of 40 in$^3$). These tests were conducted in shallow to intermediate water depths (as defined by the ranges provided in the UAGI IHA application). The 2008 test results indicate that sounds attenuated to 160-dB (rms) 1,400 m (4,593 ft) from the source, to 180-dB (rms) 160 m (525 ft) from the source, and to 190-dB (rms) 50 m (164 ft) from the source. The 2009 test results indicate that sounds attenuated to 160-dB (rms) 546 m (1,791 ft) from the source, to 180-dB (rms) 83 m (272 ft) from the source, and to 190-dB (rms) 33 m (108 ft) from the source. The results of these two tests are fairly consistent with the modeling for the single bolt gun to be used in this survey (see Table 1 earlier in this document). L–DEO intends to investigate new acoustic modeling programs in the future which incorporate environmental context. NMFS has considered the models and model results and has concluded that the proposed exclusions zones for the single mitigation gun are appropriate for the survey.

The IHA issued to UAGI, under section 101(a)(5)(D) of the MMPA provides monitoring and mitigation requirements to protect marine mammals from injury, serious injury, or mortality. UAGI is required to comply with the IHA's requirements. These analyses are supported by extensive scientific research and data. NMFS is confident in the peer-reviewed results of the L-DEO seismic calibration studies which, although viewed as conservative, were used to determine the sound radii for the mitigation airgun for this cruise and which factor into exposure estimates. NMFS has determined that these reviews are the best scientific data available for review of the IHA application and to support the necessary analyses and determinations under the MMPA, Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) and NEPA.

*Comment 3:* The NSB states that NMFS should require applicants to assess impacts of surveys to bowhead whales to the 120 dB level, especially in this case because the survey will overlap in time with migrating bowheads and the hunts in Barrow and Wainwright.

*Response:* As noted by the NSB in its letter, UAGI did consider the impacts to bowhead whales from sound levels lower than 160 dB in its application. Additionally, NMFS also noted reactions of bowhead whales to sounds below 160 dB in its Notice of Proposed IHA (76 FR 41463, July 14, 2011). The best information available to date for reactions by bowhead whales to noise, such as seismic, is based on the results from the 1998 aerial survey (as supplemented by data from earlier years) as reported in Miller *et al.* (1999). In 1998, bowhead whales below the water surface at a distance of 20 km (12.4 mi) from an airgun array received pulses of about 117–135 dB re 1 μPa rms, depending upon propagation. Corresponding levels at 30 km (18.6 mi) were about 107–126 dB re 1 μPa rms. Miller *et al.* (1999) surmise that deflection may have begun about 35 km (21.7 mi) to the east of the seismic operations, but did not provide sound pressure level (SPL) measurements to that distance and noted that sound propagation has not been studied as extensively eastward in the alongshore direction, as it has northward, in the offshore direction. Therefore, while this single year of data analysis indicates that bowhead whales may make minor deflections in swimming direction at a distance of 30–35 km (18.6–21.7 mi), there is no indication that the SPL where deflection first begins is at 120 dB; it could be at another SPL lower or higher than 120 dB. Miller *et al.* (1999) also note that the received levels at 20–30 km (12.4–18.6 mi) were considerably lower in 1998 than have previously been shown to elicit avoidance in bowheads exposed to seismic pulses. However, the seismic airgun array used in 1998 was larger than the ones used in 1996 and 1997. Therefore, while NMFS considers impacts to bowhead whales from sound levels below 160 dB, NMFS believes that it cannot scientifically support adopting any single SPL value below 160 dB and apply it across the board for all species and in all circumstances.

As stated in the past, NMFS does not believe that minor course corrections during a migration rise to a level of being a significant behavioral response. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that when, not migrating, but involved in feeding,

bowhead whales do not move away from a noise source at an SPL of 160 dB. Therefore, while bowheads may avoid an area of 20 km (12.4 mi) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS believes that does not rise to a level of a ''take.'' NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB (re 1 μPa).

Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals would react in a biologically significant way. According to experts on marine mammal behavior, the degree of reaction which constitutes a ''take,'' i.e., a reaction deemed to be biologically significant that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include, but are not limited to, other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naïve vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.,* 2007). Therefore, unless and until an improved approach is developed and peer-reviewed, NMFS will continue to use the 160-dB threshold for determining the level of take of marine mammals by Level B harassment for impulse noise (such as from airguns). While NMFS does not consider exposures to sounds below 160-dB (rms) as likely to result in take of marine mammals by Level B harassment, NMFS acknowledges that some behaviors that might result from exposures at these lower levels do have the potential to impact a subsistence hunt.

MAI did not model the 120-dB isopleths for the 10-airgun array for the 120-dB radius. Using back-of-the-envelope calculations, which do not take into consideration the site-specific environmental parameters as was done for calculating the 160-, 180-, and 190-dB radii, the 120-dB radius is anticipated to extend approximately 115 km (71.5 mi) in deep water (>1,000 m [3,281 ft]), 177 km (110 mi) in intermediate water (100–1,000 m [328–3,281 ft]), and 204 km (126.8 mi) in shallow water (<100 m [328 ft]). The planned survey tracklines lie between 250 and 800 km (155 and 497 mi) offshore of the Chukchi Sea coast. Therefore, when surveying in the project area closest to Barrow and Wainwright, the sound will attenuate to 120-dB approximately 50 km (31 mi) from the coast. Typical bowhead hunting grounds in Barrow are to the east of Point Barrow, therefore making this distance even greater. Although Wainwright has not landed a fall bowhead whale in many years, the village did land a whale on October 7, 2010. If Wainwright conducts its hunt around this same time in 2011, it will be just after the conclusion of the UAGI survey. UAGI intends to cease seismic operations (barring weather or operational delays) on October 5, 2011. The vessel will then spend approximately 4 days transiting to Dutch Harbor. The *Langseth* will remain approximately 80 km (50 mi) or more offshore while transiting through the Chukchi Sea, and no airguns will be operating at this time. Based on the information provided here and later in this document, it is not anticipated that the UAGI survey will have an unmitigable adverse impact on the bowhead whale hunts at Barrow or Wainwright.

*Comment 4:* The NSB recommends that NMFS request the applicant to revise the proposal (and take request, if needed) and evaluate the potential impacts from the MBES, SBP, and ADCP.

*Response:* The applicant provided an evaluation of the potential impacts to marine mammals from the use of these equipment sources in the IHA application and the associated Environmental Assessment (EA). Additionally, NMFS evaluated the potential use of these devices and the potential impact that the sources may have on marine mammals in the Notice of Proposed IHA (76 FR 41463, July 14, 2011).

NMFS has determined that it is not necessary to calculate take, beyond what has already been calculated, from the use of these higher-frequency sound sources. The acoustic footprints of these sources are anticipated to fall within that of the airgun array. The likelihood of a marine mammal swimming within the narrow beams of these sources is small. If the animal were to swim within the area under the vessel where it could potentially be exposed to these sounds, it would likely only be subjected to a single pulse because of the narrow beams. Therefore, no additional take has been calculated for these sources.

*Comment 5:* The Commission recommends that if NMFS is planning to allow the applicant to resume full power after 8 minutes (min) under certain circumstances, specify in the authorization in all conditions under which an 8 min period could be followed by a full-power resumption of the airguns.

*Response:* NMFS has specified in the IHA all conditions when UAGI may resume full power after 8 min. During periods of active seismic operations, there are occasions when the airguns need to be temporarily shut-down (for example due to equipment failure, maintenance, or shut-down) or a power-down is necessary (for example when a marine mammal is seen to either enter or about to enter the exclusion zone [EZ]). In these instances, should the airguns be inactive or powered-down for more than 8 min, then L–DEO would follow the ramp-up procedures identified in the ''Mitigation'' section found later in this document where airguns will be re-started beginning with the smallest airgun in the array and increase in steps not to exceed 6 dB per 5 min over a total duration of approximately 30 min. NMFS and NSF believe that the 8 min period in question is an appropriate minimum amount of time to pass after which a ramp-up process should be followed. In these instances, should it be possible for the airguns to be re-activated without exceeding the 8 min period (for example equipment is fixed or a marine mammal is visually observed to have left the EZ for the full source level), then the airguns would be reactivated to the full operating source level identified for the survey (in this case, 1,830 $in^3$) without need for initiating ramp-up procedures. In the event a marine mammal enters the EZ and a power-down is initiated, and the marine mammal is not visually observed to have left the EZ, then UAGI and L–DEO must wait 15 min (for species with shorter dive durations—small odontocetes and pinnipeds) or 30 min (for species with longer dive durations—mysticetes) after the last sighting before ramp-up procedures can be initiated, or as otherwise directed by requirements in an IHA. However, ramp-up will not occur as long as a marine mammal is detected within the EZ, which provides more time for animals to leave the EZ, and accounts for the position, swim speed, and heading of marine mammals within the EZ.

*Comment 6:* The Commission recommends that NMFS condition the authorization to require UAGI to monitor, document, and report observations during all ramp-up procedures.

*Response:* The IHA requires that observers on the *Langseth* make observations for 30 min prior to ramp-up, during all ramp-ups, and during all daytime seismic operations and record the following information when a marine mammal is sighted:

(i) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction of the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc., and including responses to ramp-up), and behavioral pace; and

(ii) Time, location, heading, speed, activity of the vessel (including number of airguns operating and whether in state of ramp-up or power-down), Beaufort wind force and sea state, visibility, and sun glare.

*Comment 7:* The Commission recommends that NMFS work with NSF to analyze these monitoring data to help determine the effectiveness of ramp-up procedures as a mitigation measure for geophysical surveys after the data are compiled and quality control measures have been completed.

*Response:* One of the primary purposes of monitoring is to result in ''increased knowledge of the species'' and the effectiveness of monitoring and mitigation measures; the effectiveness of ramp-up as a mitigation measure and marine mammal reaction to ramp-up would be useful information in this regard. NMFS has asked NSF and L–DEO to gather all data that could potentially provide information regarding the effectiveness of ramp-ups as a mitigation measure. However, considering the low numbers of marine mammal sightings and low numbers of ramp-ups, it is unlikely that the information will result in any statistically robust conclusions for this particular seismic survey. Over the long term, these requirements may provide information regarding the effectiveness of ramp-up as a mitigation measure, provided animals are detected during ramp-up.

*Comment 8:* The Commission recommends that NMFS, prior to granting the requested authorization, provide additional justification for its preliminary determination that the proposed monitoring program will be sufficient to detect, with a high level of confidence, all marine mammals within or entering the identified EZs and buffer zones, including:

(1) Identifying those species that it believes can be detected with a high degree of confidence using visual monitoring only,

(2) Describing detection probability as a function of distance from the vessel,

(3) Describing changes in detection probability under various sea state and weather conditions and light levels, and

(4) Explaining how close to the vessel marine mammals must be for Protected Species Observers (PSOs) to achieve high nighttime detection rates.

*Response:* NMFS determined that the planned monitoring program will be sufficient to detect (using visual monitoring and passive acoustic monitoring [PAM]), with reasonable certainty, marine mammals within or entering identified EZs. This monitoring, along with the required mitigation measures, will result in the least practicable impact on the affected species or stocks, will result in a negligible impact on the affected species or stocks of marine mammals, and will not have an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. Also, NMFS expects some animals to avoid areas around the airgun array ensonified at the level of the EZ.

NMFS acknowledges that the detection probability for certain species of marine mammals varies depending on animal's size and behavior, as well as sea state, weather conditions, and light levels. The detectability of marine mammals likely decreases in low light (i.e., darkness), higher Beaufort sea states and wind conditions, and poor weather (e.g., fog and/or rain). However, at present, NMFS views the combination of visual monitoring and PAM as the most effective monitoring and mitigation techniques available for detecting marine mammals within or entering the EZ. The final monitoring and mitigation measures are the most effective feasible measures, and NMFS is not aware of any additional measures which could meaningfully increase the likelihood of detecting marine mammals in and around the EZ. Further, public comment has not revealed any additional monitoring or mitigation measures that could be feasibly implemented to increase the effectiveness of detection.

NSF, UAGI, and L–DEO are receptive to incorporating proven technologies and techniques to enhance the current monitoring and mitigation program. Until proven technological advances are made, nighttime mitigation measures during operations include combinations of the use of visual PSOs for ramp-ups, PAM, night vision devices (NVDs), and continuous shooting of a mitigation airgun. L–DEO has conducted two tests regarding the effectiveness of NVDs and nighttime sightings. Results of those tests indicated that NVDs are effective to at least 150–200 m (492–656 ft) from the vessel, and observing with the naked eye at night (i.e., darkness) is effective to about 30 m (98 ft) from the vessel. Should the airgun array be powered-down, the operation of a single airgun would continue to serve as a sound source deterrent to marine mammals. In the event of a complete shut-down of the airgun array at night for mitigation or repairs, L–DEO suspends the data collection until one-half hour after nautical twilight-dawn (when PSOs are able to clear the EZ). L–DEO will not activate the airguns until the entire EZ is visible for at least 30 min.

In cooperation with NMFS, L–DEO will be conducting efficacy experiments of NVDs during a future *Langseth* cruise. In addition, in response to a recommendation from NMFS, L–DEO is evaluating the use of handheld forward-looking thermal imaging cameras to supplement nighttime monitoring and mitigation practices. During other low power seismic and seafloor mapping surveys, L–DEO successfully used these devices while conducting nighttime seismic operations.

*Comment 9:* The NSB states that if PAM is intended to be used to help monitor the EZs, they recommend that NMFS require a different acoustic monitoring tool because the applicant did not provide details about the efficacy of their proposed approach for PAM and previous efforts to use PAM in the Chukchi Sea have had limited success. NMFS could require the deployment of sonobuoys as a means to detect marine mammals within or about to enter the EZs. The NSB fully supports the continued testing and development of PAM as a monitoring tool.

*Response:* NMFS has determined that the PAM system proposed to be used during the UAGI survey is sufficient. The use of sonobuoys to detect marine mammals is unlikely to provide additional detection or monitoring benefits over the PAM system aboard the *Langseth.* Single sonobuoys cannot be used to localize animals within the EZ, and NMFS is unaware of an effective method for deploying and using multiple sonobuoys together while on the move or the software to integrate the data in a timely fashion, whereas the PAM system is capable of determining rough approximates of animal locations, thus making the detections more meaningful in the augmentation of mitigation. Second,

vocalizing low-frequency baleen whales are unlikely to be detected through sonobuoys because these sounds are below the human auditory threshold, whereas the PAM system is set up to display sound spectrograms that would allow the detection of marine mammal vocalizations outside of the human auditory range. Additionally, the location of sonobuoys after they are deployed are unknown, but they are designed to operate in line of sight distance from the vessel which would only provide limited detection improvement to visual detections during the day, and little improvement in the detection range compared to the current PAM system. The use of sonobuoys to detect marine mammals in the Arctic has also been done in the past during a similar survey, but no detections were made, and it is unlikely that sonobuoys would provide any improvement to detections beyond the visual and passive acoustic monitoring plan described in the IHA application.

*Comment 10:* The Commission recommends that NMFS require the applicant to:

(1) Report on the number of marine mammals that were detected acoustically and for which a power-down or shut-down of the airguns was initiated;

(2) Specify if such animals also were detected visually; and

(3) Compare the results from the two monitoring methods (visual versus acoustic) to help identify their respective strengths and weaknesses.

*Response:* The IHA requires that acoustic PSOs on the *Langseth* do and record the following when a marine mammal is detected by the PAM:

(i) Notify the on-duty visual PSO(s) immediately of a vocalizing marine mammal so a power-down or shut-down can be initiated, if required;

(ii) Enter the information regarding the vocalization into a database. The data to be entered include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position, and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information.

L–DEO reports on the number of acoustic detections made by the PAM system within the post-cruise monitoring reports as required by the IHA. The report also includes a description of any acoustic detections that were concurrent with visual sightings, which allows for a comparison of acoustic and visual detection methods for each cruise.

The post-cruise monitoring reports also include the following information: the total operational effort in daylight (hrs), the total operational effort at night (hrs), the total number of hours of visual observations conducted, the total number of sightings, and the total number of hours of acoustic detections conducted.

LGL, a contractor for L–DEO, has processed sighting and density data, and their publications can be viewed online at: *http://www.lgl.com/index.php?option=com_content&view=article&id=69&Itemid=162&lang=en.* Post-cruise monitoring reports are currently available on the NMFS' MMPA Incidental Take Program website and on the NSF Web site (*http://www.nsf.gov/geo/oce/envcomp/index.jsp*) should there be interest in further analysis of this data by the public.

*Comment 11:* The NSB recommends that NMFS require that all seismic surveys, regardless of their location or timing in the Beaufort and Chukchi Seas, undergo the independent peer review process.

*Response:* NMFS' implementing regulations at 50 CFR 216.108(d) state that an independent peer review of a monitoring plan is required if the activity may affect the availability of a species or stock of marine mammals for taking for subsistence purposes. The independent peer review of monitoring plans for incidental take authorization applications is not required for activities that occur outside of Arctic waters or in Arctic waters if it is determined that the activity will not affect the availability of a species or stock of marine mammals for taking for subsistence purposes. UAGI provided NMFS with a draft IHA application in early March, 2011, which included information on the timing and location of its proposed seismic lines. For reasons stated in the Notice of Proposed IHA (76 FR 41463, July 14, 2011) and later in this document, NMFS determined it was not necessary to have UAGI's monitoring plan peer reviewed. The survey will occur in an area that is between 250 and 800 km (155 and 497 mi) northwest of Barrow and Wainwright. Sound levels in the closest portion of the survey area will attenuate to 120 dB at approximately 50 km (31 mi) from the coast. The bowhead whales will be traveling from the east in a westward direction, and will reach Barrow prior to entering the sound field of the survey. The survey will occur after the conclusion of the spring and summer beluga hunts in the Chukchi Sea. If any beluga hunting continues into early September, it will be when the vessel is transiting to the site, approximately 80 km (50 mi) offshore. Seal hunting occurs closer to shore and typically does not occur beyond 40 km (25 mi) from the coast. Additionally, a Barrow resident will be aboard the *Langseth* in order to communicate with hunters.

Since NMFS preliminarily determined (based on the information contained in the draft IHA application) that UAGI's activity would not affect the availability of a species or stock of marine mammals for taking for subsistence purposes, NMFS determined that their activity did not trigger the requirement for independent peer review of the monitoring plan. The trigger for needing an independent peer review of the monitoring plan is slightly different than the ''no unmitigable adverse impact'' determination that NMFS must make prior to the issuance of an IHA. Anyone is able to make recommendations on a proposed monitoring plan during the 30-day public comment period that is afforded during the proposed IHA process. NMFS will continue to make determinations on which activities require an independent peer review of the monitoring plans on a case-by-case basis in accordance with the implementing regulations.

*Comment 12:* The NSB states that NMFS should require each IHA applicant to contribute funding or support to gather additional scientific information about the long-term impacts of anthropogenic sounds on bowhead and beluga whales. This could occur through satellite tracking, more extensive aerial or acoustic surveys, or physiological studies related to stress or impacts to hearing.

*Response:* NMFS' implementing regulations at 50 CFR 216.104(a)(14) indicate that NMFS encourages additional research and that applicants should coordinate with others conducting research on marine mammals in the same area. However, NMFS is unable to require that an applicant provide funding to those already conducting research on marine mammals.

The research scientist involved with this survey plans to use seismic equipment to investigate the tectonic structure in the Amerasian basin. While the study of long term impacts to marine mammals that deflect away from anthropogenic sound is outside of the proposed scope of this project, UAGI does support a variety of scientists and research at its institution, including

marine mammal research. Data collected by PSOs on the *Langseth* during the survey will be made publicly available for further analysis by interested parties. This research project received funding from NSF. NSF has provided support and funding for workshops, conferences, and meetings related to the issue of anthropogenic sound in the marine environment and research proposals to enhance monitoring and mitigation measures for marine species, with a particular focus on marine mammals. NSF is receptive to receiving science proposals for funding consideration, including those to investigate anthropogenic sound in the marine environment and potential long-term effects. Proposals received would be reviewed and considered for funding through the standard NSF merit review process.

*Comment 13:* The NSB states that NMFS should request UAGI to revise their IHA application and take estimates to account for the migration of marine mammals through the proposed survey area.

*Response:* NMFS does not agree that the take estimates need to be revised for bowhead and beluga whales to account for migration. First, evidence has shown that the bowhead whale fall migratory route through the Chukchi Sea is more spread out than in the Beaufort Sea, where whales tend to have a more confined migratory corridor due to ice conditions. In a recent satellite tagging study, Quakenbush *et al.* (2010) concluded from GPS data that bowhead whales do not spend much time in the northern Chukchi Sea or the Arctic Ocean north of the Chukchi Sea, near UAGI's 2011 seismic survey. Quakenbush *et al.* (2010) note that most of the whales moved west through the Chukchi Sea between 71° and 74° N. UAGI's study area occurs between 72.5–77° N. Based on that data, only part of the survey area occurs in the migratory corridor. Kernel densities from the study showed that areas with the highest probability of bowhead use from September to December were near Point Barrow and the northeast Chukotka coast; the area along the east coast of Wrangel Island also had a moderate probability of use (Quakenbush *et al.,* 2010). In addition, movements and behavior of tagged bowhead whales in this study indicated that the greatest potential for disturbance from industrial activities is near Point Barrow in September and October and in the lease area in September. These locations are a considerable distance from UAGI's survey area.

UAGI used data collected during recent aerial surveys in the Chukchi Sea to determine likely densities of cetaceans in the fall. These data are considered the best available. Therefore, NMFS has determined that the authorized levels of take are appropriate. Reasoning for this determination was provided in the Notice of Proposed IHA (76 FR 41463, July 14, 2011). Additionally, UAGI included an additional 25 percent of survey tracklines into the calculations to account for lines associated with turns, airgun testing, and repeat coverage of any areas where initial data quality is sub-standard. Because UAGI multiplied the expected species density times the anticipated area to be ensonified to that level during airgun operations in each depth stratum, excluding overlap, this 25 percent contingency is included in the take calculations. Based on the reasoning provided here, NMFS has determined that it is unnecessary to recalculate the take estimates for bowhead and beluga whales or any other marine mammals that may occur in the seismic survey project area.

*Comment 14:* The Commission recommends that NMFS consult with the funding agency (i.e., NSF) and individual applicants (e.g., UAGI, L–DEO and U.S. Geological Survey) to develop, validate, and implement a monitoring program that provides a scientifically sound, reasonably accurate assessment of the types of marine mammal taking and number of marine mammals taken.

*Response:* Studies have reported on the abundance and distribution of marine mammals inhabiting the Arctic Ocean in the Chukchi Sea, which overlaps with the seismic survey area, and UAGI has incorporated this data into their analyses used to predict marine mammal take in their application. NMFS believes that UAGI's current approach for estimating abundance in the survey area (prior to the survey) is the best available approach.

There will be significant amounts of transit time during the cruise, and PSOs will be on watch prior to and after the seismic portions of the survey, in addition to during the survey. The collection of this visual observational data by PSOs may contribute to baseline data on marine mammals (presence/absence) and provide some generalized support for estimated take numbers, but it is unlikely that the information gathered from this single cruise would result in any statistically robust conclusions for any particular species because of the small number of animals typically observed.

NMFS acknowledges the MMC's recommendations and is open to further coordination with the MMC, NSF (the vessel owner), and L–DEO (the ship operator on behalf of NSF), to develop, validate, and implement a monitoring program that will provide or contribute towards a more accurate assessment of the types of marine mammal taking and the number of marine mammals taken. However, the cruise's primary focus is marine geophysical research, and the survey may be operationally limited due to considerations such as location, time, fuel, services, and other resources.

**Description of Marine Mammals in the Area of the Specified Activity**

The Chukchi Sea supports a diverse assemblage of marine mammals, including: bowhead, gray, beluga, killer, minke, humpback, and fin whales; harbor porpoise; ringed, ribbon, spotted, and bearded seals; narwhals; polar bears; and walruses. The bowhead, humpback, and fin whales are listed as endangered, and the polar bear is listed as threatened under the U.S. ESA. All of these species are also considered depleted under the MMPA. On December 10, 2010, NMFS published a notification of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notification of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither species is considered depleted under the MMPA.

The bowhead and beluga whales and the ringed and bearded seals are the marine mammal species most likely to be encountered during this survey, with the ringed seal being the most likely marine mammal species to occur throughout the survey area. Although humpback and minke whales are uncommon in the Arctic Ocean, sightings of both species have occurred in the Chukchi Sea in recent years (Brueggeman, 2009; Haley *et al.,* 2010; Clarke *et al.,* 2011).

There are scattered records of narwhal in Alaskan waters, where the species is considered extralimital (Reeves *et al.,* 2002). Harbor porpoises occur mainly in shelf areas where they can dive to depths of at least 220 m (722 ft) and stay submerged for more than 5 min (Harwood and Wilson, 2001). This species prefers shallower waters, making it unlikely that harbor porpoises would be encountered during the proposed seismic survey. Because of the rarity of these two species in the survey area, they are not considered further in this document. The polar bear and walrus are managed by the U.S. Fish and Wildlife Service (USFWS) and are

not considered further in this IHA notice.

Refer to Sections III and IV of UAGI's application for detailed information regarding the abundance and distribution, seasonal distribution, population status, and life history and behavior of these species and their occurrence in the project area. When reviewing the application, NMFS determined that the species descriptions provided by UAGI correctly characterized the abundance and distribution, seasonal distribution, population status, and life history and behavior of each species. Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The 2010 Alaska Marine Mammal SAR is available on the Internet at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2010.pdf.*

The application also presents how UAGI calculated the estimated densities for the marine mammals in the survey area (see **ADDRESSES**). NMFS reviewed these data and determined them to be the best available scientific information for the purposes of the IHA.

**Brief Background on Marine Mammal Hearing**

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms have been derived using auditory evoked potentials, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' for marine mammals and estimate the lower and upper frequencies of functional hearing of the groups. The functional groups and the associated frequencies are indicated below (though animals are less sensitive to sounds at the outer edge of their functional range and most sensitive to sounds of frequencies within a smaller range somewhere in the middle of their functional hearing range):

- Low frequency cetaceans (13 species of mysticetes): functional hearing is estimated to occur between approximately 7 Hz and 22 kHz (however, a study by Au *et al.* (2006) of humpback whale songs indicate that the range may extend to at least 24 kHz);
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): functional hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High frequency cetaceans (eight species of true porpoises, six species of river dolphins, Kogia, the franciscana, and four species of cephalorhynchids): functional hearing is estimated to occur between approximately 200 Hz and 180 kHz; and
- Pinnipeds in Water: functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.

As mentioned previously in this document, 11 marine mammal species (seven cetacean and four pinniped species) are likely to occur in the survey area. Of the seven cetacean species likely to occur in UAGI's survey area, five are classified as low frequency cetaceans (i.e., bowhead, gray, humpback, minke, and fin whales) and two are classified as mid-frequency cetaceans (i.e., beluga and killer whales) (Southall *et al.,* 2007).

**Potential Effects of the Specified Activity on Marine Mammals**

Acoustic stimuli generated by the operation of the airguns, which introduce sound into the marine environment, may have the potential to cause Level B harassment of marine mammals in the survey area. The effects of sounds from airgun operations might include one or more of the following: tolerance, masking of natural sounds, behavioral disturbance, temporary or permanent hearing impairment, or non-auditory physical or physiological effects (Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007). Takes by serious injury or mortality are not anticipated to occur as a result of the proposed activities and none are authorized in the IHA.

Permanent hearing impairment, in the unlikely event that it occurred, would constitute injury, but temporary threshold shift (TTS) is not an injury (Southall *et al.,* 2007). Although the possibility cannot be entirely excluded, it is unlikely that the project would result in any cases of temporary or permanent hearing impairment or any significant non-auditory physical or physiological effects. Based on available data and studies, some behavioral disturbance is expected, but NMFS expects the disturbance to be localized and short-term.

In the ''Potential Effects of Specified Activities on Marine Mammals'' section of the Notice of Proposed IHA, NMFS included a qualitative discussion of the different ways that the seismic survey activities may potentially affect marine mammals. The discussion included potential effects from the airguns, as well as the other instrumentation that may be deployed during the survey (i.e., MBES, SBP, and ADCP). Marine mammals may experience masking and behavioral disturbance. The information contained in the ''Potential Effects of Specified Activities on Marine Mammals'' section from the proposed IHA has not changed. Please refer to the Notice of Proposed IHA for the full discussion (76 FR 41463, July 14, 2011). Additional information can also be found in UAGI's application and the NSF EA (see **ADDRESSES**). The inclusion of mitigation and monitoring measures described later in this document (see the ''Mitigation'' and ''Monitoring and Reporting'' sections) are anticipated to reduce impacts even further.

**Anticipated Effects on Habitat**

The seismic survey is not anticipated to have any permanent impact on habitats used by the marine mammals in the survey area, including the food sources they use (i.e., fish and invertebrates). Additionally, no physical damage to any habitat is anticipated as a result of conducting the seismic survey. While it is anticipated that the specified activity may result in marine mammals avoiding certain areas due to temporary ensonification, this impact to habitat is temporary and reversible and was considered as behavioral modification. The main impact associated with the activity will be temporarily elevated noise levels and the associated direct effects on marine mammals.

The Notice of Proposed IHA contained a full discussion of the potential impacts to marine mammal habitat and prey species in the project area. No changes have been made to that discussion. Please refer to the Notice of Proposed IHA for the full discussion of potential impacts to marine mammal habitat (76 FR 41463, July 14, 2011). NMFS has determined that UAGI's marine seismic survey is not expected to have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or on the food sources that they utilize.

**Mitigation**

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(D) of the MMPA, NMFS must, where applicable, set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable 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 subsistence uses (where relevant).

UAGI and L–DEO have based the mitigation measures described herein, to be implemented for the proposed seismic survey, on the following:

(1) Protocols used during previous L–DEO seismic research cruises as approved by NMFS; and

(2) Recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), and Weir and Dolman (2007).

To reduce the potential for disturbance from acoustic stimuli associated with the proposed activities, UAGI and/or its designees will implement the following mitigation measures for marine mammals:

(1) Exclusion zones;
(2) Power-down procedures;
(3) Shut-down procedures; and
(4) Ramp-up procedures.

*Planning Phase*

Prior to submitting a final MMPA ITA request to NMFS, NSF works with the scientists that propose studies to determine when to conduct the research study. Dr. Coakley worked with L–DEO and NSF to identify potential time periods to carry out the survey, taking into consideration key factors such as environmental conditions (i.e., ice conditions, the seasonal presence of marine mammals and sea birds), weather conditions, and equipment. The project's timeframe avoids the eastward (spring) bowhead migration but overlaps with that of the westward fall migration and the subsistence bowhead hunt along the north shore of Alaska near Barrow. To avoid disturbance, the seismic survey has been scheduled to depart from Dutch Harbor in early September and remain at least 200 km (124 mi) from Barrow during transit to and from the survey area, which is approximately 250–800 km (155–497 mi) northwest of Barrow. Also, to reduce potential effects, the size of the energy source was reduced from the *Langseth's* 36-airgun, 6600-in$^3$ array to a 10-airgun, 1830-in$^3$ array.

*Exclusion Zones*

Received sound levels for the 10-airgun array have been predicted by Marine Acoustics Inc. in relation to distance and direction from the airguns, and received sound levels for a single 40-in$^3$ mitigation airgun have been predicted by L–DEO. Table 1 shows the distances at which three rms sound levels are expected to be received from the 10-airgun array and a single airgun at shallow, intermediate, and deep water depths. The 180- and 190-dB levels are shut-down criteria applicable to cetaceans and pinnipeds, respectively, as specified by NMFS (2000); these levels were used to establish the EZs. For the 10-airgun array, the 180-dB radius for each of the three water depth categories is as follows: 425 m (0.26 mi) in deep water; 1,400 m (0.87 mi) in intermediate water; and 1,870 m (1.16 mi) in shallow water. For the 10-airgun array, the 190-dB radius for each of the three water depth categories is as follows: 130 m (426.5 ft) in deep water; 130 m (426.5 ft) in intermediate water; and 190 m (623.4 ft) in shallow water. If the protected species visual observer (PSVO) detects marine mammal(s) within or about to enter the appropriate EZ, the airguns will be powered down (or shut down if necessary) immediately.

*Power-Down Procedures*

A power-down involves decreasing the number of airguns in use such that the radius of the 180 dB (or 190 dB) zone is decreased to the extent that marine mammals are no longer in or about to enter the EZ. A power-down of the airgun array can also occur when the vessel is moving from one seismic line to another. During a power-down for mitigation, UAGI and L–DEO will operate one airgun. The continued operation of one airgun is intended to alert marine mammals to the presence of the seismic vessel in the area. In contrast, a shut-down occurs when the *Langseth* suspends all airgun activity.

If the PSVO detects a marine mammal outside the EZ, but it is likely to enter the EZ, the airguns will be powered-down before the animal is within the applicable EZ (dependent upon species). Likewise, if a marine mammal is already within the EZ when first detected, UAGI and L–DEO will power-down the airguns immediately. During a power-down of the airgun array, UAGI will also operate the 40 in$^3$ airgun. If a marine mammal is detected within or near the smaller EZ around that single airgun (Table 1), UAGI and L–DEO will shut-down the airgun (see next section).

Following a power-down, airgun activity will not resume until the marine mammal has cleared the EZ. UAGI and L–DEO will consider the animal to have cleared the EZ if:

- A PSVO has visually observed the animal leave the EZ, or
- A PSVO has not sighted the animal within the EZ for 15 min for species with shorter dive durations (i.e., small odontocetes or pinnipeds), or 30 min for species with longer dive durations (i.e., mysticetes; no large odontocetes, such as sperm whales, or beaked whales occur in the survey area).

The airgun array will be ramped up gradually after the marine mammal has cleared the EZ (see *Ramp-up Procedures*).

*Shut-Down Procedures*

UAGI and L–DEO will shut down the operating airgun(s) if a marine mammal is seen within or approaching the EZ for the single airgun. A shut-down shall be implemented:

(1) If an animal enters the EZ of the single airgun after a power-down has been initiated; or

(2) If an animal is initially seen within the EZ of the single airgun when more than one airgun (typically the full airgun array) is operating.

UAGI and L–DEO shall not resume airgun activity until the marine mammal has cleared the EZ or until the PSVO is confident that the animal has left the vicinity of the vessel. Criteria for judging that the animal has cleared the EZ will be as described in the preceding section regarding a power-down.

*Ramp-Up Procedures*

UAGI and L–DEO shall follow a ramp-up procedure when the airgun array begins operating after a specified period without airgun operations or when a power-down has exceeded that period. For the present cruise, this period would be approximately 8 min. L–DEO has used similar periods (approximately 8 to 10 min) during previous L–DEO surveys.

Ramp-up will begin with the smallest airgun in the array (40 in$^3$). Airguns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5 min period over a total duration of approximately 15–20 min. During ramp-up, the PSVOs will monitor the EZ, and if marine mammals are sighted, UAGI and L–DEO will implement a power-down or shut-down as though the full airgun array were operational.

If the complete EZ has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, ramp-up shall not commence unless at least one airgun (40 in$^3$ or similar) has been operating during the interruption of seismic survey operations. Given these provisions, it is likely that the airgun array will not be ramped-up from a complete shut-down at night or in thick fog, because the outer part of the safety zone for that array will not be visible during those conditions. If one airgun has operated during a power-down period, ramp-up to full power will be permissible at night or in poor visibility, on the assumption that marine mammals will be alerted to the approaching seismic vessel by the sounds from the single airgun and could move away. UAGI and

L–DEO shall not initiate a ramp-up of the airguns if a marine mammal is sighted within or near the applicable EZs during the day or night.

*Speed and Course Alterations*

UAGI and L–DEO are required to alter the speed or course of the vessel during seismic operations if a marine mammal, based on its position and relative motion, appears likely to enter the relevant EZ. If speed or course alteration is not safe or practicable, or if after alteration the marine mammal still appears likely to enter the EZ, further mitigation measures, such as a power-down or shut-down (as described in the previous sections), shall be taken.

*Mitigation Conclusions*

NMFS has carefully evaluated the applicant's mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's measures and a range of other measures, NMFS has determined that the required 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. Measures to ensure availability of such species or stock for taking for certain subsistence uses is discussed later in this document (see ''Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses'' section).

**Monitoring and Reporting**

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must, where applicable, 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 ITAs 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 in the action area.

UAGI will sponsor marine mammal monitoring during the project, in order to implement the mitigation measures that require real-time monitoring and to satisfy the monitoring requirements of the IHA. UAGI's Monitoring Plan is described next. The monitoring work described here has been planned as a self-contained project independent of any other related monitoring projects that may be occurring simultaneously in the same regions. UAGI is prepared to discuss coordination of its monitoring program with any related work that might be done by other groups insofar as this is practical and desirable.

*Vessel-Based Visual Monitoring*

PSVOs will be based aboard the seismic source vessel and will watch for marine mammals near the vessel during daytime airgun operations and during any ramp-ups at night. PSVOs will also watch for marine mammals near the seismic vessel for at least 30 minutes prior to the start of airgun operations after an extended shut-down (as described in the ''Mitigation'' section earlier in this document). PSVOs will conduct observations during daytime periods when the seismic system is not operating for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Based on PSVO observations, the airguns will be powered-down or shut-down when marine mammals are observed within or about to enter a designated EZ.

During seismic operations in the Arctic Ocean, at least five PSOs will be based aboard the *Langseth.* L–DEO will appoint the PSOs with NMFS' concurrence. Observations will take place during ongoing daytime operations and nighttime ramp-ups of the airguns. During the majority of seismic operations, two PSVOs will be on duty from the observation tower to monitor marine mammals near the seismic vessel. Use of two simultaneous PSVOs will increase the effectiveness of detecting animals near the source vessel. However, during meal times and bathroom breaks, it is sometimes difficult to have two PSVOs on effort, but at least one PSVO will be on duty. PSVO(s) will be on duty in shifts of duration no longer than 4 hr.

Two PSVOs will also be on visual watch during all nighttime ramp-ups of the seismic airguns. A third PSO will monitor the passive acoustic monitoring (PAM) equipment 24 hours a day to detect vocalizing marine mammals present in the action area. In summary, a typical daytime cruise would have scheduled two PSVOs on duty from the observation tower, and a third PSO on PAM. Other crew will also be instructed to assist in detecting marine mammals and implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew will be given additional instruction on how to do so.

The *Langseth* is a suitable platform for marine mammal observations. When stationed on the observation platform, the eye level will be approximately 21.5 m (70.5 ft) above sea level, and the PSVO will have a good view around the entire vessel. During daytime, the PSVOs will scan the area around the vessel systematically with reticle binoculars (e.g., 7 x 50 Fujinon), Big-eye binoculars (25 x 150), and with the naked eye. During darkness, night vision devices (NVDs) will be available (ITT F500 Series Generation 3 binocular-image intensifier or equivalent), when required. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. Those are useful in training observers to estimate distances visually but are generally not useful in measuring distances to animals directly; that is done primarily with the reticles in the binoculars.

When marine mammals are detected within or about to enter the designated EZ, the airguns will immediately be powered-down or shut-down if necessary. The PSO(s) will continue to maintain watch to determine when the animal(s) are outside the EZ by visual confirmation. Airgun operations will not resume until the animal is confirmed to have left the EZ, or if not observed after 15 min for species with shorter dive durations (small odontocetes and pinnipeds) or 30 min for species with longer dive durations (mysticetes).

*Passive Acoustic Monitoring (PAM)*

PAM will complement the visual monitoring program, when practicable. Visual monitoring typically is not effective during periods of poor visibility or at night, and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range.

Besides the three PSVOs, an additional Protected Species Acoustic Observer (PSAO) with primary responsibility for PAM will also be aboard the vessel. UAGI and L–DEO can use acoustic monitoring in addition to

visual observations to improve detection, identification, and localization of marine mammals. The acoustic monitoring will serve to alert visual observers (if on duty) when vocalizing marine mammals are detected. It is only useful when marine mammals call, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so that the PSVOs can be advised when animals are detected acoustically. When bearings (primary and mirror-image) to calling animal(s) are determined, the bearings will be relayed to the visual observer to help him/her sight the calling animal(s).

The PAM system consists of hardware (i.e., hydrophones) and software. The ''wet end'' of the system consists of a towed hydrophone array that is connected to the vessel by a tow cable. The array will be deployed from a winch located on the back deck. A deck cable will connect from the winch to the main computer laboratory where the acoustic station and signal conditioning and processing system will be located. The digitized signal and PAM system is monitored by PSAOs at a station in the main laboratory. The hydrophone array is typically towed at depths of less than 20 m (66 ft).

Ideally, the PSAO will monitor the towed hydrophones 24 hr per day at the seismic survey area during airgun operations and during most periods when the *Langseth* is underway while the airguns are not operating. However, PAM may not be possible if damage occurs to both the primary and back-up hydrophone arrays during operations. The primary PAM streamer on the *Langseth* is a digital hydrophone streamer. Should the digital streamer fail, back-up systems should include an analog spare streamer and a hull-mounted hydrophone. Every effort would be made to have a working PAM system during the cruise. In the unlikely event that all three of these systems were to fail, UAGI would continue science acquisition with the visual-based observer program. The PAM system is a supplementary enhancement to the visual monitoring program. If weather conditions were to prevent the use of PAM, then conditions would also likely prevent the use of the airgun array.

One PSAO will monitor the acoustic detection system at any one time, by listening to the signals from two channels via headphones and/or speakers and watching the real-time spectrographic display for frequency ranges produced by marine mammals. PSAOs monitoring the acoustical data will be on shift for 1–6 hours at a time. Besides the PSVO, an additional PSAO with primary responsibility for PAM will also be aboard the source vessel. All PSVOs are expected to rotate through the PAM position, although the most experienced with acoustics will be on PAM duty more frequently.

When a vocalization is detected while visual observations are in progress, the PSAO will contact the PSVO immediately, to alert him/her to the presence of marine mammals (if they have not already been seen), and to allow a power-down or shut-down to be initiated, if required. The information regarding the call will be entered into a database. Data entry will include an acoustic encounter identification number, whether it was linked with a visual sighting, date, time when first and last heard and whenever any additional information was recorded, position and water depth when first detected, bearing if determinable, species or species group (e.g., unidentified dolphin, sperm whale), types and nature of sounds heard (e.g., clicks, continuous, sporadic, whistles, creaks, burst pulses, strength of signal, etc.), and any other notable information. The acoustic detection can also be recorded for further analysis.

*PSVO Data and Documentation*

PSVOs will record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data will be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They will also provide information needed to order a power-down or shut-down of the airguns when a marine mammal is within or near the EZ. Observations will also be made during daytime periods when the *Langseth* is underway without seismic operations.

When a sighting is made, the following information about the sighting will be recorded:

1. Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace.

2. Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch whenever there is a change in one or more of the variables.

All observations and power-downs or shut-downs will be recorded in a standardized format. Data will be entered into an electronic database. The accuracy of the data entry will be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program and will facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving.

Results from the vessel-based observations will provide:

1. The basis for real-time mitigation (airgun power-down or shut-down).

2. Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS.

3. Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted.

4. Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity.

5. Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

UAGI will submit a report to NMFS and NSF within 90 days after the end of the cruise. The report will describe the operations that were conducted and sightings of marine mammals near the operations. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The 90-day report will summarize the dates and locations of seismic operations and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report will also include estimates of the number and nature of exposures that could result in ''takes'' of marine mammals by harassment or in other ways.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as an injury (Level A harassment), serious injury or mortality (e.g., ship-strike, gear interaction, and/or entanglement), UAGI and L–DEO will immediately cease the specified activities and immediately report the incident to the Chief of the Permits, Conservation and Education Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

• Time, date, and location (latitude/longitude) of the incident;
• Name and type of vessel involved;
• Vessel's speed during and leading up to the incident;
• Description of the incident;
• Status of all sound source use in the 24 hours preceding the incident;
• Water depth;
• Environmental conditions (e.g., wind speed and direction, Beaufort sea state, cloud cover, and visibility);
• Description of all marine mammal observations in the 24 hours preceding the incident;
• Species identification or description of the animal(s) involved;
• Fate of the animal(s); and
• Photographs or video footage of the animal(s) (if equipment is available).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with UAGI to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. UAGI may not resume their activities until notified by NMFS via letter, email, or telephone.

In the event that UAGI discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (i.e., in less than a moderate state of decomposition as described in the next paragraph), UAGI will immediately report the incident to the Chief of the Permits, Conservation and Education Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with UAGI to determine whether modifications in the activities are appropriate.

In the event that UAGI discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (e.g., previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), UAGI will report the incident to the Chief of the Permits, Conservation, and Education Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. UAGI will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. Activities may continue while NMFS reviews the circumstances of the incident.

**Estimated Take by Incidental Harassment**

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].'' Only take by Level B harassment is anticipated and authorized as a result of the marine seismic survey in the Arctic Ocean. Acoustic stimuli (i.e., increased underwater sound) generated during the operation of the seismic airgun array may have the potential to cause marine mammals in the survey area to be exposed to sounds at or greater than 160 dB or cause temporary, short-term changes in behavior. NMFS also assumes that marine mammals exposed to levels exceeding 160 dB re 1 μPa (rms) may experience Level B harassment. The use of the ADCP is not anticipated to result in the take of low-frequency cetaceans or pinnipeds, as the frequency for this device is outside of or at the extreme upper end of the hearing ranges of these species. There is no evidence that the planned activities could result in injury, serious injury, or mortality within the specified geographic area. The required mitigation and monitoring measures will minimize any potential risk for injury, serious injury, or mortality.

The Notice of Proposed IHA (76 FR 41463, July 14, 2011) described UAGI's methods to estimate take by incidental harassment and presented the applicant's estimates of the numbers of marine mammals that could be affected during the seismic program. The estimates are based on a consideration of the number of marine mammals that could be disturbed appreciably by operations with the 10-airgun array to be used during approximately 5,500 km (3,417.5 mi) of survey lines in the Arctic Ocean. A summary of that information is provided here. However, the reader should refer to the Notice of Proposed IHA (76 FR 41463, July 14, 2011) for the full discussion.

The anticipated radii of influence of the MBES, SBP, and ADCP are less than those for the airgun array. UAGI assumes that, during simultaneous operations of the airgun array and the other sources (which will be the case the majority of the time), any marine mammals close enough to be affected by the MBES, SBP, and ADCP would already be affected by the airguns. However, whether or not the airguns are operating simultaneously with the other sources, marine mammals are expected to exhibit no more than short-term and inconsequential responses to the MBES, SBP, and ADCP given their characteristics (e.g., narrow, downward-directed beam) and other considerations described previously. Therefore, UAGI provides no additional allowance for animals that could be affected by sound sources other than airguns.

UAGI calculated densities using data from the Chukchi Sea for the fall in depth strata 35–50 m (115–164 ft), 51–200 m (167–656 ft), and greater than 200 m (656 ft), mean group sizes from the Beaufort Whale Aerial Survey Project (BWASP) database, and values for trackline detection probability bias and availability bias, $f(0)$ and $g(0)$, from Harwood *et al.* (1996) for belugas, Thomas *et al.* (2002) for bowhead whales, and Forney and Barlow (1998) for gray whales. Based on the lack of any beluga whale sightings and very low densities of bowheads (0.0003–0.0044/km$^2$) and gray whales (0.0026–0.0042/km$^2$) during non-seismic periods of industry vessel operations in the Chukchi Sea in September–October 2006–2008 (Haley *et al.*, 2010), and the lack of beluga, bowhead, or gray whale sightings during arctic cruises by the Healy in August–September 2005 or July–August 2006 (Haley 2006; Haley and Ireland 2006), the calculated densities are possibly overestimates. Accordingly, they were reduced by an order of magnitude. Densities were calculated for depths greater than 200 m (656 ft) and less than 200 m (656 ft); in the latter case, the densities were effort-weighted averages of the 35–50 m (115–164 ft) and 51–200 m (167–656 ft) densities.

There is evidence of the occasional occurrence of humpback, minke, fin, and killer whales in the northern Chukchi Sea, but because they occur so infrequently in the Chukchi Sea, little to no data are available for the calculation of densities. Minimal densities were therefore assigned to these species to allow for chance encounters.

Four species of pinnipeds under NMFS jurisdiction could be encountered in the seismic survey area: ringed seal, bearded seal, ribbon seal, and spotted seal. Bengtson *et al.* (2005) reported ringed and bearded seal densities in nearshore fast ice and pack

ice and offshore pack ice based on aerial surveys in May–June 1999 and May 2000; ringed seal but not bearded seal densities were corrected for haulout behavior. UAGI used densities from the offshore stratum (12P). Bearded seal densities were used for water depths less than 200 m (656 ft) and were assumed to be zero in water depths greater than 200 m (656 ft) because they are predominantly benthic feeders. The fall densities of ringed seals in the open water of the offshore survey area have been estimated as 1/10 of the spring pack ice densities because ringed seals are strongly associated with sea ice and begin to reoccupy nearshore fast ice areas as it forms in the fall. The resulting densities (.081/km$^2$ in 1999 and .023/km$^2$ in 2000) are similar to ringed seal density estimates (0.016/km$^2$ to 0.069/km$^2$) from industry vessel operations during summer 2006–2008 (Haley *et al.,* 2010).

Little information is available on spotted seal or ribbon seal densities in offshore areas of the Chukchi Sea. Spotted seal density in the summer was estimated by multiplying the ringed seal density by 0.02. This calculation was based on the ratio of the estimated Chukchi populations of the two species: 8% of the Alaskan population of spotted seals is present in the Chukchi Sea during the summer and fall (Rugh *et al.,* 1997); the Alaskan population of spotted seals is 59,214 (Allen and Angliss, 2010); and the population of ringed seals in the Alaskan Chukchi Sea is greater than 208,000 (Bengtson *et al.,* 2005). The ribbon seal density used is based on two ribbon seal sightings reported during industry vessel operations in the Chukchi Sea in 2006–2008 (Haley *et al.,* 2010).

Table 2 in this document (and Table 3 in UAGI's application) provides the estimated densities of marine mammals expected to occur in the survey area. As noted previously, there is some uncertainty about the representativeness of the data and assumptions used in the calculations. It is not known how closely the densities that were used reflect the actual densities that will be encountered; however, the approach used here is believed to be the best available at this time.

The estimated numbers of individuals potentially exposed are presented below based on the 160-dB re 1 μParms criterion for all marine mammals.

TABLE 2—EXPECTED DENSITIES OF MARINE MAMMALS IN THE OFFSHORE SURVEY AREA OF THE ARCTIC OCEAN NORTH OF THE CHUKCHI SEA IN SEPTEMBER–OCTOBER 2011. CETACEAN DENSITIES ARE CORRECTED FOR *f*(0) AND *g*(0) BIASES. SPECIES LISTED AS ENDANGERED ARE IN ITALICS.

| Species | Density (#/1000 km$^2$) in depths <200 m | Density (#/1000 km$^2$) in depths >200 m |
|---|---|---|
| Mysticetes | | |
| *Bowhead Whale* | 1.87 | 0 |
| *Gray Whale* | 1.48 | 0 |
| *Fin Whale* | 0.01 | 0.01 |
| *Humpback Whale* | 0.01 | 0.01 |
| Minke Whale | 0.01 | 0.01 |
| Odontocetes | | |
| Beluga | 1.65 | 6.78 |
| Killer whale | 0.01 | 0.01 |
| Pinnipeds | | |
| Bearded Seal | 14.18 | 0 |
| Spotted Seal | 0.98 | 0.98 |
| Ringed Seal | 48.92 | 48.92 |
| Ribbon Seal | 0.27 | 0.27 |

UAGI's estimates of exposures to various sound levels assume that the survey will be fully completed; in fact, the ensonified areas calculated using the planned number of line-kilometers have been increased by 25% to accommodate turns, lines that may need to be repeated, equipment testing, etc. As is typical during offshore ship surveys, inclement weather and equipment malfunctions are likely to cause delays and may limit the number of useful line-kilometers of seismic operations that can be undertaken. The *Langseth* is not ice-strengthened and will completely avoid ice, so it is very likely that the survey will not be completed because ice likely will be present. Furthermore, any marine mammal sightings within or near the designated EZ will result in the shut-down of seismic operations as a mitigation measure. Thus, the following estimates of the numbers of marine mammals potentially exposed to 160-dB (rms) sounds are precautionary, and probably overestimate the actual numbers of marine mammals that might be involved. These estimates assume that there will be no ice, weather, equipment, or mitigation delays, which is highly unlikely.

UAGI estimated the number of different individuals that may be exposed to airgun sounds with received levels greater than or equal to 160 dB re 1 μPa (rms) on one or more occasions by considering the total marine area that would be within the 160 dB radius around the operating airgun array on at least one occasion and the expected density of marine mammals. The number of possible exposures (including repeated exposures of the same individuals) can be estimated by considering the total marine area that would be within the 160 dB radius around the operating airguns, including areas of overlap. In the survey, the seismic lines are widely spaced in the survey area, so few individual marine mammals would be exposed more than once during the survey. The area including overlap is only 1.3 times the area excluding overlap. Moreover, it is unlikely that a particular animal would stay in the area during the entire survey. The number of different individuals potentially exposed to received levels greater than or equal to 160 re 1 μPa (rms) was calculated by multiplying:

(1) The expected species density, times

(2) The anticipated area to be ensonified to that level during airgun operations in each depth stratum, excluding overlap.

Table 4 in UAGI's application shows the estimates of the number of different individual marine mammals that potentially could be exposed to sounds greater than or equal to 160 dB re 1 μPa (rms) during the proposed seismic

survey if no animals moved away from the survey vessel. Table 3 in this document presents the abundance of the different species or stocks, authorized take, and the percentage of the regional population or stock. The take estimates presented in this section of the document do not take into consideration the mitigation and monitoring measures that are required by the IHA.

TABLE 3—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED TAKE, AND THE PERCENTAGE OF THE POPULATION OR STOCK THAT MAY BE EXPOSED TO SOUNDS >160 DB RE 1 μPA (RMS) DURING THE PROPOSED SEISMIC SURVEY IN THE ARCTIC OCEAN, SEPTEMBER–OCTOBER 2011

| Species | Abundance [1] | Authorized take | Percentage of population or stock |
|---|---|---|---|
| Bowhead Whale | [2] 14,731 | 89 | 0.6 |
| Gray Whale | 19,126 | 71 | 0.4 |
| Humpback Whale | [3] 20,800 | 2 | 0.01 |
| Minke Whale | 810 | 2 | 0.2 |
| Fin Whale | 5,700 | 2 | 0.04 |
| Beluga Whale | [4] 42,968 | 794 | 1.8 |
| Killer Whale | [5] 768 | 2 | 0.3 |
| Bearded Seal | 250,000–300,000 | 677 | 0.2–0.3 |
| Spotted Seal | 59,214 | 150 | 0.3 |
| Ringed Seal | 249,000 | 7,492 | 3 |
| Ribbon Seal | 49,000 | 42 | 0.09 |

[1] Unless stated otherwise, abundance estimates are from Allen and Angliss (2011).
[2] Based on estimate of 10,545 individuals in 2001 with a 3.4% annual growth rate (George *et al.,* 2004 and revised by Zeh and Punt, 2005).
[3] North Pacific Ocean (Barlow *et al.,* 2009).
[4] Based on estimates for the eastern Chukchi Sea and Beaufort Sea stocks (Allen and Angliss, 2011).
[5] Based on estimates for the Northern resident and transient stocks (Allen and Angliss, 2011).

**Encouraging and Coordinating Research**

UAGI and NSF will coordinate the planned marine mammal monitoring program associated with the seismic survey in the Arctic Ocean with other parties that may have an interest in the area and/or be conducting marine mammal studies in the same region during the seismic survey. No other marine mammal studies are expected to occur in the study area at the proposed time. However, other industry-funded seismic surveys may be occurring in the northeast Chukchi and/or western Beaufort Sea closer to shore, and those projects are likely to involve marine mammal monitoring. UAGI and NSF have coordinated, and will continue to coordinate, with other applicable Federal, State, and Borough agencies, and will comply with their requirements.

**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 making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

For reasons stated previously in this document, no injuries or mortalities are anticipated to occur as a result of UAGI's seismic survey, and none are authorized by NMFS. Additionally, for reasons presented earlier in this document, temporary hearing impairment (and especially permanent hearing impairment) is not anticipated to occur during the specified activity. Impacts to marine mammals are anticipated to be in the form of Level B behavioral harassment only, due to the brief duration and sporadic nature of the survey. Certain species may have a behavioral reaction (e.g., increased swim speed, avoidance of the area, etc.) to the sound emitted during the marine seismic survey. Table 3 in this document outlines the number of Level B harassment takes that are anticipated as a result of the activities. No mortality or injury is expected to occur, and due to the nature, degree, and context of behavioral harassment anticipated, the activity is not expected to impact rates of recruitment or survival. The survey would not occur in any areas designated as critical habitat for ESA-listed species. Additionally, the seismic survey will not adversely impact marine mammal habitat.

While some of the species could potentially occur in the survey area year-round, some species only occur at certain times of the year. In the fall, bowhead whales begin their westward migration through the Beaufort Sea in late August/early September. The whales usually reach Barrow around mid-September. It is likely that most bowhead whales will not enter the survey area until about the second half of the survey time period. Additionally, humpback and fin whales have only started to be sighted in the Chukchi Sea in the last 5–6 years. As the extent of Arctic sea ice begins to change, these species may be expanding their normal range further north. However, this is still considered the extreme northern edge of the range of these species, so it is unlikely that they will be present throughout the entire survey time period.

Of the 11 marine mammal species likely to occur in the survey area, three are listed as endangered under the ESA: bowhead, humpback, and fin whale. All of these species are also considered depleted under the MMPA. The affected bowhead whale stock has been increasing at a rate of 3.4% per year since 2001. On December 10, 2010, NMFS published a notification of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notification of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither species is considered depleted under the MMPA. The listing for these species is not anticipated to be completed prior to the end of this seismic survey. Certain stocks of beluga whale and spotted seal are listed or proposed for

listing under the ESA. However, those stocks do not occur in the project area.

As was noted in the Notice of Proposed IHA (76 FR 41463, July 14, 2011), many cetacean species, especially mysticetes, may display avoidance reactions and not enter into areas close to the active airgun array. However, alternate areas are available to these species. The location of the survey is not a known feeding ground for these species. It is not used for breeding or nursing. Although ice seals breed and nurse in the Chukchi Sea, the survey occurs outside of the time for ice seal breeding or nursing in the Chukchi Sea.

The population estimates for the species that may potentially be taken as a result of UAGI's seismic survey were presented earlier in this document. For reasons described earlier in this document, the maximum calculated number of individual marine mammals for each species that could potentially be taken by harassment is small relative to the overall population sizes (3% for ringed seals, 1.8% for beluga whales, and less than 1% of each of the other 9 marine mammal populations or stocks).

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required mitigation and monitoring measures, NMFS finds that the seismic survey will result in the incidental take of small numbers of marine mammals and that the total taking from UAGI's activities will have a negligible impact on the affected species or stocks.

**Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses**

*Relevant Subsistence Uses*

Subsistence remains the basis for Alaska Native culture and community. Marine mammals are legally hunted in Alaskan waters by coastal Alaska Natives. In rural Alaska, subsistence activities are often central to many aspects of human existence, including patterns of family life, artistic expression, and community religious and celebratory activities. Additionally, the animals taken for subsistence provide a significant portion of the food that will last the community throughout the year. The main species that are hunted include bowhead and beluga whales, ringed, spotted, and bearded seals, walruses, and polar bears. (As mentioned previously in this document, both the walrus and the polar bear are under the USFWS' jurisdiction.) The importance of each of these species varies among the communities and is largely based on availability.

Barrow and Wainwright, which is in the Chukchi Sea, are the two villages that are closest to the survey area, which will be initiated more than 200 km (124 mi) offshore. Marine mammals are also hunted in the Beaufort Sea villages of Kaktovik and Nuiqsut (mostly from Cross Island). Other villages in the Chukchi Sea that hunt for marine mammals include Point Lay, Point Hope, Kivalina, and Kotzebue. The villages of Kivalina and Kotzebue are many hundreds of miles south of the project area.

(1) Bowhead Whale

Bowhead whale hunting is the key activity in the subsistence economies of Barrow and two smaller communities to the east, Nuiqsut and Kaktovik. Bowhead whales are also hunted by communities along the Chukchi Sea. The community of Barrow hunts bowhead whales in both the spring and fall during the whales' seasonal migrations along the coast. The communities of Nuiqsut and Kaktovik participate only in the fall bowhead harvest. The spring hunt at Barrow occurs after leads open because of the deterioration of pack ice; the spring hunt typically occurs from early April until the first week of June. The fall migration of bowhead whales that summer in the eastern Beaufort Sea typically begins in late August or September. The location of the fall subsistence hunt depends on ice conditions and (in some years) industrial activities that influence the bowheads' movements as they move west (Brower, 1996). In the fall, subsistence hunters use aluminum or fiberglass boats with outboards. Hunters prefer to take bowheads close to shore to avoid a long tow during which the meat can spoil, but Braund and Moorehead (1995) report that crews may (rarely) pursue whales as far as 80 km (50 mi) offshore. The autumn hunt at Barrow usually begins in mid-September, and mainly occurs in the waters east and northeast of Point Barrow. The whales have usually left the Beaufort Sea by late October (Treacy, 2002a,b). Along the Chukchi Sea coast, bowhead whales have recently primarily been hunted during the spring, between March and June. However, with changing ice patterns, there is a possibility that Chukchi Sea villages could begin participating in fall bowhead whale hunts. Table 4 in this document (Table 5 in UAGI's application) presents harvest data for the years 1993–2008 for bowhead whale hunts in five North Slope communities.

The survey will not have any impacts on the spring bowhead whale hunt by communities along the Chukchi Sea and Barrow, as those hunts are completed many months prior to the beginning of this survey. The villages of Kaktovik and Nuiqsut are several hundred miles to the east of the survey location. Therefore, no impacts are anticipated on the fall hunts at Kaktovik or Nuiqsut (Cross Island). The closest tracklines to Barrow are more than 200 km (124 mi) and in most cases between 250 and 800 km (155–497 mi) to the northwest of Barrow. The whales will reach Barrow before they enter into the survey area and even before entering into the area where sound attenuates to 120 dB for the 10-airgun array.

(2) Beluga Whale

Beluga whales are available to subsistence hunters at Barrow in the spring when pack-ice conditions deteriorate and leads open up. Belugas may remain in the area through June and sometimes into July and August in ice-free waters. Hunters usually wait until after the spring bowhead whale hunt is finished before turning their attention to hunting belugas. Few, if any, belugas are taken by Kaktovik and Nuiqsut hunters and only during the fall whale harvest. Along the Chukchi Sea, belugas are hunted during the spring and in the summer (between July and August) by residents of Wainwright and Point Hope. Near Point Lay, belugas are taken in June and July. During 2002–2006, Alaska Native subsistence hunters took a mean annual number of 25.4 beluga whales from the Beaufort Sea stock and 59 from the eastern Chukchi Sea stock. The average annual harvest of beluga whales taken by Barrow for 1962–1982 was five (MMS, 1996). The Alaska Beluga Whale Committee recorded that 23 beluga whales had been harvested by Barrow hunters from 1987 to 2002, ranging from 0 in 1987, 1988, and 1995 to the high of 8 in 1997 (Fuller and George, 1999; Alaska Beluga Whale Committee, 2002 cited in USDI/BLM, 2005).

UAGI's seismic survey is not anticipated to impact beluga hunts conducted by villages of the North Slope. The timing of the survey is after the spring and summer beluga harvests in the Chukchi Sea. Although hunting of beluga from Point Hope may extend into September, off Point Hope, the vessel will remain approximately 80 km (50 mi) from the coast, in transit northward to the study area.

**Table 4. Number of bowhead whales landed, by year, at Point Hope, Wainwright, Barrow, Cross Island (Nuiqsut), and Kaktovik, 1993-2008. Barrow numbers include the total number of whales landed for the year followed by the numbers landed during the fall hunt in parenthesis.**

| Year | Point Hope | Wainwright | Barrow | Cross Island | Kaktovik |
|---|---|---|---|---|---|
| 1993 | 2 | 5 | 23 (7) | 3 | 3 |
| 1994 | 5 | 4 | 16 (1) | 0 | 3 |
| 1995 | 1 | 5 | 19 (11) | 4 | 4 |
| 1996 | 3 | 3 | 24 (19) | 2 | 1 |
| 1997 | 4 | 3 | 30 (21) | 3 | 4 |
| 1998 | 3 | 3 | 25 (16) | 4 | 3 |
| 1999 | 2 | 5 | 24 (6) | 3 | 3 |
| 2000 | 3 | 5 | 18 (13) | 4 | 3 |
| 2001 | 4 | 6 | 27 (7) | 3 | 4 |
| 2002 | 0 | 1 | 22 (17) | 4 | 3 |
| 2003 | 4 | 5 | 16 (6) | 4 | 3 |
| 2004 | 3 | 4 | 21 (14) | 3 | 3 |
| 2005 | 7 | 4 | 29 (13) | 1 | 3 |
| 2006 | 0 | 2 | 22 (19) | 4 | 3 |
| 2007 | 3 | 4 | 20 (7) | 3 | 3 |
| 2008 | 2 | 2 | 21(12) | 4 | 3 |

Sources: USDI/BLM and references therein; Burns et al. (1993); Koski et al. (2005); Suydam et al. 2004, 2005, 2006, 2007, 2008, 2009.

(3) Ice Seals

Ringed seals are hunted by villagers along the Beaufort Sea coast mainly from October through June. Hunting for these smaller mammals is concentrated during winter because bowhead whales, bearded seals, and caribou are available through other seasons. Winter leads in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east are used for hunting ringed seals. The average annual ringed seal harvest by the community of Barrow from the 1960s through much of the 1980s has been estimated as 394. Along the Chukchi Sea coast, ringed seals are mainly taken between May and September near Wainwright and throughout the year by Point Lay and Point Hope hunters. As the seismic survey will occur far offshore, the survey will not affect ringed seals in the nearshore areas where they are hunted. It is unlikely that accessibility to ringed seals during the subsistence hunt could be impaired during the *Langseth's* transit to and from the study area when the airguns are not operating. Although some hunting in the Chukchi Sea does occur as far as 32 km (20 mi) from shore, the area affected during transit would be in close proximity to the ship, which will be transiting approximately 80 km (50 mi) offshore.

The spotted seal subsistence hunt on the Beaufort Sea coast peaks in July and August, at least in 1987–1990, but involves few animals. Spotted seals typically migrate south by October to overwinter in the Bering Sea. Admiralty Bay, less than 60 km (37 mi) to the east of Barrow (and more than 260 km [162 mi] from the survey area), is a location where spotted seals are harvested. Spotted seals are also occasionally hunted in the area off Point Barrow and along the barrier islands of Elson Lagoon to the east (USDI/BLM, 2005). The average annual spotted seal harvest by the community of Barrow from 1987–1990 was one (Braund *et al.,* 1993). Along the Chukchi Sea coast, seals are mainly taken between May and September near Wainwright and throughout the year by Point Lay and Point Hope hunters.

The seismic survey will take place at least 200 km offshore from the preferred nearshore harvest area of these seals. It is unlikely that accessibility to spotted seals during the subsistence hunt could be impaired during the *Langseth's* transit to and from the study area when the airguns are not operating. Although some hunting in the Chukchi Sea does occur as far as 40 km (25 mi) from shore, the area affected during transit would be in close proximity to the ship.

Bearded seals, although not favored for their meat, are important to subsistence activities in Barrow because of their skins. Six to nine bearded seal hides are used by whalers to cover each of the skin-covered boats traditionally used for spring whaling. Because of their valuable hides and large size, bearded seals are specifically sought. Bearded seals are harvested during the summer months in the Beaufort Sea (USDI/BLM, 2005). The summer hunt typically occurs near Thetis Island in July through August (prior to initiation of UAGI's survey). The animals inhabit the environment around the ice floes in the drifting ice pack, so hunting usually occurs from boats in the drift ice. Braund *et al.* (1993) estimated that 174 bearded seals were harvested annually at Barrow from 1987 to 1990. The majority of bearded seal harvest sites from 1987 to 1990 was within approximately 24 km (15 mi) of Point Barrow (Braund *et al.,* 1993), well inshore of the survey. Along the Chukchi Sea coast, bearded seals are mainly taken between May and September near Wainwright, during the spring and summer by Point Hope hunters, and throughout the year by Point Lay hunters. These hunts occur closer into shore than the survey area or the proposed transit route.

*Potential Impacts to Subsistence Uses*

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as:

* * * an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly

displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Noise emitted during the seismic survey from the acoustic sources has the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals divert from their normal migratory path by several kilometers. However, because the survey occurs so far from any of the traditional hunting grounds and to the west of the fall bowhead hunting areas (meaning the whales would reach the hunting grounds before entering the survey area), it is not anticipated that there will be impacts to subsistence uses.

*Plan of Cooperation (POC)*

Regulations at 50 CFR 216.104(a)(12) require MMPA authorization applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes. UAGI has worked with the people of the NSB to identify and avoid areas of potential conflict. The project's principal investigator (PI) contacted Dr. Glenn Sheehan of the Barrow Arctic Science Consortium and NSB biologist, Dr. Robert Suydam, on January 7, 2010, to inform them of the proposed study and the elements intended to minimize potential subsistence conflict. The PI presented the proposed UAGI survey at a meeting of the AEWC in Barrow on February 11, 2010. He explained the survey plans to the local residents, including NSB Department of Wildlife Management biologists, consulted with stakeholders about their concerns, and discussed the aspects of the survey designed to mitigate impacts. No major concerns were expressed. The PI also attended the 2011 AEWC meeting on February 17–18; representatives from all NSB communities attended. The only concern expressed was that AEWC would like a good communication link with the *Langseth* during the survey. As requested by AEWC, communication lines between the NSB and the *Langseth* during the survey will be kept open in order to minimize potential conflicts. The study was also presented to government agencies, affected stakeholders, and the general public at the annual Arctic Open-water Meeting in Anchorage, Alaska, on March 7–8, 2011.

As part of its MMPA IHA application, UAGI submitted a POC to NMFS. As noted in the POC, a Barrow resident knowledgeable about the mammals and fish of the area is expected to be included as a PSO aboard the *Langseth.* Although the primary duty of this individual will be as a member of the PSO team responsible for implementing the monitoring and mitigation requirements, this person will also be able to act as a liaison with hunters if they are encountered at sea. However, the activity has been timed so as to avoid overlap with the main harvests of marine mammals (especially bowhead whales). Meetings with whaling captains, other community representatives, the AEWC, NSB, and any other parties to the POC have been and will continue to be held, as necessary, to negotiate the terms of the POC and to coordinate the planned seismic survey operations with subsistence activity.

*Unmitigable Adverse Impact Analysis and Determination*

NMFS has determined that UAGI's marine seismic survey in the Arctic Ocean will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses. This determination is supported by the fact that UAGI and NSF have worked closely with the AEWC and NSB to ensure that the activities are not co-located with annual subsistence activities. Additionally, the seismic survey will occur more than 200 km (124 mi) offshore of the North Slope and to the west of the communities that conduct fall bowhead whale subsistence hunts. This means that the whales will reach the communities prior to entering into the survey area. The Chukchi Sea beluga hunts are typically completed prior to the time the *Langseth* would be transiting through the Chukchi Sea to the survey site. Should late summer or early fall hunts of certain species be occurring at the time of transit of the vessel, the hunts occur closer into shore than the proposed transit route of the *Langseth.*

Based on the measures described in UAGI's POC, the required mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined that there will not be an unmitigable adverse impact on subsistence uses from UAGI's marine seismic survey.

**Endangered Species Act (ESA)**

Three of the marine mammal species that could occur in the seismic survey area are listed under the ESA: Bowhead whale; humpback whale; and fin whale. Under section 7 of the ESA, NSF initiated formal consultation with the NMFS, Office of Protected Resources, Endangered Species Division, on this proposed seismic survey. NMFS' Office of Protected Resources, Permits, Conservation and Education Division, also initiated formal consultation under section 7 of the ESA with NMFS' Office of Protected Resources, Endangered Species Division, to obtain a Biological Opinion evaluating the effects of issuing the IHA on ESA-listed marine mammals and, if appropriate, authorizing incidental take. In August 2011, NMFS issued a Biological Opinion and concluded that the action and issuance of the IHA are not likely to jeopardize the continued existence of fin, bowhead, and humpback whales. NSF, UAGI, and L–DEO must comply with the Relevant Terms and Conditions of the Incidental Take Statement (ITS) corresponding to NMFS' Biological Opinion issued to NSF and NMFS' Office of Protected Resources. L–DEO must also comply with the mitigation and monitoring requirements included in the IHA in order to be exempt under the ITS in the Biological Opinion from the prohibition on take of listed endangered marine mammal species otherwise prohibited by section 9 of the ESA. Although the ringed seal and bearded seal have been proposed for listing under the ESA, this activity is not likely to jeopardize the continued existence of these species, and neither of the listings will be finalized prior to conclusion of the proposed seismic survey. Therefore, consultation pursuant to section 7 of the ESA is not needed for these species.

**National Environmental Policy Act (NEPA)**

With its complete application, UAGI and NSF provided NMFS an EA analyzing the direct, indirect, and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. The EA, prepared by LGL on behalf of NSF is entitled ''Environmental Assessment of a Marine Geophysical Survey by the R/V Marcus G. Langseth in the Arctic Ocean, September–October 2011.'' NMFS conducted an independent review and evaluation of the document for sufficiency and compliance with the Council on Environmental Quality regulations and NOAA Administrative

Order 216–6 5.09(d) and determined that issuance of the IHA is not likely to result in significant impacts on the human environment. Consequently, NMFS has adopted NSF's EA and prepared a FONSI for the issuance of the IHA. An Environmental Impact Statement is not required and will not be prepared for the action.

### Authorization

As a result of these determinations, NMFS has issued an IHA to UAGI for the take of marine mammals, by Level B harassment, incidental to conducting a marine seismic survey in the Arctic Ocean, September–October 2011, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: August 26, 2011.

**James H. Lecky,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–22434 Filed 8–31–11; 8:45 am]

BILLING CODE 3510–22–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, September 7, 2011, 10–11 a.m.

**PLACE:** Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Commission Meeting—Open to the public.

**MATTERS TO BE CONSIDERED:**

*Briefing Matter:* Proposed Safety Standard for Play Yards.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: August 30, 2011.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2011–22546 Filed 8–30–11; 4:15 pm]

BILLING CODE 6355–01–P

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, September 7, 2011; 2–4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

**MATTER TO BE CONSIDERED:**

**Compliance Status Report**

The Commission staff will brief the Commission on the status of compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

**CONTACT PERSON FOR MORE INFORMATION:** Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: August 30, 2011.

**Todd A. Stevenson,**

*Secretary.*

[FR Doc. 2011–22547 Filed 8–30–11; 4:15 pm]

BILLING CODE 6355–01–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent To Prepare a Joint Supplemental Environmental Impact Statement and Environmental Impact Report for the Folsom Dam Modification Project, Approach Channel.

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers; DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The action being taken is the preparation of a joint supplemental environmental impact statement/environmental impact report (EIS/EIR) for the Folsom Dam Modification, Approach Channel Project. The EIS/EIR will be prepared in accordance with the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The U.S. Army Corps of Engineers (USACE) will serve as lead agency for compliance with NEPA, and the State of California Central Valley Flood Protection Board (CVFPB) will serve as lead agency for compliance with CEQA. The Folsom Dam Modification Project, Approach Channel will evaluate alternatives, including a locally preferred plan, for providing dam safety and flood damage reduction at Folsom Dam located downstream from the confluence of the North and South Forks of the American River near the city of Folsom, California.

**DATES:** Written comments regarding the scope of the environmental analysis should be received by November 4, 2011.

**ADDRESSES:** Written comments concerning this study and requests to be included on the Folsom Dam Modification Project, Approach Channel mailing list should be submitted to Ms. Nancy Sandburg, U.S. Army Corps of Engineers, Sacramento District, *Attn:* Planning Division (CESPK–PD–RA), 1325 J Street, Sacramento, California 95814.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nancy Sandburg via telephone at (916) 557–7134, e-mail: *Nancy.H.Sandburg@usace.army.mil* or regular mail at (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

1. *Proposed Action.* USACE is preparing an EIS/EIR to analyze the environmental impacts associated with a range of alternatives for providing dam safety and flood damage reduction associated with Phase 4 of the action for the Folsom Dam Modification Project, Approach Channel. This project addresses design alternatives for an Approach Channel that is tiered from the 2007 Folsom Dam Safety and Flood Damage Reduction—Joint Federal Project EIS/EIR NEPA analyses to complete construction of a control structure and spillway at Folsom Dam on the American River system.

2. *Alternatives.* The EIS/EIR will address construction alternatives that are intended to improve dam safety and provide flood risk management within the project area. Alternatives analyzed during the investigation may include, but are not limited to, a combination of one or more of the following design measures to complete the new control structure and spillway: installation of a temporary cofferdam or cutoff walls, construction of a spur dike, blasting to remove bedrock material, dredging, terrestrial deposition of dredge material, and temporary modification of existing terrestrial sites for haul routes and staging areas.

3. *Scoping Process.*

*a.* A public scoping meeting will be held to present an overview of the Folsom Dam Modification Project, Approach Channel and the EIS/EIR process, and to afford all interested parties with an opportunity to provide comments regarding the scope of analysis and potential alternatives. The public scoping meeting will be held in at the Folsom Community Center at 52 Natoma Street in Folsom, CA on October 20, 2011. Presentation will begin at 6 p.m.

*b.* Potentially significant issues to be analyzed in depth in the EIS/EIR include project specific and cumulative

effects on air quality, water quality, recreation, fisheries, and transportation.

*c.* USACE is consulting with the State Historic Preservation Officer to comply with the National Historic Preservation Act, and with the U.S. Fish and Wildlife Service and National Marine Fisheries Service to comply with the Endangered Species Act. USACE is also coordinating with the U.S. Fish and Wildlife Service to comply with the Fish and Wildlife Coordination Act.

*d.* A 45-day public review period will be provided for all interested parties, individuals, and agencies to review and comment on the draft EIS/EIR. All interested parties are encouraged to respond to this notice and provide a current address if they wish to be notified of the draft EIS/EIR circulation.

4. *Availability.* The draft EIS/EIR is currently scheduled to be available for public review and comment in Spring 2012.

Dated: April 25, 2011.

**William J. Leady,**

*Colonel, U.S. Army, District Commander.*

[FR Doc. 2011–22383 Filed 8–31–11; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent to Prepare a Draft Environmental Impact Statement for the Proposed Cordova Hills Project in Sacramento County, CA, Corps Permit Application Number SPK–2004–00116

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of Intent.

**SUMMARY:** In 2008, the Cordova Hills Ownership Group (applicant) submitted a Department of the Army permit application for the proposed Cordova Hills project. On June 18, 2008, the U.S. Army Corps of Engineers, Sacramento District (Corps) determined that the proposed project may result in significant impacts to the environment, and that the preparation of an Environmental Impact Statement (EIS) is necessary. A revised permit application was submitted by the applicant on March 15, 2011.

The applicant proposes to implement a large-scale, mixed-use, mixed-density master planned community with an integrated university, neighborhood and regional commercial and residential uses and associated infrastructure. The proposed project consists of approximately: 1,000 acres of residential uses ranging from one dwelling unit per acre to 40 dwelling units per acres; 1,380,000 square feet of retail and commercial uses; 240 acres of private university campus; 635 acres of recreation areas, parks, natural avoided areas and open space corridors; 538 acres for on-site wetland and habitat avoidance, and; 18 miles of off-street/multi-use trails.

The project site is approximately 2,688 acres and contains 89.106 acres of waters of the United States. The proposed project would involve the discharge of fill material into approximately 39.630 acres of waters of the United States, including vernal pools, seasonal wetlands, seeps, intermittent drainages, and stock ponds. The proposed project may also have have indirect impacts on other waters of the U.S.

**DATES:** The Corps will conduct a public scoping meeting that will be held on Tuesday, September 13, 2011 from 5 p.m. to 7 p.m.

**ADDRESSES:** The scoping meeting will be held at Rancho Cordova City Hall, located at 2729 Prospect Park Drive, Rancho Cordova, CA 95670.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lisa Gibson, (916) 557–5288, e-mail: *lisa.m.gibson2@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** Interested parties are invited to submit written comments on the permit application on or before October 26, 2011. Scoping comments should be submitted within the next 60 days, but may be submitted at any time prior to publication of the Draft EIS. To submit comments on this notice or for questions about the proposed action and the Draft EIS, please contact Lisa Gibson, 650 Capitol Mall, Suite 5–200, Sacramento, CA 95814–4708. Parties interested in being added to the Corps' electronic mail notification list for the proposed project can e-mail a request to *spk-regulatory-info@usace.army.mil* and indicate which list you would like your e-mail address to be added. Please refer to Identification Number SPK–2004–00116 in any correspondence.

The proposed Cordova Hills Project site is located in unincorporated eastern Sacramento County. The site is bordered on the west by Grant Line Road, and on the north by Glory Lane. The proposed project site is north of Kiefer Road and west of the Carson Creek drainage, in portions of Sections 13, 14, 23 and 24, Township 8 North, Range 7 East, and Section 18, Township 8 North, Range 8 East, Mount Diablo Meridian.

A wetland delineation of the project site, which has been approved by the Corps, indicates that a total of approximately 89 acres of waters of the United States are present within the proposed project area, including: 47.5 acres of vernal pools; 22.9 acres of seasonal wetlands; 0.01 acres of seeps; 16.9 acres of intermittent drainage; 0.17 acres of Carson Creek, and; 1.5 acres of man-made stock ponds.

The EIS will include alternatives to the Proposed Action that will meet NEPA requirements for a reasonable range of alternatives, and will also meet the requirements of *CWA Section 404(b)(1) Guidelines.* The alternatives to be evaluated within the EIS have not yet been developed, but will, at a minimum, include the No Action Alternative, the Proposed Project Alternative, additional on-site alternatives, and off-site alternatives.

Sacramento County, as the lead agency responsible for compliance with the California Environmental Quality Act, is currently preparing a Draft Environmental Impact Report (DEIR). The DEIR is expected to be released in the fall of 2011.

The Corps' public involvement program includes several opportunities to provide verbal and written comments on the proposed Cordova Hills Project through the EIS process. Affected federal, state, and local agencies, Native American tribes, and other interested private organizations and parties are invited to participate. Potentially significant issues to be analyzed in depth in the EIS include loss of waters of the United States (including wetlands), and impacts related to cultural resources, biological resources, air quality, hydrology and water quality, noise, traffic, aesthetics, utilities and service systems, and socioeconomic effects.

The Corps will initiate formal consultation with the U.S. Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act for impacts to listed species that may result from the proposed project. The Corps will also consult with the State Historic Preservation Office under Section 106 of the National Historic Preservation Act for properties listed or potentially eligible for listing on the National Register of Historic Places, as appropriate.

The Draft EIS is expected to be made available to the public in the summer of 2012.

Dated: August 15, 2011.

**William J. Leady,**

*Colonel, U.S. Army District Engineer.*

[FR Doc. 2011–22392 Filed 8–31–11; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Availability of the Proposed Report of the Chief of Engineers and the Final Joint Environmental Impact Statement/ Environmental Impact Report Within the City of San Clemente Extending 3,412 ft (1,040 m) From Linda Lane to T Street

**AGENCY:** Department of the Army. U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** This announces the availability of the Proposed Report of the Chief of Engineers and the Final Joint Environmental Impact Statement/ Environmental Impact Report (FEIS/R) which analyzes the potential environmental effects associated with the proposed action and alternatives for providing shoreline protection to approximately 3,412 feet ([ft], 1,040 meters [m]) of the San Clemente shoreline from coastal storms. Maintaining the beach is needed to prevent the beach erosion that results from winter storms and to prevent damage to adjacent commuter and national defense rail line that runs along the beach through the City. In addition, the loss of sand at the beach would have an impact on City beachfront structures and beach recreation, which contributes to the local economy, and would reduce the ecological functioning of the sand beach/littoral zone.

**FOR FURTHER INFORMATION CONTACT:** Andrea E. Walker, CECW–PC–3H21, Headquarters, U.S. Army Corps of Engineers, 441 G Street, NW., Washington, DC 20314.

**SUPPLEMENTARY INFORMATION:**

*1. Without-Project Conditions and Damages.* Prior to urban development in the 1990s, the beaches within the study area remained relatively stable because of a balanced sediment supply delivered from the San Juan Creek to the Oceanside littoral cell. However, documented historical beach widths above the Mean Sea Level (MSL) line between T Street and Mariposa Point were as narrow as 82 ft (25 m) in the winter months during this time period. As a consequence, storm damages occurred in the past (*e.g.* 1964, 1983, 1988 and 1993), as the protective buffer beach width was narrow, particularly in the winter season.

Since the 1990s, the project area has experienced chronic, mild, long-term erosion. Shoreline retreat is a result of the decrease of fluvial sand supply resulting from the concreting of creeks and rivers, upstream dams, and urban development. Continued future shoreline retreat is expected to result in storm waves breaking directly upon the railroad ballast, which significantly threatens the operation of the rail corridor. Continued future shoreline retreat also will subject public facilities to storm wave-induced damages. These facilities, maintained by the City of San Clemente, include the Marine Safety Building, public restroom facilities located on the beach, and lifeguard stations. If no action is taken, public properties and structures are expected to be susceptible to damages caused by erosion (including land loss and undermining of structures), inundation (structures), and wave attack (structures, railroad).

*2. Railroad Damages.* The Los Angeles to San Diego (LOSSAN) railroad line, separating the active coastline from the coastal bluff and adjacent backshore development, has experienced railway traffic service delays as a result of the narrowing shorelines. These delays occur when storm wave run-up exceeds the elevation of the Southern California Regional Railroad Authority (SCRRA) protective revetments or the crest of the railroad ballast in the without-revetment segments. Two service disruption incidents of approximately 24 hours occurred in the 1960s and 1970's at Mariposa Point (north of the Pier) and at a location south of the Pier, respectively. In response, the SCRRA and Orange County Transportation Authority have constructed un-engineered riprap revetment in areas where the railroad ballast and tracks are vulnerable to storm wave-induced damages. Over the past ten years, storm wave attack in the study area has restricted train services periodically and during the 1998 El Nino, the protective revetment structure sustained severe damage that significantly slowed train speeds. The railroad line is used to service various national defense facilities between Los Angeles and San Diego.

*3. Coastal Storm Damages.* Public beach facilities located have experienced damages from storms, as the existing beach has historically acted as a buffer against storm wave attack but has been narrowed. These facilities include the Marine Safety Building, public restroom facilities located on the back beach, lifeguard stations, parking areas, and paving near the Pier. The 1983 El Nino storm season resulted in an estimated damage of $3,277,000 to public beach facilities in the study area. If no action is taken, the City of San Clemente's properties and structures will be susceptible to future damages caused by erosion (including loss of land and of properties), inundation, and wave attack. The majority of the National Economic Development (NED) damages/costs are related to LOSSAN railroad protection/construction and O&M costs. On an annual basis, the LOSSAN costs are $1,280,000 and the annualized value of all damage is $1,424,000.

*4. Internet.* The FEIS is also available for review on the following Web sites: Corps of Engineers, Los Angeles District Internet site: *http://www.spl.usace.army.mil/cms/index.php.* City of San Clemente's Web site is: *http://san-clemente.org/sc/News.aspx?PageID=1.*

5. *The Record of Decision (ROD)* will be issued no sooner than 30 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2011–22386 Filed 8–31–11; 8:45 am]

BILLING CODE 3720–58–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Request for Comments on the Notice of Intent To Prepare a Draft Environmental Impact Statement for the Skagit River General Investigation Study (Previously Advertised as the Skagit River Flood Damage Reduction Study), Skagit County, WA

**AGENCY:** Department of the Army, Army Corps of Engineers, DoD.

**ACTION:** Extension of comment period.

**SUMMARY:** The Corps of Engineers is extending the comment period for the Notice of Intent (NOI) to prepare a Draft Environmental Impact Statement for the Skagit River General Investigation Study (previously advertised as the Skagit River Flood Damage Reduction Study), Skagit County, Washington. This extension will provide interested persons with additional time to prepare comments on the NOI.

**DATES:** Consideration will be given only to comments that are received on or before September 9, 2011.

**ADDRESSES:** Comments on the proposed project should be sent to: Hannah Hadley, Study Environmental Coordinator, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, WA 98124–3755, *Attn:* CENWS–PM–ER; telephone (206) 764–6950; fax (206) 764–4470; or e-mail *Hannah.F.Hadley@usace.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** General questions concerning the proposed action and the DEIS can be directed to: Hannah Hadley, Study Environmental Coordinator (see **ADDRESSES**) or Daniel Johnson, Project Manager, Seattle District, U.S. Army Corps of Engineers, P.O. 3755, Seattle, WA 98124–3755, ATTN: CENWS–EN–CM–CJ; telephone (206) 764–3423; fax (206) 764–4470; or e-mail *Daniel.E.Johnson@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:** The NOI to prepare a Draft Environmental Impact Statement for the Skagit River General Investigation Study (previously advertised as the Skagit River Flood Damage Reduction Study), Skagit County, Washington was published in the July 29, 2011 **Federal Register** (76 FR 45543) for review and comment. Comments regarding the NOI were required to be received on or before August 29, 2011. During the comment period, requests to extend the comment period were received.

In response to these requests, the comment period for the NOI has been extended through September 9, 2011.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 2011–22389 Filed 8–31–11; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF ENERGY

### Issuance of Loan Guarantee to Genesis Solar, LLC, for the Genesis Solar Energy Project

**AGENCY:** U.S. Department of Energy.

**ACTION:** Record of Decision.

**SUMMARY:** The U.S. Department of Energy (DOE) announces its decision to issue a loan guarantee under Title XVII of the Energy Policy Act of 2005 (EPAct 2005) to Genesis Solar, LLC, for construction and startup of the Genesis Solar Energy Project (GSEP), a 250-megawatt (MW) nominal capacity solar power generating facility on approximately 1,950 acres, all of which is administered by the U.S. Department of the Interior, Bureau of Land Management (BLM), in Riverside County, California. The environmental impacts of constructing and operating this project were analyzed pursuant to the National Environmental Policy Act (NEPA) in *Plan Amendment/Final Environmental Impact Statement for the Genesis Solar Energy Project, Riverside County, California* (75 **Federal Register** [FR] 52736; August 27, 2010) (Final EIS), prepared by the BLM Palm Springs-South Coast Field Office with DOE as a cooperating agency. BLM consulted DOE during preparation of the EIS, DOE provided comments, and BLM addressed those comments in the Final EIS. DOE subsequently determined that its own NEPA procedures had been satisfied and adopted the Final EIS. (75 FR 78993; December 17, 2010)

**ADDRESSES:** Copies of this Record of Decision (ROD) and the Final EIS may be obtained by contacting Matthew McMillen, NEPA Compliance Officer, Environmental Compliance Division, Loan Programs Office (LP–10), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202–586–7248; or e-mail *Matthew.Mcmillen@hq.doe.gov.* The Final EIS and this ROD are also available on the DOE NEPA Web site at: *http://nepa.energy.gov,* and on the Loan Programs Web site at: *http://www.loanprograms.energy.gov.*

**FOR FURTHER INFORMATION CONTACT:** For further information about this ROD, contact Matthew McMillen, as indicated in the **ADDRESSES** section above. For general information about the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; telephone 202–586–4600; leave a message at 800–472–2756; or e-mail *AskNEPA@hq.doe.gov.* Information about DOE NEPA activities and access to DOE NEPA documents are available through the DOE NEPA Web site at *http://nepa.energy.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

The GSEP is a proposed concentrating solar electrical generating facility using parabolic trough technology with a dry-cooling system and associated facilities located on approximately 1,950 acres of BLM-administered Federal land in Riverside County, California, approximately 27 miles east of the unincorporated community of Desert Center and 25 miles west of the Arizona-California border city of Blythe. The GSEP will consist of two independent solar electric generating facilities with a net electrical output of 125 MW each, resulting in a total net electrical output of 250 MW. In addition to the generating facility, the project includes a distribution line, a 14-mile electrical transmission line, fiber-optic lines, a natural-gas pipeline, and a 6.5-mile access road. A double-circuit 230-kilovolt (kV) transmission line will be constructed to connect to the Southern California Edison Colorado River substation via the existing Blythe Energy Project Transmission Line between the Julian Hinds and Buck substations. The linear facilities will encompass approximately 90 acres outside the proposed project site.

On January 31, 2007, BLM's Palm Springs-South Coast Field Office received an application pursuant to Title V of the Federal Land Policy and Management Act (43 United States Code [U.S.C.] 1761) for a right-of-way (ROW) to construct, operate, maintain, and decommission a project identified as the NextEra Ford Dry Lake Solar Power Plant on BLM-administered Federal land in Riverside County, California. In June 2009, the applicant notified BLM that the company name was being changed to Genesis Solar, LLC, and the project became known as the Genesis Solar Energy Project (GSEP). The BLM California Desert Conservation Area (CDCA) Plan requires that all sites associated with power generation or transmission not identified in the CDCA Plan be considered through the plan amendment process. BLM approved the Proposed Plan Amendment to the CDCA Plan to allow the GSEP and approved a solar energy ROW to Genesis Solar, LLC, for the project; on November 4, 2010, the Secretary of the Interior approved these decisions.

In June 2010, Genesis Solar, LLC applied to DOE for a loan guarantee under Title XVII of EPAct 2005, as amended by Section 406 of the American Recovery and Reinvestment Act of 2009. (Recovery Act) On September 1, 2010, DOE invited the applicant to submit a Part II application in accordance with the DOE Federal Loan Guarantee Solicitation for Commercial Technology Renewable Energy Generation Projects under the Financial Institution Partnership Program, No. DE–FOA–0000166. On November 17, 2010, Genesis Solar, LLC submitted its Part II application for an $800 million loan guarantee to support the financing of the GSEP.

#### NEPA Review

BLM was the lead Federal agency in the preparation of the Genesis Solar Energy Project EIS, and DOE was a cooperating agency pursuant to a Memorandum of Agreement between DOE and BLM signed in January 2010. DOE reviewed the content of the draft EIS and provided comments to BLM to ensure that the DOE NEPA regulations (10 Code of Federal Regulations part 1021) were satisfied.

On November 23, 2009, the BLM published the ''Notice of Intent to Prepare an Environmental Impact

Statement/Staff Assessment for the NextEra Ford Dry Lake Solar Power Plant, Riverside County, CA, and Possible Land Use Plan Amendment'' in the **Federal Register** (74 FR 61167), with a 30-day scoping period for public comments that closed on December 23, 2009. The project name later changed to Genesis Solar Energy Project. The Environmental Protection Agency (EPA) published a Notice of Availability of the Draft EIS and the Draft CDCA Plan Amendment for GSEP in the **Federal Register** on April 9, 2010 (75 FR 18204). The Draft EIS was available for a 90-day public comment period, which closed on July 8, 2010. Comments received on the Draft EIS were addressed in the *Plan Amendment and Final Environmental Impact Statement for the Genesis Solar Energy Project,* and EPA published a Notice of Availability in the **Federal Register** on August 27, 2010 (75 FR 52736). BLM made the Final EIS available for an additional 30-day public review and comment period from August 27 to September 27, 2010. All substantive comments received during the 30-day public review and comment period were responded to in Appendix 1 of the *Record of Decision for the Genesis Solar Energy Project and Amendment to the California Desert Conservation Area Resource Management Plan, Riverside County, CA* (BLM ROD). BLM published its ROD in the **Federal Register** on November 12, 2010 (75 FR 69458). Links to these documents can be found at the BLM Web site: *http://www.blm.gov/ca/st/en/prog/energy/fasttrack/genesis/fedstatus.html.*

On October 7, 2010, DOE received a comment letter from the California Unions for Reliable Energy (CURE) regarding Colorado River water rights and the need for an approved water allocation for GSEP. DOE reviewed the comment responses prepared by BLM and published in the Final EIS and the information provided in the BLM ROD, and concurs with BLM as stated in its ROD that:

> The BLM has thoroughly reviewed the regulatory framework regarding the use of the accounting surface methodology of determining impacts to the Colorado River and determined that no formal regulation exists that requires Genesis to acquire an allocation at this time. The Bureau of Reclamation has not finalized its rule on the accounting surface methodology for the Colorado River. This ROD recognizes that, should a rulemaking be finalized on the currently proposed accounting surface method, the BLM will work with Genesis to ensure that appropriate processes are followed to obtain such an allocation. (BLM ROD, Section 1.2, page 13)

**Alternatives Considered**

BLM considered six alternatives: (1) The project identified in the Final EIS as the Proposed Action (parabolic trough technology with wet cooling); (2) the Dry Cooling Alternative (identified in the Final EIS as the Preferred Alternative and ultimately selected by BLM); (3) the Reduced Acreage Alternative; (4) No Action Alternative A; (5) No Action Alternative B; and (6) No Action Alternative C (under which no ROW grant for the GSEP would be authorized but the CDCA Plan would be amended). Chapter 2 of the Final EIS describes these alternatives in detail, and they are fully analyzed in Chapters 3 and 4 of the Final EIS.

The Dry Cooling Alternative, identified as the BLM Selected Alternative in the BLM ROD, requires mitigation measures identified in Chapter 4 of the Final EIS; the complete language of these measures, terms, and conditions is provided in Appendix G, Conditions of Certification, of the Final EIS. BLM has incorporated these requirements as terms and conditions into the ROW. In addition, BLM developed a Compliance Monitoring Plan, which is included as Appendix 6 to the BLM ROD.

The DOE decision is whether or not to issue a loan guarantee to Genesis Solar, LLC for $800 million to support construction and startup of the GSEP. Accordingly, the DOE alternatives in the Final EIS are (1) Issue the loan guarantee for construction and startup of the GSEP under the Dry Cooling Alternative identified as the BLM Selected Alternative in the BLM ROD, and (2) the No Action Alternative. Under the No Action Alternative, DOE would not issue a loan guarantee for the project, and it is not likely that Genesis Solar, LLC would implement the project as currently planned.

**Environmentally Preferable Alternative**

The BLM ROD identifies three environmentally preferable alternatives: (1) No Action Alternative A, under which BLM would not approve the ROW for the GSEP and would not amend the CDCA Plan; (2) No Action Alternative B, under which BLM would not authorize the ROW for the GSEP but would amend the CDCA Plan to make the project site unavailable for any type of solar energy development; and (3) the Dry Cooling Alternative, under which the project would use dry cooling technology to generate the same energy output using the same footprint but would reduce water consumption by 87%. No Action Alternatives A and B would not have impacts on the ground. However, neither of these alternatives would allow the development of renewable energy, which is a national priority. The Dry Cooling Alternative is the BLM Preferred Alternative in the Final EIS and is identified as the Selected Alternative in the BLM ROD because it allows the development of renewable energy. No wetlands would be filled and no delineated floodplains would be affected under the Dry Cooling Alternative.

DOE has decided that its Alternative 1, to issue a loan guarantee for construction and startup of the GSEP under the Dry Cooling Alternative, is environmentally preferable. DOE has determined that this alternative offers environmental benefits due to a reduction in impacts to water resources, while allowing the project's total generation capacity of 250 MW of renewable energy development. In addition, DOE has determined that this alternative offers substantial environmental benefits due to anticipated reductions in greenhouse gas emissions as described in the Final EIS, and that all practicable means to avoid or minimize environmental harm, as described in the BLM ROD and its appendices for the GSEP, are adopted as required mitigation measures by BLM.

**Consultation**

As the lead Federal agency for the GSEP, BLM complied with Section 106 of the National Historic Preservation Act and consulted with the Advisory Council on Historic Preservation, the California State Historic Preservation Officer, and interested Native American tribes; complied with Section 7 of the Endangered Species Act and the Bald and Golden Eagle Protection Act and consulted with the U.S. Fish and Wildlife Service; and entered into government-to-government consultations with a number of tribal governments. In addition, BLM consulted with the U.S. Army Corps of Engineers, which determined that the project site does not impact waters of the United States and that a Clean Water Act permit will not be required, and the State of California and Riverside County regarding compliance with state and local laws. Section 5.5 of the BLM ROD summarizes consultations with agencies and other entities.

**Intentional Destructive Acts**

As a part of its own review, DOE verified that the potential environmental impact of acts of terrorism, sabotage or other intentional destructive acts was considered in the Final EIS. DOE concluded that the proposed GSEP presents an unlikely

target for an act of terrorism or sabotage. Further, as discussed in the Final EIS, the site security measures provide appropriate levels of security to protect electrical infrastructure from malicious mischief, vandalism, or domestic/foreign terrorist attacks.

**Decision**

DOE has decided to issue a loan guarantee for construction and startup of GSEP under the Dry Cooling Alternative, as described in the Final EIS and BLM ROD.

Approval of the loan guarantee for GSEP responds to the DOE purpose and need pursuant to Section 1705 of EPAct 2005 (42 U.S.C. 16511–16514), which was added to EPAct 2005 by the Recovery Act. Section 1705 authorizes a program for rapid deployment of renewable energy projects and related manufacturing facilities, electric power transmission projects, and leading-edge biofuels projects. The primary purposes of the Recovery Act are job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. The Section 1705 program is designed to address the economic conditions of the Nation, in part, through renewable energy, transmission, and leading-edge biofuels projects. Eligible projects must commence construction by September 30, 2011.

**Mitigation**

The GSEP project for which DOE has decided to issue a loan guarantee includes mitigation measures, terms, and conditions applied by BLM in its ROW. The mitigation measures, terms, and conditions represent practicable means to avoid or minimize environmental impacts from the selected alternative (the Dry Cooling Alternative). BLM is lead Federal agency for the GSEP project under NEPA and is responsible for ensuring compliance with all adopted mitigation measures, terms, and conditions for the GSEP project set forth in the Final EIS and ROD. The complete language of the mitigation measures, terms, and conditions is provided in Appendix G of the Final EIS, and the Compliance Monitoring Plan is provided in Appendix 6 of the BLM ROD. BLM has also incorporated the mitigation measures, terms, and conditions into the ROW as terms and conditions.

The DOE loan guarantee agreement requires that the applicant comply with all applicable laws and the terms of the ROW, including mitigation measures. An applicant's failure to comply with applicable laws and the ROW would constitute a default. Upon continuance of a default, DOE would have the right under the loan guarantee agreement between DOE and the applicant to exercise usual and customary remedies. To ensure that the applicant so performs, the Loan Programs Office monitors all operative loan guarantee transactions.

Issued in Washington, DC, on August 25, 2011.

**Jonathan M. Silver,**

*Executive Director, Loan Programs Office.*

[FR Doc. 2011–22403 Filed 8–31–11; 8:45 am]

BILLING CODE 6450–10–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

**[Case No. RF–019]**

### Petition for Waiver and Notice of Granting the Application for Interim Waiver of Samsung from the Department of Energy Residential Refrigerator and Refrigerator-Freezer Test Procedure

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of Petition for Waiver and Request for Public Comments.

**SUMMARY:** This notice announces receipt of and publishes the Samsung Electronics America, Inc. (Samsung) petition for waiver (hereafter, ''petition'') from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of electric refrigerators and refrigerator-freezers. The waiver request pertains to certain basic models in Samsung's product lines that incorporate multiple defrost cycles. In its petition, Samsung provides an alternate test procedure that is the same as the test procedure DOE published in an interim final rule. DOE solicits comments, data, and information concerning Samsung's petition and the suggested alternate test procedure. DOE also publishes notice of the grant of an interim waiver to Samsung.

**DATES:** DOE will accept comments, data, and information with respect to the Samsung Petition until, but no later than October 3, 2011.

**ADDRESSES:** You may submit comments, identified by case number ''RF–019,'' by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: AS_Waiver_Requests@ee.doe.gov* Include the case number [Case No. RF–017] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J/1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to review the background documents relevant to this matter, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW., (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Available documents include the following items: (1) This notice; (2) public comments received; (3) the petition for waiver and application for interim waiver; and (4) prior DOE rulemakings regarding similar refrigerator-freezers. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background and Authority**

Title III, part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified, established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the electric refrigerators and refrigerator-freezers that are the focus of this notice.[1] Part B includes definitions, test procedures,

[1] For editorial reasons, upon codification in the U.S. Code, part B was re-designated part A.

labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure the energy efficiency, energy use, or estimated annual operating costs of a covered product, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The test procedure for automatic electric refrigerators and refrigerator-freezers is contained in 10 CFR part 430, subpart B, appendix A1.

DOE's regulations for covered products contain provisions allowing a person to seek a waiver for a particular basic model from the test procedure requirements for covered consumer products when (1) The petitioner's basic model for which the petition for waiver was submitted contains one or more design characteristics that prevent testing according to the prescribed test procedure, or (2) when prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption characteristics. 10 CFR 430.27(b)(1)(iii).

The Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

Any interested person who has submitted a petition for waiver may also file an application for interim waiver of the applicable test procedure requirements. 10 CFR 430.27(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(g).

## II. Petition for Waiver of Test Procedure

On July 19, 2011, Samsung filed a petition for waiver for new refrigerator-freezer models from the test procedure applicable to residential electric refrigerators and refrigerator-freezers set forth in 10 CFR part 430, subpart B, Appendix A1. Samsung is designing new refrigerator-freezers that incorporate multiple defrost cycles. In its petition, Samsung seeks a waiver from the existing DOE test procedure applicable to refrigerators and refrigerator-freezers under 10 CFR part 430 because the existing test procedure does not account for multiple defrost cycles. Therefore, Samsung has asked to use an alternate test procedure that is the same as the test procedure DOE published in an interim final rule (75 FR 78810, December 16, 2010). On January 27, 2011, Samsung had filed a similar petition for waiver and request for interim waiver for other basic models of refrigerator-freezers that incorporate multiple defrost cycles.

## III. Application for Interim Waiver

Samsung also requests an interim waiver from the existing DOE test procedure. Under 10 CFR 430.27(b)(2), each application for interim waiver must demonstrate likely success of the Petition for Waiver and address the economic hardship and/or competitive disadvantage that is likely to result absent a favorable determination on the application for interim waiver.'' An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied; if it appears likely that the petition for waiver will be granted; and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that Samsung's application for interim waiver does not provide sufficient market, equipment price, shipments and other manufacturer impact information to permit DOE to evaluate the economic hardship Samsung might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types. Therefore, it appears likely that Samsung's petition for waiver will be granted. In addition, it is desirable for public policy reasons to grant immediate relief pending a decision on the petition for waiver. DOE previously granted a waiver to Samsung for other basic models incorporating multiple defrost technology. In addition, DOE's test procedure interim final rule would resolve the technical issues in this waiver, but use of the test procedure would not be required until the compliance date of any amended standards (approximately 2014). (75 FR 78810, December 16, 2010).

For the reasons stated above, DOE grants Samsung's application for interim waiver from testing of its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters. Therefore, *it is ordered that:*

The application for interim waiver filed by Samsung is hereby granted for Samsung's refrigerator-freezer product lines that incorporate multiple defrost cycles subject to the specifications and conditions below.

1. Samsung shall not be required to test or rate its refrigerator-freezer product lines that incorporate multiple defrost cycles on the basis of the test procedure under 10 CFR part 430 subpart B, appendix A1.

2. Samsung shall be required to test and rate its refrigerator-freezer product line containing relative humidity sensors and adaptive control anti-sweat heaters according to the alternate test procedure as set forth in section IV, ''Alternate test procedure.''

The interim waiver applies to the following basic model groups:

| | | |
|---|---|---|
| DFSF9VKB****<br>GFSF6PKBBB<br>DFSS9VKB**** | GFSF6PKB****<br>GFSS6PKBSS | GFSS6PKB****<br>GFSF6PKBWW |

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may be manufactured by the petitioner. Samsung may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of refrigerator-freezers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not

release a petitioner from the certification requirements set forth at 10 CFR part 429.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

**IV. Alternate Test Procedure**

For the duration of the interim waiver, Samsung shall be required to test the products listed above according to the test procedures for residential electric refrigerator-freezers prescribed by DOE at 10 CFR part 430, subpart B, Appendix A1, except that, for the Samsung products listed above only, include:

1. In section 1, *Definitions,* the following definition at the end:

''Defrost cycle type'' means a distinct sequence of control whose function is to remove frost and/or ice from a refrigerated surface. There may be variations in the defrost control sequence such as the number of defrost heaters energized. Each such variation establishes a separate distinct defrost cycle type. However, defrost achieved regularly during the compressor off-cycles by warming of the evaporator without active heat addition is not a defrost cycle type.

2. In section 4, *Test Period,* the following at the end:

Systems with Multiple Defrost Frequencies. This section applies to models with long-time automatic or variable defrost control with multiple defrost cycle types, such as models with single compressors and multiple evaporators in which the evaporators have different defrost frequencies. A two-part method shall be used. The first part is a stable period of compressor operation that includes no portions of the defrost cycle, such as precooling or recovery, that is otherwise the same as the test for a unit having no defrost provisions. The second part is designed to capture the energy consumed during all of the events occurring with the defrost control sequence that are outside of stable operation, and will be conducted separately for each distinct defrost cycle type. For defrost cycle types involving the defrosting of both fresh food and freezer compartments, the freezer compartment temperature shall be used to determine test period start and stop times.

3. In section 5, *Test Measurements,* the following at the end:

Long-time or Variable Defrost Control for Systems with Multiple Defrost cycle Types.

The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = \left(1440 \times EP1/T1\right) + \sum_{i=1}^{D}\left[\left(EP2_i - \left(EP1 \times T2_i / T1\right)\right) \times \left(12/CT_i\right)\right]$$

**V. Summary and Request for Comments**

Through today's notice, DOE grants Samsung an interim waiver from the specified portions of the test procedure applicable to Samsung's new line of refrigerator-freezers with multiple defrost cycles and announces receipt of Samsung's petition for waiver from those same portions of the test procedure. DOE publishes Samsung's petition for waiver pursuant to 10 CFR 430.27(b)(1)(iv). The petition includes a suggested alternate test procedure and calculation methodology to determine the energy consumption of Samsung's specified refrigerator-freezers with multiple defrost cycles. Samsung is required to follow this alternate procedure as a condition of its interim waiver, and DOE is considering including this alternate procedure in its subsequent Decision and Order.

DOE solicits comments from interested parties on all aspects of the petition, including the suggested alternate test procedure and calculation methodology. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Michael Moss, Director of Corporate Environmental Affairs, Samsung Electronics America, Inc., 18600 Broadwick St., Rancho Dominguez, CA 90220. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 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 to DOE: one copy of the document including all the information believed to be confidential, and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on August 25, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.*

July 19, 2011

Dr. Henry Kelly
Energy Efficiency and Renewable Energy
Department of Energy
1000 Independence Avenue, SW., Washington, DC 20585

Dear Assistant Secretary Kelly:

Samsung Electronics America, Inc. (''Samsung'') respectfully submits this request Application for Interim Waiver and Petition for Waiver to the Department of Energy (''DOE'' or ''the Department'') for single compressor refrigerator-freezers with multiple defrost cycles that are manufactured by Samsung.

**Reasoning**

10 CFR Part 430.27(a)(1) allows a person to submit a petition to waive for a particular basic model any requirements of § 430.23 upon the grounds that the basic model contains one or more design characteristics which either prevent testing of the basic model according to the prescribed test procedures, or the prescribed test

procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

Current test procedures as prescribed in Appendix A1 to Subpart B of Part 430 (''Appendix A1'') do not adequately provide a way for Samsung to accurately represent the energy consumption of its refrigerator-freezers with multiple defrost cycles. DOE concurred with Samsung's understanding in the interim waiver granted to Samsung in 76 FR 16760.[2] Additionally, DOE communicated that all manufacturers planning on marketing refrigerator-freezers with multiple defrost cycles must seek a waiver from the Department.[3]

**Request**

In 75 FR 78810 (December 16, 2010), DOE issued an interim final rule for Appendix A (''Appendix A''), that effectively addresses test methodologies for refrigerator-freezers with multiple defrost cycles. Samsung requests that the Appendix A test methodology be expeditiously granted for Samsung refrigerator-freezers with multiple defrost cycles. Meanwhile, Samsung believes for the time being that the existing energy efficiency limits are adequate. Samsung therefore does not seek an alternate energy efficiency limit for these models at this time. Samsung requests that the efficient limits under § 430.32(a) are applied to the following Samsung manufactured basic models:

| | | |
|---|---|---|
| DFSF9VKB****<br>GFSF6PKBBB<br>DFSS9VKB**** | GFSF6PKB****<br>GFSS6PKBSS | GFSS6PKB****<br>GFSF6PKBWW |

Please feel free to contact me if you have any questions regarding this Petition for Waiver and Application for Interim Waiver. I will be happy to discuss should any questions arise.

Sincerely,

Michael Moss,

Director of Corporate Environmental Affairs.

[FR Doc. 2011–22399 Filed 8–31–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC11–108–000.
*Applicants:* ITC Great Plains, LLC.
*Description:* Section 203 Application for approval of acquisition of substations of ITC Great Plains, LLC.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5114.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–2972–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: ATC–LSP GIA—Settlement Filing to be effective 10/23/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5068.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–2794–003.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35: 08–23–11 Compliance with Errata Notice to be effective 4/1/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5072.
*Comment Date:* 5 p.m. Eastern Time on Thursday, August 25, 2011.

*Docket Numbers:* ER11–4352–001.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits tariff filing per 35.17(b): Amendment to metadata for APS Service Agreement No. 312 to be effective 10/21/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5045.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4354–000.
*Applicants:* Arizona Public Service Company.
*Description:* Arizona Public Service Company submits tariff filing per 35.15: Cancellation of APS Service Agreement No. 310 to be effective 10/21/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5046.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4355–000.
*Applicants:* TPW Petersburg, LLC.
*Description:* TPW Petersburg, LLC submits tariff filing per 35.12: TPW Petersburg, LLC Rate Schedule FERC No. 1 to be effective 9/30/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5063.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4356–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.15: Notice of Cancellation of Service Agreement No. 2822 in Docket No. ER11–3238–000 to be effective 7/21/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5070.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4357–000.
*Applicants:* Marathon Power LLC.
*Description:* Marathon Power LLC submits tariff filing per 35.12: Marathon Power LLC Market-Based Rate Tariff to be effective 8/23/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5075.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4359–000.
*Applicants:* Florida Power Corporation.
*Description:* Notice of Cancellation of Rate Schedule No. 127 of Florida Power Corporation.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5076.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4360–000.
*Applicants:* Florida Power Corporation.

[2] DOE understands, however, that absent an interim waiver, Samsung's products would not be accurately tested and rated for energy consumption because the current energy test procedure does not include test procedures for products with multiple defrost cycle types.

[3] Until these amendments are required in conjunction with the 2014 standards, manufacturers introducing products equipped with multiple defrost cycle types should, consistent with 10 CFR 430.27, petition for a waiver since the modified version of Appendix A1 set out in today's notice will not include a specified method for capturing this energy usage.

*Description:* Notice of Cancellation of Rate Schedule No. 190 of Florida Power Corporation.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5077.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

*Docket Numbers:* ER11–4361–000.
*Applicants:* Florida Power Corporation.
*Description:* Notice of Cancellation of Rate Schedule No. 191 of Florida Power Corporation.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5078.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 13, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 24, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–22374 Filed 8–31–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings; Filings Instituting Proceedings

* * * * *

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP11–2411–000.
*Applicants:* Northwest Pipeline GP.
*Description:* Northwest Pipeline GP submits tariff filing per 154.403(d)(2): NWP Fuel Factor Filing, Effective October 1, 2011 to be effective 10/1/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5051.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2412–000.
*Applicants:* National Fuel Gas Supply Corporation.
*Description:* National Fuel Gas Supply Corporation submits tariff filing per 154.204: EFT Changes—Line N Projects to be effective 9/22/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5071.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2413–000.
*Applicants:* Kinder Morgan Louisiana Pipeline LLC.
*Description:* Kinder Morgan Louisiana Pipeline LLC submits tariff filing per 154.204: Remove Expired Agreements to be effective 9/23/2011.
*Filed Date:* 08/23/2011.
*Accession Number:* 20110823–5074.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2414–000.
*Applicants:* Pine Needle LNG Company, LLC.
*Description:* Pine Needle LNG Company, LLC submits tariff filing per 154.402: Pine Needle LNG Company 2011 ACA Filing to be effective 10/1/2011.
*Filed Date:* 08/24/2011.
*Accession Number:* 20110824–5033.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2415–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Form of Service Agreement Modifications for Exhibit C to be effective 9/24/2011.
*Filed Date:* 08/24/2011.
*Accession Number:* 20110824–5041.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2416–000.
*Applicants:* Destin Pipeline Company, L.L.C.
*Description:* Destin Pipeline Company, L.L.C. submits tariff filing per 154.402: ACA Filing—2011 to be effective 10/1/2011.
*Filed Date:* 08/24/2011.
*Accession Number:* 20110824–5042.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2417–000.
*Applicants:* ANR Storage Company.
*Description:* ANR Storage Company submits tariff filing per 154.203: Volume 2 Baseline to be effective 8/24/2011.
*Filed Date:* 08/24/2011.
*Accession Number:* 20110824–5059.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2418–000.
*Applicants:* Questar Pipeline Company.
*Description:* Questar Pipeline Company submits tariff filing per 154.402: ACA for 2012 to be effective 10/1/2011.
*Filed Date:* 08/25/2011.
*Accession Number:* 20110825–5001.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2419–000.
*Applicants:* Questar Southern Trails Pipeline Company.
*Description:* Questar Southern Trails Pipeline Company submits tariff filing per 154.402: ACA for 2012 to be effective 10/1/2011.
*Filed Date:* 08/25/2011.
*Accession Number:* 20110825–5002.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2420–000.
*Applicants:* White River Hub, LLC.
*Description:* White River Hub, LLC submits tariff filing per 154.402: ACA for 2012 to be effective 10/1/2011.
*Filed Date:* 08/25/2011.
*Accession Number:* 20110825–5003.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2421–000.
*Applicants:* Vector Pipeline L.P.
*Description:* Vector Pipeline L.P. submits tariff filing per 154.402: ACA Charge Filing Effective 10–1–2011 to be effective 10/1/2011.
*Filed Date:* 08/25/2011.
*Accession Number:* 20110825–5018.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2422–000.
*Applicants:* Gulf South Pipeline Company, LP.
*Description:* Gulf South Pipeline Company, LP submits tariff filing per 154.204: Housekeeping filing for Volume ''Negotiated Rate and Non-conforming Agreements'' to be effective 8/31/2011.
*Filed Date:* 08/25/2011.
*Accession Number:* 20110825–5019.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Number:* RP06–614–000.
*Applicants:* Transwestern Pipeline Company, LLC.
*Description:* Petition to Amend Settlement of Transwestern Pipeline Company, LLC.
*Filed Date:* 08/24/2011.
*Accession Number:* 20110824–5116.
*Comment Date:* 5 p.m. Eastern Time on Tuesday, August 30, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

* * * * *

*Docket Numbers:* RP11–1723–001.

*Applicants:* Great Lakes Gas Transmission Limited Partnership.

*Description:* Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.203: RP11–1723 Compliance to be effective 8/1/2011.

*Filed Date:* 08/24/2011.

*Accession Number:* 20110824–5089.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

*Docket Numbers:* RP11–2135–001.

*Applicants:* Southern Star Central Gas Pipeline, Inc.

*Description:* Southern Star Central Gas Pipeline, Inc. submits tariff filing per 154.205(b): Scheduling Priorities—Withdraw Tariff Record (Sheet No. 241) to be effective 10/1/2011.

*Filed Date:* 08/24/2011.

*Accession Number:* 20110824–5024.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, September 06, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 25, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–22375 Filed 8–31–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–4363–000]**

### Osage Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Osage Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 14, 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 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.

Dated: August 25, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–22376 Filed 8–31–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER11–4351–000]**

### Pinnacle Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Pinnacle Wind, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 14, 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 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.

Dated: August 25, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–22377 Filed 8–31–11; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9458–6]**

### Notification of a Public Teleconference; Clean Air Scientific Advisory Committee; Air Monitoring and Methods Subcommittee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the Air Monitoring and Methods Subcommittee (AMMS) of the Clean Air Scientific Advisory Committee (CASAC) to provide advice on EPA's draft Near-Road $NO_2$ Monitoring Technical Assistance Document.

**DATES:** A public teleconference call will be held on Thursday, September 29, 2011 from 11:30 a.m. to 4:30 p.m. (Eastern Time).

**ADDRESSES:** The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Notice and public teleconference may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134; by fax at (202) 565–2098 or via e-mail at *hanlon.edward@epa.gov.* General information concerning the EPA CASAC can be found at the EPA CASAC Web site at *http://www.epa.gov/casac.* Any inquiry regarding EPA's draft Near-Road $NO_2$ Monitoring Technical Assistance Document should be directed to Mr. Nealson Watkins, EPA Office of Air Quality Planning and Standards (OAQPS) at *watkins.nealson@epa.gov* or 919–541–5522.

**SUPPLEMENTARY INFORMATION:**

*Background:* The CASAC was established pursuant to the under the Clean Air Act (CAA) Amendments of 1977, codified at 42 U.S.C. 7409D(d)(2), to provide advice, information, and recommendations to the Administrator on the scientific and technical aspects of issues related to the criteria for air quality standards, research related to air quality, sources of air pollution, and the strategies to attain and maintain air quality standards and to prevent significant deterioration of air quality. The CASAC is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the AMMS will hold a public teleconference call to provide advice through the chartered CASAC on EPA's draft Near-Road $NO_2$ Monitoring Technical Assistance Document.

In February 2010, EPA promulgated new minimum monitoring requirements for the nitrogen dioxide ($NO_2$) monitoring network in support of a newly revised National Ambient Air Quality Standard (NAAQS) for 1-hour $NO_2$ (75 FR 6474). In the new monitoring requirements, state and local air monitoring agencies are required to install near-road $NO_2$ monitoring stations at locations where peak hourly $NO_2$ concentrations are expected to occur within the near-road environment in larger urban areas. State and local air agencies are required to consider traffic volumes, fleet mix, roadway design, traffic congestion patterns, local terrain or topography, meteorology, population exposure and other factors in determining where a required near-road $NO_2$ monitor should be placed. In August 2010, EPA's Office of Air and Radiation (OAR) requested that CASAC review the initial phase of EPA's Near Road project, and CASAC issued a final report to the EPA Administrator in November 2010 entitled ''Review of the 'Near-road Guidance Document—Outline' and 'Near-road Monitoring Pilot Study Objectives and Approach'.'' OAR considered those recommendations from CASAC and has developed a draft technical document entitled ''Near-Road $NO_2$ Monitoring Technical Assistance Document—DRAFT August 11, 2011'' to provide state and local air monitoring agencies with recommendations and ideas on how to successfully implement near-road $NO_2$ monitors required by the 2010 revisions to the $NO_2$ minimum monitoring requirements. Since the establishment of near-road $NO_2$ monitoring stations will create an infrastructure that will likely be capable of housing multi-pollutant ambient air monitoring equipment, OAR's draft Technical Assistance Document also discusses other pollutants of interest that exist in the near-road environment, including definitions, basis of interest, and measurement methods. OAR requested CASAC advice on how to improve the near-road $NO_2$ Monitoring draft Technical Assistance Document.

*Availability of Meeting Materials:* The agenda and materials in support of these teleconference calls will be placed on the EPA CASAC Web site at *http://www.epa.gov/casac* in advance of the teleconference call.

*Procedures for Providing Public Input:* Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. Input from the public to the CASAC will have the most impact if it provides specific scientific or technical information or analysis for CASAC to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment on the Subcommittee membership and/or this advisory activity should contact the Designated Federal Officer for the relevant advisory committee directly.

*Oral Statements:* In general, individuals or groups requesting an oral presentation at this public teleconference will be limited to three minutes per speaker. Interested parties should contact Mr. Edward Hanlon, DFO, in writing (preferably via e-mail), at the contact information noted above, by September 22, 2011 to be placed on the list of public speakers for the teleconference.

*Written Statements:* Written statements should be received in the SAB Staff Office by September 22, 2011 so that the information may be made available to the Panel for their consideration. Written statements should be supplied to the DFO in electronic format via e-mail (acceptable file formats: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows

98/2000/XP format). It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the CASAC Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Mr. Edward Hanlon at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 24, 2011.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2011–22430 Filed 8–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9458–4]**

## Notification of a Joint Public Teleconference of the Chartered Science Advisory Board and Board of Scientific Counselors

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a joint public teleconference of the Chartered SAB and Board of Scientific Counselors (BOSC) to discuss a draft report providing advice on Office of Research and Development's (ORD's) new strategic directions for research.

**DATES:** The public teleconference will be held on Monday, September 19, 2011 from 12 p.m. to 3 p.m. (Eastern Daylight Time).

**ADDRESSES:** The public teleconference will be conducted by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public who wishes further information concerning the teleconference may contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218, fax (202) 565–2098; or e-mail at *nugent.angela@epa.gov*. General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab*.

**SUPPLEMENTARY INFORMATION:** *Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The BOSC was established by the EPA to provide advice, information, and recommendations regarding the ORD research program. The SAB and BOSC are Federal Advisory Committees chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. Pursuant to FACA and EPA policy, notice is hereby given that the SAB and BOSC will hold a joint public teleconference to discuss a draft report providing advice on Office of Research and Development's (ORD's) new strategic directions for research. The SAB and BOSC will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The Office of Research and Development is restructuring its research programs for FY 2012 to better understand environmental problems and inform sustainable solutions to meet EPA's strategic goals. The SAB and BOSC held a public meeting on June 29–30, 2011 to receive briefings and discuss draft research frameworks for ORD's six major research programs (76 FR 32198–32199). The SAB and BOSC will hold a public teleconference on September 19, 2011 to discuss their draft joint advisory report. Additional information about SAB and BOSC advice on new ORD strategic research directions can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Strategic%20Research%20Directions?OpenDocument.*

*Availability of Meeting Materials:* A meeting agenda and other materials for the meeting will be placed on the SAB Web site at *http://epa.gov/sab*.

*Procedures for Providing Public Input:* Interested members of the public may submit relevant written or oral information for consideration on the topics included in this advisory activity. *Oral Statements:* To be placed on the public speaker list for the September 19, 2011 meeting, interested parties should notify Dr. Angela Nugent, DFO, by e-mail no later than September 15, 2011. Individuals making oral statements will be limited to five minutes per speaker. *Written Statements:* Written statements for the September 19, 2011 meeting should be received in the SAB Staff Office by September 15, 2011, so that the information may be made available to the SAB and BOSC for their consideration prior to this meeting. Written statements should be supplied to the DFO in the following formats: one hard copy with original signature and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, MS Word, WordPerfect, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide electronic versions of each document submitted with *and* without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

*Accessibility:* For information on access or services for individuals with disabilities, please contact Dr. Nugent at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: August 26, 2011.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2011–22439 Filed 8–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9458–7]**

## Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed consent decree to address a lawsuit filed by WildEarth Guardians and Sierra Club in the United States District Court for the Northern District of California: *WildEarth Guardians et al.* v. *Jackson,* No. 3:11–cv–00190–WHA (N.D. Cal.). On July 6, 2011, Plaintiffs filed an amended complaint alleging that EPA failed, among other things, to take final action under section 110(k)(2) and (3) of the CAA to approve or disapprove, approve in part, or disapprove in part State Implementation

Plan (SIP) submittals or portions of submittals meeting applicable requirements of section 110(a)(2) of the CAA, for the States of Alabama, Connecticut, Florida, Mississippi, North Carolina, Tennessee, Indiana, Maine, Ohio, New Mexico, Delaware, Kentucky, Nevada, Arkansas, New Hampshire, South Carolina, Massachusetts, Arizona, Georgia and West Virginia with regards to the 2006 PM2.5 National Ambient Air Quality Standards (''NAAQS''). The proposed consent decree establishes deadlines for EPA to take these actions.

**DATES:** Written comments on the proposed consent decree must be received by *October 3, 2011.*

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0618, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone:* (202) 564–5601; fax number (202) 564–5603; *e-mail address: wilcox.geoffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Additional Information About the Proposed Consent Decree

The proposed consent decree would resolve a portion of a lawsuit seeking to compel the Administrator to take final action under sections 110(k)(2) and (3) of the CAA to either approve or disapprove, approve in part, or disapprove in part SIP submittals or portions of submittals meeting applicable requirements of section 110(a)(2) of the CAA. The SIP submissions at issue are the ''infrastructure'' SIPs that States are required to submit to meet the basic structural requirements to provide for the implementation, maintenance, and enforcement of the 2006 PM2.5 NAAQS within the 20 named States. Under the consent decree, various deadlines have been established for EPA to take final action for the States of Alabama, Connecticut, Florida, Mississippi, North Carolina, Tennessee, Indiana, Maine, Ohio, New Mexico, Delaware, Kentucky, Nevada, Arkansas, New Hampshire, South Carolina, Massachusetts, Arizona, Georgia and West Virginia. No later than 15 business days after taking each action, EPA shall send the notice(s) of such action to the Office of the Federal Register for review and publication in the **Federal Register**. After EPA fulfills its obligations under the decree, the Plaintiffs and EPA agree to file a joint motion for voluntary dismissal, with prejudice.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the agreement will be affirmed.

## II. Additional Information About Commenting on the Proposed Consent Decree

### *A. How can I get a copy of the consent decree?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0618) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

### *B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address,

or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov*, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 26, 2011.

**Patricia Embrey,**

*Acting Associate General Counsel.*

[FR Doc. 2011–22429 Filed 8–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9458–3]**

## Proposed Settlement Agreement, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** In accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by Sierra Club and WildEarth Guardians in the United States District Court for the Northern District of California: *Sierra Club et al.* v. *Jackson,* No. 3:10–cv–04060–CRB (N.D. Cal.). On August 10, 2011, Plaintiffs filed a second amended complaint alleging that EPA failed to perform a duty mandated by CAA section 110(c)(1), to promulgate Federal Implementation Plans (''FIPs'') within twenty-four (24) months after issuing a finding of failure to submit State Implementation Plans (''SIPs'') meeting applicable requirements of CAA section 110(a)(2), for North Dakota, Hawaii, Alaska, Idaho, Oregon, Washington, Maryland, Virginia, Arkansas, Arizona, Florida and Georgia with regard to the 1997 8-hour ozone National Ambient Air Quality Standards (''NAAQS''). In addition, Plaintiffs also alleged that EPA failed to perform a duty mandated by CAA section 110(k)(2), to take final action on the SIP submittals or portions of submittals meeting applicable requirements of CAA section 110(a)(2), submitted by Maryland, Virginia, Arkansas, Oklahoma, Florida, Georgia, Nevada, North Carolina, Tennessee, and Arizona with regard to the 1997 8-hour ozone NAAQS. The proposed settlement agreement establishes deadlines for EPA to take these actions. In addition, the proposed settlement agreement requires EPA to take action, as appropriate, on a petition for rulemaking filed by the Sierra Club on an issue related to existing SIP provisions.

**DATES:** Written comments on the proposed settlement agreement must be received by *October 3, 2011.*

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0722, online at *http://www.regulations.gov* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

**FOR FURTHER INFORMATION CONTACT:** Geoffrey L. Wilcox, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5601; fax number (202) 564–5603; e-mail address: *wilcox.geoffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Additional Information About the Proposed Settlement Agreement

The proposed settlement agreement would resolve a lawsuit seeking to compel the Administrator to take various actions related to the ''infrastructure'' SIP submissions of specific states for the 1997 8-hour ozone NAAQS. First, the proposed settlement agreement would require the Administrator either to promulgate a FIP, or to approve a SIP submission from the state in lieu thereof, pursuant to CAA section 110(c)(1), addressing the applicable requirements of section 110(a)(2), for North Dakota, Hawaii, Alaska, Idaho, Oregon, Washington, Maryland, Virginia, Arkansas, Arizona, Florida and Georgia with regard to the 1997 8-hour ozone NAAQS. Second, the proposed settlement agreement would also require the Administrator to take final action pursuant to CAA section 110(k)(2), on the SIP submittals or portions of submittals addressing the applicable requirements of section 110(a)(2), for Maryland, Virginia, Arkansas, Oklahoma, Florida, Georgia, Nevada, North Carolina, Tennessee, and Arizona with regard to the 1997 8-hour ozone NAAQS.

The proposed settlement agreement provides various dates by which EPA must propose action or take final action with respect to each of these duties, depending upon the state in question and the element or elements of section 110(a)(2) at issue. No later than 15 business days following signature on each notice related to a proposed or final action specified in the proposed settlement agreement, EPA is required to send the notice to the Office of the Federal Register for review and publication in the Federal Register. After EPA fulfills all of its obligations under the agreement to take actions required by section 110(c) or section 110(k) with respect to the various elements of section 110(a)(2) for the respective states, the Plaintiffs agree to file a motion for voluntary dismissal, with prejudice.

In addition to specific actions required by section 110(c)(1) and section 110(k), the proposed settlement agreement obligates EPA to respond to a petition for rulemaking from the Sierra Club concerning existing provisions in SIPs related to excess emissions from sources during periods of startup, shutdown, or malfunction (''SSM'') that may be contrary to the CAA and EPA's policies addressing such emissions. The proposed settlement agreement requires EPA either to grant or to deny the petition with respect to the allegedly illegal SSM provisions by a specified date. If EPA grants the petition with respect to a provision, EPA agrees to promulgate either a SIP call pursuant to section 110(k)(5) or an error correction pursuant to section 110(k)(6), as EPA deems appropriate.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

## II. Additional Information About Commenting on the Proposed Settlement Agreement

*A. How can I get a copy of the settlement agreement?*

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–0722) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *http://www.regulations.gov.* You may use *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *http://www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

*B. How and to whom do I submit comments?*

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *http://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through *http://www.regulations.gov,* your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 26, 2011.

**Patricia Embrey,**

*Acting, Associate General Counsel.*

[FR Doc. 2011–22428 Filed 8–31–11; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9458–5]**

## Request for Nominations of Experts for the Science Advisory Board's Animal Feeding Operation Emission Review Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office is requesting public nominations of technical experts to serve on an expert panel under the auspices of the SAB to conduct a peer review of EPA's development of air emission estimating methodologies for animal feeding operations.

**DATES:** Nominations should be submitted by September 22, 2011 per instructions below.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Edward Hanlon, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 564–2134, or via e-mail at *hanlon.edward@epa.gov*.

General information concerning the EPA Science Advisory Board can be found at the EPA SAB Web site at *http://www.epa.gov/sab*. For questions concerning EPA's air emission estimating methodologies for animal feeding operations, please contact Mr. Larry Elmore of EPA's Office of Air Quality Planning and Standards by phone at (919) 541–5433, or via e-mail at *elmore.larry@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background:* The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization (ERDDAA) Act, codified at 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for EPA actions. The EPA's Office of Air and Radiation (OAR) has requested the SAB to review EPA's draft air emission estimating methodologies (EEMs) for animal feeding operations (AFOs). EPA developed the draft methodologies to address requirements of a voluntary air compliance consent agreement signed in 2005 between EPA and nearly 14,000 broiler, dairy, egg layer, and swine AFO operations. The goals of the agreement are to reduce air pollution, monitor AFO emissions, promote a national consensus on methodologies for estimating emissions from AFOs, and ensure compliance with the requirements of the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-to-Know Act (EPCRA).

The pollutants monitored under the agreement include: Ammonia, hydrogen sulfide, particulate matter, and volatile organic compounds. As part of the agreement, EPA is charged with developing EEMs for broiler, dairy, egg layer, and swine AFO sectors. EPA has requested the SAB to provide advice on

scientific issues associated with EPA's development of the EEMs.

In response to EPA's request, the SAB Staff Office will form an expert panel to review EPA's development of AFO air EEMs. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App.2) and related regulations. The SAB Panel will provide advice through the chartered SAB and comply with the provisions of FACA and all appropriate SAB Staff Office procedures.

*Request for Nominations:* The SAB Staff Office is seeking public nominations of nationally recognized experts with demonstrated expertise and experience in the following areas related to AFO air emission estimation methods: Air emissions from broiler, dairy, egg layer, and/or swine production animal feeding operations; air monitoring and detection methods; exposure assessment; environmental statistics; emission and statistical modeling; and uncertainty analysis.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on this expert panel. Nominations should be submitted in electronic format (preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB Web site. The instructions can be accessed through the ''Nomination of Experts'' link on the blue navigational bar at the SAB Web site *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested below.

EPA's SAB Staff Office requests contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume or curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Mr. Edward Hanlon, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than September 22, 2011. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and bio-sketches of qualified nominees identified by respondents to this **Federal Register** notice, and additional experts identified by the SAB Staff, will be posted in a List of Candidates on the SAB Web site at *http://www.epa.gov/sab*. Public comments on this List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office a review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In forming this expert panel, the SAB Staff Office will consider public comments on the List of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in committees, subcommittees and advisory panels; and, (f) for the Panel as a whole, diversity of expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between a person's public responsibilities (which includes membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: August 26, 2011.

**Vanessa T. Vu,**

*Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 2011–22438 Filed 8–31–11; 8:45 am]

BILLING CODE 6560–50–P

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $25.1 million guarantee to support the U.S. export of aircraft tooling equipment to Mexico and the United Kingdom. The U.S. exports will enable the Mexican and British facilities to produce composite aircraft parts. All of the new Mexican and British production will be sent back to the U.S. for final assembly into business aircraft. Available information indicates that this type of supply chain structure exists because of the need for industry participants to produce technically specific goods at proprietary facilities. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register.**

**John F. Simonson,**

*Senior Vice President and Chief Financial Officer.*

[FR Doc. 2011–22378 Filed 8–31–11; 8:45 am]

BILLING CODE 6690–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice to All Interested Parties of the Termination of the Receivership of 10017, Meridian Bank, Eldred, IL

*Notice is hereby given* that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Meridian Bank, (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Meridian Bank on October 10, 2008. The

liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to:

Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, *Attention*: Receivership Oversight Department 8.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Federal Deposit Insurance Corporation.
Dated: August 29, 2011.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 2011–22408 Filed 8–31–11; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

**[Docket No. 11–14]**

### Petra Pet, Inc. (a/k/a Petrapport) v. Panda Logistics Limited; Panda Logistics Co., Ltd. (f/k/a panda Int'l Transportation Co., Ltd.); and RDM Solutions, Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Petra Pet, Inc. (a/k/a Petrapport), hereinafter ''Complainant,'' against Respondents Panda Logistics Limited, Panda Logistics Co., Ltd. (f/k/a Panda Int'l Transportation Co., Ltd), and RDM Solutions Inc. (RDM). Complainant asserts that it is a shipper. Complainant alleges that Respondents Panda Logistics Limited and Panda Logistics Co., Ltd., are each a non-vessel-operating ocean common carrier (NVOCC) and a non-U.S. based ocean transportation intermediary (OTI); and that Respondent RDM is an NVOCC and OTI, and serves as U.S. agent for Panda Logistics Limited and Panda Logistics Co., Ltd.

Complainant alleges that by failing to pay freight charges, refusing to provide freight releases, improperly diverting containers, and taking actions to cause the accrual of storage and demurrage charges, ''the actions of Respondents constitute systemic and egregious failure to establish, observe and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing and delivering Complainant's property'' in violation of § 10(d)(1) of the Shipping Act, 46 U.S.C. 41102(c). Complainant requests that the Commission order Respondents to ''[p]ay Complainant by way of reparations for the unlawful conduct hereinabove described a sum of no less than $269,940.68, plus interest'','' [p]ay any other damages that may be determined proper and just'', ''take any such other action, or provide any other such relief, as the Commission determines to be warranted, including sanctions, as appropriate, with respect to Respondents ability to conduct business as NVOCC's in the United States'', and ''[p]ay Complainant's reasonable attorneys fees and costs incurred * * *'' The full text of the complaint can be found in the Commission's Electronic Reading Room at *http://www.fmc.gov.*

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by August 27, 2012 and the final decision of the Commission shall be issued by December 26, 2012.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–22336 Filed 8–31–11; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Richard A. Dykes, Danville, Georgia; Jerry Van Dykes, Cochran, Georgia; and the Everett Dykes Estate;* to retain voting shares of Four County Bancshares, Inc., and thereby indirectly retain voting shares of Four County Bank, both of Allentown, Georgia.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *John A. Hohlen and Lynn A. Hohlen, both of Juniata, Nebraska; Mark J. Keiser and Peggy O. Keiser, both of Juniata, Nebraska; Gaylin R. Prior and Mary L. Prior, both of Hastings, Nebraska; and Dennis R. Utter and Kathryn C. Utter, both of Hastings, Nebraska,* as members of a group acting in concert; to acquire control of First Kenesaw Company, and thereby indirectly acquire control of Adams County Bank, both in Kensaw, Nebraska.

Board of Governors of the Federal Reserve System, August 29, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–22411 Filed 8–31–11; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval,

pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 2011.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106–2204:

1. *Stoneham Bancorp, MHC,* Stoneham, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Stoneham Savings Bank, Stoneham, Massachusetts.

2. *Salem Five Bancorp, MHC*, Salem, Massachusetts; to merge with Stoneham Bancorp, MHC, and thereby acquire Stoneham Savings Bank, Stoneham, Massachusetts.

In connection with this application, Applicant also has applied to acquire Stoneham Properties, LLC, Stoneham Massachusetts, and thereby engage in lending and servicing activities, pursuant to sections 225.28 (b)(1) and (b)(2) of Regulation Y.

B. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *The Adirondack Trust Company Employee Stock Ownership Trust*, Saratoga Springs, New York; to acquire 50 additional shares of 473 Broadway Holding Corporation, and thereby indirectly acquire 1,500 additional voting shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *DirecTex Holding Corp.*, Tyler, Texas; to become a bank holding company by acquiring not more than 50 percent of Gladewater National Bank, Gladewater, Texas.

2. *Integrity Bancshares, Inc.*, Houston Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Integrity Bank, SSB, Houston, Texas.

Board of Governors of the Federal Reserve System, August 29, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–22409 Filed 8–31–11; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

*1. Blue Ridge Holdings, Inc.,* Atlanta, Georgia; to acquire 100 percent of the voting shares of SAGE Southeastern Securities, Inc., Atlanta, Georgia, and thereby indirectly engage in investment advisory activities, pursuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, August 29, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–22410 Filed 8–31–11; 8:45 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

*Time and Date:* September 21, 2011, 9 a.m.–2:30 p.m.; September 22, 2011, 10 a.m.–3 p.m.

*Place:* Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 265–1600.

*Status:* Open.

*Purpose:* At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Center for Medicare and Medicaid Services, and the Office of the National Coordinator. In addition, there will be an update on the Committee's next HIPAA Report to Congress and a briefing on the Joint Population/Privacy Subcommittee Community Health Data Report, which includes a plan for an informational primer. In the afternoon, a discussion of three letters to the HHS Secretary is planned regarding (1) Standards and Operating Rules Development and Maintenance; (2) Status of implementation/transition to 5010/ICD–10; and (3) Adoption of electronic acknowledgement transaction standards.

On the morning of the second day there will be a review of the final data standards letters along with initial plans for a Standards Primer on HIPAA Transactions and Code Sets. There will also be a briefing on the DHHS Action Plan for Eliminating Health Disparities. Subcommittees will also report on their strategic plans and next steps.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon on the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of

committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 25, 2011.

**James Scanlon,**

*Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 2011–22340 Filed 8–31–11; 8:45 am]

**BILLING CODE 4151–05–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–11–0891]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Daniel Holcomb, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

World Trade Center Health Program Enrollment, Appeals & Reimbursement—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The James Zadroga 9/11 Health and Compensation Act of 2010 (Zadroga Act), promulgated on December 22, 2010, establishes a Federal program to support health monitoring and treatment for emergency responders; recovery and cleanup workers; and residents, building occupants, and area workers in New York City who were directly impacted and adversely affected by the terrorist attacks of September 11, 2001. In order to provide medical monitoring and treatment to eligible individuals, the World Trade Center (WTC) Health Program will collect eligibility and appeals data as well as information from medical and prescription pharmaceutical providers.

All responders to the New York City attack who will be newly seeking medical monitoring and treatment and survivors of the attack who were not covered by the Medical Monitoring and Treatment Program (MMTP) (for responders) or the Community Program (for survivors) prior to January 2, 2011, may apply to obtain coverage under the new WTC Health Program. In order to begin the determination eligibility process, an enrollment form must be completed. After an eligibility application is submitted to the Program, an unsuccessful applicant has an opportunity to appeal the decision; enrolled participants have further appeal rights. Health care and prescription pharmaceutical providers will be required to submit medical determinations to the WTC Program Administrator and request reimbursement.

Data are being collected in order to determine the eligibility of applicants. If an applicant is denied enrollment based on the information provided, the applicant will receive a letter that gives the reason for the denial and the opportunity to appeal the decision. Once someone is enrolled, he or she may request approval for reimbursement of travel if the individual must travel more than 250 miles to receive healthcare services.

Healthcare providers and pharmacies will file claims electronically or by paper form to be paid for their services.

There are three separate enrollment forms for each population of responders (FDNY responders, general responders, and survivors). The following information includes the definition of each population: ''FDNY responder'' is defined as a member of the Fire Department of New York City (whether fire or emergency personnel, active, or retired) who participated at least one day in the rescue and recovery effort at any of the former World Trade Center sites. ''General Responder'' is a worker or volunteer who provided Rescue, Recovery, Demolition, Debris, Removal and related support services in the aftermath of the September 11, 2001 attacks on the World Trade Center but was not affiliated with the Fire Department of New York. ''Survivor'' is a person who was present in the disaster area in the aftermath of the September 11, 2001 attacks on the World Trade Center as a result of his or her work, residence, or attendance at school, childcare, or adult daycare.

The eligibility application form will collect general contact information as well as information regarding the WTC disaster area experience. Some of the information provided will be shared with the Federal Bureau of Investigation in order to screen an individual against the terrorist watch list maintained by the Federal government. This information will also be shared with the WTC Program Administrator and will be kept in a secure manner.

WTC Health Program applicants and enrolled participants have opportunities to appeal adverse decisions made by the WTC Program Administrator. The first opportunity to appeal arises after a determination that an applicant does not meet the eligibility requirements. Once enrolled in the Program, participants will also have the opportunity to appeal a decision not to certify a WTC-related health condition or a determination that treatment will not be authorized as medically necessary. In the notification letter explaining the adverse determination, the applicant will be advised that an appeal can be requested by submitting in writing his or her name, contact information, and an explanation for the basis of the appeal.

Certain enrolled participants may be reimbursed for necessary and reasonable transportation and expenses incident to the securing of medically necessary treatment through the nationwide network if the care involves travel of more than 250 miles. Individuals requesting reimbursement must fill out a 1-page written form requesting such information as date of travel, distance, and total expense.

Pharmacies will transmit reimbursement claims to the WTC Health Program. The following data

elements will be collected for pharmacy reimbursement: Pharmacy name, pharmacy address, drug name, prescription number, patient name, patient ID number, and cost. Pharmacies utilize Electronic Data Interchange (EDI) processing at the point-of-sale to transmit claims to the World Trade Center Health Program (WTC–HP). The EDI transmission conforms to ANSI standards developed by the National Council for Prescription Drug Programs. The information collection burden occurs as the WTC–HP member information is copied from the membership card at the point-of-sale. The EDI transmission occurs in real-time as the prescription transaction is made.

The Zadroga Act of 2010 requires that all qualifying WTC-related health conditions or health conditions medically associated with a WTC-related health condition be certified by member to enable reimbursement of treatment services for care rendered to that member for a given qualifying condition(s). To meet the requirement for certification and maintain continuity of care for an individual who had been enrolled in the prior MMTP or Community Program, the WTC Health Program physician shall attest that a prior determination was rendered in the previous federally sponsored program. The attestation will include the physician's name and signature, the name of the patient, and the name of the health condition and its diagnostic (ICD–9) code.

An individual who is new to the WTC Health Program must have a certified WTC-related health condition or health condition medically associated with WTC-related health condition to receive reimbursement for treatment and other services. If a new medical determination is being made, the Program clinician must provide to the WTC Health Program the patient's name and program identification number, the name and diagnostic code of the health condition, and a brief narrative explaining the key exposure findings. The narrative will include information such as the time and duration of the individual's presence in defined geographic areas (of exposure), whether the individual was caught in the dust cloud on September 11, 2001, whether the individual conducted strenuous activity while in the exposure zone(s), the individual's symptom time course relative to September 11, 2001, and the reasons a person might be more likely to get sick from given exposures (family history or coexisting medical problems).

A Program physician will also submit a form to the WTC Health Program when a member needs medical treatment for a condition that has not yet been certified. In that case, the physician will request authorization to treat the condition because of the urgency of the medical scenario. The physician will sign a form attesting that a determination was made, and indicate the patient's name and the name of the health condition and its diagnostic code.

Physicians will be compensated through administrative expenses invoiced by their respective Clinical Center of Excellence that is under contract with the Federal government.

There are no costs to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Avg. burden per response (in hrs) | Total burden (in hrs) |
|---|---|---|---|---|---|
| Responder (FDNY and General Responder)/Survivor. | Eligibility and Qualification for the WTC Health Program. | 290 | 1 | 10/60 | 48 |
| FDNY Responder | World Trade Center Health Program FDNY Responder Eligibility Application. | 189 | 1 | 30/60 | 95 |
| General Responder | World Trade Center Health Program Responder Eligibility Application (Other than FDNY). | 2979 | 1 | 30/60 | 1490 |
| WTC Survivor | World Trade Center Health Program Survivor Eligibility Application. | 1560 | 1 | 15/60 | 390 |
| Responder (FDNY and General Responder)/Survivor. | Denial Letter and Appeal Notification—Eligibility. | 47 | 1 | 30/60 | 24 |
| Responder (FDNY and General Responder)/Survivor. | Denial Letter and Appeal Notification—Health Conditions. | 30 | 1 | 30/60 | 15 |
| Responder (FDNY and General Responder)/Survivor. | Denial Letter and Appeal Notification—Treatment. | 588 | 1 | 30/60 | 294 |
| Responder (FDNY and General Responder)/Survivor. | WTC Health Program Medical Travel Refund Request. | 10 | 1 | 10/60 | 2 |
| Physician | WTC Health Condition Certification Request. | 2,300 | 14 | 1 | 32,200 |
| | Attestation for previously-enrolled. | 2,300 | 14 | 5/60 | 2,683 |
| | Request for treatment pending authorization. | 6,000 | 1 | 30/60 | 3,000 |
| Pharmacy | Outpatient prescription pharmaceuticals. | 150 | 261 | 1/60 | 653 |

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Avg. burden per response (in hrs) | Total burden (in hrs) |
|---|---|---|---|---|---|
| Total | | | | | 40,894 |

Dated:August 25, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–22395 Filed 8–31–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60-Day–11–11KF]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 or send comments to Daniel Holcomb, CDC/ATSDR Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Pre-Evaluation Assessments of Nutrition, Physical Activity and Obesity Programs and Policies—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The causes of obesity in the United States are complex and numerous, and they occur at social, economic, environmental, and individual levels. To address the complex nature of obesity, the Centers for Disease Control and Prevention (CDC) encourages states to adopt public health strategies that address obesity through environmental change and policies. In 2009, CDC issued guidance outlining 24 community-based strategies that can be implemented to encourage healthy eating and active living.

CDC plans to collect information about the effectiveness, in practice, of a selected group of the 24 recommended strategies. Information will be collected through a systematic process for nominating, screening and assessing promising program interventions. The study is designed to highlight local achievements and identify the most promising strategies for further development, evaluation through rigorous methods, and dissemination for widespread use. Eligible respondents include states and jurisdictions that are funded through CDC's Nutrition, Physical Activity and Obesity (NPAO) cooperative agreement program, states and jurisdictions that do not currently have NPAO funding, and other organizations.

CDC will solicit nominations for pre-evaluation assessment through on-line forums (*e.g.*, obesity prevention listservs supported by CDC and other national partners, e-mail messages, and an announcement posted on CDC's NPAO Web site). CDC will select programs for assessment by reviewing completed program nomination forms, which can be submitted on-line or in hardcopy format. The program nomination form is designed to provide information enabling an initial assessment of each candidate program's suitability for further evaluation. The topics addressed in this form include a general program description, an overview of organizational capacity, and a summary of the program's potential impact, reach to target population, feasibility, transportability, acceptability to stakeholders, and sustainability.

Up to 23 initiatives will be selected for pre-assessment evaluation over a two-year period. Selected initiatives will receive FAQs to help them understand the process, effort entailed, and public health benefit. They will also be asked to provide additional information supporting coordination of a site visit and interviews with key informants.

The primary information collection involves semi-structured, in-person interviews with approximately 12 key informants at each participating site, including: The lead administrator (1), program staff (3), evaluator (1), and community partners and other stakeholders (7). Community partners and other stakeholders will be drawn from both the private sector and the state, local, and Tribal government sector. The topics to be addressed during the site visit interviews include history and description of the initiative, stakeholder involvement, evaluation plans, and funding. Site reviewers will also collect contextual information about program implementation through direct observation, which does not entail burden to respondents.

Results will be used to identify promising practices in nutrition, physical activity, and obesity used by NPAO grantees and others in the obesity prevention field; provide feedback and technical assistance to each initiative's developers, implementers and managers; and assess the evaluation readiness of obesity prevention initiatives, thereby encouraging the judicious use of scarce evaluation resources.

OMB approval will be requested for two years. Authority to collect information is provided to CDC under Sections 301 (a) and 317 (k) of the Public Health Service Act. CDC anticipates reviewing approximately 51 program nomination forms per year. Site visits will be conducted with an average of 12 programs per year.

Participation is voluntary. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

| Type of respondents | Form name | Number of respondents | Number of responses per respondent | Avg. burden per response (in hrs) | Total burden (in hrs) |
|---|---|---|---|---|---|
| Nominator | Nomination Form | 51 | 1 | 1 | 51 |
| Lead Administrator | Site Visit Availability Calendar | 12 | 1 | 1 | 12 |
| | Suggested Interviewees Form | 12 | 1 | 1 | 12 |
| | Site Visit Schedule Instructions and Template. | 12 | 1 | 5 | 60 |
| | Interview Guide for Lead Administrator | 12 | 1 | 2 | 24 |
| Evaluator | Interview Guide for Evaluator | 12 | 1 | 1 | 12 |
| Program Staff | Interview Guide for Program Staff | 36 | 1 | 1 | 36 |
| State, Local and Tribal Govt. Sector Partners. | Interview Guide for Community Partners and Other Stakeholders. | 48 | 1 | 1 | 48 |
| Private Sector Partners | Interview Guide for Community Partners and Other Stakeholders. | 36 | 1 | 1 | 36 |
| Total | | | | | 291 |

Date: August 26, 2011.

**Daniel Holcomb,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2011–22384 Filed 8–31–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2000–D–1542 (formerly Docket No. 00D–0892)]**

### Guidance on Positron Emission Tomography Drug Applications—Content and Format for New Drug Applications and Abbreviated New Drug Applications; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''PET Drug Applications—Content and Format for NDAs and ANDAs.'' This document is intended to assist manufacturers of certain positron emission tomography (PET) drugs in submitting new drug applications (NDAs) or abbreviated new drug applications (ANDAs) in accordance with the Federal Food, Drug, and Cosmetic Act (FD&C Act) and FDA regulations.

**DATES:** Submit either electronic or written comments on Agency guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6164, Silver Spring, MD 20993, 301–796–3416.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a guidance for industry entitled ''PET Drug Applications—Content and Format for NDAs and ANDAs.'' The guidance is intended to assist the manufacturers of certain PET drugs—fludeoxyglucose F 18 injection, ammonia N 13 injection, and sodium fluoride F 18 injection—in submitting NDAs and ANDAs in accordance with the FD&C Act and FDA regulations. The guidance states that to continue marketing these PET drugs for clinical use, manufacturers of these drugs must submit NDAs of the type described in section 505(b)(2) of the FD&C Act (21 U.S.C. 355(b)(2)) or ANDAs under section 505(j) of the FD&C Act by December 12, 2011. The guidance further explains when submission of a 505(b)(2) application or ANDA is appropriate and describes the information that manufacturers of these PET drugs include in each type of application.

A revised draft guidance of the same title was announced in the **Federal Register** on February 3, 2011 (76 FR 6143), and Docket No. FDA–2000–D–1542 was open for comments until April 4, 2011. The February 3, 2011, draft guidance was a revision of the document ''Draft Guidance for Industry on the Content and Format of New Drug Applications and Abbreviated New Drug Applications for Certain Positron Emission Tomography Drug Products,'' issued on March 10, 2000 (65 FR 13010). The February 3, 2011, revised guidance was issued as a draft for comment because FDA's perspective has changed significantly since the issuance of the March 2000 draft guidance. We received comments from industry and professional societies. We have carefully considered and, where appropriate, we have made corrections, added information, or clarified the information in this guidance in response to the comments or on our own initiative.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on the submission of NDAs and ANDAs for PET drugs. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

### II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the

heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

### III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; the collections of information required on Form FDA–356h have been approved under OMB control number 0910–0338; and the collections of information required on Form FDA–3397 have been approved under OMB control number 0910–0297.

### IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: August 25, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–22373 Filed 8–31–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request New proposed collection, Biospecimen and Physical Measures Formative Research Methodology Studies for the National Children's Study

**SUMMARY:** Under the provisions of Section (3507(a)(1)(D)) of the Paperwork Reduction Act of 1995, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 27, 2011, pages 23609–23611, and allowed 60 days for public comment. Two written comments and two verbal comments were received. The verbal comments expressed support for the broad scope of the study. The written comments were identical and questioned the cost and utility of the study. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Biospecimen and Physical Measures Formative Research Methodology Studies for the National Children's Study (NCS). *Type of Information Request: NEW. Need and Use of Information Collection:* The Children's Health Act of 2000 (Pub. L. 106–310) states:

(a) PURPOSE.—It is the purpose of this section to authorize the National Institute of Child Health and Human Development* to conduct a national longitudinal study of environmental influences (including physical, chemical, biological, and psychosocial) on children's health and development.

(b) IN GENERAL.—The Director of the National Institute of Child Health and Human Development* shall establish a consortium of representatives from appropriate Federal agencies (including the Centers for Disease Control and Prevention, the Environmental Protection Agency) to—

(1) plan, develop, and implement a prospective cohort study, from birth to adulthood, to evaluate the effects of both chronic and intermittent exposures on child health and human development; and

(2) investigate basic mechanisms of developmental disorders and environmental factors, both risk and protective, that influence health and developmental processes.

(c) REQUIREMENT.—The study under subsection (b) shall—

(1) incorporate behavioral, emotional, educational, and contextual consequences to enable a complete assessment of the physical, chemical, biological, and psychosocial environmental influences on children's well-being;

(2) gather data on environmental influences and outcomes on diverse populations of children, which may include the consideration of prenatal exposures; and

(3) consider health disparities among children, which may include the consideration of prenatal exposures.

To fulfill the requirements of the Children's Health Act, the results of formative research tests will be used to maximize the efficiency (measured by scientific robustness, participant and infrastructure burden, and cost) of biospecimen and physical measurement collection procedures, accompanying questionnaires, storage and information management processes, and assay procedures, thereby informing data collection methodologies for the National Children's Study (NCS) Vanguard and Main Studies. With this submission, the NCS seeks to obtain OMB's generic clearance to conduct formative research featuring biospecimen and physical measurement collections.

The results from these formative research projects will inform the feasibility (scientific robustness), acceptability (burden to participants and study logistics) and cost of NCS Vanguard and Main Study biospecimen collection procedures and physical measurements in a manner that minimizes public information collection burden compared to burden anticipated if these projects were incorporated directly into either the NCS Vanguard or Main Study. *Frequency of Response:* Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Women of child-bearing age, infants, children, fathers, health care facilities and professionals, public health professional organizations and practitioners, and hospital administrators. These include both persons enrolled in the NCS Vanguard Study and their peers who are not participating in the NCS Vanguard Study. *Annual reporting burden:* See Table 1. The annualized cost to respondents is estimated at: $600,000 (based on $10 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, BIOLOGICAL AND PHYSICAL MEASURES

| Data collection activity | Type of respondent | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|---|
| Blood: | | | | | |
| Adult | NCS participants | 4,000 | 1 | 0.5 | 2,000 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, BIOLOGICAL AND PHYSICAL MEASURES—Continued

| Data collection activity | Type of respondent | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|---|
| | Members of NCS target population (not NCS participants). | 4,000 | 1 | 0.5 | 2,000 |
| Infant/Child | NCS participants | 2,000 | 1 | 0.5 | 1,000 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.5 | 1,000 |
| Urine: | | | | | |
| Adult | NCS participants | 4,000 | 1 | 0.25 | 1,000 |
| | Members of NCS target population (not NCS participants). | 4,000 | 1 | 0.25 | 1,000 |
| Infant/Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Hair: | | | | | |
| Adult | NCS participants | 4,000 | 1 | 0.25 | 1,000 |
| | Members of NCS target population (not NCS participants). | 4,000 | 1 | 0.25 | 1,000 |
| Nails: | | | | | |
| Adult | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Cervical Fluid: | | | | | |
| Women | NCS participants | 4,000 | 1 | 0.5 | 2,000 |
| | Members of NCS target population (not NCS participants). | 4,000 | 1 | 0.5 | 2,000 |
| Breast Milk: | | | | | |
| Women | NCS participants | 4,000 | 1 | 0.5 | 2,000 |
| | Members of NCS target population (not NCS participants). | 4,000 | 1 | 0.5 | 2,000 |
| Cord Blood: | | | | | |
| Infant/ Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Meconium: | | | | | |
| Infant/Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Placenta: | | | | | |
| Infant | NCS participants | 4,000 | 1 | 0.25 | 1000 |
| | Members of NCS target population (not NCS participants). | 4,000 | 1 | 0.25 | 1000 |
| Length: | | | | | |
| Infant | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Height: | | | | | |
| Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Weight: | | | | | |
| Infant/Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Head Circumference: | | | | | |
| Infant/Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Middle Upper Arm Circumference: | | | | | |
| Infant/Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Ulnar Length: | | | | | |
| Infant/Child | NCS participants | 2,000 | 1 | 0.25 | 500 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 0.25 | 500 |
| Small, focused survey and instrument design and administration. | NCS participants | 4,000 | 2 | 1 | 8,000 |
| | Members of NCS target population (not NCS participants). | 4,000 | 2 | 1 | 8,000 |
| | Health and Social Service Providers | 2,000 | 1 | 1 | 2,000 |

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN SUMMARY, BIOLOGICAL AND PHYSICAL MEASURES—Continued

| Data collection activity | Type of respondent | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|---|
| | Community Stakeholders | 2,000 | 1 | 1 | 2,000 |
| Focus groups | NCS participants | 2,000 | 1 | 1 | 2,000 |
| | Members of NCS target population (not NCS participants). | 2,000 | 1 | 1 | 2,000 |
| | Health and Social Service Providers | 2,000 | 1 | 1 | 2,000 |
| | Community Stakeholders | 2,000 | 1 | 1 | 2,000 |
| Cognitive interviews | NCS participants | 500 | 1 | 2 | 1,000 |
| | Members of NCS target population (not NCS participants). | 500 | 1 | 2 | 1,000 |
| Total | | 113,000 | | | 60,000 |

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function 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 collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NIH Desk Officer, by E-mail to *OIRA_submission@omb.eop.gov,* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Jamelle E. Banks, Public Health Analyst, Office of Science Policy, Analysis and Communication, National Institute of Child Health and Human Development, 31 Center Drive Room 2A18, Bethesda, Maryland, 20892, or call a non-toll free number (301) 496–1877 or E-mail your request, including your address to *banksj@mail.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: August 25, 2011.

**Jamelle E. Banks,**

*Public Health Analyst, Office of Science Policy, Analysis and Communications, National Institute of Child Health and Human Development.*

[FR Doc. 2011–22456 Filed 8–31–11; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Ancillary Studies to Major Ongoing Clinical Studies: DCCT/EDIC.

*Date:* September 30, 2011.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Najma Begum, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *begumn@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R24 Seeding.

*Date:* October 5, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Novel Therapies for NIDDM P01.

*Date:* October 14, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* D.G. Patel, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7682, *pateldg@niddk.nih.gov.*

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Fellowships in Digestive Diseases and Nutrition.

*Date:* October 18, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Kabuki, 1625 Post Street, San Francisco, CA 94115.

*Contact Person:* Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993. *tathamt@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes,

Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 26, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–22454 Filed 8–31–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires {or set} strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

*Instrumented Initial Testing Facilities (IITF)*

None.

*Laboratories*

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.).

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.).

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130, (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 800–877–2520, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Dated: August 26, 2011.

**Elaine Parry,**

*Director, Office of Management, Technology, and Operations, SAMHSA.*

[FR Doc. 2011–22379 Filed 8–31–11; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3325–EM; Docket ID FEMA–2011–0001]**

### Missouri; Amendment No. 1 to Notice of an Emergency Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the State of Missouri (FEMA–3325–EM), dated June 30, 2011, and related determinations.

**DATES:** *Effective Date:* August 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the incident period for this emergency is closed effective August 1, 2011.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–22394 Filed 8–31–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1984–DR; Docket ID FEMA–2011–0001]**

### South Dakota; Amendment No. 7 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of South Dakota (FEMA–1984–DR), dated May 13, 2011, and related determinations.

**DATES:** *Effective Date:* August 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of South Dakota is hereby

amended to include the Individual Assistance program for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 13, 2011.

Charles Mix, Hughes, Stanley, and Union Counties for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–22391 Filed 8–31–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1997–DR; Docket ID FEMA–2011–0001]**

### Indiana; Amendment No. 4 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for State of Indiana (FEMA–1997–DR), dated June 23, 2011, and related determinations.

**DATES:** *Effective Date:* August 23, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Donald L. Keldsen as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–22401 Filed 8–31–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1996–DR; Docket ID FEMA–2011–0001]**

### Montana; Amendment No. 4 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Montana (FEMA–1996–DR), dated June 17, 2011, and related determinations.

**DATES:** *Effective Date:* August 24, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Montana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 17, 2011.

Blaine, Broadwater, Carter, Chouteau, Fallon, Flathead, Golden Valley, Madison, Park, Phillips, Pondera, Powell, Rosebud, Toole, and Wibaux Counties and the Fort Peck Reservation for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–22402 Filed 8–31–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1998–DR; Docket ID FEMA–2011–0001]**

### Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1998–DR), dated June 27, 2011, and related determinations.

**DATES:** *Effective Date:* August 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 27, 2011.

Fremont, Harrison, Mills, Monona, Pottawattamie, and Woodbury Counties for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct Federal assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–22398 Filed 8–31–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4015–DR; Docket ID FEMA–2011–0001]**

### Louisiana; Major Disaster and Related Determinations

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Louisiana (FEMA–4015–DR), dated August 18, 2011, and related determinations.

**DATES:** *Effective Date:* August 18, 2011.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated August 18, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from flooding during the period of April 25 to July 7, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Louisiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gerard M. Stolar, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Louisiana have been designated as adversely affected by this major disaster:

The parishes of Assumption, Avoyelles, Concordia, East Carroll, Lafourche, Madison, Point Coupee, St. Charles, St. James, St. Landry, St. Martin, St. Mary, Tensas, Terrebonne, and West Feliciana for Public Assistance.

All parishes within the State of Louisiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2011–22393 Filed 8–31–11; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R9–IA–2011–N175; 96300–1671–0000–P5]**

### Endangered Species; Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibit activities with listed species unless a Federal permit is issued that allows such activities. The ESA laws require that we invite public comment before issuing these permits.

**DATES:** We must receive comments or requests for documents on or before October 3, 2011.

**ADDRESSES:** Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or e-mail *DMAFR@fws.gov.*

**FOR FURTHER INFORMATION CONTACT:** Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (e-mail).

**SUPPLEMENTARY INFORMATION:**

#### I. Public Comment Procedures

*A. How do I request copies of applications or comment on submitted applications?*

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an e-mail or address not listed under **ADDRESSES**. If you provide an e-mail address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I review comments submitted by others?*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## II. Background

To help us carry out our conservation responsibilities for affected species, section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), require that we invite public comment before final action on these permit applications.

## III. Permit Applications

*A. Endangered Species*

Applicant: University of New Mexico, Museum of SW Biology, Albuquerque, NM; PRT–49775A

The applicant requests a permit to import salvage biological materials from Asian wild ass (*Equus hemionus hemionus*) from the wild in Mongolia for the purpose of scientific research.

Applicant: World Center for Exotic Birds, Las Vegas, NV; PRT–38734A

The applicant requests a permit to purchase in interstate commerce one male captive-bred Andean condor (*Vultur gryphus*), for the purpose of enhancement of the species through conservation education and captive propagation.

Applicant: William Bowerman, University of Maryland, College Park, MD; PRT–48572A

The applicant requests a permit to import biological samples from jackass penguins (*Spheniscus demersus*) collected in the wild in the Republic of South Africa, for the purpose of scientific research.

Applicant: Richard Schurr, Philadelphia, PA; PRT–45128A

The applicant requests a permit to purchase through interstate commerce DNA samples from captive-bred non-human primates from the following species: lowland gorilla (*Gorilla gorilla gorilla*), white-cheeked gibbon (*Hylobates leucogenys*), Siamang (*Hylobates syndactylus*), ring-tailed lemur (*Lemur catta*), bonobo (*Pan paniscus*), chimpanzee (*Pan troglodytes*), and Sumatran orangutan (*Pongo pygmaeus abelii*) from Coriell Cell Repository, Camden, New Jersey, for the purpose of scientific research.

Applicant: Yale Peabody Museum of Natural History, New Haven, CT; PRT–120045

The applicant requests a permit to export and reimport non-living museum specimens of endangered and threatened species previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: James Lindsay, Kosciusko, MS; PRT–50364A

Applicant: Jefferey Spivery, Kernersville, NC; PRT–46259A

Applicant: Rulon Anderson, Mesa, AZ; PRT–48778A

**Brenda Tapia,**

*Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.*

[FR Doc. 2011–22388 Filed 8–31–11; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

[FWS–R9–FHC–2011–N177; 94300–1122–0000–Z2]

RIN 1018–AX45

## Wind Turbine Guidelines Advisory Committee; Announcement of Public Meeting and Webcast

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of public meeting and Webcast.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), will host a Wind Turbine Guidelines Advisory Committee (Committee) meeting in-person and via webcast. The meeting and webcast are open to the public. The meeting agenda will include a presentation and discussion of the Service's revised Draft Land-Based Wind Energy Guidelines. The revised Draft incorporates changes based on public comment and recommendations from the Committee.

**DATES:** The meeting and webcast will take place on September 20 and 21, from 8 a.m. to 5 p.m. If you are a member of the public wishing to attend in person or participate via webcast, you must register online no later than September 13, 2011 (see ''Meeting Participation Information'' under **SUPPLEMENTARY INFORMATION**.)

**ADDRESSES:** *Meeting Location:* Savoy Suites Hotel, 2505 Wisconsin Ave., NW, Washington, DC 20007. (See ''Meeting Location Information'' under **SUPPLEMENTARY INFORMATION**.) Instructions for webcast participants will be given via e-mail upon online registration.

**FOR FURTHER INFORMATION CONTACT:** Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, U.S. Department of the Interior, (703) 358–2161.

**SUPPLEMENTARY INFORMATION:**

## Background

On March 13, 2007, the Department of the Interior published a notice of establishment of the Committee in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. All Committee members serve without compensation. In accordance with the Federal

Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter is filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress. The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The Committee provided its recommendations to the Secretary on March 4, 2010.

**Draft Land-Based Wind Energy Guidelines**

The Draft Land-Based Wind Energy Guidelines were made available for public comment on February 18, 2011, with a comment-period ending date of May 19, 2011 (76 FR 9590). The purpose of the Guidelines, once finalized, will be to provide recommendations on measures to avoid, minimize, and compensate for effects to fish, wildlife, and their habitats.

**Meeting Location Information**

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least 1 week in advance of the meeting.

**Meeting Participation Information**

All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

We require that all persons planning to attend in person or participate via webcast register at *http://www.fws.gov/windenergy* no later than September 13, 2011. We will give preference to registrants based on date and time of registration. Limited standing room at the meeting may be available if all seats are filled.

Dated: August 29, 2011.

**Rachel London,**

*Alternate Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.*

[FR Doc. 2011–22432 Filed 8–31–11; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLIDT020000.L10200000.EE0000.241A.00]**

### Notice of Intent To Prepare an Environmental Impact Statement for the Shoshone Basin Grazing Permit Renewal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Burley Field Office, Burley, Idaho intends to prepare an environmental impact statement (EIS) and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the EIS. Comments should be submitted within 30 days of the date of this posting to be included in the analysis. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and the BLM Web site: *http://www.blm.gov/id.* In order to be included in the draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later.

**ADDRESSES:** You may submit comments and issues related to the Shoshone Basin Grazing EIS by any of the following methods:

- *Web site: http://www.blm.gov/id/st/en/fo/burley.html.*
- *E-mail: id_burley_fo_@blm.gov.*
- *Fax:* 208–677–6699.
- *Mail:* 15 East 200 South, Burley, Idaho 83318.

Documents pertinent to this proposal may be examined at the Burley Field Office.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or to have your name added to our mailing list, contact Scott Sayer, Natural Resource Specialist, telephone (208) 677–6630, e-mail *ssayer@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:** This document provides notice that the BLM Burley Field Office, Burley, Idaho, intends to prepare an EIS for grazing permit renewals in the Shoshone Basin area, announces the beginning of the scoping process, and seeks public input on issues. The planning area is located in Twin Falls County, Idaho, and encompasses approximately 125,800 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the EIS, including the alternatives. Preliminary issues for the planning area have been identified by BLM personnel; Federal, State, and local agencies; and other stakeholders. The primary issue is the cumulative effects to a highly mobile sage-grouse population. These effects come from a variety of sources, including the proposed China Mountain Wind Project, Jack Ranch Wind Project (private), Gollaher Mountain Wind Project (private), Southwest Intertie (500 kV) transmission line, Gateway West (500kV) transmission line, numerous wildfires, and grazing.

The Burley Field Office will consult with the Shoshone-Paiute and Shoshone-Bannock Tribes on this action during regular consultation proceedings and briefings. The BLM will also brief county commissioners, Congressional delegations and grazing permittees during the EIS process.

An environmental assessment (EA) was prepared for the Horse Creek, Magic Common, South Big Creek, Kerr Lost Creek, and Baker Lost Creek allotments in the Shoshone Basin. An EA was also prepared for grazing permit renewal for the Western Stock Growers, Hub Butte, and Squaw Joe allotments. In those EAs, the BLM concluded that direct and indirect impacts from livestock grazing alone were not significant. However, large energy projects proposed in the area could, if constructed result in significant cumulative effects on Greater sage-grouse. The EIS will explore potential impacts from proposed grazing against the backdrop of wildfire and the development of energy projects that are reasonably foreseeable in the Browns Bench/Shoshone Basin area.

You may submit comments on issues and planning criteria in writing to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period. 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 in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The public is also encouraged to help identify any other management questions and concerns that should be addressed in the EIS.

The BLM will use an interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Range management, wildlife biology, archaeology, riparian, soils, and outdoor recreation.

**Authority:** 40 CFR 1501.7, 43 CFR 1610.2.

**Michael C. Courtney,**

*Field Manager.*

[FR Doc. 2011–22346 Filed 8–31–11; 8:45 am]

**BILLING CODE 4310–GG–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLNVS0100.L51010000.ER0000. LVRWF1104100; NVN–085801, NVN–088592, NVN–089530, and NVN–090050; MO# 4500022828; TAS: 14X5017]**

### Notice of Intent To Prepare a Supplemental Environmental Impact Statement and a Resource Management Plan Amendment, and Notice of Segregation for the Proposed First Solar South Project Near Primm in Clark County, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM), Las Vegas Field Office (LVFO), will prepare a Supplemental Environmental Impact Statement (EIS) and a proposed amendment to the Las Vegas Resource Management Plan (RMP) for a proposed solar energy project located on public lands in Clark County, Nevada. Publication of this notice initiates the scoping process to solicit public comments and identifies issues for both actions. Publication of this notice also serves to segregate the identified lands from appropriation under the public land laws, including location under the Mining Law, but not the Mineral Leasing Act or the Materials Act, subject to valid existing rights.

**DATES:** This notice initiates the public scoping process. Comments on issues may be submitted in writing until October 31, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media and the BLM Web site at: *http://www.blm.gov/nv/st/en/fo/lvfo.html.* A temporary segregation of the lands identified herein is effective immediately upon publication of this notice in the **Federal Register**.

**ADDRESSES:** Written comments may be submitted by the following methods:

- *E-mail: SilverStateSouthEIS@blm.gov.*
- *Fax:* (702) 515–5010, attention Gregory Helseth.
- *Mail:* Bureau of Land Management, Las Vegas Field Office, Attn: Gregory Helseth, 4701 North Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

**FOR FURTHER INFORMATION CONTACT:** Gregory Helseth, Renewable Energy Project Manager, at (702) 515–5173; or e-mail at *SilverStateSouthEIS@blm.gov.* Please also contact Gregory Helseth to have your name added to the mailing list. 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:** Silver State Solar, LLC, has submitted a right-of-way (ROW) application for the construction, operation, maintenance, and termination of a solar energy generation facility on 13,043 acres of public land east of Primm, Nevada. The ROW application is assigned BLM case number NVN–089530. This application expands on ROW application NVN–085801. The proposed solar energy project would consist of photovoltaic panels and related ROW appurtenances, including a substation and switchyard facilities, and would produce about 400 megawatts of electricity.

The Supplemental EIS will address new information associated with NVN–089530 and update as necessary the consideration of NVN–085801, which was analyzed in the Final EIS for the Silver State Solar Energy Project. The Record of Decision signed October 12, 2010 for the Silver State Solar Energy Project did not authorize all phases of application NVN–085801.

Approval of ROW application NVN–089530 will require amendment of the October 1998 Las Vegas RMP in order to address proposed changes in land and resource use within the Jean Lake/Roach Lake Special Recreation Management Area (SRMA). The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the Supplemental EIS. At present, the BLM has identified the following preliminary issues: Impacts to threatened and endangered species, visual resources, recreation and off-highway vehicle use; and socioeconomic and cumulative impacts. The Supplemental EIS will analyze the site-specific impacts on air quality, biological resources, cultural resources, special designations (SRMA), water resources, geological resources and hazards, hazardous materials handling, land and airspace use, noise, paleontological resources, public health, socioeconomics, soils, traffic and transportation, visual resources, wilderness characteristics, waste management, worker safety, and fire protection; as well as facility-design engineering, efficiency, reliability, transmission-system engineering, transmission line safety, and nuisance issues.

By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans. The BLM will integrate the land use planning process with the NEPA process for this project. The BLM will utilize and coordinate the NEPA commenting process to satisfy the public involvement process for Section 106 of the National Historic Preservation Act (16 U.S.C. 470(f)) as provided for in 36 CFR 800.2(d)(3). Native American tribal consultations will be conducted in accordance with policy. Tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, as well as individuals or organizations that may be interested in or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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.

*Segregation of Lands:* An Interim Rule, published in the **Federal Register** (76 FR 23198) on April 26, 2011, amended the BLM regulations found in 43 CFR parts 2090 and 2800 to provide provisions to allow the BLM to temporarily segregate from the operation of the public land laws, by publication of a **Federal Register** notice, public lands included in a pending solar energy generation ROW application in order to promote the orderly administration of the public lands. Upon segregation under the Interim Rule, such lands will not be subject to appropriation under the public land laws, including location under the Mining Law of 1872 (but not the Mineral Leasing Act or the Materials Act), subject to valid existing rights, for a period of up to 2 years.

This segregation is warranted to allow for the orderly administration of the public lands to facilitate the development of valuable renewable resources and to avoid conflicts between renewable energy generation and mining claims. This temporary segregation does not affect valid existing rights in mining claims located before this segregation notice. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which would not impact lands identified in this notice may be allowed with the approval of an authorized officer of the BLM during the segregative period.

The lands segregated under this Notice are legally described as follows:

**Mount Diablo Meridian**

T. 26 S., R. 59 E.,
Sec. 13, Lots 1 to 8, inclusive;
Sec. 14;
Sec. 23 E½;
Sec. 24, Lots 1 to 16, inclusive;
Secs. 25 and 26;
Sec. 27, SE¼;
Sec. 34, Lot 1, E½, portion of all public lands east of ROW CC0360 Union Pacific Railroad;
Secs. 35 and 36.
T. 27 S., R. 59 E.,
Sec. 1, Lots 1 to 4, inclusive, S½NE¼, S½NW¼, and S½;
Sec. 2, Lots 1 to 4, inclusive, S½NE¼, S½NW¼, and S½;
Sec. 3, Lot 1, Lot 2, Lot 3, Lot 4, NE¼SE¼NE¼, SE¼SE¼NE¼, NE¼NE¼SE¼, SE¼NE¼SE¼, and SE¼SE¼SE¼;
Sec. 9, NE¼SE¼, SW¼SE¼, SE¼SW¼SE¼, NE¼SW¼SE¼, SE¼NW¼SE¼, and NE¼NW¼SE¼, portion of public lands east of ROW CC0360 Union Pacific Railroad;
Sec. 10, SE¼NE¼, N½NE¼, and S½;
Secs. 11 to 15, inclusive;
Sec. 22, Lots 2 to 13, inclusive, SW¼NE¼, SE¼NW¼, and NW¼SW¼;
Secs. 23 and 24;
Sec. 25, N½;
Sec. 26, Lots 2 to 13, inclusive, SW¼NE¼, SE¼NW¼, and NW¼SW¼;
Sec. 27, Lots 4 to 6, inclusive.

The area described contains 13,043.20 acres, more or less, in Clark County, Nevada.

The BLM intends to resurvey T. 27 S., R. 59 E., sec. 3, lots 1 through 3. The description will be replaced for those lands upon final approval of the official plat of survey. The segregation of lands identified in this notice will not exceed 2 years from the date of publication. Termination of the segregation, as provided in the Interim Rule, is the date that is the earliest of the following: Upon issuance of a decision by the authorized officer granting, granting with modifications, or denying the application for a ROW; automatically at the end of the 2 year segregation; or upon publication of a **Federal Register** notice of termination of the segregation. Upon termination of segregation of these lands, all lands subject to this segregation will automatically reopen to appropriation under the public land laws.

**Authority:** 43 CFR 2800 and 2090.

**Robert B. Ross Jr.,**

*Las Vegas Field Office Manager.*

[FR Doc. 2011–22345 Filed 8–31–11; 8:45 am]

**BILLING CODE 4310–HC–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMT922200–11–L13100000–FI0000–P;MTM 98742]**

### Notice of Proposed Reinstatement of Terminated Oil and Gas Lease MTM 98742

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** Per 30 U.S.C. 188(d), Wilks Ranch Montana, Ltd. timely filed a petition for reinstatement of competitive oil and gas lease MTM 98742, Fergus County, Montana. The lessee paid the required rental accruing from the date of termination.

No leases were issued that affect these lands. The lessee agrees to new lease terms for rentals and royalties of $20 per acre and 18–2/3 percent. The lessee paid the $500 administration fee for the reinstatement of the lease and the $163 cost for publishing this Notice.

The lessee met the requirements for reinstatement of the lease per Sec. 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). We are proposing to reinstate the lease, effective the date of termination subject to the:

- Original terms and conditions of the lease;
- Increased rental of $20 per acre;
- Increased royalty of 18⅔ percent; and
- $163 cost of publishing this Notice.

**FOR FURTHER INFORMATION CONTACT:** Teri Bakken, Chief, Fluids Adjudication Section, Bureau of Land Management Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, 406–896–5091, *Teri_Bakken@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.

**Teri Bakken,**

*Chief, Fluids Adjudication Section.*

[FR Doc. 2011–22352 Filed 8–31–11; 8:45 am]

**BILLING CODE 4310–DN–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLOR936000–L14300000–ET0000; HAG–11–0232; OROR–45928]**

### Public Land Order No. 7777; Partial Extension of Public Land Order No. 6874; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order extends, in part, the duration of the withdrawal created by Public Land Order No. 6874 for an additional 20-year period. The extension is necessary to continue protection of the unique and important forest genetic resources and the expenditure of Federal funds at the Forest Service's Panelli Seed Orchard, which would otherwise expire on August 27, 2011. The withdrawal for the Quartz Evaluation Plantation is no longer needed and that portion of the withdrawal will expire at the end of the original term on August 27, 2011.

**DATES:** *Effective Date:* August 28, 2011.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Roy, Bureau of Land Management, Oregon/Washington State Office, 503–808–6189, or Dianne Torpin, United States Forest Service, Pacific Northwest Region, 503–808–2422. 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 either of the above individuals during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with either of the above individuals. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The purpose for which the withdrawal was first made for the Panelli Seed Orchard requires this extension in order to continue protection of the unique and important forest genetic resources and the expenditure of Federal funds. The portion of the withdrawal extended by this order will expire on August 27, 2031, unless as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended. The purpose for which the withdrawal for the Quartz Evaluation Plantation was first made no longer exists, so this portion of the withdrawal will expire at the end of its original term on August 27, 2011.

## 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, it is ordered as follows:

1. Public Land Order No. 6874 (56 FR 42540 (1991)), which withdrew National Forest System lands from location and entry under the United States mining laws (30 U.S.C. Ch. 2), but not from leasing under the mineral leasing laws, to protect the unique and important forest genetic resources and the expenditure of Federal funds at the Panelli Seed Orchard, is hereby extended for an additional 20-year period until August 27, 2031, only insofar as it affects the following described land:

**Willamette Meridian**

*Fremont National Forest*

Panelli Seed Orchard

T. 37 S., R. 15 E.,
Sec. 24, NE¼SE¼.
T. 37 S., R. 16 E.,
Sec. 19, W½ lot 3.

The area described contains approximately 59.78 acres in Klamath and Lake Counties.

2. Public Land Order No. 6874 (56 FR 42540 (1991)), will expire on August 27, 2011, only insofar as it affects the following described land, which will not be opened to the mining laws until such time and date as specified in an opening order that will be published separately in the **Federal Register** pursuant to 43 C.F.R. 2091.6:

**Willamette Meridian**

*Fremont National Forest*

Quartz Evaluation Plantation

T. 37 S., R. 16 E.,
Sec. 28, SW¼NE¼.

The area described contains 40 acres in Lake County.

**Authority:** 43 CFR 2310.4.

Dated: August 17, 2011.

**Rhea S. Suh,**

*Assistant Secretary—Policy, Management and Budget.*

[FR Doc. 2011–22353 Filed 8–31–11; 8:45 am]

**BILLING CODE 3410–11–P**

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## DEPARTMENT OF THE INTERIOR

## National Park Service

**[2253–665]**

## Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

**DATES:** Representatives of any Indian tribe that wishes to claim a cultural affiliation with the human remains and associated funerary objects should contact the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, at the address below by October 3, 2011.

**ADDRESSES:** Dr. Anthony Garcia, Phoebe A. Hearst Museum of Anthropology, UC Berkeley, 103 Kroeber Hall, Berkeley, CA 94720–3712, telephone (510) 643–5283.

**SUPPLEMENTARY INFORMATION:** Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, CA. The human remains and associated funerary objects were removed from CA–Sac–16, Sacramento County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

## Consultation

A detailed assessment of the human remains and associated funerary objects was made by the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, in consultation with representatives of the Berry Creek Rancheria of Maidu Indians of California; Buena Vista Rancheria of Me-Wuk Indians of California; Cachil Dehe Band of Wintun Indians; Cortina Indian Rancheria of Wintun Indians of California; California Valley Miwok Tribe, California; Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; Chicken Ranch Rancheria of Me-Wuk Indians of California; Enterprise Rancheria of Maidu Indians of California; Greenville Rancheria of Maidu Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-Wuk Indians of California; Mooretown Rancheria of Maidu Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; United Auburn Indian Community of the Auburn Rancheria of California; Washoe Tribe of Nevada & California; Wilton Rancheria, California; and Yocha Dehe Wintun Nation, California (hereinafter ''The Tribes''). The Phoebe A. Hearst Museum of Anthropology has also consulted with the Miwok Tribe of the El Dorado Rancheria, a non-Federally recognized Indian Group.

Pursuant to an October 4, 2010, claim by the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California, the Phoebe A. Hearst Museum of Anthropology has completed a review of its previously

submitted Culturally Unidentifiable Inventory of human remains and associated funerary objects for this site. This review was based on additional information submitted by the tribe on behalf of its claim, as well as additional research on the Museum's collections of documentary and physical evidence. As a result, the Museum has revised its original determination that the human remains and associated funerary objects described in this notice were culturally unidentifiable, and has determined them to be culturally affiliated. In addition, the review has resulted in other changes to the inventory. First, it has been determined that there were two catalog numbers listed that are not currently found in the collection, thereby reducing the catalog numbers for the remains to 32. Second, both the number of individuals and associated funerary objects has changed. The minimum number of individuals changed from 46 to 51, and the number of associated funerary objects changed from 117 individual objects to 18 lots of objects.

**History and Description of the Remains**

Between January 1, 1936, and December 31, 1937, human remains representing a minimum of 51 individuals were collected from CA–Sac–16, in Sacramento County, CA. The excavation was conducted by Sacramento Junior College, and the materials were taken to Sacramento Junior College at that time. Between 1940 to 1942, human remains were brought from Sacramento Junior College to the museum (represented by the catalog numbers 1–238637, 1–238524, 12–8069, 12–6651, 12–6652, 12–6990, 12–11171, 12–11172). Additional human remains were donated by Sacramento Junior College to Gila Pueblo in 1948, and subsequently were transferred to the museum (represented by the catalog numbers 12–7769, 12–7770, 12–7773, 12–7774, 12–7775, 12–7776, 12–7777, 12–7805, 12–7806, 12–7807, 12–7809, 12–7811, 12–7817, 12–7838, 12–7839, 12–7858, 12–7861, 12–7875, 12–7876, 12–7898, 12–7905, 12–7907, 12–7908, 12–7909). No known individuals were identified. The 18 associated funerary objects (representing 18 catalog numbers) are 8 lots of beads, 1 bead fragment, 1 blade, 1 hook, 2 lots of ornaments, 1 projectile point, 1 abalone shell, 1 deer tooth, 1 lot of acorn fragments, and 1 baked clay object.

As previously reported, the overall CA–Sac–16 site appears to represent roughly 2,800 years of human occupation between the Middle Horizon and Euro-American contact in the Central Valley of California. Additional research has now revealed that three of the 32 cataloged human skeletal remains for CA–Sac–16 (12–8069, 12–6651, and 12–6652) may be placed chronologically within the Late Horizon based on an assessment of the directly associated artifacts. Human skeletal remains associated with the remaining 29 catalog numbers cannot currently be placed chronologically or stratigraphically due to lack of provenience documentation, potential comingling of burials during original acquisition, and lack of associated temporal markers or radiometric determinations. These remains were originally reported in the museum's inventory as ''culturally unidentifiable.''

The consultation and research conducted as a result of the Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California's request to the Museum for re-assessment of cultural affiliation included a detailed study of the entire collection of 453 temporally diagnostic artifacts (largely projectile points and beads) recovered from the site during recovery of the human remains. That study has demonstrated that 97% of these artifacts are chronologically attributable to the Late Horizon, and has established a shared group identity between The Tribes (as well as the Miwok Tribe of the El Dorado Rancheria, a non-Federally recognized Indian Group), and the earlier identifiable group represented by the Late Horizon human remains and associated funerary objects in the CA–SAC–16 assemblage inventoried herein. Further confirmation of this cultural affiliation is the correspondence of CA–Sac–16 to the ethnohistorically described village of Nawrean. A full review of the collections has failed to identify any evidence of earlier remains in the holdings from CA–SAC–16. Therefore, cultural affiliation with extant tribes which occupied this area aboriginally can now be established by a preponderance of the evidence.

**Determinations Made by the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley**

Officials of the Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice most likely represent the physical remains of 51 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 18 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes, and the Miwok Tribe of the El Dorado Rancheria, a non-Federally recognized Indian Group.

**Additional Requestors and Disposition**

Representatives from any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Anthony Garcia, Phoebe A. Hearst Museum of Anthropology, UC Berkeley, 103 Kroeber Hall, Berkeley, CA 94720–3712, telephone (510) 643–5283, before October 3, 2011. Repatriation of the human remains and associated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology at the University of California, Berkeley, is responsible for notifying The Tribes, and the Miwok Tribe of the El Dorado Rancheria, a non-Federally recognized Indian Group, that this notice has been published.

Dated: August 29, 2011.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2011–22426 Filed 8–31–11; 8:45 am]

BILLING CODE 4312–50–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Buy American Exception Under the American Recovery and Reinvestment Act of 2009

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of approval.

**SUMMARY:** This notice provides information regarding the Bureau of Reclamation (Reclamation) approval of the Buy American waiver requested by the Sunnyside Division Board of Control (SDBOC) to purchase foreign-produced ductile iron flanges also known as bolt rings used to connect high-density polyethylene (HDPE) and polyvinyl chloride (PVC) pipe as part of the American Recovery and Reinvestment Act of 2009 (ARRA) grant for the Enclosed Lateral Improvement Project (ELIPS) located in Sunnyside, Washington.

**DATES:** The effective date of the Buy American Waiver approval was August 16, 2011.

**FOR FURTHER INFORMATION CONTACT:** Wilson Orvis, Grants Management Analyst—Acquisition and Assistance Management Division, Bureau of Reclamation, Denver Federal Center, Building 56, Room 1006, P.O. Box 25007 (84–27850), Denver, CO 80225–0007; *telephone:* (303) 445–2444; or via e-mail at *worvis@usbr.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

The total estimated cost of the ELIPS project is $33,000,000, of which $21,400,000 is the Federal cost-share of the ARRA funded grant. The ductile iron flanges are not available in the United States and are necessary for the construction of the ELIPS project. The SDBOC engineers conducted market research for the domestic ductile iron flange production industry and determined there is currently no domestic availability for ductile iron flanges for use with HDPE and PVC pipe.

Congress has enacted a Buy American provision which requires manufactured goods permanently incorporated into a project funded with ARRA funds to be produced in the United States. The application of Buy American is triggered by the obligation of Federal ARRA funds to a project. Once ARRA funds are obligated to a project, then all iron, steel, and manufactured goods incorporated into the project must be produced in the United States. The specific statutory requirement reads as follows:

> Section 1605 of the Recovery Act prohibits the use of recovery funds for a project for the construction, alteration, maintenance, or public work unless all of the iron, steel, and manufactured goods are produced in the United States.

### 2 CFR 176.80

Under 2 CFR 176.80(a), the head of the Federal department or agency may waive the Buy American requirements for specific products on an ARRA funded construction project when Buy American is inconsistent with the public interest; such materials and products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

The waiver process is initiated by a requesting organization when it believes that a waiver is warranted pursuant to any of the three waiver provisions under 2 CFR 176.80(a). The SDBOC submitted a Buy American waiver request based on the waiver provision under 2 CFR 176.80(a)(1)—Nonavailability. The project requirements specified the use of ductile iron flanges that were determined through industry research conducted by SDBOC to not be domestically available. Based on the confirmation that these ductile iron flanges used with HDPE pipe are not currently available, Reclamation approved the Buy American waiver request.

Reclamation's publication of its Buy American decision is required pursuant to the Buy American Act, 2 CFR 176.80(b)(2). The specific statutory requirement reads as follows:

> The head of the Federal department or agency shall publish a notice in the **Federal Register** within two weeks after the determination is made, unless the item has been already determined to be domestically non-available. A list of items that are not domestically available is at 48 CFR 25.104(a). The **Federal Register** notice or information from the notice may be posted by OMB to Recovery.gov. The notice shall include—(i) The title ''Buy American Exception under the American Recovery and Reinvestment Act of 2009''; (ii) The dollar value and brief description of the project; and (iii) A detailed written justification as to why the restriction is being waived.

Upon publication of this **Federal Register** notice, Reclamation is notifying the public of the decision to approve the Buy American waiver requested by the SDBOC to purchase foreign ductile iron flanges as part of the ARRA grant for the SDBOC ELIPS project located in Sunnyside, Washington.

Dated: August 26, 2011.

**Karl E. Wirkus,**

*Pacific Northwest Regional Director, Bureau of Reclamation.*

[FR Doc. 2011–22385 Filed 8–31–11; 8:45 am]

BILLING CODE 4310–MN–P

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## DEPARTMENT OF THE INTERIOR

## Bureau of Reclamation

## Charter Renewal, Glen Canyon Dam Adaptive Management Work Group

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of renewal.

**SUMMARY:** Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior (Secretary) is renewing the charter for the Glen Canyon Dam Adaptive Management Work Group. The purpose of the Adaptive Management Work Group is to advise and to provide recommendations to the Secretary with respect to the operation of Glen Canyon Dam and the exercise of other authorities pursuant to applicable Federal law.

**FOR FURTHER INFORMATION CONTACT:** Linda Whetton, 801–524–3880.

**SUPPLEMENTARY INFORMATION:** This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463, as amended). The certification of renewal is published below.

### Certification

I hereby certify that Charter renewal of the Glen Canyon Dam Adaptive Management Work Group is in the public interest in connection with the performance of duties imposed on the Department of the Interior.

**Ken Salazar,**

*Secretary of the Interior.*

[FR Doc. 2011–22382 Filed 8–31–11; 8:45 am]

BILLING CODE 4310–MN–P

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–683; Third Review]**

## Fresh Garlic From China; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Fresh Garlic From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on fresh garlic from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 3, 2011. Comments on the adequacy of responses may be filed with the Commission by

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–257, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

November 10, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On November 16, 1994, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of fresh garlic from China (59 FR 59209). Following first five-year reviews by Commerce and the Commission, effective March 13, 2001, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China (66 FR 14544). Following second five-year reviews by Commerce and the Commission, effective October 19, 2006, Commerce issued a continuation of the antidumping duty order on imports of fresh garlic from China (71 FR 61708). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission found three separate *Domestic Like Products* consisting of fresh garlic, dehydrated garlic, and seed garlic corresponding with the broader scope of the original investigation. However, the Commission found that the domestic industries producing garlic for dehydration and seed garlic were neither materially injured nor threatened with material injury by reason of the subject imports from China. One Commissioner defined the *Domestic Like Product* differently in the original determination. In its full first five-year review determination, the Commission defined the *Domestic Like Product* as all fresh garlic. Consistent with its *Domestic Like Product* definition in the original investigation and first five-year review, the Commission found in its expedited second five-year review determination a single *Domestic Like Product* consisting of all fresh garlic, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found three *Domestic Industries* consisting of the domestic producers of fresh garlic, the domestic producers of dehydrated garlic, and the domestic producers of seed garlic to coincide with the three *Domestic Like Products.* The Commission also found that crop tenders were not members of the *Domestic Industry.* One Commissioner defined the *Domestic Industry* differently in the original determination. In its full first five-year review determination, consistent with Commerce's narrower scope and the Commission's *Domestic Like Product* definition of a single *Domestic Like Product* consisting of all fresh garlic, the Commission found a single *Domestic Industry* consisting of all producers of fresh garlic. In its expedited second five-year review determination, the Commission once again found a single *Domestic Industry* consisting of all domestic producers of fresh garlic.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. § 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR § 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those

parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 3, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 10, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after May 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and e-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during crop year 2011 (June 2010–May 2011), except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during crop year 2011 (June 2010–May 2011) (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during crop year 2011 (June 2010–May 2011) (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after May 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–22275 Filed 8–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–702; Third Review]**

## Ferrovanadium and Nitrided Vanadium From Russia; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Ferrovanadium and Nitrided Vanadium From Russia

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is October 3, 2011. Comments on the adequacy of responses may be filed with the Commission by November 10, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On July 10, 1995, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (60 FR 35550). Following first five-year reviews by Commerce and the Commission, effective June 7, 2001, Commerce issued a continuation of the antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (66 FR 30694). Following second five-year reviews by Commerce and the Commission, effective October 13, 2006, Commerce issued a continuation of the antidumping duty order on imports of ferrovanadium and nitrided vanadium from Russia (71 FR 60475). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–256, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Russia.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, the Commission found one *Domestic Like Product* including both ferrovanadium and nitrided vanadium. Noting in its full first five-year review determination and its expedited second five-year review determination that nitrided vanadium had not been produced in the United States since 1992, the Commission determined that, based on the record, the product most like ferrovanadium and most similar in characteristics and uses to nitrided vanadium that was produced in the United States was ferrovanadium. Accordingly, the Commission found one *Domestic Like Product* consisting of ferrovanadium. One Commissioner defined the *Domestic Like Product* differently in the first and second five-year review determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission found one *Domestic Industry* consisting of ferrovanadium and nitrided vanadium producers, including toll producer Bear Metallurgical Corp. (''Bear''). In its full first five-year review determination, the Commission found one *Domestic Industry* consisting of ferrovanadium producers Bear and Metallurg Vanadium Corp. (''MVC'') (formerly Shieldalloy Metallurgical Corp.). The Commission, however, did not include tollees Gulf Chemical & Metallurgical Corp. and U.S. Vanadium Corp. in the *Domestic Industry* because those firms produced vanadium pentoxide, an intermediate product, not ferrovanadium, the *Domestic Like Product.* Two Commissioners defined the *Domestic Industry* differently in the first five-year review determination. In its expedited second five-year review determination, the Commission once again defined the *Domestic Industry* as the domestic producers of ferrovanadium: Bear and MVC.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. § 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR § 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 3, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 10, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service

must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise on the Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and e-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds of contained vanadium and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds of contained vanadium and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise from the Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds of contained vanadium and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country (i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total

exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 25, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–22274 Filed 8–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–703; Third Review]**

## Furfuryl Alcohol From China; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Furfuryl Alcohol From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on furfuryl alcohol from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 3, 2011. Comments on the adequacy of responses may be filed with the Commission by November 10, 2011. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

**DATES:** *Effective Date:* September 1, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*— On June 21, 1995, the Department of Commerce (''Commerce'') issued an antidumping duty order on imports of furfuryl alcohol from China (60 FR 32302). Following first five-year reviews by Commerce and the Commission, effective May 4, 2001, Commerce issued a continuation of the antidumping duty order on imports of furfuryl alcohol from China (66 FR 22519). Following second five-year reviews by Commerce and the Commission, effective October 6, 2006, Commerce issued a continuation of the antidumping duty order on imports of furfuryl alcohol from China (71 FR 59072). The Commission is now conducting a third review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

*Definitions.*—The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Like Product* as furfuryl alcohol, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, its full first five-year review determination, and its expedited second five-year review determination, the Commission defined the *Domestic Industry* as all producers of furfuryl alcohol, including toll-producers, captive producers, and merchant market producers. Specifically, in its original determination, the Commission defined the *Domestic Industry* as QO Chemicals, generally known as Great Lakes, an integrated producer of furfuryl alcohol. Although the Commission found Advanced Resin Systems, Inc. (''ARS'') to be a domestic producer of furfuryl alcohol in the original determination, it excluded ARS from the domestic industry as a related party. In its full first five-year review determination, the Commission defined the *Domestic Industry* to include Penn Chemicals,

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 11–5–258, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Ferro Industries, and Great Lakes. In its expedited second five-year review determination, the Commission found Penn Chemicals to be the sole producer of furfuryl alcohol and, therefore, defined the *Domestic Industry* to be Penn Chemicals.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

*Participation in the review and public service list.*—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register.** The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. § 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR § 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR § 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Certification.*—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

*Written submissions.*—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 3, 2011. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is November 10, 2011. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

*Inability to provide requested information.*—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

*Information To Be Provided in Response to This Notice of Institution:* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and e-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. § 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the

*Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and e-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2010, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) Net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2010 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–22272 Filed 8–31–11; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–758]**

## In the Matter of Certain Mobile Telephones and Modems; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 17) of the presiding administrative law judge (''ALJ'') terminating the above-captioned

investigation based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 2, 2011, based on a complaint filed by Sony Corporation of Japan. 76 FR 5824–25. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain mobile telephones and modems by reason of infringement of certain claims of U.S. Patent Nos. 6,311,092; 5,907,604; 6,263,205; 6,507,611; 6,674,464; 7,839,477; and 6,674,732. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: LG Electronics, Inc. of South Korea; LG Electronics USA, Inc. of Englewood Cliffs, New Jersey; and LG Electronics Mobilecomm USA, Inc. of San Diego, California.

On February 28, 2011, the Commission issued notice of its determination not to review the ALJ's ID setting a target date of August 2, 2012, for completion of the investigation.

On August 10, 2011, complainant and respondents jointly moved to terminate the investigation on the basis of a settlement agreement. The Office of Unfair Import Investigations did not participate in this investigation.

The ALJ issued the subject ID (Order No. 17) on August 11, 2011, granting the motion for termination. He found that the motion for termination satisfies Commission rule 210.21(b). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation by settlement agreement is in the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID, and the investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

By order of the Commission.

Issued: August 26, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–22358 Filed 8–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

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## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–774]**

## In the Matter of Certain Electronic Devices Having a Digital Television Receiver and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 5) of the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation based on a settlement agreement.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, *Esq.,* Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on June 6, 2011, based on a complaint filed by Zenith Electronics LLC of Lincolnshire, Illinois. 76 FR. 32373–74. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic devices having a digital television receiver and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,598,220; 5,629,958; and 5,636,251. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named the following respondents: Sony Corporation of Japan; Sony Corporation of America of New York, New York; and Sony Electronics, Inc. of San Diego, California.

On August 10, 2011, complainant and respondents jointly moved to terminate the investigation on the basis of a settlement agreement. The Office of Unfair Import Investigations did not participate in this investigation.

The ALJ issued the subject ID on August 11, 2011, granting the motion for termination. He found that the motion for termination satisfies Commission rule 210.21(b). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation by settlement agreement is in the public interest. No party petitioned for review of the ID. The Commission has determined not to review the ID, and the investigation is terminated.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 CFR 210.21, 210.42(h).

By order of the Commission.

Issued: August 26, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–22359 Filed 8–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–759]**

### In the Matter of Certain Birthing Simulators and Associated Systems; Issuance of a Limited Exclusion Order and a Cease and Desist Order; Termination of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation directed against products of respondents Shanghai Honglian Medical Instruments of China and Shanghai Evenk International Trading Co., Ltd. of China. The investigation is terminated.

**FOR FURTHER INFORMATION CONTACT:** Michelle Klancnik, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on February 7, 2011, based on a complaint filed by Gaumard Scientific Company, Inc. of Miami, Florida. 76 F R 6632 (Feb. 7, 2011). The complaint, as amended, alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain birthing simulators and associated systems by reason of infringement of various claims of United States Patent Nos. 6,503,087 (''the '087 patent'') and 7,114,954 (''the '954 patent''). The complaint named Shanghai Honglian Medical Instruments of China and Shanghai Evenk International Trading Co., Ltd. of China as respondents. The complaint and Notice of Investigation were served on respondents on February 1, 2011. No responses were received. On March 4, 2011, the ALJ issued an order requiring respondents to show cause why they should not be held in default and judgment rendered against them for failing to respond to the complaint and notice of investigation. Respondents did not respond. On March 30, 2011, the ALJ issued an ID, finding both respondents in default pursuant to Commission Rule 210.16 (19 CFR 210.16) and terminating the above-referenced investigation. None of the parties petitioned for review of the ID. On May 2, 2011, the Commission determined not to review the ID.

Having reviewed the record in this investigation, including the written submissions of the parties, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed entry of birthing simulators covered by one or more of claims 16–20, 22–23, 25–28, 30–31, 33–34, and 36–38 of the '087 patent and claims 1, 2, 6, 7, and 10 of the '954 patent and that are manufactured by or on behalf of Shanghai Honglian and Shanghai Evenk, their affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or successors or assigns. The Commission has also determined to issue a cease and desist order that prohibits importing, selling for importation, marketing, advertising, distributing, offering for sale, selling, transferring (except for exportation), advertising, and soliciting United States agents or distributors for birthing simulators that are covered by one or more of the asserted claims.

The Commission further determined that the public interest factors enumerated in section 337(d)(1) (19 U.S.C. 1337(d)(1)) do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period (19 U.S.C. 1337(j)) shall be in the amount of 100 percent of the entered value of Shanghai Honglian's and Shanghai Evenk's birthing simulators that are subject to the order. The Commission's orders were delivered to the President and the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

By order of the Commission.

Issued: August 29, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–22381 Filed 8–31–11; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP; NIJ Docket No. 1560]**

### Compliance Testing Program Administrative Clarification to National Institute of Justice Standard-0101.06, Ballistic Resistance of Body Armor

**AGENCY:** National Institute of Justice, Justice.

**ACTION:** Notice.

**SUMMARY:** The National Institute of Justice (NIJ) is providing notice of its administrative clarification of NIJ Standard 0101.06, ''Ballistic Resistance Body Armor'' (hereinafter, ''NIJ Standard-0101.06'').

**SUPPLEMENTARY INFORMATION:** NIJ announces an administrative clarification to NIJ Standard-0101.06. This provides additional clarification with regard to NIJ's original intention concerning a statement in the ''Foreword'' to the NIJ Standard-0101.06. The full text of the administrative clarification can be found on the NIJ JustNet Web site at: *http://www.justnet.org/Documents/BA-CTP-clarification_201101.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Casandra Robinson by telephone at 202–305–2596 [**Note:** this is not a toll-free telephone number], or by e-mail at *casandra.robinson@usdoj.gov.*

**John H. Laub,**

*Director, National Institute of Justice.*

[FR Doc. 2011–22390 Filed 8–31–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OJP (BJA) Docket No. 1566]**

### Meeting of the Department of Justice Global Justice Information Sharing Initiative Federal Advisory Committee

**AGENCY:** Office of Justice Programs (OJP), Justice.

**ACTION:** Notice of meeting.

**SUMMARY:** This is an announcement of a meeting of the DOJ's Global Justice Information Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global.*

**DATES:** The meeting will take place on Thursday, October 13, 2011 from 8:30 a.m. to 4 p.m. E.T.

**ADDRESSES:** The meeting will take place at the Washington Hilton, 1919 Connecticut Avenue, NW., Washington, DC 20009, *Phone:* (202) 483–3000.

**FOR FURTHER INFORMATION CONTACT:** J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, Washington, DC 20531; *Phone:* (202) 616–0532 [**Note:** this is not a toll-free number]; *E-mail: James.P.McCreary@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

**Purpose**

The GAC will act as the focal point for justice information systems integration activities to help facilitate development and coordination of national policy, practices, and technical solutions in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and Federal policymakers. The GAC will also advocate for strategies for accomplishing a Global information sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

**J. Patrick McCreary,**

*Global DFE, Bureau of Justice Assistance, Office of Justice Programs.*

[FR Doc. 2011–22339 Filed 8–31–11; 8:45 am]

**BILLING CODE 4410–18–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until October 31, 2011.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below: Clearance Officer: Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, *Fax No.* 703–837–2861, *E-mail: OCIOMail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* 3133–0004.

*Form Number:* NCUA 5300.

*Type of Review:* Revision to the currently approved collection.

*Title:* Revisions to NCUA Call Reports.

*Description:* The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

*Respondents:* All Credit Unions.

*Estimated No. of Respondents/Recordkeepers:* 7,264.

*Estimated Burden Hours per Response:* 6.6 hours.

*Frequency of Response:* Quarterly.

*Estimated Total Annual Burden Hours:* 191,770.

*Estimated Total Annual Cost:* $5,628,450.

By the National Credit Union Administration Board on August 26, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–22335 Filed 8–31–11; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Reinstatement, With Change, of a Previously Approved Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted until October 31, 2011.

**ADDRESSES:** Interested parties are invited to submit written comments to NCUA Clearance Officer:

*Clearance Officer:* Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax No. 703–837–2861.

*E-mail: OCIOmail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or a copy of the information collection request should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*OMB Number:* 3133–0138.

*Type of Review:* Reinstatement, with change, of a previously approved collection.

*Title:* Community Development Revolving Loan Fund—Loan Program.

*Description:* NCUA requests this information from participants in the Community Development Revolving Loan Fund (CDRLF) Loan Program. The information will allow NCUA to assess a credit union's capacity to repay the funds and ensure that the funds were used as intended to benefit the institution and community it serves.

*Estimated No. of Respondents/ Recordkeepers:* 75.

*Estimated Burden Hours per Response:* 4, 8, 16 or 40 hours per response, dependent on application type.

*Frequency of Response:* Reporting, on occasion and semi-annually.

*Estimated Total Annual Burden Hours:* 1,100 hours.

*Estimated Total Annual Cost:* $38,500.

By the National Credit Union Administration Board on August 26, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–22337 Filed 8–31–11; 8:45 am]

**BILLING CODE 7535–01–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

**DATES:** Comments will be accepted October 3, 2011.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Clearance Officer listed below: Clearance Officer: Tracy Sumpter, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, Fax No. 703–837–2861, *E-mail: OCIOmail@ncua.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:** Proposal for the following collection of information:

*Title:* Corporate Credit Union Monthly Call Report.

*OMB Number:* 3133–0067.

*Form Number:* NCUA 5310.

*Type of Review:* Reinstatement, without change, of a previously approved collection.

*Description:* NCUA utilizes the information to monitor financial conditions in corporate credit unions, and to allocate supervision and examination resources.

*Respondents:* Corporate credit unions, or ''banker's banks'' for natural person credit unions.

*Estimated No. of Respondents/Record keepers:* 27.

*Estimated Burden Hours per Response:* 8 hours.

*Frequency of Response:* Monthly.

*Estimated Total Annual Burden Hours:* 2,592 hours.

*Estimated Total Annual Cost:* $64,800.

By the National Credit Union Administration Board on August 26, 2011.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2011–22338 Filed 8–31–11; 8:45 am]

**BILLING CODE 7535–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0203]**

### In the Matter of Entergy Operations, Inc. and Entergy Nuclear Operations, Inc.; Confirmatory Order Modifying Licenses (Effective Immediately)

EA–11–096

Docket Nos. 050–00313; 050–00368; 050–00333; 050–00416; 050–00247; 050–00286; 050–00255; 050–00293; 050–00458; 050–00271; 050–00382

License Nos. DPR–51; NPF–6; DPR–59; NFP–29; DPR–26; DPR–64; DPR–20; DPR–35; NFP–47; DPR–28; NFP–38

**I**

Entergy Operations, Inc. and Entergy Nuclear Operations, Inc., (collectively Entergy) are the holders of Operating License Nos. DPR–51; NPF–6; DPR–59; NFP–29; DPR–26; DPR–64; DPR–20; DPR–35; NFP–47; DPR–28 and NFP–38 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) part 50. The licenses authorize the operation of Arkansas Nuclear One, Units 1 & 2, James Fitzpatrick Nuclear Power Plant, Grand Gulf Nuclear Station, Unit 1, Indian Point Nuclear Generating, Units 2 & 3, Palisades Nuclear Plant, Pilgrim Nuclear Power Station, River Bend Station, Vermont Yankee Nuclear Power Station and Waterford Steam Electric Station, Unit 3 (collectively, the Facilities), in accordance with conditions specified therein. The Facilities are located in the vicinity of the following cities: Russellville, Arkansas; Oswego, New York; Vicksburg, Mississippi; New York City, New York; South Haven, Michigan; Boston, Massachusetts; Baton Rouge, Louisiana; Brattleboro, Vermont and New Orleans, Louisiana, respectively.

This confirmatory order (referenced as CO, Confirmatory Order or Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on July 18, 2011 in Washington, DC.

**II**

On March 17, 2011, the NRC Office of Investigations (OI) issued its report of investigation (OI Case No. 4–2010–053). Based on the evidence developed during its investigation, the NRC identified an apparent violation of 10 CFR 50.7 involving an employee at the River Bend Station who was rated lower in his/her 2008 annual performance appraisal because the employee questioned the qualifications necessary to perform certain work activities in compliance with the applicable plant procedure(s).

By letter May 20, 2011, the NRC identified to Entergy the apparent violation of 10 CFR 50.7 and offered Entergy the opportunity to provide a written response, attend a pre-decisional enforcement conference, or request ADR. Entergy chose ADR.

On July 18, 2011, the NRC and Entergy met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR through mediation is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

**III**

The NRC acknowledges that Entergy on its own initiative undertook a number of actions prior to the issuance

of the NRC's May 20, 2011 letter. Those actions are summarized below:

1. Conducting remedial 10 CFR 50.7 training to key managers at River Bend, Palisades and Grand Gulf nuclear power plants;

2. Debriefing the employee in question on the results of the company's investigation and corrective actions, including revision of his/her 2008 appraisal and other corrective actions;

3. Conducting fleet-wide training for Employee Concerns Program (ECP) personnel;

4. Completing an apparent cause evaluation relating to the company's ECP investigation;

5. Holding a management meeting with the employee in question again to review corrective actions;

6. Reviewing all closed ECP retaliation type concerns fleet-wide from 2008 and 2009;

7. Conducting 4-hour 10 CFR 50.7 training to select River Bend Station management personnel;

8. Completing fleet-wide review of all 2009 appraisals for employees with overall ''Improvement Required'' rating;

9. Completing benchmarking evaluation of ECP practices and procedures;

10. Revising procedure EN–MA–102, Inspection Program;

11. Issuing guidance on preparation and conduct of performance improvement plans;

12. Providing 3-hour 10 CFR 50.7 training for all supervisors and above fleet-wide (ongoing as of the date of this CO); and

13. Developing procedure EN–EC–100–01 ''Employee Concern Coordinator Training Program'' to provide instructions for ECP coordinator qualifications.

During the ADR mediation session, an agreement in principle was reached where Entergy agreed to take the following additional actions:

1. Entergy will reorganize the Quality Control (QC) reporting relationship so that those persons whose primary function is to assign or perform QC inspections will report directly to a manager in the Quality Assurance (QA) organization. These same persons may have a dotted line reporting relationship to the site Maintenance department and may be tasked to perform maintenance activities other than QC inspections. Entergy will provide to the Director, Office of Enforcement, a plan to accomplish this reorganization within 90 days after the issuance of this CO and will complete the transition described above within 270 days after the issuance of this CO. If Entergy is unable to provide a plan or complete the transition as described above, this CO shall be null and void and the NRC reserves the right to reenter the enforcement process in the underlying matter.

2. Entergy will review its existing general employee training (GET) to ensure adequate coverage of 10 CFR 50.7, including insights from the underlying matter. To that end, Entergy will create a document identifying the relevant ''lessons-learned'' from the facts of this matter, and in reviewing its GET, Entergy will ensure that these lessons-learned are addressed in the training materials. Entergy will also document the results of its review of the GET within 60 days after the issuance of the CO. If this review reveals a need to revise the GET, Entergy will make the appropriate revisions within 180 days of the issuance of this CO.

3. Entergy will review its existing training provided to new supervisors to ensure adequate coverage of 10 CFR 50.7 including insights from the underlying matter. To that end, Entergy will create a document identifying the relevant ''lessons-learned'' from the facts of this matter, and in reviewing the training provided to new supervisors, Entergy will ensure that these lessons-learned are addressed in the training materials. Entergy will also document the results of its review of the training within 60 days after the issuance of the CO. If this review reveals a need to revise the supervisory training, Entergy will make the appropriate revisions within 180 days of the issuance of this CO.

4. Within 30 days after the issuance of this CO, a senior Entergy nuclear executive will issue a fleet-wide written communication reinforcing Entergy's commitment to maintaining a safety conscious work environment and reaffirming Entergy's insistence upon the protection of employees' right and obligation to raise safety issues without fear of retaliation.

5. Within 365 days after the issuance of this CO, subcommittees of Entergy's Safety Review Committees (both for Boiling Water Reactors and Pressurized Water Reactors) will conduct an effectiveness review of ECP procedural enhancements and the ECP training that arose from the corrective actions taken in relation to this matter. This review will include a sampling review of ECP investigations and reports. These subcommittees will document their analyses and findings and make the results available for NRC review.

6. By no later than December 31, 2012, Entergy will conduct a safety culture survey at the River Bend Station comparable to the independent survey conducted in 2009 at RBS and make the results available for NRC review.

On August 15, 2011, Entergy consented to issuing this CO with the commitments, as described in Section V below. Entergy further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

## IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order and thereby has agreed not to pursue further action in connection with the NRC's May 20, 2011 letter to Entergy relating to OI investigation 4–2010–053.

I find that Entergy's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Entergy's commitments be confirmed by this Confirmatory Order. Based on the above and Entergy's consent, this Confirmatory Order is immediately effective upon issuance. By no later than 30 days after the completion of the last requirement of Section V, Entergy is required to notify the NRC in writing and summarize its actions.

## V

Accordingly, pursuant to Sections 104b, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, *It Is Hereby Ordered, Effective Immediately, That:*

1. Entergy will reorganize the Quality Control (QC) reporting relationship so that those persons whose primary function is to assign or perform QC inspections will report directly to a manager in the Quality Assurance (QA) organization. These same persons may have a dotted line reporting relationship to the site Maintenance department and may be tasked to perform maintenance activities other than QC inspections. Entergy will provide the Director, Office of Enforcement, a plan to accomplish this reorganization within 90 days after the issuance of this CO and will complete the transition described above within 270 days after the issuance of this CO. If Entergy is unable to provide a plan or complete the transition as described above, this CO shall be null and void and the NRC reserves the right to reenter the enforcement process in the underlying matter.

2. Entergy will review its existing general employee training (GET) to ensure adequate coverage of 10 CFR 50.7, including insights from the underlying matter. To that end, Entergy will create a document identifying the relevant ''lessons-learned'' from the facts of this matter, and in reviewing its GET, Entergy will ensure that these lessons-learned are addressed in the training materials. Entergy will also document the results of its review of the GET within 60 days after the issuance of the CO. If this review reveals a need to revise the GET, Entergy will make the appropriate revisions within 180 days of the issuance of this CO.

3. Entergy will review its existing training provided to new supervisors to ensure adequate coverage of 10 CFR 50.7 including insights from the underlying matter. To that end, Entergy will create a document identifying the relevant ''lessons-learned'' from the facts of this matter, and in reviewing the training provided to new supervisors, Entergy will ensure that these lessons-learned are addressed in the training materials. Entergy will also document the results of its review of the training within 60 days after the issuance of the CO. If this review reveals a need to revise the supervisory training, Entergy will make the appropriate revisions within 180 days of the issuance of this CO.

4. Within 30 days after the issuance of this CO, a senior Entergy nuclear executive will issue a fleet-wide written communication reinforcing Entergy's commitment to maintaining a safety conscious work environment and reaffirming Entergy's insistence upon the protection of employees' right and obligation to raise safety issues without fear of retaliation.

5. Within 365 days after the issuance of this CO, subcommittees of Entergy's Safety Review Committees (both for Boiling Water Reactors and Pressurized Water Reactors) will conduct an effectiveness review of ECP procedural enhancements and the ECP training that arose from the corrective actions taken in relation to this matter. This review will include a sampling review of ECP investigations and reports. These subcommittees will document their analyses and findings and make the results available for NRC review.

6. By no later than December 31, 2012, Entergy will conduct a safety culture survey at the River Bend Station comparable to the independent survey conducted in 2009 at RBS and make the results available for NRC review.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Entergy of good cause.

**VI**

Any person adversely affected by this Confirmatory Order, other than Entergy, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

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 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 (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.

If a person (other than Energy) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A Request for Hearing Shall Not Stay the Immediate Effectiveness of This Order.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 24th day of August 2011.

**Roy P. Zimmerman,**

*Director, Office of Enforcement.*

[FR Doc. 2011–22417 Filed 8–31–11; 8:45 am]

**BILLING CODE 7590–01–P**

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## NUCLEAR REGULATORY COMMISSION

**[Docket Number 50–397; NRC–2010–0029]**

## Energy Northwest, Columbia Generating Station; Notice of Availability of Draft Supplement 47 to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants and Public Meetings for the License Renewal of Columbia Generating Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has published a draft plant-specific supplement to the Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS), NUREG–1437, regarding the renewal of operating license NPF–21 for an additional 20 years of operation for Columbia Generating Station. Columbia Generating Station is located in Richland, Washington. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be considered, comments on the draft supplement to the GEIS and the proposed action must be received by November 16, 2011. The NRC staff is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2010–0029 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2010–0029. 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.

**SUPPLEMENTARY INFORMATION:**

### Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, 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 Draft Supplement 47 to the GEIS is available electronically under ADAMS Accession Number ML11227A007.

• *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–2010–0029.

In addition, a copy of the draft supplement to the GEIS is available to local residents near the site at the Richland Public Library, 955 Northgate Drive, Richland, Washington 99352 and at the Kennewick Branch of Mid-Columbia Libraries, 1620 South Union Street, Kennewick, Washington 99338.

All comments received by the NRC, including those made by Federal, State, and local agencies; Native American Tribes; or other interested persons, will be made available electronically at the NRC's PDR in Rockville, Maryland, and through ADAMS. Comments received after the due date will be considered only if it is practical to do so.

The NRC staff will hold public meetings prior to the close of the public comment period to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. Two meetings will be held at the Red Lion Hotel, 802 George Washington Way, Richland, Washington, on Tuesday, September 27, 2011. The first session will convene at 2 p.m. and will continue until 5 p.m., as necessary. The second session will convene at 7 p.m. and will continue until 10 p.m., as necessary. The meetings will be transcribed and will include: (1) A presentation of the contents of the draft plant-specific supplement to the GEIS and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meeting or in writing. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. Daniel Doyle, the NRC Environmental Project Manager, at 1–800–368–5642, extension 3748, or by e-mail at *Daniel.Doyle@nrc.gov* no later than Friday, September 23, 2011. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Doyle's attention no later than September 23, 2011, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel Doyle, Division of License Renewal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Mail Stop O–11F1, Washington, DC 20555–0001. Mr. Doyle may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 23rd day of August 2011.

For the Nuclear Regulatory Commission.

**David J. Wrona,**

*Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–22415 Filed 8–31–11; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–389; NRC–2011–0190]**

## Florida Power & Light Company, St. Lucie Plant, Unit 2 License Amendment Request; Opportunity To Request a Hearing and To Petition for Leave To Intervene, and Commission Order Imposing Procedures for Document Access

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of license amendment request, opportunity to request a hearing and to petition for leave to intervene, and Commission order.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–16 issued to Florida Power & Light Company (the licensee) for operation of the St. Lucie Plant, Unit No. 2, located in St. Lucie County, Florida.

**DATES:** Requests for a hearing or leave to intervene must be filed by October 31, 2011. Any potential party as defined in Title 10 of the *Code of Federal Regulations* (10 CFR) 2.4 who believes access to sensitive unclassified non-safeguards Information (SUNSI) is necessary to respond to this notice must request document access by September 12, 2011.

**ADDRESSES:** You can access publicly available documents related to this action 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.* The application for amendment, dated February 25, 2011, contains proprietary information and, accordingly, those portions are being withheld from public disclosure. A redacted version of the application for amendment is available electronically under ADAMS Accession No. ML110730268.

• *Federal Rulemaking Web Site:* Supporting materials related to this action can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0190.

**FOR FURTHER INFORMATION CONTACT:** Tracy J. Orf, Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* 301–415–2788; *fax number:* 301–415–2102; *e-mail: tracy.orf@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The NRC is considering issuance of an amendment to Facility Operating License No. NPF–16 issued to Florida Power & Light Company for Operation of the St. Lucie Plant, Unit No. 2.

The proposed amendment would increase the licensed core power level for St. Lucie, Unit No. 2, from 2700 megawatts thermal (MWt) to 3020 MWt. The increase in core thermal power will be approximately 12 percent, including a 10-percent power uprate and a 1.7-percent measurement uncertainty recapture, over the current licensed core thermal power level and is categorized as an extended power uprate. The proposed amendment would modify the renewed facility operating license and the technical specifications to support operation at the increased core thermal power level.

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 amendment will not be issued prior to a hearing unless the staff makes a determination that the amendment involves no significant hazards considerations. If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

## II. Opportunity To Request a Hearing

Requirements for hearing requests and petitions for leave to intervene are found in 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' Interested persons should consult 10 CFR 2.309, which is available at the NRC's PDR, located at O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 (or call the PDR at 1–800–397–4209 or 301–415–4737). The NRC regulations are also accessible online in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.*

## III. Petitions for Leave To Intervene

Any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the requestor or petitioner and specifically explain the reasons why the intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner seeks to have litigated in the hearing. For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license amendment in response to the application. The petition must include a concise statement of the alleged facts or expert opinions which support the position of the requestor/petitioner and on which the requestor/petitioner intends to rely at hearing, together with references to the specific sources and documents on which the requestor/petitioner intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the requestor/petitioner disputes and the supporting reasons for each dispute, or, if the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief.

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 with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board (the Licensing Board) will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Non-timely petitions for leave to intervene and contentions, amended petitions, and supplemental petitions will not be entertained absent a determination by the Commission, the Licensing Board or a presiding officer that the petition should be granted and/or the contentions should be admitted based upon a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

A State, county, municipality, Federally-recognized Indian Tribe, or agencies thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(d)(2). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission by October 31, 2011. The petition must be filed in accordance with the filing instructions in Section IV of this document, and should meet the requirements for petitions for leave to intervene set forth in this section, except that State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d)(1) if the facility is located within its boundaries. The entities listed above could also seek to participate in a hearing as a nonparty pursuant to 10 CFR 2.315(c).

Any person who does not wish, or is not qualified, to become a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of position on the issues, but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to such limits and conditions as may be imposed by the Licensing Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by October 31, 2011.

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, then any hearing held would take place before the issuance of any amendment.

**IV. Electronic Submissions (E-Filing)**

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 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 the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC'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 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 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 September 1, 2011. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

*Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation*

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified non-safeguards information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGC mailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It Is So Ordered.*

Dated at Rockville, Maryland, this 26th day of August 2011.

For the Nuclear Regulatory Commission.

**Annette L. Vietti-Cook,**

*Secretary of the Commission.*

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/Activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to sensitive unclassified non-safeguards information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 requestor/petitioner reply). |
| 20 | Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for requestor/petitioner to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI. |
| A | If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2011–22405 Filed 8–31–11; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0204]**

## Proposed Generic Communication; Draft NRC Generic Letter 2011–XX: Seismic Risk Evaluations for Operating Reactors

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of opportunity for public comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to inform addressees that the NRC requests addressees to evaluate their facilities to determine the current level of seismic risk and to submit the requested information to facilitate the NRC's determination if there is a need for additional regulatory action.

**DATES:** Comment period expires October 31, 2011. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

**ADDRESSES:** Please include Docket ID NRC–2011–0201 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0201. 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.

**SUPPLEMENTARY INFORMATION:**

### Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

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

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, 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–2011–0201.

**FOR FURTHER INFORMATION CONTACT:** Kamal Manoly, NRR/DE, 301–415–2765, *e-mail: Kamal.Manoly@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

## NRC Generic Letter 2011–XX Seismic Risk Evaluations for Operating Reactors

*Addressees*

All holders of an operating license or construction permit for a nuclear power reactor issued under Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, ''Domestic Licensing of Production and Utilization Facilities,'' except those who have permanently ceased operation and have certified that fuel has been removed from the reactor vessel.

*Intent*

The NRC is issuing this generic letter (GL) to inform addressees that the NRC requests addressees to evaluate their facilities to determine the current level of seismic risk and to submit the requested information to facilitate the NRC's determination if there is a need for additional regulatory action.

*Background*

Structures, systems, and components (SSCs) important to safety at nuclear power reactors must be designed to withstand the effects of natural phenomena, including earthquakes, without losing the capability to perform their intended safety functions. SSCs in operating nuclear power plants are designed either in accordance with, or have been revised to meet the intent of Appendix A to 10 CFR part 100 and Appendix A to 10 CFR part 50, General Design Criteria (GDC) 2. The state of knowledge of seismic hazard within the United States has evolved to the point that the NRC has concluded that, in view of the potential safety significance of this issue, it is necessary to reexamine the level of conservatism in the determination of original seismic design estimates. Analyses performed under the Generic Issue program (GIP) indicated the need to evaluate in more detail the impact of updated seismic hazard information with respect to operating commercial nuclear reactors. The background information relevant to this GL includes the individual plant examinations of external events (IPEEE) and Generic Issue (GI)–199, ''Implications of Updated Probabilistic Seismic Hazard Estimates in Central and Eastern United States on Existing Plants,'' dated June 9, 2005 (ADAMS Accession No. ML051600272). The following paragraphs summarize these two studies.

Individual Plant Examination of External Events

On June 28, 1991, the NRC issued Supplement 4 to GL 88–20, ''Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities,'' (ADAMS Accession No. ML031150485) to request that each licensee identify and report to the NRC all plant-specific vulnerabilities to severe accidents caused by external events. The IPEEE program included the following four supporting objectives:

(1) Develop an appreciation of severe accident behavior.

(2) Understand the most likely severe accident sequences that could occur at the licensee's plant under full-power operating conditions.

(3) Gain a qualitative understanding of the overall likelihood of core damage and fission product releases.

(4) Reduce, if necessary, the overall likelihood of core damage and radioactive material releases by modifying, where appropriate, hardware and procedures that would help prevent or mitigate severe accidents.

The external events to be considered in the IPEEE were seismic events; internal fires; and high winds, floods, and other external initiating events, including accidents related to transportation or nearby facilities and plant-unique hazards.

In June 1991, at about the same time the NRC issued Supplement 4 to GL 88–20, the NRC issued NUREG–1407, ''Procedure and Submittal Guidance for the Individual Plant Examination of External Events (IPEEE) for Severe Accident Vulnerabilities,'' (ADAMS Accession No. ML063550238) which provided guidelines for conducting IPEEEs. On September 8, 1995, the NRC issued Supplement 5 to GL 88–20 (ADAMS Accession No. ML031130465) to notify licensees of modifications to the recommended scope of the seismic portion of the IPEEE for certain plant sites in the Central and Eastern United States (CEUS).

NUREG–1742, ''Perspectives Gained from the Individual Plant Examination of External Events (IPEEE) Program,'' issued April 2002, (ADAMS Accession Nos. ML021270070 and ML021270674) provides insights gained by the NRC from the IPEEE program. Almost all licensees reported in their IPEEE submittals that no plant vulnerabilities were identified with respect to seismic risk (the use of the term ''vulnerability'' varied widely among the IPEEE submittals). However, most licensees did report at least some seismic ''anomalies,'' ''outliers,'' or other concerns. In the few submittals that did identify a seismic vulnerability, the findings were comparable to those identified as outliers or anomalies in other IPEEE submittals. Seventy percent of the plants proposed improvements as a result of their seismic IPEEE analyses. In several responses, neither the IPEEE analyses nor subsequent assessments documented the potential safety impacts of these improvements, and in most cases, plants have not reported completion of these improvements to the NRC.

Generic Issue 199

In support of early site permits (ESPs) and combined license applications (COLs) for new reactors, the NRC staff reviewed updates to the seismic source and ground motion models provided by applicants. These seismic updates included new Electric Power Research Institute models to estimate earthquake ground motion and updated models for earthquake sources in the CEUS, such as around Charleston, SC, and New Madrid, MO. These reviews identified higher seismic hazard estimates than previously assumed that may result in the increased likelihood of exceeding the safe-shutdown earthquake (SSE) at operating facilities in the CEUS. The staff determined that based on the evaluations of the IPEEE program, seismic designs of operating plants in the CEUS do not pose an imminent safety concern. At the same time, the staff also recognized that, because the probability of exceeding the SSE at some currently operating sites in the CEUS is higher than previously understood, further study was warranted. As a result, the staff concluded on May 26, 2005 (ADAMS Accession No. ML051450456), that the

issue of increased seismic hazard estimates in the CEUS be examined under the GIP.

GI–199, ''Implications of Updated Probabilistic Seismic Hazard Estimates in Central and Eastern United States on Existing Plants'' was established on June 9, 2005 (ADAMS Accession No. ML051600272). The initial screening analysis for GI–199 suggested that estimates of the seismic hazard for some currently operating plants in the CEUS have increased. The NRC completed the initial screening analysis of GI–199 on February 1, 2008 (ADAMS Accession No. ML073400477), which concluded that GI–199 should proceed to the safety/risk assessment stage of the GIP. The NRC held a public meeting on February 6, 2008 (ADAMS Accession No. ML080350189), at which the NRC staff discussed its ongoing activities related to GI–199, described the screening process and criteria, and explained the screening analysis results.

Subsequently, during the safety/risk assessment stage of the GIP, the NRC staff reviewed and evaluated the new information received with the ESP/COL submittals, along with 2008 U.S. Geological Survey seismic hazard estimates and recent geological research literature. The staff compared the new seismic hazard data with the earlier evaluations conducted as part of the IPEEE program. From this evaluation, the staff concluded that the likelihood of exceeding the seismic hazard used in the IPEEE program could be higher than previously understood for some currently operating CEUS sites.

The NRC staff completed the safety/risk assessment stage of GI–199 on September 2, 2010 (ADAMS Accession No. ML100270582), concluding that GI–199 should transition to the regulatory assessment stage of the GIP. The NRC staff presented this conclusion at a public meeting held on October 6, 2010 (ADAMS Accession No. ML102950263). Information Notice 2010–018, ''Generic Issue 199, 'Implications of Updated Probabilistic Seismic Hazard Estimates in Central and Eastern United States on Existing Plants,' '' dated September 2, 2010 (ADAMS Accession No. ML101970221) summarizes the results of the GI–199 safety/risk assessment.

*Discussion*

GI–199 was initiated because of the need to evaluate the effect of updated seismic hazard estimates on operating nuclear power plants. The GI–199 safety/risk assessment investigated the safety and risk implications of updated earthquake-related data and models. These data and models suggest that the probability for earthquake ground shaking above the seismic design basis for some nuclear power plants in the CEUS is greater than previous estimates.

In the safety/risk assessment, the NRC staff used the risk metric of the change in seismic core damage frequency (SCDF) derived from an updated understanding of the site-specific seismic hazard estimates from those previously used in the IPEEE submittals. The changes in SCDF estimate in the safety/risk assessment for some plants lie in the range of $10^{-4}$ per year to $10^{-5}$ per year, which meet the numerical risk criteria for an issue to continue to the regulatory assessment stage of the GIP.

It is recognized that the approach used to estimate SCDF in the safety/risk assessment was not based on a rigorous methodology. The approach merely extrapolated from the information available within the IPEEE submittals. As described in NUREG–1742, there are limitations associated with utilizing the inherently qualitative insights from the IPEEE submittals in a quantitative assessment. Specifically, the staff's assessment did not provide insight into which SSCs are important to seismic risk. Such knowledge is necessary for the NRC staff to determine, in light of the new understanding of seismic hazards, the safety significance associated with the new information regarding seismic margin. The burden to be imposed by this GL is justified in view of the potential safety significance of this issue.

*Backfit Discussion*

This GL contains only the information request described in ''Requested Response.'' The GL does not contain any recommended changes to the design or procedures necessary to operate the nuclear power plants of the addressees. This GL also does not contain any direction or suggestion that the addressees should consider developing or implementing changes to the design or procedures necessary to operate their nuclear power plants in light of the information requested by this GL. The NRC staff does not intend that the probabilistic seismic hazard estimates or the methods of evaluation required by this GL be automatically incorporated into the licensing basis (including design basis) of any of the addressees' nuclear power plants via this GL. The NRC staff is not requiring or recommending the submission of any addressee-initiated changes to the licensing bases for the addressees' nuclear power plants, as the need for such changes will have to be made on a case by case basis by licensees after evaluating the significance of the information developed as a result of this GL.

The NRC will evaluate the information submitted by the addressees in response to this GL and may then determine whether there is a need to take additional action. If that determination results in an action that constitutes an NRC staff recommendation (including the issuance of NRC communications characterized as ''guidance'') or an NRC requirement (via regulation or order, including licensing action) that one or more of the addressees change the design or the procedures necessary to operate the addressees' nuclear power plants, then the NRC will treat that action as backfitting under the Backfit Rule at 10 CFR 50.109.

Under the provisions of Sections 161.c, 103.b, and 182.a of the Atomic Energy Act of 1954, as amended, this GL requests a review and appropriate resulting actions to ascertain whether backfits are warranted. No mandated backfit is intended by the issuance of this GL. Therefore, the NRC staff has not performed a backfit analysis.

*Federal Register Notification*

To be done after the public comment period.

*Congressional Review Act*

This section is not applicable because this proposed GL is being issued for public comment.

*Paperwork Reduction Act Statement*

This GL does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0011 and 3150–0093.

The burden to the public for this mandatory information is estimated to be 1,240 hours per response for plants in the CEUS where the GMRS does not exceed the SSE. Western plants may require an additional 2,500 hours to develop seismic source characterization and ground motion models. For any plant where the GMRS exceeds the SSE, the burden is estimated to be an additional 2,880 hours if the licensee elects to perform an SMA or an additional 3,380 hours if the licensee elects to perform an SPRA. This includes time for reviewing existing data sources, gathering and analyzing the data needed, and completing and reviewing the information collection.

Send comments on any aspect of this information collection, including

suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T5–F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by e-mail to *infocollects@nrc.gov* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0011), Office of Management and Budget (OMB), Washington, DC 20503.

Please direct any questions about this matter to Kamal Manoly, at 301–415–2765 or by e-mail at *Kamal.manoly@nrc.gov*.

**End of Draft Generic Letter**

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 25 day of August, 2011.

For the Nuclear Regulatory Commission.

**Stacey Rosenberg,**

*Chief, Generic Communications and Power Uprate Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–22422 Filed 8–31–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Project No. 753; NRC–2010–0170]**

## Notice of Availability of Proposed Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360''

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of availability.

**SUMMARY:** As part of the consolidated line item improvement process (CLIIP), the NRC is announcing the availability of the model application (with model no significant hazards consideration determination) and model safety evaluation (SE) for plant-specific adoption of Technical Specifications Task Force (TSTF) Traveler TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092670242). The changes revise Technical Specifications (TS) 3.8.4, ''DC Sources Operating,'' TS 3.8.5, ''DC Sources—Shutdown,'' and TS 3.8.6, ''Battery Cell Parameters.'' Additionally, a new Administrative Controls program, titled ''Battery Monitoring and Maintenance Program,'' is added to Section 5.5, ''Programs and Manuals.'' The CLIIP model SE will facilitate expedited approval of plant-specific adoption of Traveler TSTF–500, Revision 2.

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 ADAMS:* Publicly available documents created by 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 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 model application and SE for plant-specific adoption of TSTF–500, Revision 2, are available electronically under ADAMS Accession Number ML111751792. The NRC staff disposition of comments received to the Notice of Opportunity for Public Comment announced in the **Federal Register** on May 4, 2010 (75 FR 23822), is available electronically under ADAMS Accession Number ML111751788.

*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–2010–0170.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michelle C. Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12D20, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1774 or e-mail at *michelle.honcharik@nrc.gov.* For technical questions, please contact Mr. Gerald Waig, Senior Reactor Systems Engineer, Technical Specifications Branch, Mail Stop: O–7 C2A, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2260 or e-mail at *gerald.waig@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** TSTF–500, Revision 2, is applicable to all nuclear power reactors. The Traveler modifies the Standard TS requirements related to the DC electrical power systems. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's model SE, referencing the applicable technical justifications, and providing any necessary plant-specific information. The NRC will process each amendment application responding to this NOA according to applicable NRC rules and procedures.

This CLIIP change does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–500, Revision 2. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review and would not be reviewed as a part of the CLIIP. This may increase the time and resources needed for the review or result in NRC staff rejection of the license amendment request (LAR). Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–500, Revision 2.

Dated at Rockville, Maryland, this 22nd day of August 2011.

For the Nuclear Regulatory Commission,

**John R. Jolicoeur,**

*Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.*

[FR Doc. 2011–22412 Filed 8–31–11; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. CP2011–70; Order No. 828]**

## New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to enter into an additional agreement under the ''International Business Reply Service (IBRS) Competitive Contract 3'' product offering. This document invites

public comments on the request and addresses several related procedural steps.

**DATES:** *Comments are due:* September 1, 2011.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

On August 19, 2011, the Postal Service filed a notice, pursuant to 39 CFR 3015.5, that it has entered into an additional International Business Reply Service (IBRS) Competitive contract.[1] The Postal Service requests that the instant contract be included within the IBRS Competitive Contract 3 product. *Id.* at 3.

In Docket Nos. MC2011–21 and CP2011–59, the Postal Service requested that the Commission add IBRS Competitive Contract 3 to the competitive product list, and that the contract filed in Docket No. CP2011–59 serve as the baseline contract for future functional equivalence analyses of the IBRS Competitive Contract 3 product.[2]

In support of its Notice, the Postal Service filed the following attachments:

- Attachment 1—a redacted copy of the contract;
- Attachment 2—a redacted copy of the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—Governors' Decision No. 08–24, which establishes prices and classifications for the IBRS Contracts product, and includes Mail Classification Schedule language for IBRS contracts, formulas for pricing along with an analysis, certification of the Governors vote, and certification of compliance with 39 U.S.C. 3633(a); and
- Attachment 4—an application for non-public treatment of materials to maintain the redacted portions of the contract, customer identifying information and related financial information under seal.

*The instant contract.* The Postal Service filed the instant contract pursuant to 39 CFR 3015 and in accordance with Order No. 178.[3] It states it will notify the mailer of the effective date within 30 days of receipt of all necessary regulatory approvals. The contract will remain in effect for 1 year however, it may be terminated by either party with 30 days' written notice. Notice at 3; Attachment 1 at 4.

*Functional equivalence.* The Postal Service asserts that the instant contract is functionally equivalent to the IBRS contracts previously filed. *Id.* at 3. It also asserts that the ''functional terms'' of the instant contract and the ''functional terms'' of the proposed baseline IBRS 3 Competitive Contract ''are the same, although other terms that do not directly change the nature of the agreements' basic obligations may vary.'' *Id.* at 4. To that end, the Postal Service indicates that prices under IBRS contracts may differ based on volume or postage commitments and when the agreement is signed. It identifies certain customer-specific information that distinguishes the instant contract from the proposed baseline agreement. *Id.* at 5.

The Postal Service concludes that the instant contract complies with 39 U.S.C. 3633 and is functionally equivalent to the proposed IBRS Competitive Contract 3 baseline agreement in Docket Nos. MC2011–21 and CP2011–59. *Id.* Therefore, it contends that the instant contract should be included within the IBRS Competitive Contract 3 product. *Id.*

## II. Notice of Filing

The Commission establishes Docket No. CP2011–70 for consideration of matters raised by the Postal Service's Notice.

The Commission appoints James F. Callow to serve as Public Representative in this docket.

*Comments.* Interested persons may submit comments on whether the Postal Service's filings in the captioned docket are consistent with the policies of 39 U.S.C. 3632, 3633 or 39 CFR part 3015. Comments are due no later than September 1, 2011. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*).

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket No. CP2011–70 for consideration of the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than September 1, 2011.
4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–22367 Filed 8–31–11; 8:45 am]

**BILLING CODE 7710–FW–P**

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## POSTAL REGULATORY COMMISSION

**[Docket No. A2011–52; Order No. 825]**

## Post Office Closing

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** This document informs the public that an appeal of the closing of the Lake Creek, Texas post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

**DATES:** *Administrative record due (from Postal Service)*: September 6, 2011; *deadline for notices to intervene:* September 19, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT**

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[1] Notice of the United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, August 19, 2011 (Notice).

[2] *See* Docket Nos. MC2011–21 and CP2011–59, Request of the United States Postal Service to Add International Business Reply Service Competitive Contract 3 to the Competitive Products List and Notice of Filing of Contract (Under Seal), February 11, 2011.

[3] *See* Docket Nos. MC2009–14 and CP2009–20, Order Concerning International Business Reply Service Contract 1 Negotiated Service Agreement, February 5, 2009 (Order No. 178).

section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, pursuant to 39 U.S.C. 404(d), the Commission received four petitions for review of the Postal Service's determination to close the Lake Creek post office in Lake Creek, Texas. The petitions were filed by Paul M. Burt, Lynne P. Long, Linda L. Baker, and Daryl Blakley (Petitioners). The earliest postmark date is July 20, 2011.[1] The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2011–52 to consider Petitioners' appeals. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than September 26, 2011.

*Categories of issues apparently raised.* Petitioners contend that the Postal Service failed to consider the effect of the closing on the community. *See* 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is September 6, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is September 6, 2011.

*Availability; Web site posting.* The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participants' submissions also will be posted on the Commission's Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., eastern time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

*Intervention.* Persons, other than Petitioners and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before September 19, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by the Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered:*

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than September 6, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than September 6, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order in the **Federal Register**.

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| August 22, 2011 | Filing of Appeal. |
| September 6, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| September 6, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| September 19, 2011 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| September 26, 2011 | Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| October 17, 2011 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| November 1, 2011 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| November 8, 2011 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| November 17, 2011 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[1] On July 26, 2011, the Commission received two petitions for review regarding the closing of the Lake Creek post office. Subsequently, the Commission was informed by the Postal Service that there had not been a final determination made to close the Lake Creek post office. On August 18, 2011, Paul M. Burt (Petitioner) provided the Commission with documents establishing that the final determination to close the Lake Creek post office had been made and posted July 1, 2011. Each petition appears to have been submitted in a timely fashion.

[FR Doc. 2011–22326 Filed 8–31–11; 8:45 am]
BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon written request, copies available from:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

*Extension:* Rule 15g–2, SEC File No. 270–381, OMB Control No. 3235–0434.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The ''Penny Stock Disclosure Rules'' (Rule 15g–2, 17 CFR 240.15g–2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a ''penny stock''. As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in ''penny stocks'' before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission.

There are approximately 253 broker-dealers that could potentially be subject to current Rule 15g–2. The Commission estimates that approximately 5% of registered broker-dealers are engaged in penny stock transactions, and thereby subject to the Rule (5% × approximately 5,063 registered broker-dealers = 253 broker-dealers). The Commission estimates that each one of these firms processes an average of three new customers for penny stocks per week. Thus, each respondent processes approximately 156 penny stock disclosure documents per year. If communications in tangible form alone are used to satisfy the requirements of Rule 15g–2, then the copying and mailing of the penny stock disclosure document takes no more than two minutes. Thus, the total associated burden is approximately 2 minutes per response, or an aggregate total of 312 minutes per respondent. Since there are 253 respondents, the current annual burden is 78,936 minutes (312 minutes per each of the 253 respondents) or 1,316 hours for this third party disclosure burden. In addition, broker-dealers incur a recordkeeping burden of approximately two minutes per response when filing the completed penny stock disclosure documents as required pursuant to the Rule 15(g)(2)(c), which requires a broker-dealer to preserve a copy of the written acknowledgement pursuant to Rule 17a–4(b) of the Exchange Act. Since there are approximately 156 responses for each respondent, the respondents incur an aggregate recordkeeping burden of 78,936 minutes (253 respondents × 156 responses for each × 2 minutes per response) or 1,316 hours, under Rule 15g–2. Accordingly, the current aggregate annual hour burden associated with Rule 15g–2 (that is, assuming that all respondents provide tangible copies of the required documents) is approximately 2,632 hours (1,316 third party disclosure hours + 1,316 recordkeeping hours).

The burden hours associated with Rule 15g–2 may be slightly reduced when the penny stock disclosure document required under the rule is provided through electronic means such as e-mail from the broker-dealer (*e.g.,* the broker-dealer respondent may take only one minute, instead of the two minutes estimated above, to provide the penny stock disclosure document by e-mail to its customer). In this regard, if each of the customer respondents estimated above communicates with his or her broker-dealer electronically, the total ongoing respondent burden is approximately 1 minute per response, or an aggregate total of 156 minutes (156 customers × 1 minute per respondent). Assuming 253 respondents, the annual third party disclosure burden, if electronic communications were used by all customers, is 39,468 minutes (156 minutes per each of the 253 respondents) or 658 hours. If all respondents were to use electronic means, the recordkeeping burden is 78,936 minutes or 1,316 hours (the same as above). Thus, if all broker-dealer respondents obtain and send the documents required under the rules electronically, the aggregate annual hour burden associated with Rule 15g–2 is 1,974 (658 hours + 1,316 hours).

In addition, if the penny stock customer requests a paper copy of the information on the Commission's Web site regarding microcap securities, including penny stocks, from his or her broker-dealer, the printing and mailing of the document containing this information takes no more than two minutes per customer. Because many investors have access to the Commission's Web site via computers located in their homes, or in easily accessible public places such as libraries, then, at most, a quarter of customers who are required to receive the Rule 15g–2 disclosure document request that their broker-dealer provide them with the additional microcap and penny stock information posted on the Commission's Web site. Thus, each broker-dealer respondent processes approximately 39 requests for paper copies of this information per year or an aggregate total of 78 minutes per respondent (2 minutes per customer × 39 requests per respondent). Since there are 253 respondents, the estimated annual burden is 19,734 minutes (78 minutes per each of the 253 respondents) or 329 hours. This is a third party disclosure type of burden.

We have no way of knowing how many broker-dealers and customers will choose to communicate electronically. Assuming that 50 percent of respondents continue to provide documents and obtain signatures in tangible form and 50 percent choose to communicate electronically to satisfy the requirements of Rule 15g–2, the total aggregate burden hours is 3,948 ((aggregate burden hours for documents and signatures in tangible form × 0.50 of the respondents = 1,316 hours) + (aggregate burden hours for electronically signed and transmitted documents × 0.50 of the respondents = 987 hours) + (aggregate burden hours for recordkeeping of tangible documents × 0.50 of the respondents = 658) + (aggregate burden hours for recordkeeping of electronically filed documents = 658) + (329 burden hours for those customers making requests for a copy of the information on the Commission's Web site)).

The Commission does not maintain the risk disclosure document. Instead, it must be retained by the broker-dealer for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place. The collection of information required by the rule is mandatory. The risk disclosure document is otherwise

governed by the internal policies of the broker-dealer regarding confidentiality, *etc.*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number.

Background documentation for this information collection may be viewed at the following link, *http://www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an e-mail to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 26, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–22366 Filed 8–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

*Upon written request; copies available from:* U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

*Extension:*

Rule 12g3–2; OMB Control No. 3235–0119; SEC File No. 270–104.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for approval.

Rule 12g3–2 (17 CFR 240.12g3–2) under the Securities Exchange Act of 1934 (the ''Exchange Act'') provides an exemption from Section 12(g) of the Exchange Act (15 U.S.C. 781(g)) for foreign private issuers. Rule 12g3–2 is designed to provide investors in foreign securities with information about such securities and the foreign issuer. The information filed under Rule 12g3–2 must be filed with the Commission and is publicly available. We estimate that it takes approximately one hour to provide the information required under Rule 12g3–2 and that the information is filed by 1,800 foreign issuers for a total annual reporting burden of 1,800 hours.

Written comments are invited on: (a) Whether this proposed collection of information is necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

August 26, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–22364 Filed 8–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65203; File No. SR–Phlx–2011–120]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Change the Name of the PSX Ouch BBO Feed to the PSX MatchView Feed and To Modify Its Contents

August 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on August 19, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to change the name of the PSX Ouch BBO Feed to the PSX MatchView Feed (the ''Feed'') and to modify the contents of the Feed in two ways. The Feed provides a view of how the Exchange views the Best Bid and Offer (''BBO'') available from all market centers for each individual security the Exchange trades.

The Exchange has filed this proposal under Rule 19b–4(f)(6) [3] under the Act and PSX has provided the Commission with the notice required by Rule 19b–4(f)(6)(iii) under the Act.[4]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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

This proposal regards the PSX MatchView Feed (formerly known as the PSX Ouch BBO Feed), a data feed that represents the Exchange's view of best bid and offer data received from all market centers. The Feed is available to all Exchange members and market participants equally at no charge,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 17 CFR 240.19b–4(f)(6)(iii).

offering all participants transparent, real-time data concerning the Exchange's view of the BBO data. The Exchange makes the Feed available on a subscription basis to market participants that are connected to the Exchange whether through extranets, direct connection, or Internet-based virtual private networks.

Currently, the Feed reflects the Exchange's view of the BBO data, at any given time, based on orders executed on the Exchange and updated quote information from the network processors.[5] The Feed contains the following data elements: symbol, bid price, and ask price.[6] Unlike the PSX TotalView feed, the MatchView feed does not contain information about individual orders, either those residing within the Exchange system or those executed or routed by the Exchange. Unlike the network processor feeds containing the National Best Bid and Offer (''NBBO''), the MatchView Feed does not identify either the market center quoting the BBO or the size of the BBO quotes. It merely contains the symbol and bid and offer prices.

The Exchange is modifying the inputs used for calculating the prices reflected on the Feed. Currently, the Feed reflects bids and offers contained on data feeds from the network processors, as well as certain PSX orders referenced below. In the future, the Feed will continue to reflect these orders entered on the Exchange but rather than reflect only individual exchange bids and offers received from the network processors, the Feed will reflect individual exchange bids and offers received either from the network processor or directly from an exchange that disseminates bids and offers to vendors via a proprietary data feed. The Exchange will reflect bids and offers from another exchange's proprietary data feed only when the Exchange deems the proprietary data feed to be sufficiently reliable and also faster than the network processor.[7]

This determination—whether to utilize bids and offers from the network processor feed or from a direct proprietary data feed—will be made by the Exchange on a market-by-market basis based upon objective criteria about reliability and speed. The determination, once made, will apply to all bids and offers from an exchange; it will not be made on a stock-by-stock basis. Additionally, the determination, once made, will be valid until such time as the away exchange stops disseminating the proprietary data feed in a manner that meets PSX's objective criteria (for example, when that exchange experiences operational difficulties that reduce the reliability and speed of its proprietary data feed). For exchanges that do not disseminate proprietary data feeds or whose proprietary data feeds lack sufficient reliability and speed, the Feed will continue to reflect bids and offers disseminated via the network processor feeds.

Additionally, in a previous filing, the Exchange noted that the Feed depicts the Exchange's view of the BBO for all markets other than the Exchange.[8] In one narrow set of circumstances, the Feed will show the BBO for all markets including the Exchange. Specifically, an order received by the Exchange that improves the BBO will be reflected in the Feed when three circumstances are met: (1) The Exchange receives an order marked by the entering member as any visible bookable order that is not an IOC and is an ''Inter-market Sweep'' (an order known as a ''Day ISO''); (2) the Day ISO order is priced higher than the current Best Bid or lower than the current Best Offer disseminated by the network processor or applicable exchange proprietary data feed; and (3) the Day ISO represents the new best bid or offer on the Exchange. In those circumstances, the new best bid or offer on the Exchange will be transmitted to the network processor and then reflected on the Feed (and the Exchange's other proprietary data feeds, such as PSX TotalView). As stated above, the Feed does not show the market center responsible (whether the Exchange or an away market) for either the Best Bid or Best Offer reflected on the Feed.

These modifications to the Feed will enhance market transparency and foster competition among orders and markets. Member firms may use the Feed to more accurately price their orders based on the Exchange's view of what the BBO is at any point in time, including bids and offers received via proprietary data feeds which may not be reflected in the official NBBO due to latencies inherent in the NBBO's dissemination. As a consequence, member firms may more accurately price their orders on the Exchange, thereby avoiding price adjustments by the Exchange based on a quote that is no longer available. Additionally, members can use the Feed to price orders more aggressively to narrow the NBBO and provide better reference prices for investors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general and with Sections 6(b)(5) of the Act,[10] 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that this proposal is in keeping with those principles by enhancing transparency through the dissemination of the most accurate quotations data and by clarifying its contents.

*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

[5] The Feed will not reflect all information available to the Exchange. Specifically, the Feed will exclude information about the routing of orders to away exchanges. Thus, although the Exchange execution system and routing engine will know when a bid or offer from an away market is no longer available because the Exchange has routed an order to the bid or offer, the Feed will not reflect such routing activity.

[6] The Feed also contains a time stamp and message type field for reference.

[7] The Exchange is also changing its policies and procedures under Regulation NMS governing the data feeds used by its execution system and routing engine. Current policies state that those systems use data provided by the network processors. In the future, those systems will use data provided either by the network processors or by proprietary feeds offered by certain exchanges directly to vendors. The determination of which data feed to utilize will be the same as the determination made with respect to the Feed. In other words, the Exchange execution system, routing engine and Feed will each utilize the same data for a given exchange although, as set forth in footnote 5, the Feed does not contain all information available to the execution system and routing engine.

[8] *See* Securities Exchange Act Release No. 62876 (Sept. 9, 2010), 75 FR 56624 (Sept. 16, 2010) (filing SR–Phlx–2010–120).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay because it would permit the Exchange to immediately provide the new content of the PSX MatchView Feed to market participants. The Commission believes that waiving the 30-day operative delay[15] is consistent with the protection of investors and the public interest and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*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–2011–120 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–120. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's 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 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2011–120 and should be submitted on or before September 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–22363 Filed 8–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65210; File No. SR–NYSEArca–2011–59]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Adding Commentary .01 to Rule 6.37B To Indicate That Market Makers Will Not Be Obligated To Quote in Adjusted Option Series and To Clarify an Existing Exception to the Quoting Obligations

August 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .01 to Rule 6.37B to indicate that Market Makers will not be obligated to quote in adjusted option series and to clarify an existing exception to the quoting obligations. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposal is to add Commentary .01 to Rule 6.37B to relieve Market Makers of the obligation to quote in adjusted option series and to propose a definition of adjusted options series. The proposal is similar to a rule change for NASDAQ OMX Phlx (''Phlx'').[3]

Rule 6.37B discusses the quoting obligations that are applicable to Market Makers on the Exchange. The Rule states that, in addition to other requirements, Lead Market Makers (''LMMs'') must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue. Similarly, Market Makers must provide continuous two-sided quotations throughout the trading day in its appointed issues for 60% of the time the Exchange is open for trading in each issue.

Under Rule 6.4(e)(i), LEAPS are series added as part of an extended far term expiration month, and under the same provision, the Exchange Rules regarding continuity do not apply to index option series until the time to expiration is less than 12 months, and do not apply to equity option series or option series on Exchange Traded Fund Shares until the time to expiration is less than nine months.

The Exchange proposes to clarify that the exception for LEAPS is an exception to the obligations in Rule 6.37B by adding Commentary .01. The Exchange further proposes to extend the exception to certain adjusted series,[4] and to define ''adjusted series'' for the purposes of Rule 6.37B. An ''adjusted series'' under the Rule would be defined as an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

After a corporate action and a subsequent adjustment to the existing options, the series in question are identified by the Options Price Reporting Authority (''OPRA'') and at OCC with a separate symbol consisting of the underlying symbol and a numerical appendage. As a standard procedure, exchanges listing options on an underlying security which undergoes a corporate action resulting in adjusted series will list new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally active for a short period of time following adjustment, but orders to open an options position in the underlying are almost exclusively placed in the new standard contracts. Although the adjusted series may not expire for as much as 27 months, in a short time the adjusted series become inactive. Thus, the burden of quoting these series generally outweighs the benefit of being appointed in the class because of the lack of interest in the series by various market participants.

On NYSE Arca, such series may not meet the standards to be considered active, and, under Commentary .03 to NYSE Arca Rule 6.86, the Exchange shall no longer disseminate quotes in the series. Thus, the current obligation holds Market Makers to submit quotes in series that are generally not published to OPRA unless requested.[5] Since the obligation to submit electronic quotes upon request of a Trading Official will continue if the proposed rule is approved, a fair and orderly market in the inactive series is readily available.

The Exchange has recently noticed requests for withdrawals from appointment in classes that include adjusted series by Market Makers, including LMMs, resulting in a reduction in liquidity in these classes. Market Makers and LMMs that have withdrawn from assignments in these classes have informed the Exchange that the withdrawals were based in part on the obligation to continuously quote adjusted options series whereby the quoting obligations on these often less frequently traded option series impacted the risk parameters acceptable to the Market Makers and LMMs. The Market Makers and LMMs have also expressed that the adjusted nature of these series also complicates the calculation of an appropriate quote.

This lack of interest is exacerbated by Market Makers withdrawing from the appointments which in turn, has caused liquidity (as well as volume) to be negatively impacted in the affected options classes listed on the Exchange. The Exchange believes that the proposed Commentary will ameliorate the liquidity impact by allowing Market Makers and Lead Market Makers to continue their appointment in these option classes.

The proposed rule change is similar to the Phlx rule, in that the Exchange is merely proposing to exclude the adjusted series from the continuous quoting obligation, but not from other obligations under Rules 6.37, 6.37A, 6.37B and 6.82. The Phlx rule excludes adjusted series (and Quarterly Options) from the Streaming Quote Trader's assignment. Of particular note, the proposal would not excuse a Market Maker from the obligation, when called upon by a Trading Official, to submit a single quote or maintain continuous quotes in one or more series of an option issue within the Market Maker's appointment whenever, in the judgment of such Trading Official, it is necessary to do so in the interest of maintaining fair and orderly markets.[6]

Further, the proposed rule does not excuse the Market Maker from the obligations to respond with a two-sided, legal width market to a call for a market by a Floor Broker.[7]

The current quoting obligation in such illiquid series is a minor part of a Market Maker's overall obligation, and the proposed modicum of relief is mitigated by the obligation to respond to a request for quote from a Trading Official or a Floor Broker. Because of the lack of interest in such series, there is little demonstrable benefit to being a market maker in them other than the ability to maintain market maker margins for what little activity may occur. In addition, the burden of continuous quoting in these series is counter to efforts to mitigate the number of quotes collected and disseminated.

The Exchange believes that the proposed rule change should incent Market Makers and Lead Market Makers to continue appointments and thereby expand liquidity in options classes listed on the Exchange to the benefit of the Exchange and its OTP Holders and public customers.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'')[8], in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to prevent fraudulent and

[3] *See* Exchange Act Release No. 61095 (December 2, 2009) 74 FR 64786 (December 8, 2009).

[4] NYSE Arca Rule 6.4(c) states ''Option contracts shall be subject to adjustments in accordance with the Rules of the Options Clearing Corporation.''

[5] Commentary .03 to Rule 6.86 states, in part, ''The Exchange may determine that a series has become active intraday if (i) The series trades at any options exchange; (ii) NYSE Arca receives an order in the series; or (iii) NYSE Arca receives a request for quote from a customer in that series. If a series becomes active intraday, the Exchange will immediately disseminate quotes in the series to OPRA, and continue to disseminate quotes for the balance of the trading day.''

[6] *See* NYSE Arca Rule 6.37B(d).

[7] *See* NYSE Arca Rule 6.37(b)(5) and Commentary .05.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal is consistent with the Act because, on balance, the elimination of the continuous quoting obligations in adjusted series is a minor change and should not impact the quality of Arca's market. Among other things, adjusted series are not common, and trading interest is often very low after the corporate event has passed. Consequently, continuous quotes in such series increases quote traffic and burdens systems without a corresponding benefit. By not requiring Market Makers to continuously quote in such series, the Exchange's proposal would further its goal of measured quote mitigation. Further, while they will not be tasked with continually quoting such series, Market Makers will be obligated to quote the series when called upon by a Trading Official. In addition, a MM [sic] will be required to quote the series when it becomes ''lit'' in response to a request for quote being received. Accordingly, the proposal supports the quality of Arca's market by helping to ensure that Market Makers will continue to be obligated to quote in adjusted series when the need arises.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2011–59 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2011–59. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–59 and should be submitted on or before September 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–22442 Filed 8–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65209; File No. SR–NYSEAmex–2011–61]**

## Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing of Proposed Rule Change Adding Commentary .01 to Rule 925.1NY To Indicate That Market Makers Will Not Be Obligated To Quote in Adjusted Option Series and To Clarify an Existing Exception to the Quoting Obligations

August 26, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to add Commentary .01 to Rule 925.1NY to indicate that Market Makers will not be obligated to quote in adjusted option series and to clarify an existing exception to the quoting obligations. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposal is to add Commentary .01 to Rule 925.1NY to relieve Market Makers of the obligation to quote in adjusted option series and to propose a definition of adjusted options series. The proposal is similar to a rule change recently approved [3] for NASDAQ OMX Phlx (''Phlx'').[4]

Rule 925.1NY discusses the quoting obligations that are applicable to Market Makers on the Exchange. The Rule states that, in addition to other requirements, Specialists must provide continuous two-sided quotations throughout the trading day in its appointed issues for 90% of the time the Exchange is open for trading in each issue. Similarly, Market Makers must provide continuous two-sided quotations throughout the trading day in its appointed issues for 60% of the time the Exchange is open for trading in each issue.

Under Commentary .03(a) to Rule 903, LEAPS are series added as part of an extended far term expiration month, and under the same provision, the Exchange Rules regarding continuity do not apply to index option series until the time to expiration is less than 12 months, and do not apply to equity option series or option series on Exchange Traded Fund Shares until the time to expiration is less than nine months.

The Exchange proposes to clarify that the exception for LEAPS is an exception to the obligations in Rule 925.1NY by adding Commentary .01. The Exchange further proposes to extend the exception to certain adjusted series,[5] and to define ''adjusted series'' for the purposes of Rule 925.1NY. An ''adjusted series'' under the Rule would be defined as an option series wherein, as a result of a corporate action by the issuer of the underlying security, one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

After a corporate action and a subsequent adjustment to the existing options, the series in question are identified by the Options Price Reporting Authority (''OPRA'') and at OCC with a separate symbol consisting of the underlying symbol and a numerical appendage. As a standard procedure, exchanges listing options on an underlying security which undergoes a corporate action resulting in adjusted series will list new standard option series across all appropriate expiration months the day after the existing series are adjusted. The adjusted series are generally active for a short period of time following adjustment, but orders to open an options position in the underlying are almost exclusively placed in the new standard contracts. Although the adjusted series may not expire for as much as 27 months, in a short time the adjusted series become inactive. Thus, the burden of quoting these series generally outweighs the benefit of being appointed in the class because of the lack of interest in the series by various market participants.

On NYSE Amex, such series may not meet the standards to be considered active, and, under NYSE Amex Rule 970.1NY, the Exchange shall no longer disseminate quotes in the series. Thus, the current obligation holds Market Makers to submit quotes in series that are generally not published to OPRA unless requested.[6] Since the obligation to submit electronic quotes upon request of a Trading Official will continue if the proposed rule is approved, a fair and orderly market in the inactive series is readily available.

The Exchange has recently noticed requests for withdrawals from appointment in classes that include adjusted series by Market Makers, including Specialists, resulting in a reduction in liquidity in these classes. Market Makers and Specialists that have withdrawn from assignments in these classes have informed the Exchange that the withdrawals were based in part on the obligation to continuously quote adjusted options series whereby the quoting obligations on these often less frequently traded option series impacted the risk parameters acceptable to the Market Makers and Specialists. The Market Makers and Specialists have also expressed that the adjusted nature of these series also complicates the calculation of an appropriate quote.

This lack of interest is exacerbated by Market Makers withdrawing from the appointments which in turn, has caused liquidity (as well as volume) to be negatively impacted in the affected options classes listed on the Exchange. The Exchange believes that the proposed Commentary will ameliorate the liquidity impact by allowing Market Makers and Specialists to continue their appointments in these option classes.

The proposed rule change is similar to the Phlx rule, in that the Exchange is merely proposing to exclude the adjusted series from the continuous quoting obligation, but not from other obligations under Rules 6.37, 6.37A, 6.37B and 6.82. The Phlx rule excludes adjusted series (and Quarterly Options) from the Streaming Quote Trader's assignment. Of particular note, the proposal would not excuse a Market Maker from the obligation, when called upon by a Trading Official, to submit a single quote or maintain continuous quotes in one or more series of an option issue within the Market Maker's appointment whenever, in the judgment of such Trading Official, it is necessary to do so in the interest of maintaining fair and orderly markets.[7]

Further, the proposed rule does not excuse the Market Maker from the obligations to respond with a two-sided, legal width market to a call for a market by a Floor Broker.[8]

The current quoting obligation in such illiquid series is a minor part of a Market Maker's overall obligation, and the proposed modicum of relief is mitigated by the obligation to respond to a request for quote from a Trading Official or a Floor Broker. Because of the lack of interest in such series, there is little demonstrable benefit to being a market maker in them other than the ability to maintain market maker margins for what little activity may occur. In addition, the burden of continuous quoting in these series is counter to efforts to mitigate the number of quotes collected and disseminated.

The Exchange believes that the proposed rule change should incent Market Makers and Specialists to continue appointments and thereby expand liquidity in options classes listed on the Exchange to the benefit of the Exchange and its ATP Holders and public customers.

[3] The Commission notes that the Phlx proposal was not approved by the Commission, but rather designated for immediate effectiveness by Phlx.

[4] *See* Exchange Act Release No. 61095 (December 2, 2009) 74 FR 64786 (December 8, 2009).

[5] NYSE Amex Rule 903(g) states ''Option contracts shall be subject to adjustments in accordance with the Rules of the Options Clearing Corporation.''

[6] Rule 970.1NY states, in part, ''The Exchange may determine that a series has become active intraday if (i) the series trades at any options exchange; (ii) NYSE Amex receives an order in the series; or (iii) NYSE Amex receives a request for quote from a customer in that series. If a series becomes active intraday, the Exchange will immediately disseminate quotes in the series to OPRA, and continue to disseminate quotes for the balance of the trading day.''

[7] *See* NYSE Amex Rule 925.1NY(d).

[8] *See* NYSE Amex Rule 925NY(b)(6).

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act''),[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that its proposal is consistent with the Act because, on balance, the elimination of the continuous quoting obligations in adjusted series is a minor change and should not impact the quality of Amex's market. Among other things, adjusted series are not common, and trading interest is often very low after the corporate event has passed. Consequently, continuous quotes in such series increases quote traffic and burdens systems without a corresponding benefit. By not requiring Market Makers to continuously quote in such series, the Exchange's proposal would further its goal of measured quote mitigation. Further, while they will not be tasked with continually quoting such series, Market Makers will be obligated to quote the series when called upon by a Trading Official. In addition, a MM [sic] will be required to quote the series becomes ''lit'' in response to a request for quote being received. Accordingly, the proposal supports the quality of Amex's market by helping to ensure that Market Makers will continue to be obligated to quote in adjusted series when the need arises.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEAmex–2011–61 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–61. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–61 and should be submitted on or before September 22, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–22440 Filed 8–31–11; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### Somerset International Group, Inc.; Order of Suspension of Trading

August 30, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Somerset International Group, Inc.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on August 30, 2011, through 11:59 p.m. EDT on September 13, 2011.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2011–22534 Filed 8–30–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12756 and #12757]**

### South Dakota Disaster #SD–00042

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1984–DR), dated 08/23/2011.

*Incident:* Flooding.

*Incident Period:* 03/11/2011 through 07/22/2011.

*Effective Date:* 08/23/2011.

*Physical Loan Application Deadline Date:* 10/24/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/23/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/23/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans): Charles Mix, Hughes, Stanley, Union.

*Contiguous Counties:* (Economic Injury Loans Only):

South Dakota: Aurora, Bon Homme, Brule, Clay, Dewey, Douglas, Gregory, Haakon, Hutchinson, Hyde, Jones, Lincoln, Lyman, Sully, Ziebach.

Iowa: Plymouth, Sioux, Woodbury.

Nebraska: Boyd, Dakota, Dixon, Knox.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners with Credit Available Elsewhere | 5.125 |
| Homeowners without Credit Available Elsewhere | 2.563 |
| Businesses with Credit Available Elsewhere | 6.000 |
| Businesses without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations with Credit Available Elsewhere | 3.250 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 127566 and for economic injury is 127570.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–22420 Filed 8–31–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12740 and #12741]**

### Texas Disaster Number TX–00380

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Texas (FEMA–1999–DR), dated 08/15/2011.

*Incident:* Wildfires.

*Incident Period:* 04/06/2011 through 05/03/2011.

*Effective Date:* 08/18/2011.

*Physical Loan Application Deadline Date:* 10/14/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/14/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of TEXAS, dated 08/15/2011, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Cochran, Hartley, Jeff Davis, Palo Pinto.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

**Joseph P. Loddo,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–22416 Filed 8–31–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12714 and #12715]**

### Montana Disaster Number MT–00062

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Montana (FEMA–1996–DR), dated 07/26/2011.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 04/03/2011 through 07/22/2011.

*Effective Date:* 08/24/2011.

*Physical Loan Application Deadline Date:* 09/26/2011.

*EIDL Loan Application Deadline Date:* 04/26/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Montana, dated 07/26/2011 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans): Blaine, Broadwater, Carter, Chouteau, Fallon, Flathead, Golden Valley, Madison, Park, Phillips, Pondera, Powell, Rosebud, Toole, Wibaux, and the Fort Peck Reservation.

*Contiguous Counties:* (Economic Injury Loans Only):

Montana: Beaverhead, Dawson, Glacier, Lincoln, Richland, Sheridan.

Idaho: Fremont.

North Dakota: Bowman, Golden Valley, Mckenzie, Slope.

South Dakota: Butte, Harding.

Wyoming: Crook.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–22419 Filed 8–31–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12754 and #12755]**

### Iowa Disaster #IA–00036

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major

disaster for Public Assistance Only for the State of Iowa (FEMA–1998–DR), dated 08/22/2011.

*Incident:* Flooding.

*Incident Period:* 05/25/2011 and continuing.

*Effective Date:* 08/22/2011.

*Physical Loan Application Deadline Date:* 10/21/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/22/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/22/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Fremont, Harrison, Mills, Monona, Pottawattamie, Woodbury.

The Interest Rates are:

| | Interest |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 3.250 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 127546 and for economic injury is 127556.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–22421 Filed 8–31–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12760 and #12761]**

### Iowa Disaster #IA–00037

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4016–DR), dated 08/24/2011.

*Incident:* Severe Storms, Straight-line Winds, and Flooding.

*Incident Period:* 07/09/2011 through 07/14/2011.

*Effective Date:* 08/24/2011.

*Physical Loan Application Deadline Date:* 10/24/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/24/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/24/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Benton, Clay, Dickinson, Marshall, Story, Tama.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 3.250 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury: | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 12760B and for economic injury is 12761B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–22418 Filed 8–31–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12748 and #12749]**

### Louisiana Disaster #LA–00041

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Louisiana (FEMA–4015–DR), dated 08/18/2011.

*Incident:* Flooding.

*Incident Period:* 04/25/2011 through 07/07/2011.

*Effective Date:* 08/18/2011.

*Physical Loan Application Deadline Date:* 10/17/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/18/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 08/18/2011, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Assumption, Avoyelles, Concordia, East Carroll, Lafourche, Madison, Pointe Coupee, Saint Charles, Saint James, Saint Landry, Saint Martin, Saint Mary, Tensas, Terrebonne, West Feliciana.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Non-Profit Organizations With Credit Available Elsewhere ..... | 3.250 |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |
| For Economic Injury:. | |
| Non-Profit Organizations Without Credit Available Elsewhere ..... | 3.000 |

The number assigned to this disaster for physical damage is 127486 and for economic injury is 127496.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Joseph P. Loddo,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–22414 Filed 8–31–11; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12746 and #12747]**

### North Carolina Disaster #NC–00035

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 08/19/2011.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 08/05/2011.

*Effective Date:* 08/19/2011.

*Physical Loan Application Deadline Date:* 10/18/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/19/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Mecklenburg.

*Contiguous Counties:*

North Carolina: Cabarrus, Gaston, Iredell, Lincoln, Union.

South Carolina: Lancaster, York.

The Interest Rates are:

| | Percent |
|---|---|
| For Physical Damage: | |
| Homeowners With Credit Available Elsewhere | 5.000 |
| Homeowners Without Credit Available Elsewhere | 2.500 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.250 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| For Economic Injury: | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 12746 6 and for economic injury is 12747 0.

The States which received an EIDL Declaration # are: North Carolina, South Carolina.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

August 19, 2011.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2011–22423 Filed 8–31–11; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Annual Meeting of the Regional Small Business Regulatory Fairness Boards, Office of the National Ombudsman

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Notice of open meeting of the Regional Small Business Regulatory Fairness Boards.

**SUMMARY:** The SBA, Office of the National Ombudsman is issuing this notice to announce the location, date, time and agenda for the annual board meeting of the ten Regional Small Business Regulatory Fairness Boards (Regional Regulatory Fairness Boards). The meeting is open to the public.

**DATES:** The meeting will be held on the following dates: Monday, September 19, 2011 from 8:30 a.m. to 5 p.m. E.S.T. and on Tuesday, September 20, 2011 from 8:30 a.m. to 1 p.m. E.S.T.

**ADDRESSES:** The meeting will be at the SBA Headquarters, 409 3rd Street, SW., Washington, DC 20416, in the Eisenhower Conference Room located on the 2nd Floor.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), Sec. 222, SBA announces the meeting of the Regional Regulatory Fairness Boards. The Regional Regulatory Fairness Boards are tasked to advise the National Ombudsman on matters of concern to small businesses relating to enforcement activities of agencies and to report on substantiated instances of excessive enforcement against small business concerns, including any findings or recommendations of the Board as to agency enforcement practice or policy.

The purpose of the meeting is to discuss the following topics related to the Regional Regulatory *Fairness Boards:*

—RegFair Board Member Duties, Responsibilities, and Standards of Conducting Briefing.

—Overview of Regulatory Process for Federal Agencies.

—Media Relations and ONO Highlights.

—Planning for and Logistics of Hearings/Roundtables.

—Securing Comments and the Comment Process.

—Congressional Regulatory Forum.

—Success by Working Together To Address Regulatory Issues for Small Businesses.

—Federal Agency Partnerships: Existing and Future.

—New Administrative Initiatives.

—Board Member Travel Reimbursement.

**FOR FURTHER INFORMATION CONTACT:** The meeting is open to the public; however advance notice of attendance is requested. Anyone wishing to attend and/or make a presentation to the Regulatory Fairness Boards must contact Yolanda Swift by September 14, 2011 by fax or e-mail in order to be placed on the agenda. *Yolanda.swift@sba.gov,* Deputy National Ombudsman for Regulatory Enforcement Fairness, Office of the National Ombudsman, 409 3rd Street, SW., Suite 7125, Washington, DC 20416, phone (202) 205–6918, fax (202) 401–6128.

Additionally, if you need accommodations because of a disability or require additional information, please contact José Méndez, Case Management Specialist, Office of the National Ombudsman, 409 3rd Street, SW., Suite 7125, Washington, DC 20416, phone (202) 205–6178, fax (202) 401–2707, e-mail *jose.mendez@sba.gov.*

For more information on the Office of the National Ombudsman, please visit our Web site at *http://www.sba.gov/ombudsman.*

Dated: August 25, 2011.

**Dan Jones,**

*SBA Committee Management Officer.*

[FR Doc. 2011–22407 Filed 8–31–11; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) during the Week Ending August 20, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2011–0150.

*Date Filed:* August 15, 2011.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* September 6, 2011.

*Description:*

Application of Universal Jet Aviation, Inc. (''Universal'') requesting a certificate of public convenience and necessity authorizing Universal to engage in foreign charter air transportation of persons, property and mail.

*Docket Number:* DOT–OST–2011–0151.

*Date Filed:* August 15, 2011.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* September 6, 2011.

*Description:*

Application of Universal Jet Aviation, Inc. (''Universal'') requesting a certificate of public convenience and necessity authorizing Universal to engage in interstate charter air transportation of persons, property and mail with a Boeing Business Jet aircraft.

*Docket Number:* DOT–OST–2003–16308.

*Date Filed:* August 16, 2011.

*Due Date for Answers, Conforming Applications, or Motion To Modify Scope:* September 6, 2011.

*Description:*

Application of Grupo Aereo Monterrey, S.A. de C.V., d/b/a Magnicharters requesting a foreign air carrier permit and supplement to application for an exemption to engage in charter foreign air transportation of passengers between the United States and Mexico and to conduct other passenger charter operations in accordance with 14 CFR part 212.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2011–22396 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–9XP

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 13, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* DOT–OST–2011–0148.

*Date Filed:* August 9, 2011.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* August 30, 2011.

*Description:* Application of Aeroenlaces Nacionales, S.A. de C.V. (''vivaAerobus'') requesting an exemption authorizing it to engage in scheduled foreign air transport of persons, property and mail between Monterrey, Mexico and Orlando, Florida; Monterrey, Mexico and Miami, Florida; Guadalajara, Mexico and Houston, Texas; and Guadalajara, Mexico and San Antonio, Texas. In addition, vivaAerobus requests that the Department amend the carrier's foreign air carrier permit to integrate the exemption authority requested herein and vivaAerobus's existing exemption authority to eliminate the need to apply for repeated renewals of the exemption authority.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2011–22400 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed the Week Ending August 13, 2011

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* DOT–OST–2011–0146.

*Date Filed:* August 9, 2011.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC COMP Mail Vote 679, Resolution 024d, Currency Names, Codes, Rounding Units and Acceptability of Currencies—Jordan, Intended Effective Date: 1 June 2011.

(Memo 1622), PTC COMP Mail Vote 679, Resolution 024d, Currency Names, Codes, Rounding Units and Acceptability of Currencies—Jordan, Intended Effective Date: 1 June 2011, Implementation Date: 1 August 2011.

*Docket Number:* DOT–OST–2011–0147.

*Date Filed:* August 9, 2011.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC COMP Mail Vote 680, Resolution 024a, Establishing Passenger Fares and Related Charges, Lithuania, Intended Effective Date: 1 September 2011.

**Renee V. Wright,**

*Program Manager, Docket Operations, Federal Register Liaison.*

[FR Doc. 2011–22397 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–9X–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Availability of a Final Environmental Assessment (Final EA) and a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower and Base Building at University of Illinois Willard Airport, Savoy, IL

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

**ACTION:** Notice of Availability of a Final Environmental Assessment (Final EA) and Finding of No Significant Impact (FONSI)/Record of Decision (ROD) for a Proposed Airport Traffic Control Tower and Base Building at University of Illinois Willard Airport, Savoy, Illinois.

**SUMMARY:** The Federal Aviation Administration (FAA) is issuing this notice to advise the public that the FAA has prepared, and approved on August 8, 2011, a Finding of No Significant Impact (FONSI)/Record of Decision (ROD) based on the Final Environmental Assessment (Final EA) for a Proposed Airport Traffic Control Tower (ATCT) with Associated Base Building at University of Illinois Willard Airport (CMI), Savoy, Illinois. The FAA prepared the Final EA in accordance with the National Environmental Policy Act and the FAA's regulations and guidelines for environmental documents and was signed on July 18, 2011. Copies of the FONSI/ROD and/or Final EA are available by contacting Ms. Virginia Marcks through the contact information provided below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Virginia Marcks, Manager, Infrastructure Engineering Center, AJW–C14D, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018. Telephone number: (847) 294–7494.

**SUPPLEMENTARY INFORMATION:** The Final EA evaluated the construction and operation of a new ATCT and Base Building at CMI. The ATCT will be located approximately 660 feet east of the existing ATCT facility on vacant land located on airport property. The ATCT facility will occupy approximately 5.5 acres, and is 744 feet above mean sea level. The ATCT would be accessed via a realigned airport access road and is located in the east-central portion of the airport, approximately 2,150 feet east of the Runway 14L–32R and Runway 4–22 intersection. The new ATCT will be a Low Activity Level facility with a 440 square foot cab and will be at an overall height of 130 feet above ground level. The new ATCT will enhance controllers' visibility from the tower cab and will provide sufficient space to improve operational efficiency. The Base Building will be of sufficient size for administrative space requirements and will be able to accommodate state-of-the-art equipment upgrades. The project also includes, and the Final EA evaluated, construction of a paved parking area next to the Base Building; site work, including realignment of an airport access road, grading, drainage, utilities, and fencing; replacement of the 8 element V–Ring antenna on the Runway 32R instrument landing system with a 14-element LPD antenna array and relocate 55 feet to the northwest; Dopplerization of the Very High Frequency Omnidirectional Range with Tactical Air Navigation facility; unconditional approval of the revised Airport Layout Plan; and Federal funding of the project.

The Final EA has been prepared in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, and FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' In addition, FAA Order 5050.4B, ''National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions'' has been used as guidance in the preparation of the environmental analysis.

Issued in Des Plaines, Illinois, on August 22, 2011.

**Virginia Marcks,**

*Manager, Infrastructure Engineering Center, Chicago, AJW–C14D, Federal Aviation Administration.*

[FR Doc. 2011–22463 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Sixteenth Meeting: Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS)

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

**ACTION:** Notice of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS).

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS).

**DATES:** The meeting will be held September 27–29, from 8 a.m.–5 p.m.

**ADDRESS:** The meeting will be held at Le Canard sur le Toit, 28 chemin de La Salvetat, 31 770 Colomiers, France. For more information contact +33.561.303.783 or Fax +33.561.151.980 (Fax), e-mail: *reception@canardsurletoit.com* or visit *http://www.carnardsurletoit.com.* Alternate POC is: RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC 20036. Point of Contact is *Jiverson@rtca.org,* telephone (202) 833–9339, Fax (202) 833–9434.

**FOR FURTHER INFORMATION CONTACT:** (1) RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Joint RTCA Special Committee 213: EUROCAE WG–79: Enhanced Flight Vision Systems/ Synthetic Vision Systems (EFVS/SVS) meeting.

The agenda will include:

**Tuesday, September 27**

- 8 a.m.–5 p.m. Plenary
  - Introductions and administrative items
  - Review and approve minutes from last full plenary meeting (RTCA Paper No. 147–11/SC213–059
  - DO–315 items deferred due to applicability to EFVS versus SVS
  - ED–179B status and update
  - Review SVS/CVS (WG1) and Vision Systems (WG2) objectives
  - Work Group 2 (VS) Discussion

**Wednesday, September 28**

- 8 a.m.–5 p.m. Plenary
  - Work Group 2 (VS) Discussion
  - Work Group 1 (SVS/CVS) Discussion

**Thursday, September 29**

- 8 a.m.–3 p.m. Plenary
  - Work Group 2 (VS) Discussion
  - Work Group 1 (SVS/CVS) Discussion
  - Administrative Items (meeting schedule)
  - Any other business
  - Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION**

**CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, August 26, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–22452 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Fourth Meeting RTCA NextGen Advisory Committee (NAC)

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

**ACTION:** RTCA NextGen Advisory Committee (NAC).

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA NextGen Advisory Committee (NAC).

**DATES:** The meeting will be held September 29, 2011 from 9 a.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at RTCA Headquarters, Colson/NBAA Conference Room, 1150 18th Street, NW., Suite 910, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the NextGen Advisory Committee meeting. The agenda will include:

- 9 a.m. (Opening Plenary (Welcome and Introductions), Chairman Dave Barger, President and CEO, JetBlue Airways.
- Official Statement of Designated Federal Official, Michael Huerta, FAA Deputy Administrator.
- Review and Approval of May 19, 2011 Meeting Summary/Terms of Reference.
- Chairman's Report—Chairman Barger.
- FAA Report—Michael Huerta.
- Subcommittee Report: NAC Subcommittee and Work Groups.
- Subcommittee Co-Chair, Steve Brown, Senior Vice President, Operations and Administration, National Business Aviation Association and Tom Hendricks, Senior Vice President, Safety, Security and Operations, Air Transportation Association.
- Status Report—Data Comm Tasking.
- Break.
- Review and Approve Recommendations for Submission to FAA.
- AdHoc—Economic Incentives to Equip for NextGen.
- Review and Approve Recommendations for Submission to FAA.
- Business Case Gap Assessment for NextGen Equipage and Operational Incentives.
- Review and Approve Recommendation for Submission to FAA.
- Enhancing Operations in Specific Regional Airspace.
- Lunch Break.
- Review and Approve Recommendations for Submission to FAA.
- NextGen Implementation Performance Measurement Criteria.
- Review and Approve Recommendation for Submission to FAA.
- Trajectory Operations Concept of Use for Mid-Term (2018).
- Afternoon Break.
- Review and Approve Recommendation for Submission to FAA.
- Metroplex Prioritization Criteria and Capabilities Applied to the Metroplex Areas.
- Committee Discussion of 2012 Taskings—''What Comes Next?''
- Other Business/Anticipated Issues for NAC Consideration and Action at January/February 2012 meeting.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FUTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 26, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–22458 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 26th Meeting: RTCA Special Committee 206: Aeronautical Information and Meteorological Data Link

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

**ACTION:** Notice of RTCA Special Committee 206: Aeronautical Information and Meteorological Data Link Services meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 206: Aeronautical Information and Meteorological Data Link Services.

**DATES:** The meeting will be held September 19–23, 2011 from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at Harris Corporation, Capitol Gallery Building, 600 Maryland Ave., SW., Suite 850 East, Washington, DC 20024. For further information regarding this meeting contact AvMet Applications, Inc., at (703) 835–9191 or (703) 351–5658.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1150 18th Street, NW., Suite 910, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 206: EUROCAE WG 76 Plenary: AIS and MET Data Link Services meeting. The agenda will include:

**September 19–Monday**

*9 a.m.*

- Opening Plenary.
- Chairmen's remarks and Host's comments.
- Introductions.
- Approval of previous meeting minutes.
- Review and approve meeting agenda.
- Schedule for this week.
- Action Item Review.
- Sub Group 1, Work Plan—SG1 Chairmen.
- Sub Group 2 Work Plan—SG2 Chairmen.
- Sub Group 3 Work Plan—SG3 Chairmen.
- Discuss readiness for release of DO–267A Revision for FRAC process.
- Discuss readiness for release of OSED document for FRAC process.

• Discuss status of Deliverables in TOR and potential changes.

• Discuss the certification and liability issues surrounding the use of MET information on the flight deck (all SG's).

• OGC Sensor Modeling Language Presentation (SG2 and SG3).

**September 20—Tuesday**

*9 a.m.*

• SG1, SG2, and SG3 Meetings.

**September 21—Wednesday**

*9 a.m.*

• SG1, SG2, and SG3 Meetings.

**September 22—Thursday**

*9 a.m.*

• SG1, SG2, and SG3 Meetings.

2 p.m.

• Plenary Session.

• Sub Group 1 Reports.

• Sub Group 2 Reports.

• Sub Group 3 Reports.

• Action Item Review.

• Meeting Plans and Dates.

• Discuss Status of Deliverables in TOR and potential changes.

• Decision to release DO–267A Revision Document for FRAC Process.

• Other Business.

**September 23—Friday**

*9 a.m.*

• SG1, SG2, and SG3 Meetings.

*2 p.m.*

• Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 26, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–22460 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Fourth Meeting: RTCA Special Committee 225: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes

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

**ACTION:** Notice of RTCA Special Committee 225 meeting: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 225: Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes.

**DATES:** The meeting will be held September 27–28, 2011, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1150 18th Street, Suite 910, NW., Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1150 18th Street, Suite 910, NW., Washington, DC 20036, telephone (202) 833–9339 or e-mail *jiverson@rtca.org,* fax (202) 833–9434, Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 225, Rechargeable Lithium Batteries and Battery Systems—Small and Medium Sizes

**Agenda**

*Tuesday September 27, 2011*

• Welcome/Introductions/Administrative Remarks.

• Review of the meeting agenda.

• Review and approval of summary from the third plenary meeting RTCA paper no. 149–11/SC225–006.

• Tom Chapin from UL presentation on research regarding Lithium battery testing at UL.

• Review of action items.

• Review draft document that includes top tier requirements 1, 2, 3 and 5.

• Review top tier requirements 4, 7, 8 and 9.

• Review new action items.

• Review agenda for Wednesday, September 28.

*Wednesday September 28, 2011*

• Review meeting agenda, other actions.

• Working Groups meeting.

• Review draft document that includes top tier requirements 1, 2, 3 and 5.

• Finish discussion for Requirement 6.

• Continue discussion on top tier requirements 4, 7, 8 and 9.

• Working Group report, review progress and actions.

• Other Business.

• Establish Agenda for Fifth Plenary Meeting.

• Administrative Items (Meeting Schedule).

• Review all action items.

• Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 26, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–22455 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Ninth Meeting—RTCA Special Committee 217: Joint With EUROCAE WG–44 Terrain and Airport Mapping Databases

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

**ACTION:** Notice of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases.

**DATES:** The meeting will be held September 6–9, 2011, from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at Linkoping University, Norrkoping Campus, Bredgatan 33, 602 21 Norrköping. For additional information, contact John Kasten at *john.kasten@jeppesen.com,* (303) 328–4535 (office), (303) 260–9652 (mobile) or alternate contact Roger Li at *riger.li@lfv.se* or +46.11.19.27.13 (office) or +46.709.18.91.48 (mobile)

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1150 18th Street, NW., Suite 910 Street, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a RTCA Special Committee 217: Joint with EUROCAE WG–44 Terrain and Airport Mapping Databases meeting. The agenda will include:

**September 6th, 2011**

- Opening Plenary Session.
- Chairman's remarks and Introductions.
- Housekeeping.
- Approve minutes from previous meeting and RTCA paper No. 137–11/SC217–025.
- Review and Approve Meeting Agenda.
- Schedule for this week.
- PMC Meeting, September 28, 2011 Discussion.
- Action Item Review (looking for presentations).
- Presentations (Not Liked to Working Group Activity).
- Working Group Reports (Activity Status).

**September 7th, 2011**

- Terrain and Obstacle Working Group Report.
- Other Working Group Reports.
- New Working Group ASRN V&V Document (DO-xxx).

**September 8 th, 2011**

- Terrain and Obstacle Working Session.
- ASN V&V Working Group.
- LFV Presentations and/or Demonstrations.

**September 9th, 2011**

- Working Group Road Map Review.
- Draft Terms of Reference Update for DO–272D and DO–291C.
- Action Item Review.
- Other Business.
- Closing Plenary Session.
- Joint RTCA SC–217/EUROCAE WG–44.
- Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 26, 2011.

**Robert L. Bostiga,**

*RTCA Advisory Committee.*

[FR Doc. 2011–22447 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Standard Operating Procedures (SOP) of the Aircraft Certification Service (AIR) Process for the Sequencing of Certification and Validation Projects

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability and request for public comment.

**SUMMARY:** This notice announces the availability of and request for public comments on the Aircraft Certification Service (AIR) standard operating procedure (SOP) describing the process used to sequence certification projects that are anticipated to take more than 40 hours of FAA involvement to complete.

**DATES:** Comments must be received on or before October 3, 2011.

**ADDRESSES:** Send all comments on the SOP #: AIR–100–001; Standard Operating Procedure—Aircraft Certification Service Project Sequencing to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. *Attn:* Renton S. P. Bean, AIR–103. You may deliver comments to: Federal Aviation Administration, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024, or electronically submit comments to the following Internet address: *9–AWA–AVS–AIR–103–SOP@faa.gov.* Include in the subject line of your message the following: SOP #: AIR–100–001; Standard Operating Procedure—Aircraft Certification Service Project Sequencing.

**FOR FURTHER INFORMATION CONTACT:** Renton S. Bean, Senior Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical and Administrative Support Branch, AIR–103, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024. Telephone (202) 385–6301, FAX (202) 385–6475, or e-mail at: *9-AWA-AVS-AIR-103-SOP@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

You are invited to comment on the SOP for the sequencing of certification and validation projects listed in this notice by sending such written data, views, or arguments to the above listed address. Please identify ''SOP #: AIR–100–001; Standard Operating Procedure—Aircraft Certification Service Project Sequencing,'' as the subject of your comments. You may also examine comments received on the SOP before and after the comment closing date at the FAA's Aircraft Engineering Division office located at, 950 L'Enfant Plaza, 5th Floor, SW., Washington, DC 20024, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final document.

**Background**

In 2005, the Federal Aviation Administration instituted a project sequencing process to manage our limited resources to address both continued operational safety and certification project work. This SOP documents the process used for sequencing new certification and validation projects worked in its Aircraft Certification Offices (ACOs), Manufacturing Inspection District Offices (MIDOs), and Directorate Standards Staffs. All applications for new certification and validation projects requiring more than 40 hours of dedicated FAA work effort are prioritized, on a national basis, based primarily on the project's impact on safety and availability of resources. The certification and validation programs include: Type certificate (TC), Amended Type Certificate (ATC), Supplemental Type Certificated ATC), Amended Supplemental Type Certificate (ASTC), Type Design Changes, Type Validation, when the FAA is the Validating Authority, and Parts Manufacturer Approval (PMA). Prior to 2005, the FAA accepted and committed to work all certification and validation projects in the order they were received, and frequently had to divert resources from activities supporting our safety mission to meet certification commitments. A means to manage resources such that applicants' requests for services are properly balanced with the FAA's primary mission of ensuring continued operational safety of the existing fleet is essential. The FAA is publishing the SOP to ensure transparency of the existing sequencing process and to

solicit feedback on how the process can be improved.

**How to Obtain Copies**

You can get an electronic copy of the SOP #: AIR–100–001; Standard Operating Procedure—Aircraft Certification Service Project Sequencing, via the Internet at *http://www.faa.gov/aircraft/draft_docs/*, and then select Policy, or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on August 26, 2011.

**Susan J.M. Cabler,**

*Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 2011–22360 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: San Francisco County, CA

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to rescind a Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The FHWA, on behalf of the California Department of Transportation (Caltrans), announces this notice to advise the public of the rescinding of the Notice of Intent (NOI) to prepare an Environmental Impact Statement for improvements that were proposed for the Bayview Transportation Improvements Project. The NOI was published in the **Federal Register** on June 2, 2004. This rescission is based on major changes in the scope of the project.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brent, Office Chief, California Department of Transportation, District 4, Office of Environmental Analysis, P.O. Box 23660, MS–8B, Oakland, California 94623–0660, *Telephone:* (510) 286–5231, *E-mail: melanie_brent@dot.ca.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the delegated National Environmental Policy Act (NEPA) agency is rescinding the NOI to prepare an Environmental Impact Statement for proposed roadway improvements in the southeast sector of San Francisco, California to facilitate truck traffic from U.S. Highway 101 to planned industrial development in the former Hunters Point Shipyard. The NOI is being rescinded because the land use plans for the former Hunters Point Shipyard have evolved to a broader mix of residential, commercial, research and development, and industrial activities and there is a need to connect Hunters Point with Candlestick Point, and other parts of the Bayview District and beyond. The rescoped project will: Emphasize transit, bikes, pedestrians, and autos rather than trucks; conform to the City's ''transit first policy'' as a means to reduce vehicular traffic on streets as well as on U.S. 101 and its interchanges; connect neighborhoods within the Bayview District through a new bus rapid transit (BRT) route (the ''spine'' of the proposed project); provide transfer points between the BRT line and other transit routes; construct a new transit center; facilitate bicycle and pedestrian movement on streets that are in need of improvement; and create a more sustainable and viable community. Given the changes in scope of the proposed action, Caltrans intends to prepare an Environmental Assessment to determine if the project has the potential to significantly affect the quality of the human environment.

Dated: August 25, 2011.

**Gary Sweeten,**

*Acting Director, Local Programs, Federal Highway Administration, Sacramento, CA.*

[FR Doc. 2011–22349 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327, and Other Federal Agencies.

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and other Federal agencies, that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to proposed highway improvements in Santa Clara County at the connection of the State Route 17, Interstate 280 and Interstate 880 freeways in the City of San Jose, Santa Clara County, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before February 28, 2012. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Melanie Brent, Office Chief, Office of Environmental Analysis, Caltrans District 4, 111 Grand Avenue, MS 8B, Oakland, CA 94612, (510) 286–5231, *Melanie_Brent@dot.ca.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Highway Improvements to modify the State Route 17/Interstate-280/Interstate-880 freeway-to-freeway interchange as well as the adjacent interchange at Interstate 88R0/Stevens Creek Boulevard. The purpose of the project is to improve operations and safety on the freeways and local roadways in the vicinity of these interchanges and to provide additional access between the Interstate 280/Interstate 880 freeway corridors and nearby land uses.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project. A Finding of No Significant Impact (FONSI) was approved on July 8, 2011. The FEA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/envdocs.htm.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109] and its regulations 23 CFR 772

2. Antiquities Act of 1906 [16 U.S.C. 431–433]; Federal-Aid Highway Act of 1935 [20 U.S.C. 78]
3. Clean Air Act [42 U.S.C. 7401–7671(q)]
4. Clean Water Act [33 U.S.C. 1344]

**Authority:** 23 U.S.C. 139(l)(1)

Issued on: August 25, 2011.

**Gary Sweeten,**

*Acting Director, Local Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2011–22350 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–RY–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–1998–4334; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2007–27897; FMCSA–2009–0121]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 32 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective September 13, 2011. Comments must be received on or before October 3, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) numbers: FMCSA–1998–4334; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2007–27897; FMCSA–2009–0121, using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *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 or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

*Instructions:* Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

*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 Federal Docket Management System (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.*

**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:**

### Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 set out in 49 CFR part 381.

### Exemption Decision

This notice addresses 32 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 32 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are the following:

Daniel F. Albers
John A. Bridges
Eddie M. Brown
Edwin L. Bupp
Clifford D. Carpenter
Duane C. Conway
Brian W. Curtis
Roger D. Davidson, Sr.
Robin C. Duckett
Marco A. Esquivel
Tomie L. Estes
Raymond L. Herman
Jesse R. Hillhouse, Jr.
Billy R. Holdman
Ray C. Johnson
Terry R. Jones
Randall H. Keil
James J. Mitchell
Andrew M. Nurnberg
Kenneth R. Pedersen
Joshua R. Perkins
Eligio M. Ramirez
Victor C. Richert
Craig R. Saari
Jerry L. Schroder
Gerald J. Shamla
William C. Smith
Larry D. Steiner
Scott C. Teich
Anthony T. Truiolo
Gregory A. VanLue
Kevin W. Wunderlin

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption

will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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.

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 32 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 19598; 68 FR 33570; 68 FR 44837; 70 FR 17504; 70 FR 25878; 70 FR 30997; 70 FR 41811; 72 FR 27624; 72 FR 28093; 72 FR 39879; 72 FR 40362; 72 FR 52419; 74 FR 20523; 74 FR 26461; 74 FR 34630; 74 FR 41971). Each of these 32 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

**Request for Comments**

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 3, 2011.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 32 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: August 19, 2011.

**Larry W. Minor,**

*Associate Administrator Office of Policy.*

[FR Doc. 2011–22316 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2011–0183]**

### Pipeline Safety: Potential for Damage to Pipeline Facilities Caused by the Passage of Hurricanes

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice; Issuance of Advisory Bulletin.

**SUMMARY:** PHMSA is issuing this advisory bulletin to remind owners and operators of gas and hazardous liquid pipelines of the potential for damage to pipeline facilities caused by the passage of Hurricanes.

**ADDRESSES:** This document can be viewed on the Office of Pipeline Safety (OPS) home page at: *http://ops.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Operators of pipelines subject to regulation by PHMSA should contact the appropriate PHMSA Regional Office. The PHMSA Regional Offices and their contact information are as follows:

- *Eastern Region:* Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia, call 609–989–2171.
- *Southern Region:* Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee, call 404–832–1140.
- *Central Region:* Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin, call 816–329–3800.
- *Southwest Region:* Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, call 713–272–2859.
- *Western Region:* Alaska,, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, Oregon, Utah, Washington, and Wyoming, call 720–963–3160.

Intrastate pipeline operators should contact the appropriate State pipeline safety authority. A list of State pipeline safety authorities is provided at: *http://www.napsr.org/managers/napsr_state_program_managers2.htm.*

For general information about this notice contact John Hess, Director for Emergency Support and Security, 202–366–4595 or by e-mail at *PHMSA.OPA90@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The purpose of this advisory bulletin is to remind all owners and operators of gas and hazardous liquid pipelines, particularly those with facilities located in offshore and inland areas, about the serious safety-related issues that can result from the passage of hurricanes. That includes the potential for damage to offshore platforms and pipelines and onshore pumping stations, compressor stations, and terminals.

Operators of gas and hazardous liquid pipelines have a general obligation to identify any conditions that can adversely affect the operation of their pipelines and to take appropriate corrective measures upon discovering such conditions. Specifically, § 192.613 of the gas pipeline safety regulations states that ''[e]ach operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning * * * unusual operating and maintenance conditions,'' and that ''[i]f a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator

shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with § 192.619(a) and (b).'' Section 195.401(b)(1) of the hazardous liquid pipeline safety regulations states that ''[w]henever an operator discovers any condition that could adversely affect the safe operation of its pipeline system, it must correct the condition within a reasonable time. However, if the condition is of such a nature that it presents an immediate hazard to persons or property, the operator may not operate the affected part of the system until it has corrected the unsafe condition.'' Section 195.401(b)(2) further states that ''[w]hen an operator discovers a condition on a pipeline covered under [the integrity management requirements in] § 195.452, the operator must correct the condition as prescribed in § 195.452(h).''

Operators of shallow-water gas and hazardous liquid pipelines in the Gulf of Mexico and its inlets have a specific obligation to ''prepare and follow a procedure to identify [their] pipelines * * * that are at risk of being an exposed underwater pipeline or a hazard to navigation * * * [and to] conduct appropriate underwater inspections * * * [of those pipelines] based on the identified risk[;]'' and upon discovering that ''its pipeline is an exposed underwater pipeline or poses a hazard to navigation,'' to promptly report the location of that pipeline to the National Response Center, to mark its location, and to ensure its reburial within a specified time. 49 CFR 192.612, 195.413.

Hurricanes can adversely affect the operation of a pipeline and require corrective action under §§ 192.613 and 195.401. Hurricanes also increase the risk of underwater pipelines in the Gulf of Mexico and its inlets becoming exposed or constituting a hazard to navigation under §§ 192.612 and 195.413. The concentration of U.S. oil and gas production, processing, and transportation facilities in the Gulf of Mexico and onshore Gulf Coast means that a significant percentage of domestic oil and gas production and processing is prone to disruption by hurricanes.

In 2005, Hurricanes Katrina and Rita caused significant damage to the oil and gas production structures. The onshore damage caused a significant impact in the ability of the oil and gas industry to respond due to the lack of resources, personnel, and infrastructure, as well as significant damage to onshore processing facilities and power supplies. There were significant competing resource needs with the impacts caused by the devastation of New Orleans and western Louisiana/eastern Texas shore communities that normally provide the services and supplies for the industry.

## II. Advisory Bulletin (ADB–11–05)

To: Owners and operators of gas and hazardous liquid pipeline systems.

Subject: Potential for damage to pipeline facilities caused by hurricanes.

Advisory: All owners and operators of gas and hazardous liquid pipelines are reminded that pipeline safety problems can occur by the passage of hurricanes. Pipeline operators are urged to take the following actions to ensure pipeline safety:

1. Identify persons who normally engage in shallow-water commercial fishing, shrimping, and other marine vessel operations and caution them that underwater offshore pipelines may be exposed or constitute a hazard to navigation. Marine vessels operating in water depths comparable to a vessel's draft or when operating bottom dragging equipment can be damaged and their crews endangered by an encounter with an underwater pipeline.

2. Identify and caution marine vessel operators in offshore shipping lanes and other offshore areas that deploying fishing nets or anchors and conducting dredging operations may damage underwater pipelines, their vessels, and endanger their crews.

3. If operators should need to bring offshore and inland transmission facilities back online, check for structural damage to piping, valves, emergency shutdown systems, risers and supporting systems. Aerial inspections of pipeline routes should be conducted to check for leaks in the transmission systems. In areas where floating and jack-up rigs have moved and their path could have been over the pipelines, review possible routes and check for sub-sea pipeline damage where required.

4. Operators should take action to minimize and mitigate damages caused by flooding to gas distribution systems including the prevention of overpressure of low pressure and high pressure distribution systems.

PHMSA would appreciate receiving information about any damage to pipeline facilities caused by hurricanes. The Federal pipeline safety regulations require that operators report certain incidents and accidents to PHMSA by specific methods. Damage not reported by these methods may be reported to John Hess, Director for Emergency Support and Security, 202–366–4595 or by e-mail at *PHMSA.OPA90@dot.gov.*

Chapter 601; 49 CFR 1.53.

Issued in Washington, DC, on August 26, 2011.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Field Operations.*

[FR Doc. 2011–22343 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2006–26618]**

### Pipeline Safety: Request for Special Permit

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal pipeline safety laws, PHMSA is publishing this notice to announce the availability of the draft environment assessment prepared in response to the request for a special permit we have received from El Paso Pipeline, seeking relief from compliance with certain requirements in the Federal pipeline safety regulations. This notice also seeks public comments on any safety or environmental impacts relative to this request. At the conclusion of the 30-day comment period, PHMSA will evaluate the comments and determine whether to grant or deny a special permit.

**DATES:** Submit any comments regarding the draft environmental assessment for this special permit request by October 3, 2011.

**ADDRESSES:** Comments should reference the docket number for the specific special permit request and may be submitted in the following ways:

- *E-Gov Web Site: http://www.Regulations.gov.* This site allows the public to enter comments on any Federal Register notice issued by any agency.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System: 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:* Docket Management System: 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.

*Instructions:* You should identify the docket number for the special permit request you are commenting on at the beginning of your comments. If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA has received your comments, please include a self-addressed stamped postcard. Internet users may submit comments at *http://www.Regulations.gov.*

**Note:** Comments are posted without changes or edits to *http://www.Regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.Regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** *General:* Kay McIver by telephone at 202–366–0113, or e-mail at *kay.mciver@dot.gov.*

*Technical:* Steve Nanney by telephone at 713–628–7479, or e-mail at *Steve.Nanney@dot.gov.*

**SUPPLEMENTARY INFORMATION:** PHMSA has received a request for special permit from El Paso pipeline seeking relief from compliance with certain pipeline safety regulations. The request included the completion of an environmental assessment questionnaire, and submission of a technical analysis by the operator. The request and supporting documents were filed at *http://www.Regulations.gov* and assigned docket number Docket No. PHMSA–2006–26618. We invite interested persons to participate by reviewing the draft environment assessment at *http://www.Regulations.gov,* and by submitting written comments, data or other views. Please include any comments on potential environmental impacts that may result if this special permit is granted.

Before acting on the special permit request, PHMSA will evaluate all comments received on or before the comments closing date. Comments will be evaluated after this date if it is possible to do so without incurring additional expense or delay. PHMSA will consider each relevant comment we receive in making our decision to grant or deny a request.

PHMSA is publishing the draft environment assessment in response to this special permit request.

| Docket number | Requester | Regulation(s) affected | Nature of special permit |
|---|---|---|---|
| PHMSA–2006–26618 ..... | El Paso Pipeline Group for Tennessee Gas Pipeline. | 49 CFR 192.611 ..... | The special permit request from El Paso Pipeline seeks permission to extend a previously approved permit for the 30-inch Niagara Spur Loop Line 230B–200, near Lockport, New York by an additional 1,250 feet. The previously issued permit allowed Tennessee Gas Pipeline (TGP) to operate at or below the MAOP of 877 psig. We are publishing the draft environment assessment to seek public comments on any environmental impacts that granting an extension of this permit would present. |

**Authority:** 49 U.S.C. 60118 (c)(1) and 49 CFR 1.53.

Issued in Washington, DC, on August 23, 2011.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Pipeline Safety Field Operations.*

[FR Doc. 2011–22342 Filed 8–31–11; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. PHMSA–2011–0101]**

### Pipeline Safety: Issuance of Draft Decision on GexCon US, Inc. Petition for Approval of Flame Acceleration Simulator

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice advises owners and operators of liquefied natural gas facilities and other interested parties that the Administrator has issued a Draft Decision on GexCon US, Inc.'s petition for approval of Flame Acceleration Simulator (FLACS). The Draft Decision is available for public inspection at Docket No. PHMSA–2011–0101 at *http://www.regulations.gov.*

**DATES:** Submit comments by September 14, 2011.

**ADDRESSES:** Comments should reference Docket No. PHMSA–2011–0101 and may be submitted in the following ways:

- *E–Gov Website: http://www.regulations.gov.* This Web site allows the public to enter comments on any Federal Register notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Management Facility, M–30, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* U.S. Department of Transportation, Docket Management Facility, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* Identify the docket number PHMSA–2011–0101 at the beginning of your comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You should know that 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.*). Therefore, you may want to review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or visit *http://www.regulations.gov* before submitting any such comments.

*Docket:* For access to the docket or to read background documents or comments go to *http://www.regulations.gov* at any time or to 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. If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on PHMSA–2011–0101.'' The Docket Clerk will date stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices

in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

**Note:** Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

Any comments received by September 14, 2011, will be considered before a Final Decision is issued. Late comments will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Charles Helm by telephone at 405–954–7219 or by e-mail at *Charles.Helm@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On December 22, 2010, Gexcon US, Inc., filed a petition for approval of FLACS as required under 49 CFR 190.9 and 193.2059(a). The regulations permit the Administrator to approve the use of alternative vapor gas dispersion models in siting liquefied natural gas facilities.

On August 15, 2011, the Administrator issued a Draft Decision proposing to approve GexCon US, Inc.'s petition. The Draft Decision is available for public inspection under PHMSA Docket No. PHMSA–2011–0101 at *http://www.regulations.gov.*

Issued in Washington, DC, on August 26, 2011.

**Alan K. Mayberry,**

*Deputy Associate Administrator for Field Operations.*

[FR Doc. 2011–22348 Filed 8–31–11; 8:45 am]

**BILLING CODE 4910–60–P**

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## DEPARTMENT OF THE TREASURY

### President's Advisory Council on Financial Capability Proposed Themes and Principles; Request for Comment

**AGENCY:** Department of the Treasury.

**ACTION:** Notice of request for public comment.

**SUMMARY:** The Department of the Treasury, on behalf of the President's Advisory Council on Financial Capability (''Council''), invites public comment on the Council's proposed themes and principles for recommendations presented at the Council's July 21, 2011, meeting. Established by Executive Order on January 29, 2010, the role of the Council is to advise the President and the Secretary of the Treasury on means to promote and enhance individuals' and families' financial capability.

**DATES:** Submission of comments is requested by September 22, 2011.

Submission of Written Statements: The public is invited to submit written comments to the Council. Written comments should be sent by any one of the following methods:

**Electronic Comments**

E-mail *ofe@treasury.gov;* or

**Paper Comments**

The Department of the Treasury, Office of Financial Education and Financial Access, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, the Department will make all comments available in their original format, including any business or personal information provided such as names, addresses, e-mail addresses, or telephone numbers, for public inspection and photocopying in the Department's library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC, 20220, on official business days between the hours of 10 a.m. and 5 p.m. You can make an appointment to inspect comments by calling (202) 622–0990. All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit comments that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:** Dubis Correal, Director, Office of Financial Education, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–5770 or *ofe@treasury.gov.*

**SUPPLEMENTARY INFORMATION:** On January 29, 2010, the President signed Executive Order 13530, creating the Council to assist the American people in understanding financial matters and making informed financial decisions, thereby contributing to financial stability. The Council is composed of two *ex officio* Federal officials and 11 non-governmental members appointed by the President with relevant backgrounds, such as financial services, consumer protection, financial access, and education. The role of the Council is to advise the President and the Secretary of the Treasury (''Secretary'') on means to promote and enhance individuals' and families' financial capability. The Council held its first meeting on November 30, 2010, its second on April 21, 2011, and its third on July 12, 2011. At the July 12 meeting, the Council outlined five guiding principles based on the current state of financial education and access, to serve as an aid to the Council in making its final recommendations to the President and the Secretary. Also on July 12, the Council identified three themes. Together, the principles and themes will serve as the framework for the final recommendations the Council will make to the President and the Secretary. The Council also believes there are many alternative tactics that can be used to achieve the goals expressed in the themes. In particular, the Council is interested in approaches that have proven to be effective in advancing the three themes and can be scaled up. Please include examples and associated research supporting the effectiveness of the approaches. Each of the Council subcommittees (Access, Partnerships, Research and Evaluation, and Youth) will review the timely submitted comments to inform their recommendations to the full Council.

*Request for Comments:* Comments are requested on both the themes and principles, and tactics that will achieve their goals. In particular, the Council is interested in approaches that have proven to be effective in advancing the three themes and can be scaled up. Commenters are urged to keep comments succinct and relevant to the content expressed by the themes and principles; therefore we request responses no longer than three pages. The themes and principles are posted on the Department's Web site: *http://www.treasury.gov/resource-center/financial-education/Pages/July122011.aspx.*

Dated: August 23, 2011.

**Rebecca Ewing,**

*Acting Executive Secretary, U.S. Department of the Treasury.*

[FR Doc. 2011–22435 Filed 8–31–11; 8:45 am]

**BILLING CODE 4810–25–P**

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of One Entity Pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria''

**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 entity whose property and interests in

property are blocked pursuant to Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria.''

**DATES:** The designation by the Director of OFAC of one entity identified in this notice, pursuant to Executive Order 13572, is effective on August 10, 2011.

**FOR FURTHER INFORMATION CONTACT:** Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

**SUPPLEMENTARY INFORMATION:**

### Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://*www.treas.gov/ofac) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

### Background

On April 29, 2011, the President issued Executive Order 13572, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria,'' (the ''Order'') pursuant to, *inter alia*, the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President expanded the scope of the national emergency declared in Executive Order 13338 of May 11, 2004.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Syria, including those related to repression; (2) to be a senior official of an entity whose property and interests in property are blocked pursuant to this Order; (3) to have materially assisted, sponsored or provided financial, material, or technological support for, or goods or services in support of, the activities in subsection (b)(i) of Section 1 of the Order or any person whose property and interests in property are blocked pursuant to Executive Order 13338, Executive Order 13460, or this Order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Executive Order 13460 or this Order.

On August 10, 2011, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, one entity whose property and interests in property are blocked pursuant to Executive Order 13572.

The listings for the entity on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

### Entity

Syriatel (a.k.a. Syriatel Mobile; a.k.a. Syriatel Mobile Telecom; a.k.a. Syriatel Mobile Telecom SA), Doctors Syndicate Building, Al Jalaa Street, Abu Roumaneh Area, PO Box 2900, Damascus, Syria [Syria].

Dated: August 10, 2011.

**Adam Szubin**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2011–22431 Filed 8–31–11; 8:45 am]

BILLING CODE 4810–AL–P

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## DEPARTMENT OF THE TREASURY

## Office of Foreign Assets Control

## Designation of Three 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 three 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 three individuals identified in this notice, pursuant to Executive Order 13224, are effective on August 16, 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 August 16, 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, three individuals whose property and interests in property are blocked pursuant to Executive Order 13224.

The designees are as follows:

1. ABDUL RAHMAN, Muhammad Jibril (a.k.a. ABDUL RAHMAN, Muhammad Jibriel; a.k.a. Abdurrahman, Mohammad Jibriel; a.k.a. Abdurrahman, Mohammad Jibril; a.k.a. Ardhan Bin Abu Jibril, Muhammad Ricky; a.k.a. Ardhan Bin Muhammad Iqbal, Muhammad Ricky; a.k.a. Ardhan, Muhamad Ricky; a.k.a. ''Syah, Heris''; a.k.a. ''Yunus, Muhammad''), Jl. M Saidi RT 010 RW 001 Pesanggrahan, South Petukangan, South Jakarta, Indonesia; Jl. Nakula of Witana Harja Complex, Block C, Pamulang, Tangerang, Banten, Indonesia; DOB 28 May 1984; alt. DOB 3 Dec 1979; alt. DOB 8 Aug 1980; alt. DOB 3 Mar 1979; POB East Lombok, West Nusa Tenggara, Indonesia; nationality Indonesia; Identification Number 2181558; National ID No. 3219222002.2181558; Passport S335026 (Indonesia) (individual) [SDGT].
2. Ba'Asyir, Abdul Rahim (a.k.a. Ba'ASYIR, 'Abd Al-Rahim; a.k.a. Ba'Asyir, Abdul Rachim; a.k.a. Ba'Asyir, Abdul Rochim; a.k.a. Ba'Asyir, Abdurochim; a.k.a. Ba'Asyir, Abdurrahim; a.k.a. Ba'Asyir, Abdurrahman; a.k.a. Ba'Asyir, Abdurrochim; a.k.a. Bashir, 'Abd Al-Rahim; a.k.a. Bashir, Abdul Rachim; a.k.a. Bashir, Abdul Rahim; a.k.a. Bashir, Abdul Rochim; a.k.a. Bashir, Abdurochim; a.k.a. Bashir, Abdurrahim; a.k.a. Bashir, Abdurrahman; a.k.a. Bashir, Abdurrochim); DOB 16 Nov 1977; alt. DOB 16 Nov 1974; POB Solo, Indonesia; alt. POB Sukoharjo, Central Java, Indonesia; nationality Indonesia (individual) [SDGT].
3. Patek, Umar (a.k.a. Kecil, Umar; a.k.a. Patek, Omar; a.k.a. ''Al Abu Syekh Al Zacky''; a.k.a. ''Pak Taek''; a.k.a. ''Pa'Tek''; a.k.a. ''Umangis Mike''); DOB 1970; POB Central Java, Indonesia; nationality Indonesia (individual) [SDGT].

Dated: August 16, 2011.

**Barbara C. Hammerle,**

*Acting Director, Office of Foreign Assets Control.*

[FR Doc. 2011–22441 Filed 8–31–11; 8:45 am]

**BILLING CODE 4811–AL–P**

## UNITED STATES INSTITUTE OF PEACE

### Meeting

**AGENCY:** United States Institute of Peace.

**DATE/TIME:** Thursday, September 22, 2011 (9 a.m.–6:30 p.m.).

**LOCATION:** 2301 Constitution Avenue, NW., Washington, DC 20037.

**STATUS:** Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

**AGENDA:** September 22, 2011 Board Meeting; Approval of Minutes of the One Hundred Fortieth Meeting (June 23–24, 2011) of the Board of Directors; Chairman's Report; President's Report; Overview of Budget and Congress; Grants Program Discussion; Board Executive Session; Other General Issues.

**CONTACT:** Tessie F. Higgs, Executive Office, *Telephone:* (202) 429–3836.

Dated: August 22, 2011.

**Michael Graham,**

*Senior Vice President for Management and CFO, United States Institute of Peace.*

[FR Doc. 2011–22331 Filed 8–31–11; 8:45 am]

**BILLING CODE 6820–AR–M**

## DEPARTMENT OF VETERANS AFFAIRS

### Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee will be held on September 15–16, 2011, in Room 250 at the Department of Veterans Affairs, 1575 Eye Street, NW., Washington, DC. On September 15, the session will begin at 8:30 a.m. and end at 5 p.m. On September 16, the session will begin at 8 a.m. and end at 12 noon. This meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology. The Committee assesses the capability of VA health care facilities and programs to meet the medical, psychological, and social needs of older Veterans and evaluates VA programs designated as Geriatric Research, Education, and Clinical Centers.

The meeting will feature presentations and discussions on VA's geriatrics and extended care programs, aging research activities, update on VA's employee staff working in the area of geriatrics (to include training, recruitment and retention approaches), Veterans Health Administration (VHA) strategic planning activities in geriatrics and extended care, recent VHA efforts regarding dementia and program advances in palliative care, and performance and oversight of VA Geriatric Research, Education, and Clinical Centers.

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 Mrs. Marcia Holt-Delaney, Program Analyst, Office of Geriatrics and Extended Care (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Marcia.Holt-Delaney@va.gov*. Individuals who wish to attend the meeting should contact Mrs. Holt-Delaney at (202) 461–6769.

Dated: August 26, 2011.

By Direction of the Secretary.

**Vivian Drake,**

*Acting Committee Management Officer.*

[FR Doc. 2011–22362 Filed 8–31–11; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

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Part II

## Commodity Futures Trading Commission

17 CFR Part 49

Swap Data Repositories: Registration Standards, Duties and Core Principles; Final Rule

**COMMODITY FUTURES TRADING COMMISSION**

**17 CFR Part 49**

**RIN 3038–AD20**

## Swap Data Repositories: Registration Standards, Duties and Core Principles

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is adopting its regulations to implement section 21 of the Commodity Exchange Act (''CEA'' or ''Act''), which establishes registration requirements, statutory duties, core principles and certain compliance obligations for registered swap data repositories (''SDRs''). Section 21 of the CEA was added by section 728 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').

**DATES:** Effective date is October 31, 2011. Applicants at that time may apply for registration as SDRs but are not required to do so. Mandatory registration and compliance with the registration rules will occur upon the effective date of the swap definition rulemaking, which the Commission will publish at a later date.

**FOR FURTHER INFORMATION CONTACT:** For questions relating to this rulemaking: Jeffrey P. Burns, Assistant General Counsel, Office of the General Counsel (''OGC''), at (202) 418.5101, *jburns@cftc.gov;* Susan Nathan, Senior Special Counsel, Division of Market Oversight (''DMO''), at (202) 418.5133, *snathan@cftc.gov;* or Adedayo Banwo, Counsel, OGC, at (202) 418.6249, *abanwo@cftc.gov,* Commodity Futures Trading Commission, Washington, DC 20581. With respect to questions relating to registration processing and compliance matters: Riva Spear Adriance, Associate Director, DMO, at (202) 418.5494, *radriance@cftc.gov* and Sebastian Pujol Schott, Associate Deputy Director, Market Compliance, DMO, at (202) 418.5641, *sschott@cftc.gov,* respectively.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Overview*

On July 21, 2010, President Obama signed into law the Dodd-Frank Act.[1] Title VII[2] amended the CEA[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency and promote market integrity within the financial system by, among other things (1) providing for the registration and comprehensive regulation of swap dealers (''SDs'') and major swap participants (''MSPs''); (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

To enhance transparency, promote standardization and reduce systemic risk, section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13)(G), which requires all swaps—whether cleared or uncleared—to be reported to SDRs,[4] which are new registered entities created by section 728 of the Dodd-Frank Act.[5] SDRs are required to perform specified functions related to the collection and

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), available at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

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

[3] 7 U.S.C. 1, *et seq.*

[4] Section 721 of the Dodd-Frank Act amends section 1a of the CEA to add the definition of SDR. Pursuant to section 1a(48), the term ''swap data repository means any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps.'' 7 U.S.C. 1a(48).

[5] The Commission notes that currently there are global trade repositories for credit, interest rate and equity swaps. Since 2009, all G–14 dealers have submitted credit swap data to the Depository Trust and Clearing Corporation's (''DTCC'') Trade Information Warehouse. In January 2010 TriOptima launched the Global OTC Derivatives Interest Rate Trade Reporting Repository after selection by the Rates Steering Committee of the International Swaps and Derivatives Association (''ISDA'') to provide a trade repository to collect information on trades in interest rate swaps. In August 2010, DTCC also launched the Equity Derivatives Reporting Repository for equity swaps and other equity derivatives. Other entities may also perform trade repository functions on a more limited basis based on various business models and/or regional or localized considerations. In addition, a variety of firms also provide ancillary services and functions essential to the efficient operation of trade reporting of swaps. Recently, ISDA in anticipation of the implementation of swap data reporting and SDR requirements related to the Dodd-Frank Act selected DTCC and a joint venture between DTCC's Deriv/SERV and EFETnet as ''global'' repositories for interest rates available at *http://www2.isda.org/attachment/MzExMQ==/InterestRatesRepositorySelection.pdf* and commodities available at *http://www2.isda.org/attachment/MzIwNw==/CommodityRepositorySelection.pdf.* In addition, the Global FX Divisions of the Association of Financial Markets Europe (AFME), Securities industry and Financial Markets (SIFMA) and the Asian Securities industry and Financial Markets (ASIFMA) have recommended a partnership with DTCC and SWIFT for the purpose of developing a foreign exchange trade repository available at *http://www.sifma.org/news/news.aspx?id=8589934651.*

maintenance[6] of swap transaction data and information and to make such data and information directly and electronically available to regulators. Section 728 of the Dodd-Frank Act added to the CEA new section 21 governing registration and regulation of SDRs and directed the Commission to promulgate rules governing those duties and responsibilities. Section 21 requires that SDRs register with the Commission regardless of whether they are also licensed as a bank or registered as a security-based swap data repository with the Securities and Exchange Commission (''SEC''), and to submit to inspection and examination by the Commission.[7]

To register and maintain registration with the Commission, SDRs are required to comply with specific duties and core principles enumerated in section 21 as well as other requirements that the Commission may prescribe by rule. As described more fully in the Commission's Notice of Proposed Rulemaking (''SDR NPRM''),[8] new section 21(c) mandates that SDRs (1) accept data; (2) confirm with both counterparties the accuracy of submitted data; (3) maintain data according to standards prescribed by the Commission; (4) provide direct electronic access to the Commission or any designee of the Commission (including another registered entity); (5) provide public reporting of swap data in the form and frequency required by the Commission; (6) establish automated systems for monitoring and analyzing data (including the use of end user clearing exemptions) at the direction of the Commission; (7) maintain user privacy; (8) on a confidential basis, pursuant to section 8 of the CEA,[9] upon request and after notifying the Commission, make data available to other specified regulators; and (9) establish and maintain emergency and business continuity-disaster recovery procedures (''BC–DR''). In connection with the sharing of confidential information with other regulators, the SDR must, pursuant to new section 21(d), receive a written agreement from such regulator, prior to sharing the information, stating that it will abide by the confidentiality provisions of section 8 and agree to indemnify both the SDR and the Commission against any litigation expenses relating to information provided under section 8.

New section 21(e) also added a provision that each SDR designate a chief compliance officer (''CCO'') with specified duties. New section 21(f) established three focused core principles. First, unless necessary or appropriate to achieve the purposes of the CEA, an SDR may not adopt any rule or take any action that results in any unreasonable restraint or trade, or impose any material anticompetitive burden on the trading, clearing or reporting of transactions. Second, each SDR must establish transparent governance arrangements to fulfill the public interest requirements of the CEA and support the objectives of the Federal government, owners and participants. Third, each SDR must establish and enforce rules to minimize conflicts of interest in the SDR's decision-making processes and establish a process for resolving conflicts of interest. Section 21(f) further directs the Commission to establish additional duties for SDRs to minimize conflicts of interest, protect data, ensure compliance and guarantee the safety and security of the SDR.[10]

### *B. International Considerations*

Section 752(a) of the Dodd-Frank Act directs the Commission to consult and coordinate with foreign regulatory authorities regarding the establishment of consistent international standards for the regulation of swaps and various ''swap entities.'' The Commission is committed to a cooperative international approach to the registration and regulation of SDRs and has consulted extensively with various foreign regulatory authorities in promulgating both its proposed and final regulations. In this regard, both the proposed and final part 49 regulations reflect the Commission's intent to harmonize our approach to the extent possible with the European Commission's regulatory proposal related to OTC derivatives, central counterparties and trade repositories.[11] The Commission's part 49 regulations also largely adopt the recommendations of the May 2010 ''CPSS–IOSCO Consultative Report, Considerations for Trade Repositories in the OTC Derivatives Market'' (''Working Group Report'').[12] The Commission believes that the Dodd-Frank Act and the part 49 regulations are consistent with the goals of the Working Group Report. As noted in the SDR NPRM, section 21 of the CEA does not authorize the Commission to exempt any entity performing the functions of an SDR from the registration requirements or any other duties established by the Dodd-Frank Act.[13] Certain non-U.S. swap activity is excluded, however, from the reach of the Dodd-Frank Act and Commission regulations pursuant to section 2(i) of the CEA.[14]

### *C. Summary of the Proposed Part 49 Regulations*

Against this background, the Commission developed and published for comment part 49 of the

[6] *See* Commission, Notice of Proposed Rulemaking: Swap Data Recordkeeping and Reporting Requirements, 75 FR 76574 (Dec. 8, 2010) (''Data NPRM''). The Data NPRM, among other things, proposed regulations governing SDR data collection and reporting responsibilities under part 45 of the Commission's regulations.

[7] Section 21(a)(1)(B) permits derivatives clearing organizations (''DCOs'') to register as SDRs.

[8] Commission, Notice of Proposed Rulemaking: Swap Data Repositories, 75 FR 80898 (Dec. 23, 2010).

[9] Section 8(e) of the CEA, 7 U.S.C. 12(e), establishes among other things the conditions under which the Commission may furnish information obtained in connection with the administration of the CEA to any department or agency of the United States. Such information shall not be disclosed by such department or agency except in any action or proceeding under the laws of the United States to which it, the Commission or the United States is a party.

[10] Pursuant to this provision, the Commission also may develop additional duties taking into account evolving standards of the United States and the international community. Section 21(f)(4) of the CEA, 7 U.S.C. 24a(f)(4). This provision is sometimes referred to as ''Core Principle 4.''

[11] *See* Proposal for a Regulation of the European Parliament and of the Council on OTC Derivatives, Central Counterparties, and Trade Repositories (the ''European Commission Proposal''), COM (2010). *See also* SDR NPRM *supra* note 8 at 80899–80900 and note 16. The proposal, if implemented, would become a part of the European Union's framework for financial supervision. The European Union is composed of 27 member states and the European Securities and Markets Authority will supervise the European securities markets along with the national regulators of the member states.

[12] This working group was jointly established by the Committee on Payment and Settlement Systems (''CPSS'') of the Bank of International Settlements (''BIS'') and the Technical Committee of the International Organization of Securities Commissions (''IOSCO''). The Working Group Report presented a set of factors to consider in connection with the design, operation and regulation of SDRs. A significant focus of the Working Group Report is access to SDR data by appropriate regulators: the report urges that a trade repository ''should support market transparency by making data available to relevant authorities and the public in line with their respective information needs.'' The Working Group Report is available at *http://www.bis.org/publ/cpss90.pdf. See also* CPSS–IOSCO Consultative Report, Principles of Financial Market Infrastructures (March 2011) available at *http://www.bis.org/publ/cpss94.pdf.* See also Financial Stability Board, Implementing OTC Derivatives Market Reforms, October 25, 2010 (''FSB Report''); FSB, Derivative Market Reforms, Progress Report on Implementation, April 15, 2010 (''FSB Progress Report'').

[13] Section 721(d) of the Dodd-Frank Act, which as relevant here amended the Commission's exemptive authority under section 4c(1) of the CEA, does not permit the Commission to grant exemptions with respect to new section 21 of the CEA unless expressly authorized.

[14] Section 2(i) of the CEA, as amended by section 722 of the Dodd-Frank Act, excludes from U.S. jurisdiction all swap activity that does not have a ''direct and significant connection with activities in, or effect on, commerce of the United States'' unless such activity contravenes regulations necessary to prevent evasion. 7 U.S.C. 2(i)(1)–(2).

Commission's regulations establishing provisions applicable to the registration and regulation of SDRs.[15] Proposed part 49 of the Commission's regulations included procedures and substantive requirements to achieve and maintain registration as an SDR—including proposed standards for compliance with each of the statutory duties enumerated in section 21(c), the three core principles outlined in section 21(f), and proposed additional duties consistent with the authority conferred by section 21(f)(4).

1. Proposed Regulations Related to Registration

Section 21(a)(1)(A) makes it unlawful for any person, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR. Consistent with this statutory directive, the Commission proposed regulations establishing procedural and substantive requirements governing registration as an SDR.[16] The proposed regulations required that SDRs specify the asset class or classes for which they will accept swap data and undertake to accept all swaps in asset classes for which they have specified.[17] If the applicant is a foreign entity, the proposed regulations specified that it be required to certify, and provide an opinion of counsel, that as a matter of law it is able to provide the Commission with prompt access to its books and records and to submit to onsite inspection and examination by the Commission.[18] The proposal established the standard of review as well as the standards for denial, suspension and revocation of registration. In addition, the proposed rules provided a ''provisional registration'' for SDR applicants that are in substantial compliance with the registration standards set forth in the regulations.[19] With respect to Commission review of SDR rules and rule amendments, the proposed rules provided procedures by which an applicant for SDR registration may either request that the Commission approve any or all of its rules or self-certify that its rules comply with the CEA or Commission regulations thereunder (''self certification'').[20]

The proposed regulations separately required SDRs to file with the Commission a notice of an equity interest transfer of ten percent or more, as defined in the Commission's revised part 40 rules[21] and specified the necessary information and related notifications. Similarly, the proposed rules described the procedures and requirements for registering successor entities of an SDR.[22]

2. Proposed Regulations Related to Statutory Duties of SDRs

Section 21(c) of the CEA prescribes the minimum duties required of SDRs. To register and maintain registration, an SDR must (i) accept swap data as prescribed by the Commission; (ii) confirm with both counterparties to a swap the accuracy of the data; (iii) maintain the data submitted; (iv) provide the Commission or its designee (including another registered entity) with direct electronic access to the swap data; (v) provide the information prescribed by the Commission to comply with the public reporting requirements set forth in section 2(a)(13) of the CEA; (vi) establish automated systems for monitoring, screening, and analyzing swap data; (vii) maintain the privacy and confidentiality of any and all swap data received by the SDR; (viii) provide access to the swap data to specified appropriate domestic and foreign regulators; and (ix) adopt and implement emergency and BC–DR procedures.

Pursuant to the authority granted by sections 21(f)(4)[23] and 8a(5)[24] of the CEA, the Commission proposed to include in part 49 four additional duties requiring SDRs to (i) adopt and implement system safeguards, including BC–DR plans; (ii) maintain sufficient financial resources; (iii) furnish market participants with a disclosure document setting forth the risks and costs associated with using the services of an SDR; and (iv) provide fair and open access and fees and charges that are equitable and non-discriminatory. Proposed §§ 49.9–49.18 and 49.23–49.27 described the standards for compliance with each of these duties.

3. Proposed Regulations Related to Data Acceptance, Accuracy and Recordkeeping

Sections 21(c)(1)–(5) of the CEA, as adopted by section 728 of the Dodd-Frank Act, address the duties of SDRs in connection with accepting and maintaining swap data, ensuring accuracy and reliability, and providing direct electronic data access to the Commission or its designee.[25] To implement section 21(c)(1), the Commission proposed that SDRs adopt policies and procedures that will enable them to electronically accept data and other regulatory information, and to accept all swaps in an asset class, or classes, for which they have registered.[26] The Commission also proposed that SDRs establish policies and procedures to prevent a valid swap from being invalidated, altered or modified through the SDR's confirmation or recording process, and provide facilities for effectively resolving disputes concerning the accuracy of swap data and positions recorded by the SDR.[27]

Proposed § 49.11 implemented section 21(c)(2) of the CEA and specified that an SDR adopt policies and procedures to ensure the accuracy of swap data reported to it, and must confirm with both counterparties to the swap[28] the accuracy of data and information submitted by them.[29]

Proposed § 49.12 implemented section 21(c)(3) of the CEA and required

[15] A full description and discussion of each proposed rule can be found in the SDR NPRM, *supra* note 8.

[16] Proposed §§ 49.3–49.4 and 49.6–49.7; Proposed Form SDR.

[17] Proposed § 49.10. Proposed § 49.2(a)(2) defines the term ''asset class'' as those swaps in a particular broad category of goods, services or commodities underlying a swap. The asset classes include credit, equity, interest rates, currency, other commodities, and such other asset classes as may be determined by the Commission.

[18] Proposed § 49.7.

[19] Proposed § 49.3(b).

[20] Proposed § 49.8.

[21] *See* Commission, Notice of Proposed Rulemaking: Revisions to part 40 (Provisions Common to Registered Entities), 75 FR 67282 (Nov. 2, 2010)(''Part 40 NPRM'') and Final rule: Revisions to part 40 (Provisions Common to Registered Entities), 76 FR 44776 (July 27, 2011)(''Part 40 Adopting Release'') (collectively, ''part 40'').

[22] Proposed § 49.6.

[23] Section 21(f)(4) of the CEA; *see supra* note 10.

[24] Section 8a(5) of the CEA, 7 U.S.C. 12a(5), authorizes the Commission to promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or accomplish any of the purposes of the CEA. In connection with SDRs, section 21(a)(3)(A)(ii), 7 U.S.C. 24a(3)(A)(ii), specifically requires that an SDR, to be registered and maintain registration, must comply with any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the CEA.

[25] In a companion rulemaking under new part 45 of its regulations, the Commission has proposed data elements that must be reported to SDRs and has in addition provided specific requirements for SDRs relating to (i) determining which counterparty must report the swap data to the SDR; (ii) third-party facilitation of swap data reporting; (iii) reporting to a single SDR in connection with the reporting of swap data; and (iv) reporting errors and omissions. *See* Data NPRM *supra* note 6.

[26] Proposed § 49.10.

[27] *Id.*

[28] These proposed confirmation requirements would not apply to real-time public reporting. *See* proposed § 43.3(f) set forth in Commission, Notice of Proposed Rulemaking: Real-Time Public Reporting of Swap Transaction Data, 74 FR 76140 (Dec. 7, 2010) (the ''Real-Time NPRM'').

[29] As noted, the form and content of the swap data ultimately will be established in the Commission's part 45 regulations related to data elements and standards. The Data NPRM detailed and defined the terms ''confirmation'' and ''confirmation data.'' *See* Data NPRM *supra* note 6.

SDRs to maintain the books and records of all activity and data relating to swaps reported to the SDR, consistent with recordkeeping and reporting rules to be established in new parts 43 and 45 of the Commission's regulations.[30] As proposed, § 49.12 required that SDR books and records be open to inspection on request by any representative of the Commission, the United States Department of Justice, the SEC or any representative of a prudential regulator authorized by the Commission. The proposal would further require each SDR that publicly disseminates swap data in real time to comply with the real-time reporting requirements prescribed in part 43.[31]

The Commission proposed two requirements in connection with the provision of direct electronic access mandated by section 21(c)(4) of the CEA. First, SDRs would be required to provide the Commission or its designee with connectivity and access to the SDR's database; second, SDRs would be required to electronically deliver to the Commission or its designee certain data in the form and manner prescribed by the Commission.[32] The Commission also proposed that SDRs be required to provide it with monitoring tools identical to those provided to the SDR's compliance staff and CCO.[33] In connection with section 21(c)(5)'s mandate that SDRs establish automated systems for monitoring, screening and analyzing swap data, the Commission proposed that at this time SDRs establish the infrastructure necessary to fulfill the statutory requirement.[34]

4. Proposed Regulations Relating to Data Privacy, Confidentiality and Access

Section 21(c)(6) of the CEA requires that an SDR maintain the privacy of all swap transaction information that it receives from an SD, counterparty or any other registered entity. The Commission recognized that data related to real-time public reporting is, by its nature, publicly available, while detailed core data intended for use by the Commission and other regulators is subject to statutory confidential treatment. Accordingly, the Commission proposed to implement section 21(c)(6)'s mandate—and also in part the conflicts of interest core principle applicable to SDRs (''Core Principle 3'')—by requiring that ''SDR Information'' that is not subject to real-time reporting be treated as non-public and confidential and may not be accessed, disclosed, or used for purposes unrelated to SDR responsibilities under the CEA unless the submitters of the data explicitly agree to such use.[35] The proposed regulation also directed SDRs to establish and maintain safeguards, policies and procedures addressing the misappropriation or misuse of swap data that the Commission is prohibited from disclosing pursuant to section 8 of the CEA (''Section 8 Material'')[36] or similar material, such as intellectual property.

The Commission proposed to prohibit the use of SDR data for commercial or business purposes by the SDR or any of its affiliated entities with a limited exception where the SDR has received the express written consent of the market participants who submitted the swap data.[37] The proposal required that SDRs develop and maintain firewalls to protect data they are required to maintain, and permitted access to third-party service providers so long as they have implemented stringent confidentiality procedures to protect data and information from improper disclosure.[38]

Section 21(c)(7) requires that an SDR make data available to certain domestic and foreign regulators (''Appropriate Domestic Regulator'' or ''Appropriate Foreign Regulator'') under specified circumstances. To implement this provision, the Commission proposed definitions and standards for determining appropriateness—such as an existing memorandum of understanding (''MOU'') or similar agreement executed with the Commission—as well as procedures for gaining access to data maintained by SDRs.[39] Separately, section 21(d) mandates that prior to receipt of any requested data or information from an SDR, the Appropriate Foreign or Appropriate Domestic Regulator must execute a ''Confidentiality and Indemnification Agreement'' with the SDR. The Commission proposed to implement this provision by requiring that such an agreement be executed between SDRs and each appropriate regulator.[40] The Commission acknowledged in the SDR NPRM that this requirement could have the unintended effect of inhibiting access to data maintained by SDRs. Consistent with the international harmonization envisioned by section 752 of the Dodd-Frank Act, the Commission stated that it will endeavor to provide sufficient access to SDR data to Appropriate Foreign and Domestic Regulators. In that regard, the Commission noted that pursuant to section 8(e) of the CEA it may share confidential information in its possession with any foreign futures authority, department or agency of any foreign government or political subdivision thereof.[41]

5. Proposed Regulations Related to Emergency Procedures

To implement section 21(c)(8), the Commission proposed § 49.23 to require SDRs to adopt specific policies and procedures for the exercise of emergency authority. The Commission based its proposals on existing emergency authority concepts—in particular, the application guidance for former designated contract market (''DCM'') Core Principle 6.[42] As proposed, § 49.23 required SDRs to enumerate the circumstances in which it is authorized to invoke its emergency authority, applicable procedures, and the range of measures it is authorized to take in response to an emergency. Further, the emergency policies and procedures adopted by an SDR must specifically address conflicts of interest and include a requirement that the SDR's CCO be consulted in any emergency that may raise conflicts of interest. The proposal further required an SDR to identify to the Commission the persons authorized to exercise emergency authority and the chain of command, and to promptly notify the

[30] *See* § 45.2 set forth in the Data NPRM *supra* note 6 and § 43.3 set forth in Real-Time NPRM *supra* note 28.

[31] *Id.*

[32] Proposed § 49.17.

[33] *Id.*

[34] Proposed §§ 49.13 and 49.14. The latter proposal was designed to implement the Commission's program to monitor and prevent abuse of end-user clearing exemption claims. *See* section 2(h)(7) of the CEA, as amended, which creates a framework by which certain swaps may be exempt from clearing if one of its counterparties is (i) not a financial entity; (ii) is using swaps to hedge or mitigate commercial risk; and (iii) notifies the Commission as to how it generally meets the financial obligations associated with entering into non-cleared swaps (the ''end-user clearing exemption''). *See* Commission, Notice of Proposed Rulemaking: End-User Exemption to Mandatory Clearing of Swaps, 75 FR 80747 (Dec. 23, 2010) (''End-User NPRM'').

[35] Proposed § 49.16. However, aggregated data that cannot be attributed to individual transactions or market participants may be made publicly available by SDRs.

[36] *Id.* Section 8(a) of the CEA prohibits the Commission from disclosing information or material if it ''would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' *See also* the definition of ''Section 8 Material'' in § 49.2(a)(14).

[37] Proposed § 49.17(g)(2).

[38] *Id.* This proposal was intended to partially implement section 21(c)(6)'s privacy provisions as well as the provisions of section 21(f)(3), which requires an SDR to establish and enforce rules to mitigate conflicts of interest. *See* SDR NPRM *supra* note 8 at 80911.

[39] *Id.*

[40] Proposed § 49.18.

[41] SDR NPRM *supra* note 8 at 80910.

[42] *Id.* at 80911.

Commission of any emergency action taken.

6. Regulations Related to Designation of a Chief Compliance Officer

Section 21(e) establishes the CCO as a focal point for compliance. The Commission implemented section 21(e) in proposed § 49.22, which further developed and detailed CCO statutory requirements and responsibilities. Specifically, proposed § 49.22 established the supervisory regime applicable to CCOs; specified removal provisions; specified the duties and authorities of CCOs; and detailed the information that must be included in the required annual compliance report and the procedure for submission of the report to the Commission.

7. Core Principles Applicable to SDRs

Unlike prescriptive rules, core principles generally provide the registered entity with reasonable discretion in establishing the manner of compliance with each specified principle. Section 21(f) enumerates three focused core principles applicable to SDRs: (1) Antitrust considerations (''Core Principle 1''); (2) governance arrangements (''Core Principle 2''); and (3) conflicts of interest, Core Principle 3.[43] With respect to Core Principle 1, antitrust considerations, the Commission proposed in § 49.19 that, unless necessary or appropriate to achieve the purposes of the CEA, SDRs should avoid adopting any rule, regulation or policy or taking any action that results in an unreasonable restraint of trade or imposes any material anticompetitive burden on the trading, clearing, reporting, and/or processing of swaps.

Core Principle 2 requires that each SDR establish governance arrangements that are transparent to fulfill public interest requirements and to support the objectives of the Federal government, owners and participants. Core Principle 3 provides that each SDR establish and enforce rules to minimize conflicts of interest in its decision-making processes and establish a process for resolving such conflicts. In order to ensure proper implementation of Core Principles 2 and 3, the Commission proposed § 49.20 (focusing on the transparency of SDR governance arrangements) and § 49.21 (addressing SDR identification and mitigation of existing and potential conflicts of interest).

Proposed § 49.20 prescribed minimum standards for the transparency of SDR governance arrangements and required that the SDR make available certain information to the Commission and the public that is current, accurate, clear and readily accessible; and that it disclose summaries of significant decisions. In addition, proposed § 49.20 required each SDR to ensure that an independent perspective be reflected in the nominations process for its board of directors as well as the process for assigning members of the board or others to SDR committees. Finally, the proposal included a number of substantive requirements for SDR boards of directors and committees. In implementing Core Principle 3, the Commission proposed in § 49.21 that each SDR maintain and enforce rules that would identify and mitigate existing and potential conflicts of interest in its decision-making processes.

8. Proposed Regulations Relating to Additional Duties

As noted above, section 21(f)(4) provides authority under which the Commission may prescribe additional duties for SDRs. Pursuant to section 21(f)(4) and section 8a(5) of the CEA, the Commission proposed to include in part 49 four additional duties that would require SDRs to (i) adopt and implement system safeguards, including BC–DR plans;[44] (ii) maintain sufficient financial resources;[45] (iii) furnish to market participants a disclosure document setting forth the risks and costs associated with using the services of an SDR;[46] and (iv) provide fair and open access to the SDR and fees that are equitable and non-discriminatory.[47]

9. Proposed Regulations Related to Real-Time Public Reporting

As discussed above, section 727 of the Dodd-Frank Act established certain public reporting requirements for all swap transactions and participants, creating new section 2(a)(13)(B) which establishes the reporting requirements pursuant to which the Commission is authorized to promulgate rules mandating the public availability of swap transaction and pricing data in ''real time.''[48] To implement these provisions, the Commission proposed a real-time public reporting framework for swap transaction and pricing data in new part 43 of its Regulations.[49] Proposed § 49.15 details SDRs' ability to accept and publicly disseminate swap transaction and pricing data on a swap market as well as those executed off-exchange; its provisions apply to off-facility swap transactions and to all swap transactions executed on a SEF or DCM that fulfill the public dissemination requirement of proposed part 43 by reporting to a registered SDR. As proposed, § 49.15 required SDRs to establish electronic reporting systems necessary to receive and publicly disseminate all required data fields and further requires SDRs who disseminate swap transaction and pricing data in real time to promptly notify the Commission when such data is not timely reported.

10. Proposed Regulations Relating to Implementation of SDR Rules

Proposed § 40.8 was intended to conform SDR implementation procedures to the proposed amendments to the Commission's part 40 regulations addressing provisions common to all registered entities.[50] The proposal provided that an applicant for registration as an SDR may request Commission approval of some or all of its rules or, alternatively, may self-certify its rules. Proposed § 40.8 specified procedures applicable to both alternatives.

*D. Overview of Comments Received*[51]

The Commission received a total of 29 comments from a broad range of

[43] Section 21(f)(4), the ''fourth core principle,'' grants broad rulemaking authority to the Commission to establish additional duties for SDRs. The Commission proposed to add several additional duties pursuant to this authority; they are discussed in section II. E, below.

[44] Proposed § 49.24.

[45] Proposed § 49.25.

[46] Proposed § 49.26.

[47] Proposed § 49.27.

[48] Section 2(a)(13)(A) of the CEA defines real-time public reporting to mean ''as soon as technologically practicable after the time at which the swap transaction has been executed.''

[49] *See* Real-Time NPRM *supra* note 28.

[50] *See* Part 40 *supra* note 21.

[51] The initial comment period with respect to proposed part 49 closed on February 22, 2011. The comment periods for most proposed rulemakings implementing the Dodd-Frank Act were reopened for 30 days from April 27 through June 2, 2011. Throughout this release, comment letters (''CL'') are identified by ''CL'' and the submitter. Each letter will be addressed as appropriate in connection with the discussion, *infra,* of the final regulatory provision or provisions to which they relate. All comment letters are available through the Commission Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=939.* Comments addressing the proposed part 49 regulations were received from: (1) American Benefits Council (''ABC'') and the Committee on the Investment of Employee Benefits Assets (''CIEBA'') on February 22, 2011 (''CL–ABC/CIEBA''); (2) Americans for Financial Reform (''AFR'') on February 22, 2011 (''CL–AFR''); (3) Argus Media Inc. (''Argus'') on February 22, 2011 (''CL–Argus''); (4) Association of Institutional Investors (''AII'') on June 2, 2011 (''CL–AII''); (5) Chris Barnard (''Barnard'') on May 25, 2011 (''CL–Barnard''); (6) Better Markets on February 22, 2011 (''CL–Better Markets''); (7) CIEBA on June 3, 2011 (''CL–CIEBA''); (8) CME Group (''CME'') on February 22, 2011 (''CL–CME''); (9) Council of Institutional Investors (''Council'') on February 18, 2011 (''CL–Council''); (10) Depository Trust & Clearing

interested persons, including existing trade repositories and potential SDRs, foreign regulatory authorities, trade organizations, banks, commercial end-users, and DCMs. While commenters generally expressed support for the proposed part 49 rules, they also offered recommendations for clarification or modification of specific provisions. Comments generally focused on one or more of a dozen broad themes, including (i) SDRs as a public utility; (ii) commercialization of data; (iii) indemnification requirements; (iv) monitoring, screening and analyzing swap data; (v) ability of SDRs to invalidate or modify the terms of an executed swap; (vi) real-time public reporting; (vii) pricing; (viii) bundling of services; (ix) registration; (x) governance and conflicts of interest; (xi) access to data; and (xii) implementation and phase-in.[52] Individual comments will be described and discussed as appropriate throughout this section.

## II. Part 49 of the Commission's Regulations: The Final Rules

As proposed in the SDR NPRM, part 49 contains provisions governing the registration and regulation of SDRs. The scope of part 49 is established in § 49.1; definitions are contained in § 49.2. Proposed §§ 49.3–49.4 and 49.6–49.7, along with Form SDR, establish the procedures and substantive requirements for registration as an SDR. Proposed § 49.5 governs equity interest transfers and § 49.8 establishes procedures under which an SDR must implement its rules. Compliance with the statutory duties described in section 21(c) of the CEA is established in § 49.9 and detailed in §§ 49.10 through 49.18 and §§ 49.23 and 49.24. Core principles applicable to SDRs as outlined in section 21(f) are set forth in §§ 49.19 through 49.22. Additional duties promulgated pursuant to section 21(f)(4) of the CEA (''Core Principle 4'') are set forth in §§ 49.25 through 49.27. Unless otherwise discussed in this section, the regulations are adopted as proposed.

### *A. Requirements of Registration*

#### 1. Procedures for Registration—§ 49.3

To implement the requirements of section 21(a), the Commission proposed § 49.3 to establish application and approval procedures. Proposed § 49.3 required each SDR applicant to file for registration electronically on proposed Form SDR.[53] Form SDR would require each applicant to provide the Commission with documentation relating to its business organization, financial resources, technological capabilities, and accessibility of services.[54] The Commission is adopting §§ 49.3–49.7 substantially as proposed subject to the minor modifications discussed below.

The Commission received one comment relating to registration generally. CIEBA requested that the Commission clarify that it will register any qualified applicant as an SDR.[55] The Commission confirms that it expects to register any applicant that satisfies the requirements for registration established in section 21 of the CEA and this part 49.[56]

As discussed below, although it received no comments regarding proposed Form SDR, the Commission has determined to make minor technical and conforming changes to Form SDR and also to amend certain provisions of §§ 49.3–49.7.[57]

#### (a) Form SDR

The Commission is making certain technical amendments to Form SDR to harmonize, to the extent possible, the SDR registration procedures with the application procedures for DCMs, DCOs, and SEFs. For example, the word ''material'' has been added to the registration instructions to make clear that ''intentional misstatements or omissions of material fact may constitute federal criminal violations.'' Because the registration application must be filed electronically, Form SDR as adopted no longer requires the applicant to provide two copies of Form SDR and attached exhibits. Additionally, the Commission revised Item 8 to account for various organizational structures. Moreover, instead of requesting ''State/Country'' of the entity's incorporation or filing, the final Form SDR requests that the applicant note the ''Jurisdiction'' of the organization and list the jurisdictions in which the applicant is qualified to do business. This information will assist the Commission in determining whether other domestic and foreign regulators should be contacted during the application process.

Corporation (''DTCC'') on February 22, 2011 (''CL–DTCC I''); (11) DTCC on June 3, 2011 (''CL–DTCC II''); (12) DTCC on June 10, 2011 (''CL–DTCC III''); (13) European Securities and Markets Authority (''ESMA'') on January 17, 2011 (''CL–ESMA''); (14) Foreign Banking Organizations—Barclays, BNP Paribas, Deutsche Bank, Royal Bank of Canada, The Royal Bank of Scotland Group, Societe Generale and UBS (''Foreign Banks'') on January 11, 2011 (''CL–Foreign Banks''); (15) Global Foreign Exchange Division (''Global FX Division') formed in cooperation with the Association for Financial Markets in Europe (''AFME''), the Securities Industry and Financial Markets Association (''SIFMA'') and the Asia Securities Industry and Financial Markets Association (''ASIFMA'') on February 22, 2011 (''CL–Global FX Division''); (16) Managed Funds Association (''MFA'') on February 21, 2011 (''CL–MFA''); (17) Markit on February 7, 2011 (''CL–Markit''); (18) MarkitSERV on February 7, 2011 (''CL–MarkitSERV I''); (19) MarkitSERV on June 3, 2011 (''CL–MarkitSERV II''); (20) MarkitSERV on June 3, 2011 (''CL–MarkitSERV III''); (21) Not-For-Profit Electric End-User Coalition consisting of the National Rural Electric Cooperative Association, the American Public Power Association and the Large Public Power Council (''NFPE Coalition'') on February 22, 2011 (CL–NFPE Coalition''); (22) The Office of the Comptroller of the Currency (''OCC'') on June 30, 2011 (''CL–OCC''); (23) Regis—TR on February 22, 2011 (''CL–Regis-TR''); (24) Reval.com, Inc. (''Reval'') on January 24, 2011 (''CL–Reval I''); (25) Reval on February 18, 2011 (''CL–Reval II''); (26) Reval on February 20, 2011 (''CL–Reval III''); (27) Securities Industry and Financial Markets Association (''SIFMA'') Asset Management Group (''AMG'') on February 7, 2011 (''CL–AMG''); (28) SunGard Energy & Commodities (''Sungard'') on February 22, 2011 (''CL–Sungard''); and (29) TriOptima on February 22, 2011 (''CL–TriOptima'').

In addition, five comment letters submitted in response to the Data NPRM also referenced the proposed part 49 regulations. Those commenters are: (1) DTCC on February 7, 2011 (''CL–Data-DTCC''); (2) Encana Marketing (USA) Inc. (''Encana'') on February 7, 2011 (''CL–Data-Encana''); (3) Foreign Banks on February 17, 2011 (''CL–Data-Foreign Banks''); (4) Global FX Division on February 7, 2011 (''CL–Data-Global FX Division''); and (5) InterContinentalExchange, Inc. (''ICE'') on February 7, 2011 (''CL–Data-ICE''). The comments have been considered in connection with the promulgation of these final rules, and will be addressed in connection with the discussion of the provisions to which they relate.

The Commission notes that both DTCC and CME submitted additional late comment letters related to the SDR Rulemaking on July 21, 2011 and July 29, 2011, respectively. These late-filed comment letters were received very close to the Commission's decision on the final part 49 rules; the letters raised no new issues, and therefore, the Commission is not providing a specific response to any issues raised by the letters.

[52] The Commission in its SDR NPRM requested comment on the nature and length of any implementation or phase-in period for proposed part 49. Six commenters responded, recommending variously that there be separate phase-in periods for different asset classes and/or that the Commission sequence the implementation of reporting rules by first implementing parts 45 and 49. Subsequently, when sufficient information is collected to fully study the markets, rules related to real-time and block trading should be implemented. The Commission has determined to separately address implementation and sequencing issues and will consider and address comments related to those concerns in connection with that action. In addition, 14 additional comments were received by the Commission in connection with its request for comment on the order in which it should consider final rulemakings made under the Dodd-Frank Act. *See infra* note 315 for cites to the additional letters.

[53] This form would be used for initial or provisional registration as an SDR as well as for any amendments to the applicant's registration status.

[54] SDR NPRM *supra* 8 at 80900–80901.

[55] *See* CL–CIEBA *supra* note 51.

[56] In particular, the Commission notes that section 21(B) of the CEA, as amended by section 728 of the Dodd-Frank Act, expressly provides that a DCO may register as an SDR.

[57] The Commission in approving applicants for registration as SDRs expects to provide an identifying code that is unique for each ''approved'' SDR in order to provide proper identification for each SDR and the transactions that are reported to it.

Both § 49.3(a)(5) and Form SDR, as adopted, require that an annual amendment on Form SDR be filed within 60 days of the end of each fiscal year rather than on a calendar year basis. The Commission believes that this is consistent with the CCO filing provisions set forth in § 49.22 and will provide the Commission with more timely financial statements.

The Commission is also making technical amendments to the form to eliminate redundant and ambiguous undefined language. For example, the term ''Applicant'' is capitalized and is referred to as a proper person to create consistency and references to ''facing page'' were removed as this concept was not defined in Form SDR or the regulations.

Form SDR as adopted clarifies that in order to assist the Commission in its review of an application, applicants for registration are encouraged to supplement Form SDR with any additional information that may be significant to their operation as an SDR. In addition, the Commission in adopting final Form SDR clarifies that SDR applicants must be mindful that certain information submitted for application purposes may be made available to the public and therefore advises applicant to request confidential treatment, where appropriate, when submitting application materials.

(b) Provisional Registration

As proposed, § 49.3(b) permitted the Commission, upon the request of an applicant, to grant provisional registration as an SDR if the applicant is in substantial compliance with the standards set forth in proposed § 49.3(a)(4).[58] Because the Commission believed that provisional registration should not be a permanent part of part 49, proposed regulation 49.3(b) provided for a ''sunset'' provision so that the provisional registration provision would terminate 365 days from the effective date of the proposed regulations. The Commission has determined to amend proposed § 49.3(b) to remove this sunset provision and provide that the Commission may terminate granting new provisional registrations at a later date.[59] The Commission believes that removal of the sunset provision will allow the Commission to fully evaluate applications for registration and provide greater flexibility in establishing compliance deadlines with registration requirements under § 49.3. The Commission expects to work with applicants to ensure that the transition from provisional registration to full registration is as prompt and seamless as possible.

In its comment letter, DTCC urged that applicants for provisional registration be required to demonstrate operational capability, real-time processing, multiple redundancy and robust information security controls.[60] The Commission agrees that SDRs should have sufficient operational capabilities to operate on a 24-hour basis based on a 6-day working week and accordingly has clarified in § 49.3(b) that in considering a grant of provisional registration it will require both (i) a demonstrated ability to substantially comply with the standards established in § 49.3(a)(4) and statutory duties and core principles; and (ii) demonstrated operational capability, real-time processing, multiple redundancy and robust information security controls.

(c) Registration of Existing Registered Entities

Although comments addressing the proposed application and registration procedures generally indicated satisfaction with the Commission's proposal, CME recommended that DCOs wishing to register as SDRs be given relief from ''duplicative'' registration and requested that the Commission adopt an abbreviated notice registration procedure for registered DCOs in good standing with the Commission.[61]

The Commission acknowledges the merits of CME's suggestion that there be a process to streamline the application procedures for existing DCO registrants, and therefore, is adopting a modification to § 49.3. The Commission is making a minor revision to § 49.3(a)(3) so that applicants are not subject to unnecessary duplicative review by the staff of the Commission. Specifically, staff in considering an application for registration as an SDR shall include in its review an applicant's past relevant submissions to the Commission and its compliance history. In addition, the Commission believes that once it gains experience with the SDR registration process it may re-evaluate whether a shortened or ''notice'' registration process should be available to existing non-SDR registrants (such as a DCO) seeking registration as an SDR.[62]

2. Withdrawal From Registration—§ 49.4

As proposed, § 49.4(a) outlined the process for withdrawal from registration and specified that written notice of a request to withdraw be served at least 90 days prior to the desired effective date of the withdrawal. The Commission has corrected § 49.4(a) to clarify that notice must be served at least 60 days prior to the desired effective date of the withdrawal; this correction achieves consistency with § 49.4(b), which provides that a notice of withdrawal from registration shall be effective on the 60th day after its filing with the Commission.

3. Notification of Equity Interest Transfers—§ 49.5

As proposed, § 49.5 required SDRs to file with the Commission a notice of the equity interest transfer of ten percent or more, no later than the business day following the date on which the SDR enters into a firm obligation to transfer the equity interest. The Commission proposed a ten percent threshold because it believes that a change in ownership of such magnitude, even without a corresponding change in control, may have an impact on the operations of the SDR.[63]

The Commission received a single comment relating to this provision which recommended that the Commission lower the notification threshold from ten percent to five percent. The same commenter also urged that the Commission obtain notification at or prior to the firm commitment to transfer the equity interest.[64] The Commission has considered these comments and believes that the notification threshold as proposed is adequate, based on its belief that a ten percent threshold appropriately covers those transfers that may result in significant control or lead to control of the SDR's management.

As proposed, § 49.5(a) and (c) required filings with the Commission relating to equity transfer notifications and certifications electronically through dedicated e-mail addresses. The Commission believes that future procedures may change, and therefore,

[58] Proposed § 49.3(a)(4) delineated the standards for approval of an SDR application: The SDR (i) is appropriately organized, and has the capacity, to ensure the prompt, accurate and reliable performance of its functions as an SDR; (ii) can comply with any applicable provisions of the CEA and regulations thereunder; (iii) can carry out its functions in a manner consistent with the purposes of section 21 of the CEA; and (iv) can operate in a fair, equitable and consistent manner.

[59] No comments were received in response to the proposed provisional registration provisions.

[60] CL–DTCC I *supra* note 51 at 4.

[61] *See* CL–CME *supra* note 51.

[62] The Commission notes that the additional cost of providing documents that may already be available to the Commission is expected to be limited to the expense of providing electronic copies of the exhibits set forth in Form SDR.

[63] SDR NPRM *supra* note 8 at 80902, n.25.

[64] *See* CL–Better Markets *supra* note 51.

is revising these provisions so that SDRs file certain equity transfer notifications and certifications in a format and manner to be specified by the Secretary of the Commission. Accordingly, the Commission is adopting this provision largely as proposed subject to the modification described above.

4. Swap Data Repositories Located in Foreign Jurisdictions—§ 49.7

The Commission proposed § 49.7 to enable it to obtain necessary swap data and related books and records maintained by an SDR located outside the United States. As proposed, § 49.7 required each SDR located outside the United States to provide an opinion of counsel that the SDR can, as a matter of law, provide the Commission with prompt access to its books and records and submit to onsite inspection and examination by the Commission. The Commission believes this provision is necessary because different jurisdictions may have different legal frameworks, which in turn may limit or restrict the Commission's ability to receive information from an SDR. An opinion of counsel in this regard will allow the Commission to better evaluate an SDR's capability to meet the requirements of registration and ongoing supervision.

The Commission requested comment on a series of questions relating to registration of a foreign-based SDR.[65] In response, the Commission received several comments regarding the potential for ''duplicative'' registration requirements.[66] With one exception, commenters supported a system of cross-registration or ''recognition'' in order to reduce potential burdens.

ESMA in particular requested that the Commission consider a recognition regime in which an SDR located in a foreign jurisdiction could register with the Commission if (i) the laws and regulations of the foreign jurisdiction are equivalent to those in the U.S.; and (ii) a MOU has been signed by the Commission and the foreign regulator.[67] ESMA suggested that the MOU would ensure access to all information the Commission will need in order to fulfill its statutory duties.

Reval, however, urged that that all foreign-based SDRs be required to comply with U.S. regulations and procedures, and to physically host the data in the U.S. or create a daily backup of the data with an entity in the U.S.[68] DTCC also maintained that foreign-based SDRs should not be approved by the Commission under reduced registration requirements[69] and asserted that an abbreviated or notice registration procedure for foreign SDRs should be based on a comparable regulatory structure for repositories in the home country of the foreign SDR.

The Commission notes that the Dodd-Frank Act and the CEA do not authorize the Commission to exempt SDRs located in foreign jurisdictions from the registration requirements set forth in section 21. At the same time, the Commission is cognizant of the global nature of the swaps market and of concerns regarding regulatory responsibilities and costs associated with requiring foreign-based SDRs to comply with multiple, separate regulatory regimes. To that end, the Commission expects to consult, cooperate, and exchange information with foreign regulators in connection with the oversight of foreign-based SDRs that are separately registered in jurisdictions outside of the U.S.

The Commission is mindful of the commenters' concerns and emphasizes that the extent of the Commission's ability to coordinate with foreign regulators will depend largely on the comparability and comprehensiveness of supervision and regulation by the foreign jurisdiction in which the SDR is located. In considering the feasibility of a particular recognition regime, the Commission intends to review regulatory requirements and the supervision or oversight programs of a ''home'' or foreign regulator of an SDR to determine the extent to which the Commission potentially could rely on such foreign regulators. The level of cooperation and the extent of any coordination would be evaluated on an individual basis and would be governed by an MOU. For example, the Commission and the foreign regulator should be capable of exchanging regulatory reports (including examination reports) and filings, as well as other information applicable to the operation of such entity as an SDR. This exchange of information would assist the Commission in determining whether the SDR located in a foreign jurisdiction is in compliance with duties mandated under part 49. Such cooperation or coordination with foreign regulators would not limit or in any way condition the discretion of the Commission in the discharge of its regulatory responsibilities.

*B. Duties of Registered SDRs*

Section 21(c) sets forth the minimum duties that an SDR is required to perform to become registered and to maintain registration. These statutory duties require that SDRs (i) accept swap data as prescribed by the Commission; (ii) confirm with both counterparties to a swap the accuracy of the data; (iii) maintain the data submitted; (iv) provide the Commission or its designee (including another registered entity) with direct electronic access to the swap data; (v) provide the necessary information as prescribed by the Commission to comply with the public reporting requirements set forth in section 2(a)(13) of the CEA; (vi) establish automated systems for monitoring, screening, and analyzing swap data; (vii) maintain the privacy or confidentiality of any and all swap data that the SDR receives; (viii) provide access to the swap data to certain ''appropriate'' domestic and foreign regulators; and (ix) adopt and implement emergency procedures. In addition, the Commission pursuant to its authority under sections 21(f)(4) and 8a(5)[70] of the CEA proposed that registered SDRs (i) adopt and implement system safeguards, including BC–DR plans; (ii) maintain sufficient financial resources; (iii) furnish market participant with a disclosure document setting forth the risks and costs associated with using the services of the SDR; and (iv) provide fair and open access and fees and charges that are equitable and non-discriminatory.

1. Acceptance of Data—§ 49.10

As proposed, § 49.10 required that SDRs adopt policies and procedures that would enable the SDR to electronically accept data and other regulatory

[65] Specifically, the Commission requested comment with respect to whether (i) the registration process for the foreign SDR be any different than the Commission's proposed registration process; (ii) there are any factors that the Commission should consider to ensure that an SDR located outside the United States seeking to register as an SDR can, in compliance with applicable foreign laws, provide the Commission with access to the SDR's books and records that are required pursuant to proposed § 49.7 and can submit to onsite inspection and examination by the Commission; and (iii) there are any other factors the Commission should consider relating to an SDR located outside of the United States *See* SDR NPRM *supra* 8 at 80903.

[66] *See* CL–DTCC II; CL–Foreign Banks; CL–ESMA; CL–TriOptima; CL–Regis-TR; CL–Reval *supra* note 51.

[67] CL–ESMA *supra* note 51.

[68] CL–Reval II *supra* note 51.

[69] CL–DTCC I *supra* note 51.

[70] Section 8a(5) of the CEA, 7 U.S.C. 12a(5), authorizes the Commission to promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or accomplish any of the purposes of the CEA. In connection with SDRs, section 21(a)(3)(A)(ii), 7 U.S.C. 24a(a)(3)(A)(ii) specifically requires that an SDR to be registered and maintain its registration must comply with any requirement that the Commission may impose by rule or regulation pursuant to section 8a(5) of the CEA.

information;[71] accept all swaps in the asset class(es)[72] for which they have registered;[73] establish sufficient policies and procedures to prevent a valid swap from being invalidated, altered or modified through the confirmation or recording process of the SDR; and establish procedures and provide facilities for effectively resolving disputes over the accuracy of the swap data and positions that are recorded in the SDR.

The Commission received one comment relating to the definition of asset class that indicated cross-currency (also known as currency) swaps are not properly characterized under the ''currency'' asset class but instead are interest rate products.[74] Therefore, the Commission believes a modification is necessary to better reflect the fact that the industry typically characterizes ''currency'' swaps as ''interest rate swaps.'' This characterization is based on the attributes of currency swaps that resemble the structure and operation exhibited by interest rate swaps while in ''foreign exchange'' swaps, the underlying foreign currency is exchanged by the parties. Accordingly, the Commission is replacing the term ''currency'' in the definition of asset class with ''foreign exchange'' as set forth in § 49.2(a)(2) to accurately reflect the asset classes employed in the swaps market.

The Commission received a single comment relating to data formats and protocols for data submission to SDRs.[75] DTCC commented that a registered SDR should have the flexibility to specify the acceptable data formats, connectivity requirements, and other protocols for submitting information.[76] While the Commission generally agrees with DTCC that SDRs should have flexibility to specify acceptable data formats and other technical requirements, the Commission does not believe that DTCC's recommendations are necessary to operational flexibility. Several commenters supported[77] the proposed requirement in § 49.10(b) that an SDR accept all swaps from any asset class or classes for which it registers. CME, however, recommended that DCO–SDRs should only be required to accept data for swaps that they clear and not for uncleared/bilateral transactions.[78] The Commission believes that CME's approach would lead to greater data fragmentation. Additionally, the Commission believes that pursuant to section 2(a)(13)(G), SDRs are required to accept cleared and uncleared swaps. Accordingly, the Commission is adopting § 49.10(b) substantially as proposed, with the addition of the phrase ''unless otherwise prescribed by the Commission'' so that the Commission may, in its discretion, provide flexibility to the general rule that an SDR must accept all swaps in an asset class for which it has registered. This flexibility will be especially relevant in connection with the implementation or phasing of reporting obligations of market participants.

The Commission received four comments relating to proposed § 49.10(c).[79] The comments were supportive of the Commission's efforts to prevent improper invalidation of swap transactions; as discussed below, however, some commenters felt that further refinement of the text is necessary.

ABC/CIEBA and AMG requested that the Commission clarify that § 49.10(c) would prevent an SDR from adopting user agreements that indirectly serve to modify or invalidate terms that have been agreed upon by the counterparties.[80] The Commission has adopted the recommended clarification. ABC/CIEBA and AMG also requested that the Commission seek to prevent confirmation and reporting platforms from adopting provisions in their user agreements that would permit the modification or invalidation without the consent of the counterparties.[81] CIEBA also separately suggested that the Commission prohibit SDRs from using third-party service providers which invalidate a swap without the consent of a counterparty.[82] The Commission believes that § 49.10(c), as proposed, would clearly prohibit SDRs as well as any agent or third-party service provider of the SDR to modify or invalidate a swap transaction without the consent of the counterparties.

2. Confirmation of Data Accuracy—§ 49.11

As proposed, § 49.11 required SDRs to establish and adopt policies and procedures to ensure the accuracy of swap data that is reported to an SDR.[83] In particular, proposed § 49.11 required that the SDR confirm with both counterparties to the swap the accuracy of the data and information submitted[84] and receive acknowledgement of all data submitted as well as corrections of any errors.[85] The SDR NPRM specified that confirmation is unnecessary when the reporting party is a SEF, DCM, DCO or a confirmation or matching service provider to whom the swap counterparty has delegated its reporting obligation. However, the SDR would still be required to ensure that the data and information it receives from such entity is accurate.

As detailed in proposed part 45, the reporting of swap creation data (primary economic terms data and confirmation data) and swap continuation data will take place through different channels, depending on the nature of the transaction and counterparties. Primary economic terms data is required to be reported by a SEF or DCM if the swap is executed on a platform, and by the reporting counterparty (SD, MSP, or other counterparty) if the swap is not platform executed. Confirmation data

[71] *See* section 21(c)(1) of the CEA, 7 U.S.C. 24a(c)(1). The Commission proposed in new part 45 to the Commission's Regulations the specific data elements that must be reported and applicable to DCMs, DCOs, swap execution facilities (''SEFs''), foreign boards of trade (''FBOTs''),1 SDs, MSPs, non-end-user SDs/MSPs and end-users in connection with the reporting of such swap data to SDRs. These data elements and standards would include the reporting of continuation data throughout the life of the swap. In addition, the Data NPRM also provides specific requirements for SDRs relating to (i) determining which counterparty must report to the SDR; (ii) third-party facilitation of swap data reporting; (iii) reporting to a single SDR in connection with the reporting of swap data; (iv) required data standards; and (v) the reporting of errors and omissions. *See* Data NPRM *supra* note 6.

[72] Proposed § 49.2(a)(2) defined ''asset class'' as those swaps in a particular broad category of goods, services or commodities underlying a swap. The asset classes include credit, equity, interest rates, currency, other commodities and such other assets as may be determined by the Commission. *See also* Department of the Treasury, Notice of Proposed Determination of Foreign Exchange Swaps and Foreign Exchange Forwards Under the Commodity Exchange Act, 76 FR 25774 (May 5, 2011) and Request for Comments: Determination of Foreign Exchange Swaps and Forwards, 75 FR 66829 (Oct. 29, 2010) and 75 FR 66426 (Oct. 28, 2010).

[73] As detailed in proposed § 49.27, SDRs would be required to provide fair and open access to their services. The Commission submits that SDRs would not be permitted to discriminate in connection with the access to their services. As a result, market participants with sufficient technology resources for connectivity and the payment of fees would be granted access to the services of the SDR.

[74] *See* CL–Global FX Division *supra* note 51 at 2.

[75] *See* CL–DTCC I *supra* note 51.

[76] *Id.*

[77] *See* CL–Better Markets, CL–DTCC I and CL–Global FX Division *supra* note 51.

[78] *See* CL–CME *supra* note 51.

[79] *See* CL–ABC/CIEBA, CL–AMG and CL–CIEBA *supra* note 51.

[80] CL–ABC/CIEBA and CL–AMG *supra* note 51 at 3–4 and 9, respectively.

[81] *Id.*

[82] CL–CIEBA *supra* note 51 at 5.

[83] *See* Data NPRM *supra* note 6.

[84] The Data NPRM details and defines ''confirmation'' and ''confirmation data.'' The term confirmation is proposed in § 45.1(b) to mean ''the full, signed legal confirmation by the counterparties of all of the terms of a swap.'' The term ''confirmation data'' is proposed in § 45.1(c) to mean ''all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap.'' *See* Data NPRM, *supra* note 6.

[85] This requirement does not apply to real-time public reporting. *See* proposed § 43.3(f) *supra* note 28.

will be reported by a DCO if the swap is cleared, and by the reporting counterparty if the swap is uncleared. Swap continuation data will be reported throughout the life of a swap by the DCO and/or the reporting counterparty. Consistent with proposed part 45 and § 49.12, SDRs are required to accept swap data from these entities, as well as from third-party service providers who may be acting on their behalf.

The Commission received five comments relating to an SDR's obligation to confirm the accuracy of the reported swap data.[86] Several commenters recommended that an SDR should not be required to affirmatively communicate with both counterparties in order to confirm the accuracy of data submitted. Reval commented that the SDR should only be required to confirm the accuracy of the trade with the reporting entity.[87] DTCC[88] and MarkitSERV[89] both supported the use of confirmation records in fulfilling the obligation of the SDR to confirm data submissions.

The Commission notes that section 21(c)(2) of the CEA states that an SDR must confirm the accuracy of the data that was submitted with both counterparties to the swap and does not draw any distinction between submitted swap data that has or has not been legally confirmed. However, the Commission agrees with the commenters that it may not be necessary to affirmatively communicate with both counterparties in all circumstances. Therefore, the Commission has modified the manner in which an SDR may fulfill the requirement to confirm the accuracy of the data. As adopted, § 49.11 will not require an SDR to affirmatively communicate with both counterparties when data is received from a SEF, DCM, DCO, or third-party service provider under certain conditions. Communication need not be direct and affirmative where the SDR has formed a reasonable belief that the data is accurate, the data or accompanying information reflects that both counterparties agreed to the data, and the counterparties were provided with a 48-hour correction period. The SDR must affirmatively communicate with both counterparties to the swap when data is submitted directly by a swap counterparty such as an SD, MSP or non-SD/MSP counterparty such as an end-user.

Encana requested that the Commission provide additional guidance on how proposed § 45.10 and § 49.11 work together. Both regulations impose obligations on reporting parties and SDRs relating to errors and omissions in the reporting of swap transaction data.[90] The Commission submits that the regulations are complementary and are both expected to protect the integrity and the accuracy of reported data. While § 45.10 provides an ongoing obligation for counterparties to provide error corrections, § 49.11 imposes a duty on the SDR to provide a correction period to receive from counterparties, within a short time period after the data has been submitted, acknowledgment of the accuracy of the data.

3. Recordkeeping Requirements—§ 49.12

Proposed § 49.12 implements section 21(c)(3) consistent with existing Commission regulations and the Commission's proposed part 45 regulations[91] and required that SDRs maintain swap data throughout the existence of the swap and for five years following termination during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access and in archival storage capable of being retrieved within three business days.

The Commission received one comment[92] recommending that swap data be kept indefinitely.[93] As proposed, § 49.12(a) required SDRs to maintain books and records as prescribed by proposed § 45.2. Rather than specifically referencing and incorporating the provisions of proposed § 45.2, the Commission believes § 49.12(a) should require SDRs to comply with any and all recordkeeping provisions adopted under part 45.[94] Accordingly, § 49.12(a) as adopted requires registered SDRs to ''maintain books and records in accordance with the requirements of part 45 of this chapter regarding the data required to be reported to the swap data repository.'' Under § 49.12(a), registered SDRs will be required to maintain swap data for the time periods and under the standards to be set forth in part 45.[95]

The Commission is revising proposed § 49.12 to require SDRs to comply with the time periods set forth in part 45 for maintaining books and records. The Commission does not believe that SDRs should be required to keep records indefinitely following the expiration of the underlying transactions.

Proposed § 49.12(c) required all books and records to be open to inspection upon request by any representative of the Commission, the United States Department of Justice, the SEC or prudential regulators as authorized by the Commission. The Commission is revising § 49.12(c) to remove the SEC and prudential regulators so that only the Commission and the Department of Justice will have books and records inspection rights.[96] This change will maintain consistency with existing Commission regulations on recordkeeping.[97]

The Commission believes that the proper procedure for Appropriate Domestic Regulators to obtain SDR Information is through the mechanism set forth in § 49.17 (Access to SDR Data) discussed below in section II.B.7.

The Commission is adopting § 49.12(d) largely as proposed, subject to a slight modification discussed below in connection with § 49.15 relating to real-time public reporting requirements.

[86] *See* CL–Reval II, CL–DTCC I, CL–MarkitSERV I, CL–ABC/CIEBA and CL–Data-Encana *supra* note 51.

[87] CL–Reval II *supra* note 51 at 6.

[88] CL–DTCC I *supra* note 51 at 20.

[89] CL–MarkitSERV I *supra* note 51 at 6.

[90] *See* CL–Encana *supra* note 51.

[91] *See* Data NPRM *supra* note 6.

[92] *See* CL–Barnard *supra* note 51 at 2.

[93] The Commission has also received several comments in connection with the proposed part 45 recordkeeping provisions. Comments received in connection with proposed part 45 will be reviewed in connection with that rulemaking; the Commission is adopting § 49.12(a) largely as proposed subject to the modifications discussed below.

[94] Like other rules that are tied to related rulemakings, § 49.12(c) will become effective 60 days after publication in the **Federal Register** but compliance will not be required until such time as the part 45 rules become effective.

[95] The time period and standards in part 45 are currently proposed as throughout the existence of the swap and for five years following termination during which time the records must be readily accessible by the SDR and available to the Commission via real-time electronic access and in archival storage capable of being retrievable within three business days.

[96] *See* proposed rule 13n–7 under the Securities Exchange Act of 1934, 17 CFR 240.13n–7 set forth in the SEC's proposal relating to security-based swap data repositories. The SEC in that proposal did not provide inspection rights of the books and records of a security-based swap data repository to the Commission or prudential regulators. *See* SEC, Notice of Proposed Rulemaking: Security-Based Swap Data Repository Registration, Duties and Core Principles, 75 FR 77306 (Dec. 10, 2010).

[97] Commission regulation § 1.31 requires that all ''books and records required to be kept by the act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.'' The Commission notes that section 4r(c) of the CEA adopted by Section 729 of the Dodd-Frank Act provides inspection rights to, among others, the SEC, prudential regulators and the FSOC. However, these rights are limited to counterparties that do not clear or have their swap transactions reported to, or accepted by, an SDR. Accordingly, the Commission lacks the statutory authority to provide books and records inspection rights to those named other regulators.

4. Monitoring, Screening and Analyzing Swap Data—§ 49.13 and § 49.14

Proposed §§ 49.13 and 49.14 implement section 21 of the CEA and together reflect SDRs' significant responsibilities in the new swaps market regulatory structure established by the Dodd-Frank Act. Under this new regulatory structure, SDRs will function not only as repositories for swap transaction data, but also as potential sources of support for the Commission's oversight of swaps markets and swap market participants. Section 21(c)(5) of the CEA, as amended by section 728 of the Dodd-Frank Act, requires SDRs to establish ''automated systems for monitoring, screening, and analyzing swap data, including compliance and frequency of end-user clearing exemption claims by individuals and affiliated entities.'' [98] By its terms, section 21(c)(5) requires that such automated systems be established ''at the direction of the Commission,'' but does not provide for specific functions which SDRs should undertake with respect to the swap transaction data in their possession. The only specific requirement set forth in section 21(c)(5) is that SDRs have systems in place capable of fulfilling such requirements as the Commission may assign.

Proposed §§ 49.13 and 49.14 required that SDRs: (1) Monitor, screen, and analyze all swap data in their possession as the Commission may require; (2) develop systems and resources as necessary to execute any monitoring, screening, or analyzing functions assigned by the Commission; and (3) monitor, screen, and analyze swap transactions which are reported to the SDR as exempt from clearing pursuant to section 2(h)(7) of the CEA (*i.e.,* end-user clearing exemption).

The Commission received eight comment letters relating to proposed §§ 49.13 and 49.14.[99] While the commenters were generally supportive of the proposed rules and their objectives, they articulated a number of concerns, including: (1) The level of detail concerning routine and ad hoc monitoring, screening and analysis requirements; (2) future compliance costs; and (3) the level of responsibilities imposed on SDRs and/or retained by the Commission. Four of the commenters [100] requested additional detail and clarity on the anticipated requirements in proposed § 49.13(a) and (b).

Sungard, in particular, expressed concern that proposed § 49.13(a) provided only ''limited guidance'' on the requirements to be imposed on SDRs' automated systems for monitoring, screening, and analyzing swap data.[101] Sungard referenced the SDR NPRM which stated that the Commission ''will consider specific tasks to be performed by SDRs at a later date'' and requested that in the final rule 49.13(a), the Commission ''provide an implementation period and effective date which are based on such later date.'' [102] Sungard also commented that the potentially rising cost of compliance with proposed § 49.13(b), which requires that SDRs maintain sufficient resources to fulfill the requirements in § 49.13(a), monitor their resources annually, and make adjustment as needed to remain in regulatory compliance, might harm the commercial viability of SDRs.[103]

Three commenters [104] suggested that the Commission should play a larger role in the monitoring, screening, and analyzing of swap market data; while two commenters [105] took the opposing view and suggested that data monitoring, screening, and analyzing should be performed centrally by an SDR. Both AFR and Better Markets believed that aggregated data monitoring and analysis should be performed by the Commission rather than relying on SDRs.[106] CME's comments raised concerns with providing SDRs with surveillance responsibilities.[107] DTCC, however, recommended that certain monitoring, screening, and analyzing functions be performed centrally by an SDR.[108] Reval recommended that SDRs be more than a data warehouse and provide data analysis to the Commission.[109]

Commenters expressed concern that §§ 49.13(a) and 49.14 do not sufficiently describe the specific tasks SDRs are expected to perform. The Commission recognizes that §§ 49.13(a) and 49.14 do not contain specific requirements. Its intention in §§ 49.13(a) and 49.14 is to codify the statutory requirements in section 21(c)(5) and establish that specific monitoring, screening, and analyzing duties will be imposed when its knowledge of the markets is more fully developed.[110] At that time, the Commission will provide SDRs with adequate notice to permit them to meet specific requirements of §§ 49.13(a) and 49.14.

Regarding proposed § 49.13(b), the Commission believes that SDRs and other regulated entities should always maintain sufficient resources to comply with regulatory requirements under the CEA. The Commission also recognizes the necessity for adequate resource requirements for SDRs given the expectation that SDRs may play a significant role in assisting the Commission to fulfill its regulatory mandate. Therefore, the Commission has not implemented Sungard's suggestion to impose a cap on the growth of required information technology, staff, and other resources required under § 49.13(b). The Commission also notes that the requirement of § 43.13(b) to ''establish and maintain sufficient information technology, staff, and other resources'' is similar to provisions proposed and already existing for DCMs and proposed for SEFs.[111] Furthermore, any increased

[98] Section 21(c)(5) of the CEA.

[99] These letters represent comments from five potential SDRs, two non-profit organizations, and one individual . *See* CL–AFR, CL–Barnard, CL–Better Markets, CL–CME, CL–DTCC I, CL–Reval II, CL–Sungard, and CL–TriOptima *supra* note 51.

[100] CL–Barnard, CL–CME, CL–Sungard and CL–TriOptima *supra* note 51.

[101] See CL–Sungard *supra* note 51 at 2.

[102] *Id.* at 2. *See also* SDR NPRM *supra* note 8 at 80907.

[103] Sungard made a number of recommendations to ensure the commercial viability of SDRs, including (1) a constraint on the growth in resources required under § 49.13(b), (2) a mechanism to recover at least a portion of resource costs in a manner other than user fees, or (3) ''some other mechanism to allow for the business planning necessary for the SDR to function while being certain of compliance with applicable rules.'' *Id.*

[104] *See* CL–AFR, CL–Better Markets and CL–CME *supra* note 51.

[105] *See* CL–DTCC I and CL–Reval II *supra* note 51.

[106] AFR further suggested that the Commission develop ''the capacity to perform key data analysis in-house, using raw data from SDRs, instead of becoming dependent on privately owned SDRs to measure aggregate exposures.'' *Id.* at 4. Better Markets suggested that the Commission build its own ''single, in-house system'' for monitoring and analyzing swap data rather than rely on individual SDRs. CL–Better Markets *supra* note 51 at 8.

[107] CME stated that it is ''not convinced that SDRs should be given wide ranging surveillance responsibilities.'' CL–CME *supra* note 51 at 5. And instead, opined that ''[m]arket-wide surveillance duties are best placed with a regulator or self-regulatory organization empowered with disciplinary powers * * *.'' *Id.*

[108] CL–DTCC I *supra* note 51 at 24.

[109] CL–Reval II *supra* note 51 at 7. Reval suggested that SDRs should be required to provide an independent valuation of the swaps submitted to the SDR, provide the relevant market data that goes into the calculation of the swap value, verify the credit value adjustment for uncleared trades, and provide the Commission with historic, current, and future risk analysis to anticipate systemic risk. *Id.* at 8.

[110] *See* proposed § 49.13(a). SDR NPRM *supra* note 8 at 80907.

[111] *See* Core Principle 2, Acceptable Practices, in appendix B to part 38 of the Commission's regulations. The Application Guidance for this Core Principle requires designated contract markets to ''have arrangements and resources for effective trade practice surveillance programs'' and ''have arrangements, resources and authority for effective rule enforcement.'' 17 CFR 38, appendix B. *See also* proposed § 38.155(a) which requires a designated contract market to ''establish and maintain sufficient compliance department resources and staff to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market

regulatory functions covered by proposed § 49.13(b), which may result in increase costs, will apply to all SDRs equally. As discussed above, the Commission has also committed to giving sufficient notice before imposing specific obligations under §§ 49.13 and 49.14, giving SDRs time to also address any resulting financial needs.

AFR, Better Markets and CME recommended that the Commission play a larger role than proposed in the monitoring, screening, and analyzing of swap market data. Both AFR and Better Markets, in particular, recommended that the Commission build its own systems for monitoring, screening and analyzing swap data. The Commission believes that the proper role of an SDR is to provide the Commission with a centralized recordkeeping facility to facilitate its surveillance and oversight responsibilities in the swaps markets. The Commission does not propose that SDRs displace the Commission's regulatory responsibilities, but neither does it propose to displace SDRs statutory obligations to monitor, screen and analyze swap market data. The Commission largely agrees with AFR and Better Markets in that the Commission should retain the responsibility for surveillance and oversight of the swaps market; however, the Commission believes it is unnecessary to duplicate systems that will already be available through the SDR infrastructure. Additionally, the Commission believes that SDRs, at the direction of the Commission, will provide sufficient capacity for monitoring, screening, and analyzing swap data. The Commission believes that the approach of proposed §§ 49.13 and 49.14 adequately balances the Commission's regulatory responsibilities with SDRs statutory duties and, as articulated by DTCC, ''promotes efficiency in the system.'' [112]

Commenters also made recommendations relating to uniform recordkeeping and reporting requirements across different SDRs. The Commission notes that it addressed this issue in a separate, related, rulemaking.[113] Nonetheless, the Commission does not agree with Better Markets that it must also require SDR systems to be uniform and compatible. The Commission believes that its designation of uniform recordkeeping and reporting requirements will sustain a level of system compatibility. In addition, when established, the monitoring, screening, and analyzing tasks required of SDRs will likely impose a level of uniformity of system outputs within similarly situated SDRs.

Lastly, the Commission agrees with Reval's assertion that in order to minimize systemic risk, SDRs need to engage in certain data analysis and reporting rather than function merely as warehouses of transaction data. However, as articulated above, at this time the Commission has not proposed, nor is it implementing, specific data analysis functions for SDRs. The Commission intends to consider additional specific tasks to be performed by SDRs when its knowledge and experience of the regulatory oversight needs with respect to the swap markets has developed more fully.

With the clarifications and modifications described above, the Commission is adopting §§ 49.13 and 49.14 substantially as proposed.[114]

5. Real-Time Public Reporting—§ 49.15

Section 2(a)(13)(D) of the CEA permits the Commission to require registered entities to publicly disseminate swap transaction and pricing data. To implement section 2(a)(13), the Commission is establishing a real-time public reporting framework in a new part 43 of the Commission's regulations that is subject to a separate rulemaking.[115]

As proposed, § 49.12(d) and § 49.15 together set forth the requirements for SDRs regarding the public dissemination of swap transaction and pricing data. Proposed § 49.12(d) required each SDR to comply generally with the requirements prescribed in part 43, while proposed § 49.15 described additional duties of an SDR relating to the acceptance and public dissemination of swap transaction and pricing data in real-time.

The Commission received a total of seven comments relating to proposed §§ 49.12(d) and 49.15.[116] Markit and Argus urged the Commission to adopt tighter restrictions on the commercial non-public dissemination of real-time data,[117] while Markit also recommended that the part 43 rules explicitly state that ownership of swap transaction data does not transfer from counterparties to other regulated entities such as DCMs, SEFs and DCOs.[118] AMG and AII both requested that the Commission phase-in block size determinations and time-limits for real-time dissemination.[119] NFPE Coalition also requested a clarification regarding aspects of the real-time reporting requirements and suggested that SDRs should not be used to determine the timeliness of real-time public reporting.[120] ICE and DTCC believed that SDRs should be designated as the sole vehicle for the dissemination of swap data [121] while DTCC also expressed the concern that public dissemination could disclose the identities of swap counterparties.[122] Better Markets also recommended that the Commission have real-time streaming or instantaneous access to swap transaction data in order to fulfill its regulatory obligations.[123]

The Commission is adopting § 49.15 substantially as proposed. As adopted, § 49.15(a) will no longer limit the real-time reporting of swap transactions for SDRs to ''off facility swaps.'' The Commission is currently considering comments received in connection with the proposed part 43 regulations,[124] including those relating to an SDR's role in the public dissemination of swap transaction and pricing data in real time. The Commission may include limitations on the type of public reporting and dissemination for SDRs. As adopted, § 49.15(c), relating to the untimely submission of swap data for real-time public reporting and dissemination purposes will not reference the specific time periods and notification procedures proposed in part 43. Instead, § 49.15(c) will require SDRs to ''notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of

surveillance, and real-time market monitoring.'' 75 FR 80572, 80613 (Dec. 22, 2010)(''DCM NPRM''). *See also* proposed § 37.203(c)(1) which requires a swap execution facility to ''establish and maintain sufficient compliance department resources and staff to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance and real-time market monitoring.'' Commission, Notice of Proposed Rulemaking: Core Principles and Other Requirements for Swap Execution Facilities, 76 FR 1214, 1241 (Jan. 7, 2011)(''SEF NPRM'').

[112] CL–DTCC *supra* note 51 at 24.

[113] *See* Data NPRM *supra* note 6.

[114] The Commission is making two non-substantive modifications to §§ 49.13(a) and 49.14. The word ''perform'' will be added to the last sentence in § 49.13(a) and the word ''of'' will be added to the last sentence in § 49.14. These modifications are being made to improve the sentence structure of both of these sections.

[115] *See* Real-Time NPRM *supra* note 28. As noted above, §§ 49.12(d) and 49.15 will become effective 60 days from the date of publication in the **Federal Register,** but compliance will not be required until such time as the part 43 rules become effective. *See* note 93 *supra.*

[116] *See* CL–Markit, CL–AMG, CL–Argus, CL–AII, CL–NFPE Coalition, CL–DTCC I and CL–DTCC II *supra* note 51.

[117] CL–Markit and CL–Argus *supra* note 51.

[118] CL–Markit *supra* note 51.

[119] CL–AMG and CL–AII *supra* note 51.

[120] CL–NFPE Coalition *supra* note 51.

[121] CL–Data-ICE, CL–DTCC I and CL–DTCC II *supra* note 51.

[122] CL–DTCC I *supra* note 51.

[123] CL–Better Markets *supra* note 51.

[124] Real-Time NPRM *supra* note 28.

this chapter.'' The Commission believes this change provides appropriate flexibility to adjust SDR responsibilities with regard to the untimely reporting of swap transaction data in accordance with any future adoption of part 43. The Commission will consider the comment received in connection with proposed § 49.15(c) when addressing the relevant provisions in part 43, which is expected to be finalized subsequent to this rulemaking.

In response to comments received [125] concerning the commercial use of real-time public swap data and the commercialization of data generally, the Commission submits that persons responsible [126] for the public dissemination of swap data are prohibited from distributing such data prior to public dissemination. Such pre-publicly available dissemination would constitute a ''commercial use'' under § 49.17(g). Therefore, SDRs may not make commercial use of real-time swap data before dissemination to the public, including any analysis for commercial purposes. As set forth in 49.17(g)(1), the Commission also notes that SDRs must maintain appropriate firewalls to protect swap data from unlawful commercial uses.

Additionally, as discussed above, in light of the comments received and as a result of its consideration of proposed § 49.15, the Commission will continue to consider the role SDRs will play in the public dissemination of real-time swap data and will address these issues in the context of the part 43 rules.

6. Maintenance of Data Privacy—§ 49.16

To implement the statutory requirements of sections 21(c)(6)[127] and 21(f)(3)[128] of the CEA, as added by section 728 of the Dodd-Frank Act,[129] the Commission proposed in § 49.16 that SDRs maintain the privacy and confidentiality of reported swap data.

Section 21(c)(6) of the CEA provides that an SDR shall ''maintain the privacy of any and all swap transaction information that the swap data repository receives from an SD, counterparty, or any other registered entity.'' Section 21(f)(3) of the CEA also sets forth a conflict of interest ''core principle'' applicable to an SDR. As detailed further below, the Commission has identified certain conflicts that may implicate access, disclosure, or use of SDR Information.[130] SDR Information includes any information that an SDR receives from a reporting counterparty,[131] including market participants [132] such as DCMs, DCOs, SEFs, SDs, MSPs and non-SD/MSP counterparties.

The Commission emphasizes that SDRs are expected to receive two separate ''streams'' of data: (i) Data related to real-time public reporting which by its nature is publicly available and (ii) data that is intended for use by the Commission and other regulators which is subject to statutory confidential treatment (''Core Data''). Accordingly, pursuant to sections 21(c)(6) and 21(f)(3) (Core Principle 3—Conflicts of Interest) of the CEA, SDR information that is not subject to real-time public reporting should be treated as non-public and held strictly confidential such that it may not be accessed, disclosed, or used for purposes not related to SDR responsibilities under the CEA or the regulations thereunder, unless such use is explicitly agreed to by the reporting entities. However, aggregated data that cannot be attributed to individual transactions or market participants may be disclosed by an SDR on a voluntary basis or as required by the Commission.

As proposed, § 49.16 required SDRs to establish, maintain, and enforce specific policies and procedures to protect the privacy or confidentiality of any and all SDR Information, including privacy or confidentiality policies and procedures for the sharing of SDR Information with SDR affiliates [133] as well as certain non-affiliated third parties.[134] Proposed § 49.16 also required SDRs to establish and maintain safeguards, policies, and procedures that would, at a minimum, address the misappropriation or misuse of swap data that the Commission is prohibited (save for limited exceptions) from disclosing Section 8 Material.[135] As discussed, Section 8 Material is that information or material described in section 8(a) of the CEA that the Commission is prohibited from publishing if it ''would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [136] Such information would typically

[125] *See* CL–Markit and CL–Argus *supra* note 51.

[126] Although SDRs are permitted to delegate the performance of various functions to 3rd party service providers, the SDR retains the responsibility for compliance with this and other regulatory restrictions.

[127] 7 U.S.C. 24a(c)(6). For a discussion of commercial data privacy, *see generally* Department of Commerce, Internet Policy Task Force, Commercial Data Privacy and Innovation in the Internet Economy: A Dynamic Policy Framework (Dec. 2010) and Federal Trade Commission (FTC), Preliminary Staff Report, Protecting Consumer Privacy in an Era of Rapid Change (Dec. 2010). *See also* FTC, Final Rule: Standards for Safeguarding Customer Information, 67 FR 36484 (May 23, 2002).

[128] According to such ''core principle,'' each SDR shall ''establish and enforce rules to minimize conflicts of interest in [its] decision-making process * * *'' and ''establish a process for resolving conflicts of interest. *See infra* section II D. 4.

[129] *See* section 21(f)(3) of the CEA, 7 U.S.C. 24a(f)(3).

[130] The term ''SDR Information'' is defined in proposed § 49.2(a)(15) to mean ''any information that the swap data repository maintains.'' § 49.17(f) and (g) discussed below contain more specific prohibitions on access or use of SDR Information.

[131] The term ''reporting counterparty'' is set forth in proposed § 45.5 of the Data Rulemaking NPRM. The proposed definition is based on section 4r(3) of the CEA.

[132] The term ''market participant'' is defined in proposed § 49.2(a)(6) to mean any person participating in the swap market, including, but not limited to, DCMs, DCOs, SEFs, SDs, MSPs, and any other counterparties to a swap transaction.

[133] The term ''affiliate'' is defined in proposed § 49.2(a)(1) to mean a person that ''directly, or indirectly, controls, is controlled by, or is under common control with, the swap data repository.''

[134] The term ''non-affiliated third party'' is defined in proposed § 49.2(a)(7) to mean ''any person except (i) swap data repository, (ii) the swap data repository's affiliate, or (iii) a person employed by a swap data repository and any entity that is not the swap data repository's affiliate (and ''non-affiliated third party'' includes such entity that jointly employs the person).''

[135] The term ''Section 8 Material'' is defined in proposed § 49.2(a)(13) as ''the business transactions, trade data, or market positions of any person and trade secrets or names of customers.'' The legislative history of section 8 of the CEA reflects substantial Congressional concern with protecting the legitimate interests of certain market participants. In particular, Congressional members were concerned that ''bona fide hedging transactions'' and ''legitimate'' or ''necessary'' speculative transactions would be impracticable if disclosure of positions or transactions was permitted. Congress was also concerned that publication of the names and market positions of large traders would facilitate manipulation and place traders at a competitive disadvantage. *See generally* 61 *Cong. Rec.* 1321 (1921); Regulation of Grain Exchanges, Hearing on H.R. 8829 Before the H. Comm. on Agriculture, 73rd Cong. (1934).

[136] Section 8(a) of the CEA outlines the scope and authority of the Commission to publish or otherwise publicly disclose information that is gathered in the course of its investigative and market surveillance activities. While the section authorizes the Commission to publish or disclose the information obtained through the use of its powers, it expressly provides that, except in specifically prescribed circumstances, the Commission may not lawfully: publish data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers. * * *

7 U.S.C. 12(a).

The statutory bar to disclosure of ''business transactions, market positions and trade secrets'' is qualified by several narrowly-defined exceptions set forth in section 8(e) of the CEA. 7 U.S.C. 12(e). Section 8(e) generally provides that ''upon request,'' the CFTC may furnish ''any information'' in its possession ''obtained in connection with its administration of the [CEA]'' to another U.S. government department or agency, individual states, foreign futures authorities and foreign governments and any committee of the U.S. Congress that is ''acting within the scope of its jurisdiction.'' Section 8(b) of the CEA permits disclosure of Section 8 Material in connection with certain congressional, administrative or judicial proceedings. In addition, section 8(e) also provides an exception for information that was previously disclosed publicly pursuant to section 8.

include trade data, position data, business transactions, trade secrets and any other non-public personal information about a market participant or any of its customers. Moreover, proposed § 49.16 required an SDR to also protect information that is not Section 8 Material as well as intellectual property that may include trading strategies.

The Commission submits that these SDR safeguards, policies, and procedures addressing privacy and confidentiality—as well as misuse and misappropriation—of data should provide (i) limitations on access related to Section 8 Material and other SDR Information; (ii) standards related to controlling persons associated with the SDR trading for their personal benefit or the benefit of others; and (iii) adequate oversight to ensure SDR compliance with § 49.17. As set forth in § 49.17 discussed below in the section entitled ''Access to SDR Data,'' an SDR may share swap data and information with certain ''appropriate'' domestic and foreign regulators. Commercial use of the data maintained by an SDR—exclusive of real-time reporting data—is strictly circumscribed as provided in § 49.17. As noted above, swap data that is publicly disseminated in real-time by SDRs pursuant to proposed part 43 of the Commission's Regulation would not be subject to the privacy and confidentiality requirements set forth in § 49.16.

The Commission received two comments relating to privacy and confidentiality concerns.[137] DTCC specifically supported the Commission's efforts to keep swap data reported to SDRs confidential but noted the possibility of unintentional disclosure of participant identities in connection with the public dissemination of swap data. The concern raised by DTCC focused on the perceived potential for market participants to extrapolate identities of counterparties to a transaction that is publicly reported pursuant to the real-time public reporting requirements. The Commission, however, believes that the manner in which real-time public reporting will occur pursuant to part 43 will mitigate this concern because counterparty identities will not be disclosed and the actual underlying notional amount will not be associated with any particular transaction. MFA similarly believes that the requirements of § 49.16 may not be sufficient to protect the confidentiality of trading positions.

The Commission agrees with MFA that the confidentiality of position level data held by an SDR is extremely important and notes that § 49.16, as proposed, would require that each SDR ''[e]stablish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of: (i) Section 8 Material; (ii) other SDR Information; and/or Intellectual property * * *''[138] Accordingly, the Commission believes that this requirement covers the matters that MFA proposed for inclusion in § 49.16. ''Section 8 Material'' as defined in proposed § 49.2(a)(11) means the ''business transactions, trade data or market positions of any person and trade secrets or names of customers.'' The details of any master agreements governing a swap would clearly fall within a ''business transaction'' referenced in the definition of Section 8 Material.

In connection with MFA's desire to have the legal standard of care set forth in § 49.16, the Commission submits that SDRs, rather than the Commission, are in the better position to establish appropriate procedures to protect the confidentiality of SDR data consistent with § 49.16. In addition, the Commission believes that MFA's recommendation to hold current and former SDR employees, directors, officers, agents and representatives liable by regulation for any breach of the SDR's privacy policies and procedures is beyond the scope of section 21(c)(6). Consistent with MFA's comments, the Commission believes that SDRs must be prohibited, as a condition of accepting data from reporting entities, from requiring the waiver of any legal rights such entities may have with respect to breaches of confidentiality by the SDR. The Commission also received comments on confidentiality and aggregated data from DTCC, which was concerned that market participants may be able to identify the parties to a particular transaction through extrapolation even though the disclosed data is ''aggregated.''[139]

In order to clarify its position with respect to the disclosure of ''aggregated data,'' the Commission believes that it is permissible under the Dodd-Frank Act and part 49 of the Commission's regulations for an SDR to disclose, for non-commercial purposes, data on an aggregated basis such that the disclosed data reasonably cannot be attributed to individual transactions or market participants. In addition, the Commission submits that if requested by the Commission, an SDR would be required to disclose aggregated data in such form and manner as the Commission prescribes.

Accordingly, the Commission is adopting § 49.16 largely as proposed with the addition of (i) paragraph (b) to clarify that an SDR is prohibited from requiring a waiver of a reporting entity's legal rights for breaches of confidentiality by the SDR or affiliated entities; and (ii) paragraph (c) to clarify that SDRs may disclose aggregated data voluntarily or as requested by the Commission.

7. Access to SDR Data—§ 49.17

(a) Definition of Appropriate Domestic Regulator

As detailed in the SDR NPRM, the Commission in proposed § 49.17 specifically included the Federal Reserve Bank of New York (''FRBNY'') as an ''Appropriate Domestic Regulator'' because section 21(c)(7) of the CEA does not specifically provide for the sharing of information between an SDR and the FRBNY. The Commission believes that only including the FRBNY as an Appropriate Domestic Regulator is overly restrictive, and therefore, is revising the definition of ''Appropriate Domestic Regulator'' to include any ''Federal Reserve Bank.''[140]

(b) Commission Access

As detailed in the SDR NPRM, a critical function and responsibility of an SDR is to provide ''direct electronic access'' to the Commission or its designee, which could include another registered entity.[141] The Commission in § 49.17(b)(3) defined the term ''direct electronic access'' as ''an electronic system, platform or framework that provides internet or web-based access to real-time swap transaction data.'' The Commission believes that a clarification to the definition of ''direct electronic access'' is necessary to include

[137] *See* CL–DTCC I and CL–MFA *supra* note 51.

[138] Proposed § 49.16(a)(2) set forth in SDR NPRM *supra* note 51 at 80931.

[139] CL–DTCC I *supra* note 51.

[140] The Commission notes that the expansion of ''Appropriate Domestic Regulator'' to include any Federal Reserve Bank will serve to ensure that the Board of Governors of the Federal Reserve System (''FRB'') will be able to effectively and efficiently perform its statutory responsibilities as prescribed by the Federal Reserve Act (''FRA'').

[141] *See* section 21(c)(4)(A) of the CEA. The term ''registered entity'' is defined in section 1a(40) of the CEA to include (i) a board of trade designated as a contract market under section 5 of the CEA; (ii) a DCO registered under section 5b of the CEA; (iii) a SEF registered under section 5h of the CEA; (iv) an SDR registered under section 21 of the CEA; and (v) with respect to a contract that the Commission determines is a significant price discovery contract, any electronic trading facility on which the contract is executed or traded. 7 U.S.C. 1a(40).

''scheduled data transfers to the Commission's electronic systems.''

The Commission received seven comments on direct electronic access.[142] Although most commenters were generally supportive of the Commission's approach, a few objected to certain provisions of § 49.17(c) as proposed. Each comment is discussed below.

In connection with the Commission's request for comment,[143] Better Markets and AFR both registered their preference for real-time direct streaming of swap data versus periodic electronic transfer of data.[144] The Commission agrees with both Better Markets and AFR that real-time access to swap data is necessary for adequate oversight and surveillance of the swaps market.

In response to a Commission request [145] for comment relating to the most cost-effective method or manner in providing direct electronic access, Reval stated that SDRs should be required to provide the Commission with internet browser-based access to a hosted SDR solution. Consistent with Reval's comments, the Commission believes that an internet or Web-based method to access reported swap data held and maintained by SDRs would be the least disruptive and most efficient process.

DTCC noted its experience with the Trade Information Warehouse for OTC credit derivatives [146] and recommended that the Commission permit SDRs to adopt in their discretion the manner and method of providing data sets to the Commission. The Commission believes that the manner and method of obtaining access to the swap data held by SDRs is the function and prerogative of the Commission and should not be left to the judgment or discretion of the SDR and its management. In connection with its separate comment letter responsive to the Data NPRM, DTCC also asserted that the Commission should allow sufficient reporting flexibility. As set forth above, the Commission does not believe that SDRs should have the discretion or ability to determine the appropriate data sets that should be provided to the Commission.

CME stated that it is impractical to provide Commission staff with access identical to that provided to the SDR's CCO because of technical considerations.[147] CME also disagreed with the premise of ''direct electronic access'' set forth in § 49.17(c), maintaining that SDRs should not be required to provide ''proprietary'' systems to the Commission without compensation and without adequate assurances that the swap data would remain confidential. Moreover, CME asserted that ''real-time'' electronic access to the swap data maintained by an SDR is not necessary.

The Commission disagrees with CME's view regarding Commission direct electronic access. As stated previously, section 21(c)(4)(A) of the CEA mandates that SDRs provide the Commission (or any Commission designee) with direct electronic access.[148] Accordingly, the Commission submits that this requirement to provide the Commission with direct electronic access is not qualified or at the discretion of the SDR. With respect to CME's concern relating to improper disclosure of confidential swap data, the Commission notes that section 8 of the CEA prohibits the Commission from disclosing information ''that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [149] Accordingly, the Commission believes that CME's comments are unwarranted and should not serve to limit direct electronic access by the Commission and its staff.

NFPE Coalition commented that the Commission should not have access to entity data submitted by non-financial entities, including the identity of such entities, unless they engage in swaps to the extent that their exposure could pose a systemic risk. The Commission notes that the Dodd-Frank Act generally provides regulators with the ability to monitor and oversee the swaps markets by reviewing and analyzing the data to be held by SDRs. The Commission submits that the ability to review and analyze all swap transactions (whether by a financial or non-financial entity) is essential in order for the entire market to be sufficiently monitored and analyzed. The Commission does not agree with the NFPE Coalition's view that non-financial entity transactions should remain confidential given the direct statutory requirements in section 21(c)(6) of the CEA that SDRs ''maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity.''

Based on the analysis set forth above relating to proposed § 49.17(c) and an SDR's statutory duty to provide the Commission or its designee with direct electronic access, the Commission is adopting § 49.17(c) as proposed. In addition, as discussed above, the Commission is also adopting a minor revision to the definition of ''direct electronic access'' set forth in § 49.17(b)(3) to clarify that ''direct electronic access'' would include ''scheduled data transfers to Commission's electronic systems.''

(c) Other Regulator Access to SDR Data

Section 21(c)(7) [150] of the CEA requires a registered SDR, on a confidential basis pursuant to section 8 of the CEA, upon request and after notifying the Commission, to make available all data [151] obtained by the registered SDR, to ''Appropriate Domestic Regulators'' and ''Appropriate Foreign Regulators.''

The Commission also proposed that the term ''Appropriate Foreign Regulator'' be defined in § 49.17. As proposed, the definition of ''Appropriate Foreign Regulator'' has two parts or elements. First, § 49.17(b)(2) defines an Appropriate Foreign Regulator as those ''foreign regulators'' [152] with an existing MOU or

[142] *See* CL–Better Markets, CL–AFR and CL–Reval I *supra* note 51. *Compare* CL–DTCC II, CL–Data-DTCC, CL–CME and CL–NFPE Coalition *supra* note 51.

[143] The Commission in the SDR NPRM requested comment on real-time access as follows: ''What are the advantages and disadvantages of requiring SDRs to provide a direct streaming of the data to the Commission or its designee? Should the Commission require periodic electronic transfer of data as an alternative? If so, how often should such transfer occur (*e.g.,* hourly, a few times a day, every few days, once a week)?'' SDR NPRM *supra* note 51 at 80906.

[144] CL–AFR and CL–Better Markets *supra* note 51 at 3 and 7–8, respectively.

[145] The Commission in the SDR NPRM requested the comment on the following: ''What would be the most feasible and cost-effective method for an SDR to provide direct electronic access to the Commission or its designee?'' SDR NPRM *supra* note 8 at 80906.

[146] CL–DTCC II *supra* note 51.

[147] CL–CME *supra* note 51 at 5–6.

[148] *Id.*

[149] *See* 7 U.S.C. 12(a). The statutory bar to disclosure of ''business transactions, market positions and trade secrets'' is qualified by several narrowly-defined exceptions set forth in section 8(e) of the CEA.

[150] Section 21(c)(7) of the CEA reads:

A swap data repository shall—* * * on a confidential basis pursuant to Section 8, upon request, and after notifying the Commission of the request, make available all data obtained by the swap data repository, including individual counterparty trade and position data, to—(A) each appropriate prudential regulator; (B) the Financial Stability Oversight Council; (C) the Securities and Exchange Commission; (D) the Department of Justice; and (E) any other person that the Commission determines to be appropriate. * * *

7 U.S.C. 24a(c)(7). Included in the definition of Appropriate Domestic Regulators are all domestic entities listed in section 21(c)(7) and other persons that the Commission has determined to be appropriate.

[151] The sharing of data with an Appropriate Domestic Regulator by a registered SDR is subject to the confidentiality and indemnification restrictions in section 21(d) of the CEA, 7 U.S.C. 24a(d).

[152] The term ''foreign regulator'' is defined in proposed § 49.2(a)(4) to mean ''a foreign futures authority as defined in section 1a(26) of the

other similar type of information sharing arrangement executed with the Commission. Second, § 49.17(b)(2) provides that foreign regulators without an MOU with the Commission may be deemed ''Appropriate Foreign Regulators'' as determined on a case-by-case basis by the Commission. Accordingly, § 49.17 as proposed set forth detailed filing procedures for foreign regulators who do not currently have an MOU with the Commission to obtain the status of ''Appropriate Foreign Regulator.'' The Commission received no comments relating to the proposed definition of Appropriate Domestic Regulator and Appropriate Foreign Regulator. Accordingly, the Commission is adopting § 49.17(b) as proposed.

The procedure for Appropriate Domestic Regulators or Appropriate Foreign Regulators to gain access to the data held and maintained by an SDR was detailed in proposed § 49.17(d). First, an Appropriate Domestic Regulator or Appropriate Foreign Regulator is required to request access with the registered SDR in sufficient detail so that the SDR is able to determine the basis of the request. As part of this request, the Appropriate Domestic Regulator or Appropriate Foreign Regulator must also certify (i) its statutory authority; and (ii) that it is acting within the scope of its jurisdiction. The registered SDR must then notify the Commission promptly by electronic means of any request received from an Appropriate Domestic Regulator or Appropriate Foreign Regulator. As proposed, the registered SDR will then provide access to the requested swap data if satisfied that the Appropriate Domestic Regulator or Appropriate Foreign Regulator is acting within the scope of its authority.

The Commission received one comment from the OCC expressing concern that SDRs would serve a ''gate keeping'' function relating to regulator access.[153] OCC maintained that SDRs should not be permitted to question the statutory authority of a regulator to receive swaps data maintained by the SDR. Although other commenters[154] did not specifically comment on the procedure set forth in § 49.17(d) relating to regulators' access, these commenters generally indicated that SDRs should operate in a manner that would freely provide information to regulators. These commenters viewed the purpose of SDRs as one of assisting regulators in fulfilling their regulatory obligations. The theme of these comments is that SDRs should serve as an impartial vehicle for assisting regulators.

Upon review of the comments received and the access procedure generally, the Commission believes that other regulator access (Appropriate Domestic Regulator and Appropriate Foreign Regulators) should not be constrained or limited by SDRs. Therefore, the Commission is revising proposed § 49.17(d) so that Appropriate Domestic Regulator and Appropriate Foreign Regulators when filing a request for access are only required to certify that they are acting within the scope of their jurisdiction. As proposed, § 49.17(d)(i) required the Appropriate Domestic Regulator or Appropriate Foreign Regulator to set forth in sufficient detail the basis for its request. The Commission is eliminating this requirement in § 49.17(d) as adopted. In addition, proposed § 49.17(d)(3) required an SDR to provide access to the requested swap data ''if satisfied that the Appropriate Domestic Regulator or Appropriate Foreign Regulator is acting within the scope of its authority.'' The Commission is also revising proposed § 49.17(d)(3) so that Appropriate Domestic Regulators' and Appropriate Foreign Regulators' access to SDR swap data is provided once the SDR notifies the Commission of the request.

(d) Confidentiality and Indemnification Agreement

For the purpose of implementing section 21(c)(7) and (d) of the CEA, the Commission proposed § 49.18. Consistent with section 21(d),[155] § 49.18, as proposed, provided that an Appropriate Domestic Regulator or Appropriate Foreign Regulator prior to receipt of any requested data or information from a registered SDR must execute a ''Confidentiality and Indemnification Agreement'' with the registered SDR. The Commission further provided in proposed § 49.18 that an Appropriate Domestic Regulator or Appropriate Foreign Regulator must notify and provide a copy of the Confidentiality and Indemnification Agreement to the Commission.

Proposed § 49.18 required that the Confidentiality and Indemnification Agreement executed with each Appropriate Domestic Regulator and/or Appropriate Foreign Regulator provide that such entity abide by the confidentiality requirements set forth in section 8 of the CEA relating to the swap data that is to be provided by the registered SDR. Moreover, the Confidentiality and Indemnification Agreement must provide that each section 21(c)(7) entity agree to indemnify the registered SDR and the Commission for any expenses arising from litigation relating to the information provided under section 8 of the CEA. The Commission received four comments[156] relating to the confidentiality and indemnification agreement requirement and/or information sharing among regulators.

DTCC stated that proposed § 49.18 is not consistent with the OTC Derivatives Regulators' Forum (''ODRF'')[157] guidelines which generally provide that ''[a]uthorities, including central banks, prudential supervisors, resolution authorities and market regulators, with a material interest in [credit derivatives] information in furtherance of their regulatory and/or governmental responsibilities should have unfettered access to the relevant data, irrespective of the location of the trade repository.''[158] Accordingly, DTCC recommended that the indemnification provisions of section 21(d) as proposed in § 49.18 should not apply where regulators are carrying out regulatory responsibilities, acting in a manner consistent with international agreements and maintaining the confidentiality of the data.[159] With this recommendation, DTCC requested the

Commodity Exchange Act, foreign financial supervisors, foreign central banks and foreign ministries.''

[153] CL–OCC *supra* note 51.

[154] *See* CL–DTCC I, CL–TriOptima, CL–Regis—TR and CL–ESMA *supra* note 51.

[155] Section 21(d) of the CEA provides:

Before the swap data repository may share information with any entity described in subsection (c)(7)–(1) the swap data repository shall receive a written agreement from each entity stating that the entity shall abide by the confidentiality requirements described in Section 8 relating to the information on swap transactions that is provided; and (2) each entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation related to the information provided under section 8.

7 U.S.C. 24a(d).

[156] *See* CL–DTCC I, CL–TriOptima, CL–ESMA and CL–Foreign Banks *supra* note 51.

[157] ODRF includes representatives from central banks, prudential supervisors and market regulators from over 20 countries globally. The ODRF is not a standard-setting body, but instead, supports the application of standards set by other bodies in the international regulatory community. The Forum provides an environment for regulators and authorities to exchange views and to share information related to OTC derivatives central counterparties and trade repositories on a regular basis. It also provides mutual assistance among the authorities in carrying out their respective responsibilities with respect to OTC derivatives. However, it is important to note that the ODRF does not supersede any regulator's statutory mission or national and otherwise applicable laws.

[158] *See* letter from OTC Derivatives Regulators' Forum to the Warehouse Trust Company, dated June 18, 2010. *Available at: http://www.dtcc.com/downloads/legal/imp_notices/2010/derivserv/tiw044.zip. See also* Working Group Report *supra* note 12.

[159] *Id.*

Commission together with other global regulators provide ''model indemnity language'' for use by all repositories or SDRs.

TriOptima specifically encouraged the Commission to ''adopt as flexible as interpretation as possible'' of the indemnification provision proposed in § 49.18.[160] Similarly, ESMA questioned the necessity of an indemnification agreement between a foreign regulator and a U.S.-registered SDR.[161] ESMA stated that this proposal would undermine the trust necessary among various regulators in connection with data access from SDRs. Although not specific to the indemnification provision, the Foreign Banks also commented that regulators should support cross-border information sharing efforts so that a complete picture of the overall swaps market is available for supervision and surveillance purposes.[162]

The Commission is mindful that the Confidentiality and Indemnification Agreement requirement set forth in section 21(d) and § 49.18 may be difficult for certain domestic and foreign regulators to execute with an SDR due to various home country laws and regulations. We note in this regard that section 752 of the Dodd-Frank Act seeks to ''promote effective and consistent global regulation of swaps'' and provides that the CFTC and foreign regulators ''may agree to such information-sharing arrangements as may be deemed to be necessary or appropriate in the public interest * * *.'' In light of this statutory directive, the Commission continues to work to provide sufficient access to SDR data to appropriate domestic and foreign regulatory authorities.

The Commission believes that, under the circumstances described below, certain Appropriate Domestic Regulators may be provided access to the swap data reported and maintained by SDRs without being subject to the notice and indemnification provisions of section 21(c)(7) and (d).[163] First, the SDR must be subject to the regulatory jurisdiction, and register with, the Appropriate Domestic Regulator. Second, consistent with section 21(c)(4)(A) of the CEA, the SDR would be permitted to provide direct electronic access to such Appropriate Domestic Regulator as a designee of the Commission.[164] Under these circumstances, the Appropriate Domestic Regulator would be provided direct electronic access to the SDR subject to the same terms and conditions as would apply to the Commission.[165]

In connection with foreign regulatory authorities, the Commission believes that confidential swap data reported to, and maintained, by an SDR may be appropriately accessed by an Appropriate Foreign Regulator without the execution of a Confidentiality and Indemnification Agreement when the Appropriate Foreign Regulator is acting in a regulatory capacity with respect to a SDR that is also registered with the Appropriate Foreign Regulator.[166] In such dual-registration cases, the Appropriate Foreign Regulator may receive information directly from the SDR without notice to the Commission and/or the execution of the Confidentiality and Indemnification Agreement, subject to applicable statutory confidentiality provisions set forth in section 8 of the CEA.[167]

Lastly, The Commission notes that the notice and indemnification requirements set forth in section 21(c)(7) and (d) of the CEA would not apply when the Commission, pursuant to section 8(e) of the CEA, shares confidential information in its possession obtained in connection with the administration of the CEA to ''any foreign futures authority, department or agency of any foreign government or any political subdivision thereof'' acting within the scope of their jurisdiction. Thus, Appropriate Foreign Regulators may, pursuant to section 8(e), receive SDR Information from the Commission without the execution of the Confidentiality and Indemnification Agreement.

Accordingly, the Commission is adopting § 49.18 as revised to provide that SDRs that are dually-registered with the Commission and an Appropriate Domestic or Foreign Regulator may provide access without the execution of a Confidentiality and Indemnification Agreement. The Commission is similarly revising § 49.17(d), as noted above, so that Appropriate Domestic and Foreign Regulators with regulatory responsibilities over SDRs are not required to file data access requests with their regulated repository or SDR.

(e) Third-Party Service Providers Employed by SDRs

The Commission in the SDR NPRM recognized that SDRs from time to time may contract with third parties in order to fulfill certain operational and data-related obligations. Data access to a third-party service provider may be especially important in connection with certain technology and infrastructure services.

The Commission received one comment letter relating to proposed § 49.17(e). MFA was concerned that § 49.17(e) may not be sufficient to protect data and information held and maintained by SDRs from improper disclosure.[168] MFA recommended that the Commission require the confidentiality procedures between an SDR and a third-party service provider to follow the same standard of care and protocol that applies to an SDR's obligation to protect confidential swap information.

The Commission agrees with MFA's recommendation and accordingly has revised § 49.17(e) to require that any ''Confidentiality Agreement'' between an SDR and a third party include a provision that the third-party service provider have the same or equivalent confidentiality procedures as the SDR outlined in § 49.16.

[160] CL–TriOptima *supra* note 51 at 3–4.

[161] CL–ESMA *supra* note 51.

[162] CL–Foreign Banks *supra* note 51 at 7.

[163] Pursuant to the directive set forth in section 712(a) of the Dodd-Frank Act, 15 U.S.C. 8302, the Commission has interpreted this provision as providing the basis to permit access to the swap data maintained by SDRs to Appropriate Domestic Regulators that have concurrent regulatory jurisdiction over such SDRs, without the application of the notice and indemnification provisions of sections 21(c)(7) and (d) of the CEA, respectively. As indicated above, the SDR, among other things, must be subject to the regulatory oversight, and be registered with, the Appropriate Domestic Regulator.

[164] As part of such designation, the Commission would require an Appropriate Domestic Regulator to enter into a MOU or similar type of information sharing arrangement with the Commission. *See* section 8(e) of the CEA, 7 U.S.C. 12(a).

[165] The Commission notes that certain SDRs are likely to register with both the Commission and the SEC because the same entity will offer its services for both swaps and security-based swaps. In addition, the Board of Governors of the Federal Reserve System currently supervises the Warehouse Trust, the global repository for credit derivatives. The Commission expects Warehouse Trust to register with the Commission as an SDR and continue to be a member of the Federal Reserve System, thereby, subject to the concurrent jurisdiction of the Commission and the Board of Governors of the Federal Reserve System.

[166] *See* section 752 of the Dodd-Frank Act, 15 U.S.C. 8325. Consistent with the directive in section 752 to ''promote effective and consistent global regulation of swaps,'' the Commission does not interpret the notice and indemnification provisions set forth in sections 21(c)(7) and (d) of the CEA to apply in circumstances in which an Appropriate Foreign Regulator possesses independent sovereign legal authority to obtain access to the information and data held and maintained by an SDR.

[167] *See* Written Testimony of Gary Gensler, Chairman of the Commission, before the U.S House Committee on Financial Services on June 16, 2011 available at *http://www.cftc.gov/PressRoom/SpeechesTestimony/opagensler-86.html* and letter from Gary Gensler, Chairman of the Commission, and Mary Schapiro, Chairman of the SEC, to Michael Barnier, European Commissioner for Internal Markets and Services, European Commission, dated June 8, 2011.

[168] CL–MFA *supra* note 51.

(f) Counterparty Access to SDRs

The Commission proposed § 49.17(f) to generally prohibit access to the swaps data maintained by a registered SDR by market participants, such as SDs and MSPs, unless the specific data was originally submitted by such party. The underlying basis for this regulation was to maintain the privacy and confidentiality of the reported data while also limiting potential access to reported swap data to the rightful parties to a swap.

The statutory authority for proposed § 49.17(f) is two-fold. First, section 21(c)(6) of the CEA requires registered SDRs to maintain the privacy of any and all swap transaction information that the registered SDR receives from an SD, counterparty, or any other registered entity. Second, section 21(f)(3) [169] of the CEA requires an SDR to establish and enforce rules to mitigate conflicts of interest.

The Commission received two comment letters relating to § 49.17(f). ABC/CIBEA noted that § 49.17(f), as proposed, generally prohibits access to swap data maintained by an SDR subject to an exception permitting access ''* * * if the specific data was originally submitted by such party.'' [170] ABC/CIEBA asserts that this provision would only include the reporting party, and therefore, recommended the Commission revise § 49.17(f) so that the exception provides ''[d]ata and information related to a particular swap that is maintained by the registered swap data repository may be accessed by either counterparty to that particular swap.'' [171] The Global FX Division similarly indicated that § 49.17(f) should be modified to permit both counterparties to a swap to view the reported data that is held and maintained by such SDR.[172]

Based on the comments noted above, the Commission is adopting § 49.17(f) largely as proposed with a revision to § 49.17(f)(2) to allow both counterparties to a swap to access information held and maintained at an SDR for that particular swap.

(g) Commercial Use of Data

The Commission in the SDR NPRM proposed § 49.17(g) to generally prohibit an SDR from using the data it accepts and maintains for commercial or business purposes. As part of this prohibition, § 49.17(g) required a registered SDR to adopt and implement adequate ''firewalls'' to protect the swaps data from any improper, commercial use. Proposed § 49.17(g)(2) provided for a limited exception to the commercial use prohibition if the submitters of the data provide express written consent to the SDR that its reported data can be used for commercial purposes. The statutory basis for § 49.17(g), as proposed, is established in sections 21(c)(6) and 21(f)(3) of the CEA.[173]

Section 21(c)(6) provides that an SDR shall ''maintain the privacy of any and all swap transaction information that the swap data repository receives from a swap dealer, counterparty, or any other registered entity.'' As indicated in the SDR NPRM, SDRs are expected to receive two separate ''streams'' of data: (i) Data related to real-time public reporting which by its nature is publicly available; and (ii) ''core'' regulatory data that is intended for use by the Commission and other regulators which is subject to statutory confidential treatment (''Core Data''). Accordingly, SDR Information that is not subject to real-time public reporting should be treated as non-public and subject to the prohibitions on commercial use set for in proposed § 49.17(g). In this manner, the Core Data could not be accessed, disclosed, or used for purposes not related to SDR responsibilities under the CEA or the regulations thereunder, unless such use is explicitly agreed to by the submitters of the data.

Section 21(f)(3) of the CEA, Core Principle 3, also provides that each SDR must establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR and to establish a process for resolving such conflicts.[174] Because of the inherent conflicts in connection with maintaining swap data and SDR operations (*e.g.,* the incentive to develop ancillary services using swap data), the Commission proposed that ''commercial use'' of any data submitted and maintained by an SDR must be severely restricted. The Commission was also concerned that an SDR may attempt to use this limited ''commercial use'' exception as a precondition for accepting non-SD/non-MSP, SD and/or MSP swap transactions. Accordingly, proposed § 49.27 required registered SDRs to provide fair, open and equal access to its services and must not discriminate against submitters of data regardless of whether such a submitter has agreed to any ''commercial use'' of its data. The Commission received a total of six comment letters relating to the commercialization of data.[175] Each of these comments is discussed in turn below.

Markit sought clarification regarding the application of proposed § 49.17(g) to the (i) preservation of data ownership rights and (ii) the permissible uses of data by an SDR.[176] Markit recommended that regulations relating to the real-time reporting of swap data make clear that swap data ownership does not transfer to the SEF, DCM or any other regulated entity, as appropriate.

The Commission believes that (i) counterparty ''consent'' to real-time reporting proposed in part 43 does not provide consent under proposed § 49.17(g) adequate to permit an SDR to use such Core Data for commercial purposes; and (ii) regulated entities responsible for the public dissemination of real-time swap data should be restricted from making commercial use of that data prior to public dissemination. The Commission does not agree with Markit's suggestion that the commercial use of real-time data by SDRs requires the consent of the data owners but, as discussed, has modified § 49.17(g)(3) to prohibit SDRs from making commercial use of real-time data before disseminating such data publicly.

CME commented that the Commission should adopt more stringent requirements to protect commercialization of data received from any entity. Accordingly, CME recommended the Commission revise proposed § 49.17(g) so that: (i) The SDR must receive express written consent before commercializing any data received, whether the entity is a swap counterparty or other registered entity (such as a DCO); (ii) the term ''market participant'' should apply more broadly than just to counterparties; and (iii) information submitted by a DCO to an SDR should not be considered to be aggregated data exempt from the commercialization prohibition.[177]

The Commission shares the CME's view that information submitted to an SDR by a registered entity, such as a DCO, is not aggregated data exempt from the commercialization prohibition.

The Commission notes that the definition of ''market participant'' set forth in proposed § 49.2(a)(6) applies to various registered entities such as DCMs, DCOs and SEFs and, therefore, is not limited to swap counterparties.

[169] *See infra* section II.D.4.

[170] CL–ABC/CIEBA *supra* note 51.

[171] CL–ABC/CIEBA *supra* note 51 at 6.

[172] CL–Global FX Division *supra* note 51.

[173] *See* section 728 of the Dodd-Frank Act.

[174] *See* section 21(f)(3) of the CEA, 7 U.S.C. 24a(f)(3) as added by section 728 of the Dodd-Frank Act.

[175] *See* CL–Markit, CL–CME, CL–Argus, CL–DTCC I, CL–DTCC II and CL–Better Markets *supra* note 51.

[176] CL–Markit I *supra* note 51 at 2.

[177] CL–CME *supra* note 51 at 4–5.

However, in terms of proposed § 49.17(g) and the underlying privacy provision related to SDRs set forth in section 21(c)(6) of the CEA, the Commission agrees with the CME's recommendation for additional clarity regarding market participants that are able to consent to the commercial use of data. Therefore, consistent with CME's comment, the Commission is revising proposed § 49.17(g) by replacing the term ''market participant'' with the language of section 21(c)(6) of the CEA which states ''swap dealer, counterparty, or any other registered entity.''

Argus commented that proposed § 49.17(g) may not be sufficient to prevent the indirect commercial use of confidential data held by an SDR. In its role of collecting and disseminating information for real-time reporting of swap transactions, Argus believes that SDRs may seek to ''monetize'' or commercially use ''real-time'' data.

The Commission believes that § 49.17(g) adequately protects swap data reported to an SDR from improper disclosure to affiliates of the SDR and other third parties. In particular, the Commission notes that § 49.17(g)(1) specifically requires that an SDR ''adopt and implement adequate 'firewalls' to protect the data required to be maintained under § 49.12 of this part and section 21(b) of the Act from any improper, commercial use.'' [178] As a preliminary matter, the Commission believes that adequate controls or firewalls would require SDR staff that is involved with any commercial use of real-time data to be restricted from obtaining access to any Core Data. The Commission does not support Argus' recommendation that would prohibit the commercial use of real-time data by an SDR if such SDR has access to non real-time data.

DTCC commented that data reported and maintained by SDRs should not be ''commercialized.'' [179] As a result, DTCC believes that a prohibition against commercial uses or practices relating to commercial use of SDR data will lead to a more cost efficient and less risky swap market. DTCC also submitted that SDRs should provide open access to offered services while preserving trading parties' control over the reported data maintained by the SDR.[180] Accordingly, DTCC believes that the particular SDR for which a trade is reported should be based on the counterparty's selection and not by a SEF, DCO, confirmation facility or other service provider.

The Commission generally agrees with DTCC's views relating to commercialization of data. However, with respect to the selection of the SDR by the reporting counterparty,[181] the Commission notes that the reporting counterparty may contractually delegate its decision to an agent such as a SEF, DCO, confirmation facility or other service provider. Accordingly, the Commission does not believe § 49.17(g) requires a revision on this point.

Better Markets asserted that if the SDR uses data for ''commercial purposes'' the SDR must be required to provide the data to the public on equal terms as to price, priority and speed of transmittal.[182] The Commission believes that generally the reporting counterparty may consent to the commercial use of its data without an additional requirement on an SDR to provide such data access to the public on equal terms.

The Commission continues to believe that conflicts are inherent in the reporting and maintaining of swap data by SDRs, and submits that the ''commercial use'' of Core Data should be restricted. However, as noted above, an SDR could, consistent with section 8 of the CEA, commercially use swap data that was reported on a real-time basis pursuant to proposed part 43 of the Commission's Regulations. However, the Commission notes that an SDR would be in violation of § 49.17(g) and if it were to require the express consent of a market participant to use any reported data held and maintained by the SDR as a condition for the reporting of such swap transaction data. Accordingly, the Commission is adopting § 49.17(g) largely as proposed subject to the revisions noted above.

8. Emergency Authority Procedures and System Safeguards—§§ 49.23 and 49.24

Section 21(c)(8) of the CEA requires SDRs to ''establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allows for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the organization.'' Proposed §§ 49.23 and 49.24 of the Commission's regulations implement section 21(c)(8).

Proposed § 49.23, consistent with former DCM Core Principle 6 [183] and new application guidance for both DCMs and SEFs,[184] required SDRs to set forth emergency contingency plans, including the designation of officials to act in the event of an emergency, chains of command and emergency conflict of interest policies and procedures.[185] Consistent with new core principle 20 for DCMs and new core principle 14 for SEFs added by sections 735 and 733 of the Dodd Frank Act, respectively, proposed § 49.24 required system safeguards for SDRs including business continuity and resumption of services plans and coordinated system testing.[186]

Proposed § 49.24(d) specifically required that SDRs have sufficient BC–DR plans and resources to enable a resumption of the SDR's operations within one business day following a disruption in SDR operations. For SDRs determined by the Commission to be ''critical,'' [187] proposed § 49.24(e)

[178] 17 CFR 49.17(g)(1).

[179] CL–DTCC I *supra* note 51 at 3.

[180] CL–DTCC II *supra* note 51 at 3.

[181] *See* proposed §§ 45.5–45.7 of the Commission's Regulations set forth in the Data NPRM *supra* note 6.

[182] *Id.* at 13.

[183] Former section 5(d)(6) of the CEA, 7 U.S.C. 7(d)(6); 17 CFR part 38, App. B, Application Guidance for former Core Principle 6.

[184] The new DCM emergency procedures core principle is also enumerated as DCM Core Principle 6 and codified in section 5(d)(6) of the CEA, 7 U.S.C. 7(d)(6); it is substantively similar to its predecessor. The new SEF emergency procedures core principle is enumerated as SEF Core Principle 8 and codified in section 5h(f)(8) of the CEA, 7 U.S.C. 7b–3(f)(8).

[185] *See* SDR NPRM *supra* note 8 at 80911–80912.

[186] Core principle 20 (DCMs) and core principle 14 (SEFs) are virtually identical and provide that each respective registered entity shall ''(A) establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and the development of automated systems, that are reliable, secure, and have adequate scalable capacity; (B) establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations and the fulfillment of the responsibilities and obligations of the board of trade [or swap execution facility]; and (C) periodically conduct tests to verify that backup resources are sufficient to ensure continued order processing and trade matching, price reporting, market surveillance, and maintenance of a comprehensive and accurate audit trail.'' The new DCM Core Principle 20 is codified in section 5(d)(20) of the CEA, 7 U.S.C. 7(d)(20). The new SEF Core Principle 14 is codified in section 5h(f)(14) of the CEA, 7 U.S.C. 7b–3(f)(14). *See* DCM NPRM and SEF NPRM, *supra* note 111.

[187] The Commission in § 49.24 has not defined a ''critical'' SDR, but instead, believes a determination of ''critical'' is a fact-intensive analysis. However, the Commission submits that a ''critical'' SDR would be an SDR that is integral to the swaps market generally or based on a particular asset class. Generally, the Commission will evaluate each SDR on a case-by-case basis, giving consideration to whether the SDR provides essential reporting and other services (such as swap confirmation and/or risk management) that is integral to the swaps market. Because of the nature of the swaps market and the essential reporting and maintenance of accurate data, the Commission is likely to view ''critical'' on a collective rather than individual basis. The Commission may also consider other relevant factors that it finds important such as whether a single or select number of SDRs maintain the vast majority of swap transaction data. *See* Commission, Notice of Proposed Rulemaking: Business Continuity and

required that they (i) implement a disaster recovery plan and BC–DR resources sufficient to enable a same-day recovery time objective in the event that its normal capabilities become inoperable, including a wide-scale disruption; and (ii) maintain geographic dispersal of infrastructure and personnel sufficient to enable achievement of a same-day recovery time objective, in the event of a wide-scale disruption.

The Commission received no comments regarding the provisions in proposed § 49.23. The Commission received one comment from Chris Barnard regarding proposed § 49.24(j).[188] Barnard, in connection with proposed recordkeeping requirements, indicated his view that proposed § 49.24(j) should be amended so that SDRs are required to keep system safeguard records indefinitely. The Commission notes that apart from the specific recordkeeping for reported swap transactions set forth in proposed § 49.12, the general recordkeeping requirements set forth in § 1.31 of the Commission Regulation's would apply to BC–DR testing records.[189] The Commission believes that § 1.31 subjects SDRs to adequate record retention requirements for BC–DR testing, and therefore, has not adopted Barnard's recommendation.

Upon review of the comment received and the proposed emergency procedures and system safeguard regulations, the Commission is adopting § 49.23 and § 49.24 as proposed.

*C. Designation of Chief Compliance Officer—§ 49.22*

Section 21(e) of the CEA, as amended by section 728 of the Dodd-Frank Act, establishes the position of CCO and enumerates specific responsibilities for CCOs at all SDRs. Section 21(e) contains three parts, which, taken together, establish CCOs as the focal points for SDRs' compliance with the CEA and applicable Commission regulations. Section 21(e) requires, first, that every SDR designate an individual to serve as CCO.[190] Second, it enumerates specific duties for CCOs and establishes their responsibilities within an SDR.[191] Third, it outlines the requirements of a mandatory annual report from SDRs to the Commission, which must be prepared and signed by an SDR's CCO.[192]

Proposed § 49.22 expanded upon the statutory provisions of section 21(e) of the CEA and granted CCOs the authority necessary to fulfill their responsibilities.[193] Proposed § 49.22 is composed of six general parts. Proposed § 49.22(a) defined the term ''board of directors.'' Proposed § 49.22(b) set forth the requirement that each SDR must appoint a CCO, and detailed the minimum qualifications for the CCO. Proposed § 49.22(c) provided for the supervisory structure that the CCO is subject to within an SDR. Proposed § 49.22(d) enumerated the duties and responsibilities of the CCO. Proposed §§ 49.22(e) and (f) detailed the information that must be included in the annual compliance report and set forth the process by which this report must be submitted to the Commission. Lastly, proposed § 49.22(g) detailed the recordkeeping requirements that the swap data repository must follow in relation to compliance matters and the annual compliance report that is submitted to the Commission.

The Commission requested comment on a number of issues relating to proposed § 49.22. Of particular note were two issues relating to the appointment and supervisory structure of the CCO. Due to concerns about potential conflicts of interest, the Commission requested comment on whether a CCO should be permitted to also serve as the general counsel of an SDR or as a member of the SDR's legal department. The Commission also requested comment on any additional measures that could be required of an SDR to adequately protect CCOs from undue influence in the performance of their duties.[194] These issues, and any comments received, are discussed in greater detail below.

The Commission received six comments relating to the SDR's CCO provisions, including three from potential SDRs, one from an operator of a number of registered DCMs, one from a public interest organization, and one from a private individual.[195]

In response to persuasive arguments by various commenters, § 49.22 as adopted includes a number of revisions. The Commission is modifying: (1) The qualifications of a CCO to include a requirement that the CCO not serve as the general counsel of the SDR or be a member of the SDR's legal department; (2) the procedures relating to removing the CCO to require that an SDR notify the Commission when a CCO is removed; (3) the enumerated duties of the CCO to clarify that potential conflicts of interest listed are not exhaustive and that the CCO is not required to guarantee compliance with Commission regulations, but only to take reasonable steps to ensure compliance; (4) the required contents of the annual compliance report that must be submitted to the Commission to reflect that policies and procedures cannot guarantee compliance with Commission regulations; (5) the

Disaster Recovery, 75 FR 42,633 (July 22, 2010); Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System issued by the Board of Governors of the Federal Reserve System, the Department of the Treasury and the SEC, 68 FR 17,809 (Apr. 11, 2003); SEC, Policy Statement Relating to Business Continuity Planning for Trading Markets, Exchange Act Release No. 48,545 (Sept. 25, 2003), 68 FR 56,656 (Oct. 1, 2003).

[188] CL–Barnard *supra* note 51 at 2.

[189] § 1.31(a)(1) specifically provides that ''[a]ll books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.''*See* 17 CFR 1.31(a)(1).

[190] *See* section 21(e)(1) of the CEA, 7 U.S.C. 24a(e)(1).

[191] *See* section 21(e)(2) of the CEA, adopted as part of the Dodd-Frank Act, providing that a CCO shall:

(A) report directly to the board or to the senior officer of the swap data repository; (B) review the compliance of the swap data repository with respect to the requirements and core principles described in this section; (C) in consultation with the board of the swap data repository, a body performing a function similar to the board of the swap data repository, or the senior officer of the swap data repository, resolve any conflicts of interest that may arise; (D) be responsible for administering each policy and procedure that is required to be established pursuant to this section; (E) ensure compliance with this Act (including regulations) relating to agreements, contracts, or transactions, including each rule prescribed by the Commission under this section; (F) establish procedures for the remediation of noncompliance issues identified by the chief compliance officer through any—(i) compliance office review; (ii) look-back; (iii) internal or external audit finding; (iv) self-reported error; or (v) validated complaint; and (G) establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

7 U.S.C. 24a(e)(2).

[192] *See* section 21(e)(3)(A) of the CEA, adopted as part of the Dodd-Frank Act, providing that a CCO shall:

[A]nnually prepare and sign a report that contains a description of—(i) the compliance of the swap data repository of the chief compliance officer with respect to this Act (including regulations); and (ii) each policy and procedure of the swap data repository of the chief compliance officer (including the code of ethics and conflict of interest policies of the swap data repository). (B) REQUIREMENTS.—A compliance report under subparagraph (A) shall—(i) accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section; and (ii) include a certification that, under penalty of law, the compliance report is accurate and complete.

7 U.S.C. 24a(e)(3)(A)–(B).

[193] *See* SDR NPRM *supra* note 51.

[194] SDR NPRM *supra* note 8 at 80914.

[195] The potential SDR commenters included: TriOptima, Reval and DTCC. The public interest organization commenter was Better Markets and the private individual commenter was Chris Barnard. CME submitted a comment letter on behalf of the four DCMs which it operates. *See* CL–TriOptima, CL–Reval, CL–DTCC I, CL–Better Markets, CL–Barnard and CL–CME *supra* note 51.

procedures relating to the submission of the annual compliance report to the Commission to clarify that the report must be submitted with the annual amendment to Form SDR and to remove certain provisions relating to the process by which the Commission may disclose the report to other parties; and (6) additional provisions as detailed below.

1. Definition of Board of Directors

The Commission in proposed § 49.22(a) defined the term ''board of directors'' as ''the board of directors of a swap data repository or for those swap data repositories whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.'' [196] The Commission also requested comment on a number of issues, including whether: (1) There should be additional rules around the types of bodies which may perform board-like functions at an SDR; (2) the proposed definition of board of directors appropriately address issues related to parent companies, subsidiaries, affiliates, and SDRs located in foreign jurisdictions; and (3) the proposed rule allowed for sufficient flexibility with regard to an SDR's business structure.[197]

The Commission received no comments on the proposed definition of board of directors.

The Commission believes that the flexibility of the proposed definition of board of directors adequately reflects the various forms of business associations which an SDR could conceivably take, including forms which do not include a corporate board of directors. Accordingly, the Commission is adopting § 49.22(a) as proposed.

2. Designation and Qualifications of Chief Compliance Officer

The Commission received three comments related to the designation and qualifications of an SDR's CCO, as described in proposed § 49.22(b)(1) and § 49.22(b)(2), respectively. Two of these comments, from Chris Barnard and Better Markets, relate to whether a CCO should be allowed to serve as general counsel of the SDR. The third comment, from CME, discusses its concern regarding the CCO's authority to ''enforce'' policies and procedures necessary to fulfill the duties set forth for CCOs.[198]

Better Markets and Chris Barnard commented that the CCO should not be allowed to serve as general counsel or be a member of the legal department of the SDR. Both commenters were concerned about the conflicts of interest that would result from a CCO also representing the SDR in legal matters. In addition to its comment regarding CCO's serving as general counsel, Better Markets also commented that in situations where there are a number of affiliate organizations, ''a single senior CCO should have overall responsibility of each affiliated and controlled entity, even if individual entities within the group have CCOs.'' [199]

Proposed § 49.22(b)(1), pertaining to the designation of a CCO, also addresses the authority and resources available to a CCO. In connection, CME commented that the use of the word ''enforce'' in proposed § 49.22(b)(1)(i) gives the CCO authority that should be reserved for senior management.

The Commission agrees with the comments made by Better Markets and Chris Barnard regarding the inherent conflicts of interest that would occur if a CCO were to serve as general counsel of an SDR or as an attorney in the legal department. Any member of the legal department of an SDR must act as an advocate for the SDR and pursue the SDR's self-interest as narrowly defined by management. If a CCO were to serve as general counsel of the SDR or as a member of the legal department, this role as an advocate may diverge with the CCO's statutory and regulatory responsibilities. The Commission believes that placing both sets of obligations in a single individual creates potential conflicts of interest, and therefore, has determined to mitigate such potential conflicts by prohibiting the CCO of an SDR from serving in the SDR's legal department.[200] As a result, the Commission is revising proposed § 49.22(b)(2) to add § 49.22(b)(2)(ii), which states that ''[t]he chief compliance officer may not be a member of the swap data repository's legal department or serve as its general counsel.''

In other respects, the Commission disagrees with commenters' views on the structure and conception of the CCO position. Section 21(e)(2) of the CEA requires the CCO to ''resolve any conflicts of interest that may arise'' and ''ensure compliance with this Act.'' [201] These duties suggest that the CCO is more than just an advisor to management and would have the ability to enforce compliance with the CEA and Commission regulations. While the CEA does not specifically use the word ''enforce,'' the Commission believes that this language is necessary to ensure that CCOs have the authority to fulfill their statutory and regulatory obligations and is consistent with the statutory directive for the CCO to ''ensure compliance with the Act (including regulations).'' [202] These considerations are particularly important given an SDR CCO's unique responsibilities with respect to fair and open access requirements set forth in § 49.27 and protecting commercially valuable swap data from improper use. The Commission notes that the authority granted to the CCO pursuant to § 49.22(b)(1)(i) does not include the ability to hire and fire SDR personnel other than its compliance staff. For purposes of clarification, however, the Commission is adopting a minor modification to § 49.22(b)(1)(ii) to state that ''[t]he chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.'' Section 49.22(b)(1)(ii) now provides greater clarity as to the SDR staff that must be under the managerial oversight of the CCO.

The Commission believes that § 49.22(b) effectively establishes the CCO as the focal point of regulatory compliance at an SDR and ensures that the CCO will have the authority to fulfill his or her duties as set forth in the CEA and Commission regulations. Accordingly, the Commission is adopting § 49.22(b)(1) and § 49.22(b)(2) subject to the above modifications.

3. Appointment, Supervision and Removal of Chief Compliance Officer

As set forth in the SDR NPRM, proposed §§ 49.22(c)(1), 49.22(c)(2) and 49.22(c)(3) provide the supervisory regime applicable to CCOs [203] by requiring that a CCO be appointed by a majority of the SDR's board of directors or senior officer, and that a majority of the board or senior officer be responsible for approving the CCO's compensation; by allowing an SDR with a board of directors to grant oversight authority to either its board or to its senior officer; and by requiring the approval of a majority of an SDR's board of directors for CCO removal (or in the

[196] SDR NPRM *supra* note 8 at 80934.

[197] SDR NPRM *supra* note 8 at 80913.

[198] CL–CME *supra* note 51 at 7.

[199] CL–Better Markets *supra* note 51 at 10.

[200] The Dodd-Frank Act also created the position of CCO for a number of other regulated entities, including swap execution facilities. For these other regulated entities the Commission determined that the conflicts of interest associated with a CCO serving as in-house counsel were substantial and prohibited the CCO from serving as in-house counsel for these regulated entities. *See* proposed § 37.1501(b)(2)(ii) and SEF NPRM *supra* note 111 at 1251.

[201] Sections 21(e)(2)(C) and (E) of the CEA.

[202] Section 21(e)(2)(E) of the CEA.

[203] SDR NPRM *supra* note 8 at 80914.

case where a SDR has no board of directors, its senior officer).[204]

Proposed §§ 49.22(c)(1) and 49.22(c)(3) sought ''to provide an SDR's CCO with a measure of independence from management in the performance of his or her duties.'' [205] However, the Commission requested comment regarding any additional measures that should be required to adequately protect CCOs from undue influence. The Commission was particularly interested in how it might offer such protection to a CCO who reports to his or her senior officer, either at the SDR's choosing or because the SDR does not have a board of directors.

The Commission specifically requested comments on (1) whether a CCO should report to the SDR's board rather than to its senior officer; (2) what potential conflicts of interest might arise if a CCO reports to the senior officer rather than to the board, and how might those conflicts be mitigated; and (3) whether ''senior officer'' of an SDR should be a defined term, and if so, how the term should be defined.[206] In addition, the Commission also requested comment on whether the provision that would require a majority of a board of directors to remove the CCO is sufficiently specific.[207]

The Commission received four comments relating to the appointment, supervision and removal of a CCO. Three of these comments suggested additional measures to protect the CCO from excessive influence by management. The fourth commenter requested that, in the final rule, SDRs be granted ''a reasonable amount of flexibility in determining how certain aspects of the CCO role (*e.g.,* reporting lines, measures to ensure CCO independence) will be designed.'' [208]

Chris Barnard and Better Markets both recommended that the ability to appoint or remove the CCO be granted to only the independent public directors of the board and not of the entire board. Better Markets also commented that the CCO ''must have a direct reporting line to the independent directors or Audit Committee.'' [209] Additionally, Better Markets stated that the CCO should be required to meet with the entire board of directors and the senior officer at least once a year and meet with the independent directors at least quarterly. Better Markets believes that these quarterly meetings should be required to ensure that the independent members of the board can adequately supervise the CCO. With regard to compensation, Better Markets commented that the CCO's compensation should be set by the independent members of the board and should not be the responsibility of the senior officer. Chris Barnard also commented on compensation, stating that the compensation of the CCO must be ''specifically designed in such a way that avoids potential conflicts of interest with its compliance role.'' [210]

Reval commented that a CCO should have ''a direct reporting line to the senior officer of the company,'' but should also report to a compliance or audit committee at the board level and have the ability to take any compliance matters to this committee if the CCO does not feel the senior officer has properly addressed the issue.[211] Additionally, in response to the Commission's request for comment, Reval commented that it was not necessary for the Commission to define ''senior officer.''

As stated above, the proposal, in connection with the oversight and reporting structure of the CCO, was modeled on section 21(e)(2)(A) of the CEA, which requires a CCO to ''report directly to the board or to the senior officer of the swap data repository.'' [212] However, the Commission notes that § 49.22(c) sets forth the minimum standards, so that SDRs may implement additional measures if deemed necessary to insulate the CCO from influence. The Commission encourages SDRs to review and enact conflict mitigation procedures as appropriate for their specific corporate and/or organizational structure.

While a majority of commenters expressed their concern that the proposed rules do not sufficiently protect the independence of the CCO, the Commission believes that the package of protections offered in the proposed rules are appropriately calibrated to insulate the CCO from day-to-day commercial pressure. The proposed rules set forth detailed appointment, supervisory and removal procedures that protect the CCO from undue influence. Accordingly, the Commission does not believe it is necessary to adopt commenters' recommendations. The Commission has revised proposed § 49.22(c)(1) in one respect, however, by eliminating the requirement that a CCO's appointment and compensation require the approval of a majority of an SDR's board of directors. The Commission believes that board approval is a sufficient requirement, and that SDRs should have appropriate discretion to determine the voting percentage necessary to appoint a CCO or determine their salary.

However, to further protect the CCO, the Commission will clarify and expand on the notification procedures regarding the appointment and removal of a CCO. Proposed § 49.22(c)(3) required an SDR to notify the Commission within two business days of appointing any new CCO. While this would effectively require an SDR to notify the Commission whenever a CCO is removed, the Commission believes that an explicit requirement is appropriate. Therefore, the Commission is adding the following sentence to § 49.22(c)(3): ''The swap data repository shall notify the Commission of such removal within two business days.''

The Commission believes that the appointment, supervisory and removal provisions of § 49.22(c) will serve to effectively protect the CCO from undue influence and will ensure that the CCO will be sufficiently shielded against retaliatory termination by the board or the senior officer of the SDR. Accordingly, the Commission is adopting § 49.22(c)(2) as proposed and is adopting §§ 49.22(c)(1) and 49.22(c)(3) subject to the above modifications.

4. Duties of the Chief Compliance Officer

Proposed § 49.22(d) detailed the duties of a CCO and is based on the CCO duties set forth in section 21(e)(2) of the CEA. The proposed rule listed the following as duties of the CCO: (1) Overseeing and reviewing compliance with the CEA and Commission regulations; (2) in consultation with the board of directors or the senior officer, resolving any conflicts of interest that may arise; (3) establishing and administering written policies and procedures designed to prevent violations of the CEA and Commission regulations; (4) ensuring compliance with the CEA and Commission regulations relating to agreements, contracts, or transactions, and with commission regulations under section 21 of the CEA; (5) establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer; (6) establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; and (7) establishing and administering a written code of ethics. In expanding on the CCO's duty to resolve conflicts of

[204] *Id.* at 80934.

[205] *Id.* at 80914.

[206] SDR NPRM *supra* note 8 at 80914.

[207] *Id.*

[208] See CL–CME *supra* note 51 at 7.

[209] CL–Better Markets *supra* note 51 at 11.

[210] CL–Barnard *supra* note 51 at 3.

[211] CL–Reval *supra* note 51 at 10.

[212] Section 21(e)(2)(A) of the CEA.

interest, the proposed rule also listed a number of potential conflicts that may confront a CCO.[213] This list of conflicts of interest was intended to indicate ''the types of conflicts that the Commission believes an SDR's CCOs should be aware of, but [was] not exhaustive.'' [214] Additionally, to assist the CCO in meeting these responsibilities, proposed § 49.22(b)(1), granted a CCO oversight authority over all compliance functions and staff acting in furtherance of those compliance functions.

In the SDR NPRM, the Commission requested comment on any additional CCO duties which the Commission should include, particularly addressing a CCO's role in managing conflicts of interest within an SDR, the types of conflicts which commenters believe might arise within an SDR, and how and by whom those conflicts should be resolved. The Commission also requested comment on whether the Commission should adopt a rule that prohibits an officer, director or person employed by the SDR or related person to coerce, manipulate, mislead, or fraudulently influence the CCO in performing his or her duties.[215]

The Commission received four comments relating to the duties of an SDR's CCO.[216] Three of the commenters—TriOptima, DTCC and CME—expressed concern that the enumerated duties of the CCO may cause the CCO to infringe on traditionally management functions. CME also stated the Commission should not require the CCO to ''ensure'' compliance with the CEA and Commission regulations. Additionally, as summarized below, Better Markets and DTCC commented on the CCO's duty to resolve any conflicts of interest that may arise.

DTCC expressed its belief that the CCO should not be ''required to be responsible for the overall operation of the SDR's business.'' [217] DTCC noted that while there are regulatory components in many areas, oversight of certain functions such as operational readiness and data security should not be the responsibility of the CCO, but should instead remain with senior management. TriOptima expressed similar concerns and stated its belief that the CCO's duties should focus on establishing, monitoring and reporting on the SDR's compliance policies. CME took issue with what it believes is an overly broad set of responsibilities assigned to CCOs; it objects to, among other provisions, a CCO's duty to ''resolve conflicts of interest.'' [218] While the CEA directs an SDR's CCO to, among other things, ''resolve any conflicts of interest that may arise,'' [219] CME believes that the word ''resolving'' in proposed § 49.22(d)(2) gives the CCO authority that should be reserved for senior management.

CME also commented on proposed § 49.22(d)(4), which listed ''ensuring compliance with the Act and Commission regulations relating to agreements, contracts, or transactions and with Commission regulations under section 21 of the Act'' as one of the CCO's duties.[220] CME believes that instead of requiring the CCO to ''ensure'' compliance, the rule should require the CCO to ''establish policies and procedures reasonably designed to ensure compliance.'' [221]

DTCC also requested that the Commission provide greater detail as to which conflicts of interest the CCO is responsible for resolving. It believes that ''the Commission should clarify that the CCO's specific responsibilities related to conflicts are limited to compliance with the provisions of section 21 of the CEA and the final rules thereunder as they relate to the swap operations of an SDR.'' [222] DTCC also suggested a materiality threshold for conflicts that require the CCO to consult with the board of directors. Lastly, Better Markets requested that the CCO be required to consult with both the independent members of the board of directors and the senior officer of the SDR when resolving conflicts of interest.

The Commission does not agree with those commenters that suggest that the proposed duties of the CCO improperly infringe on areas that are traditionally management functions. Many of the commenters based their objections on their view that the role of a CCO should be limited to monitoring compliance and advising management on compliance issues. The Commission does not believe that this limited view is appropriate for the CCO of an SDR. In listing the duties of a CCO, section 21(e)(2) of the CEA specifies that the CCO shall ''resolve any conflicts of interest that may arise'' and ''ensure compliance with this Act.'' [223] As stated above, successful execution of these duties will require that a CCO have the ability to enforce compliance with the CEA and Commission regulations. The Commission believes the language of the CEA suggests that the CCO is more than just an advisor to management on compliance issues.

In that regard, the Commission understands that a single individual cannot guarantee an SDR's compliance with the CEA and Commission regulations. However, an individual can take reasonable steps to ensure compliance. Accordingly, the Commission is revising § 49.22(d)(4) to state that one of the CCO's duties shall include ''taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations under Section 21 of the Act, including confidentiality and indemnification agreements entered into with foreign or domestic regulators pursuant to Section 21(d) of the Act.''

The Commission also disagrees with DTCC's comment that a CCO's duty to resolve conflicts of interest should be limited to those conflicts that relate to the swap operations of an SDR or that there be a materiality threshold for the CCO to consult with the board of the SDR. The Commission based this duty on the language of section 21(e)(2)(C) of the CEA. This section does not limit the CCO's duty to resolve conflicts to only those that relate to the swap operations of an SDR, nor does it suggest that there be a materiality threshold for consultation with the board of directors. Similarly, the Commission does not agree with Better Market's recommendation to add a requirement that the CCO consult with both the independent members of the board and the senior officer when resolving conflicts of interest. However, the Commission notes that while section 21(e)(2)(C) of the CEA and § 49.22(d)(2) do not require SDRs to consult both the independent members of the board and the senior officer when resolving conflicts of interest, the Commission would be supportive of any SDR that enacts this measure.

In proposed §§ 49.22(d)(2)(i)–(iii), the Commission identified a number of potential conflicts that may confront a CCO.[224] While the SDR NPRM expressly stated that this list of conflicts ''is not exhaustive,'' the Commission believes that § 49.22(d)(2) should be modified to clarify this point.[225] Therefore, the

[213] SDR NPRM *supra* note 8 at 80934.

[214] *Id.* at 80914.

[215] *Id.*

[216] *See* CL–TriOptima, CL–DTCC I, CL–CME and CL–Better Markets *supra* note 51.

[217] CL–DTCC I *supra* note 51 at 27.

[218] CL–CME *supra* note 51 at 7.

[219] Section 21(e)(2)(C) of the CEA.

[220] SDR NPRM *supra* note 8 at 80934.

[221] CL–CME *supra* note 51 at 4.

[222] CL–DTCC I *supra* note 51 at 28.

[223] Sections 21(e)(2)(C) and (E) of the CEA, 7 U.S.C. 24a(e)(2)(C) and (E).

[224] SDR NPRM *supra* note 8 at 80934.

[225] *See* SDR NPRM *supra* note 8 at 80914 which states: ''The proposed Regulation also lists a number of potential conflicts that may confront a

Commission has revised proposed § 49.22(d)(2) to add the word ''including'' before the list of potential conflicts of interest.

The Commission believes the revisions to § 49.22(d) discussed above will provide greater clarity and effectiveness with respect to the duties of an SDR's CCO. Accordingly, the Commission is adopting § 49.22(d) largely as proposed, with the modifications detailed above for § 49.22(d)(2), and § 49.22(d)(4).

5. Preparation and Submission of Annual Compliance Report

The Commission in proposed § 49.22(e) detailed the information that must be included in the annual compliance report, including a description of the SDR's written policies and procedures, an assessment by the CCO of the effectiveness of the SDR's policies and procedures in ensuring compliance with section 21 of the CEA and a description of any material changes to the policies and procedures that were made to these since the last annual compliance report.[226] In addition, proposed § 49.22(e) also required the annual report to include a certification by the CCO that, under penalty of law, the compliance report is accurate and complete.[227]

Proposed § 49.22(f)(1) set forth the procedures for review of the annual compliance report by the board of directors or senior officer of the SDR prior to submission to the Commission and proposed § 49.22(f)(2) described the process for the submission of the report.[228]

The Commission requested comment with respect to whether the annual compliance report should contain additional content beyond what is proposed in § 49.22(e) and whether additional provisions are necessary to ensure that an SDR's board of directors cannot adversely influence the content of an annual compliance report as drafted by the CCO.[229] Alternatively, the Commission also requested comment on any additional provisions that might be necessary to ensure that individual directors or other SDR employees have an adequate opportunity to register any concerns or objections they might have to the contents of an annual compliance report. The Commission received three comments regarding the preparation and submission of the annual compliance report. Both CME and DTCC commented primarily on the required provisions of the report, whereas Better Markets commented on the procedures for review by the board and submission to the Commission.

CME suggested that the Commission require that the SDR's senior officer, not its CCO, make the required certification under § 49.22(e)(7). DTCC expressed its belief that the report should be limited to detailing compliance with requirements of the CEA and the policies and procedures of the SDR that relate to its swap activities.

Better Markets supported the requirement that the CCO present the report to the board of directors prior to its submission to the Commission and proposed that the Board be required to approve the report in its entirety or detail where and why it disagrees with any provision. Better Markets also proposed that this approval or statement of disagreement be submitted to the Commission along with the report. DTCC also expressed its concern about public release of the reports and stated its belief that the annual report should be kept confidential by the Commission and should not be available to the public or to market participants.

The Commission understands that compliance with the CEA and Commission regulations cannot be guaranteed by an individual or by any policies or procedures and accordingly is revising proposed § 49.22(e)(2)(i) to require that the annual compliance report identify ''the policies and procedures that are designed to ensure compliance with each subsection and core principle, including each duty specified in section 21(c).'' The Commission is also removing proposed § 49.22(e)(6). While some commenters were supportive of the provision, the Commission has determined that it is not necessary as a mandatory requirement. The annual compliance report is a product of the CCO and intended to reflect his or her assessment of an SDR's compliance. The board of directors may append its own comments if desired, but the statutory text and the Commission's implementing regulations do not require it.

The Commission disagrees with CME's comment regarding the certification requirement for the annual compliance report. While the CEA does not explicitly require that the CCO certify the report, it does require that the CCO ''annually prepare and sign'' and that the report ''include a certification that, under penalty of law, the compliance report is accurate and complete.''[230] The Commission believes that these two requirements read together provide sufficient basis for the CCO to certify that the report is accurate and complete. However, the Commission is modifying § 49.22(e) to explicitly state that the CCO ''sign'' the annual compliance report in order to follow the statutory text more closely. The Commission also disagrees with DTCC's comment regarding limiting the scope of the report. There is no indication in the CEA that the report should be limited to only the swap activities of the SDR and the Commission believes there is no reason for the report to be limited in such a manner.

The Commission also disagrees with Better Market's suggestion to require the board to approve the report in its entirety or submit a statement detailing its objection. The Commission believes that requiring the board to approve the report would increase the risk that the CCO would be subject to undue influence by the board or by management. The proposed rule, as modified above, strikes the appropriate balance between ensuring that the board cannot adversely influence the content of a report and giving the board the opportunity to express their opinion of the report to the Commission. Additionally, the Commission acknowledges DTCC's concerns regarding public release of the report but believes that part 145 of Commission regulations sufficiently ensures that the annual compliance report will remain confidential. The Commission also does not believe § 49.22(f)(5) is necessary to protect the report from unnecessary release to the public or market participants. Therefore, the Commission has modified § 49.22(f) to remove § 49.22(f)(5).

Section 21(e)(3)(B)(i) of the CEA requires that an annual compliance report ''accompany each appropriate financial report of the swap data repository that is required to be furnished to the Commission pursuant to this section.''[231] Under the proposed rules, since an SDR's year-end financial information must be submitted as an exhibit to Form SDR, the annual compliance report was required to accompany this annual amendment to Form SDR.[232] Because this language was missing from proposed § 49.22(f)(2), the Commission has revised § 49.22(f)(2) to state that ''The annual compliance report shall be provided electronically

CCO. The list of conflicts of interest indicates the types of conflicts that the Commission believes an SDR's CCOs should be aware of, but it is not exhaustive.''

[226] SDR NPRM *supra* note 8 at 80934.

[227] *Id.* at 80934–80935.

[228] *See* proposed §§ 49.22(f)(1) and(2). *Id.* at 80935.

[229] *Id.* at 80915.

[230] Section 21(e)(3) of the CEA.

[231] Section 21(e)(3)(B)(i) of the CEA.

[232] *See* Exhibits M and N of proposed Form SDR set forth in the SDR NPRM *supra* note 8 at 80943.

to the Commission not more than 60 days after the end of the registered swap data repository's fiscal year, concurrently with the filing of the annual amendment to Form SDR that must be submitted to the Commission pursuant to § 49.3(a)(5) of this part.''

The Commission believes that §§ 49.22(e) and (f) successfully establish requirements to ensure that the annual compliance report accomplishes the regulatory goal of providing the Commission with a complete and accurate picture of an SDR's regulatory compliance program. Accordingly, the Commission is adopting §§ 49.22(e) and (f) as proposed, with the exception that §§ 49.22(e), 49.22(e)(2)(i), 49.22(e)(6), 49.22(f)(2), and 49.22(f)(5) are revised as detailed above.

6. Recordkeeping

Proposed § 49.22(g) detailed recordkeeping requirements for records relating to a CCO's areas of responsibility. This proposed regulation required an SDR to maintain: (1) A copy of its written policies and procedures, including its code of ethics and conflicts of interest policies; (2) copies of all materials, including written reports provided to the board of directors in connection with review of the annual report, as well as the board minutes or other similar written records, that record the submission of the annual compliance report to an SDR's board of directors or its senior officer; and (3) any records relevant to an SDR's annual report. The proposed rule required SDRs to maintain these records in accordance with § 1.31 of the Commission's regulations.

The Commission received one comment regarding the compliance recordkeeping provisions in proposed § 49.22(g) from Chris Barnard, who recommended that compliance records be kept indefinitely.

As stated in the SDR NPRM, the Commission designed § 49.22(g) to ensure that Commission staff would be able to obtain the information necessary to determine whether an SDR has complied with the CEA and applicable regulations.[233] The Commission believes that proposed § 49.22(g) successfully accomplishes this goal in accordance with existing Commission regulation § 1.31 which requires that regulated entities maintain records for five years. Accordingly, the Commission is adopting § 49.22(g) as proposed.

[233] *Id.* at 80915.

*D. Core Principles Applicable to SDRs—§ 49.19*

Proposed §§ 49.19–49.21 implement the three substantive core principles prescribed by section 21(f) of the CEA for registered SDRs.[234] The Commission is largely adopting the core principles as proposed. Each core principle is discussed in turn below.

1. Antitrust Considerations (Core Principle 1)

Core Principle 1 directs SDRs to consider competition issues in connection with its rules and/or activities.[235] The Commission is adopting as proposed § 49.19 (Core Principle 1),[236] which provides that unless appropriate to achieve the purposes of the CEA, a registered SDR shall avoid adopting any rule or taking any action that results in any unreasonable restraint of trade, or imposing any material anticompetitive burden on trading, clearing or reporting swaps. Like all core principles, § 49.19 directly incorporates statutory language, and the absence of particular guidance or safe harbors at this time does not diminish an SDR's obligation to comply with the core principle itself.

2. Governance Arrangements (Core Principle 2) and Conflicts of Interest (Core Principle 3)

Section 21(f)(2) of the CEA, Core Principle 2, requires that each SDR establish governance arrangements that are transparent to fulfill public interest requirements and to support the objectives of the Federal Government, owners, and participants. Section 21(f)(3) of the CEA, Core Principle 3, provides that each SDR must establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR and to establish a process for resolving such conflicts. In the SDR NPRM, the Commission proposed regulations regarding (i) the transparency of SDR governance arrangements (Proposed § 49.20) and (ii) SDR identification and mitigation of existing and potential conflicts of interest (Proposed § 49.21), in order to implement Core Principles 2 and 3, respectively.

The Commission received ten comments from interested parties.[237] As discussed below, the Commission is adopting § 49.20 and § 49.21 substantially as proposed, subject to the revisions described below.

3. Governance Arrangements (Core Principle 2)—§ 49.20

(a) Transparency of Governance Arrangements

Proposed § 49.20(a) required each registered SDR to establish governance arrangements that are well-defined and include a clear organizational structure with consistent lines of responsibility and effective internal controls.[238] In addition, proposed § 49.20(b) mandated certain minimum standards for the transparency of SDR governance arrangements. These minimum standards required an SDR to: (1) Include a statement in its charter documents regarding the transparency of its governance arrangements, and the manner in which such transparency supports the objectives of the Federal Government; (2) make available certain information to the public and relevant authorities;[239] (3) ensure that the information made available is current, accurate, clear and readily accessible; and (4) disclose summaries of significant decisions in a sufficiently comprehensive and detailed fashion so that the public and relevant authorities would have the ability to discern the SDR policies or procedures implicated and the manner in which SDR decisions

[234] Section 21(f)(4), 7 U.S.C. 24a(f)(4), establishes as a fourth core principle Commission authority to establish additional rules for registered SDRs. The Commission proposed and is today adopting §§ 49.25–49.27 pursuant to this authority. These rules are discussed in section E, below.

[235] The Commission itself is required to consider the antitrust laws in fulfilling its statutory obligations. Section 15(b) of the CEA provides that the Commission shall take into consideration the public interest to be protected by the antitrustlaws and endeavor to take the least anticompetitive means of achieving the objective of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any Commission rule or regulation * * * or in requiring or approving any bylaw, rule or regulation of a contract market or registered futures association * * *

[236] The Commission received no comments in connection with proposed § 49.19.

[237] *See* CL–AFR, CL–CME, CL–Council, CL–DTCC I, CL–DTCC II, CL–Reval II, CL–TriOptima, CL–Better Markets, CL–ABC/CIEBA and CL–Barnard *supra* note 51.

[238] *See* SDR NPRM *supra* note 8 at 80932–80933.

[239] Such information includes: (i) The registered SDR mission statement; (ii) the mission statement and/or charter of the registered SDR Board of Directors and certain committees; (iii) the board of directors nominations process of the registered SDR, as well as the process for assigning members of the board of directors or other persons to certain committees; (iv) names of all members of (a) the board of directors and (b) certain committees; (v) a description of how the board of directors and certain committees consider an independent perspective in their decision-making processes; (vi) the lines of responsibility and accountability for each operational unit of the registered SDR; and (vii) summaries of significant decisions implicating the public interest, the rationale for such decisions, and the process for reaching such decisions. These significant decisions include decisions relating to pricing of repository services, the offering of ancillary services, access to data, and the use of SDR Information. SDR NPRM *supra* note 8 at 80916.

implement or amend such policies or procedures.[240] Proposed § 49.20(b) would not require SDRs to publicly disclose minutes of board of directors or committee meetings, however, disclosure to the Commission would be required upon request.

The Commission received no comments addressing proposed § 49.20(a), but received two comment letters related to proposed § 49.20(b). One comment, from the Council, discussed the need for greater transparency in certain areas including SDR director independence. TriOptima's comment related to the public disclosure of summaries of significant decisions implicating the public interest.

The Council commented that the Commission's proposal relating to the public disclosure of an SDR's mission statement, board nomination process and board committee assignment process is consistent with the Council's best practices for corporate boards.[241] However, the Council requested that the Commission consider whether there should be greater transparency with respect to: (1) Director independence; (2) the board's role in risk oversight; and (3) director compensation in the final rule.[242]

TriOptima expressed its concern regarding proposed § 49.20(b)(vii), which required each registered SDR to make available to the public and relevant authorities, including the Commission, summaries of significant decisions implicating the public interest.[243] As an alternative to public disclosure, TriOptima proposed that the Commission require SDRs to make ongoing reports to the Commission regarding board of directors and committee decisions that affect SDR compliance with the applicable regulations, particularly changes to its procedures and compliance status.[244]

The Commission has considered the Council's comments regarding the need for greater transparency with respect to: (1) Director independence; (2) the board's role in risk oversight and (3) director compensation, and has concluded that the proposed minimum transparency requirements are sufficient to support the objectives of the Federal Government and fulfill the public interest. With respect to TriOptima's proposed alternative regarding the public disclosure of significant decisions, the Commission declines to adopt TriOptima's recommendation to report only SDR board of directors or committee decisions that would affect the SDR's compliance with the Commission's regulations and to limit such reporting to the Commission solely. Since an SDR is required to have governance arrangements that are transparent to fulfill the public interest,[245] the Commission believes that the public should be fully informed of the manner in which an SDR satisfies such requirement. The Commission emphasizes, however, that SDRs should not be required to disclose Section 8 Material (as defined in § 49.2(a)(14)) or, where appropriate, information that the SDR may have received on a confidential basis from a reporting entity. Accordingly, the Commission has adopted § 49.20(a) as proposed and has revised § 49.20(b) to exclude the disclosure of Section 8 Material and, where appropriate, information received by an SDR from a reporting entity on a confidential basis.

(b) Consideration of an Independent Perspective

In proposed § 49.20(c)(1)(i)(A), the Commission required that each registered SDR establish, maintain, and enforce policies and procedures to ensure that (i) its board of directors, as well as (ii) any SDR committee that has the authority to (A) act on behalf of the board of directors or (B) amend or constrain the action thereof, adequately considers a perspective independent of competitive, commercial, or industry interests in its deliberations.[246] As discussed in the SDR NPRM, ''the Commission believes that the board of directors, as well as each abovementioned committee, would be more likely to contemplate the manner in which a decision might affect all constituencies, and less likely to concentrate on the manner in which a decision affects the interests of the control group, if it integrates an independent perspective in its deliberations.'' [247] Therefore, in counterbalancing the perspective of certain reporting entities controlling an SDR, the Commission believes that the integration of an independent perspective would aid in addressing the conflicts of interest identified in the SDR NPRM. The Commission also proposed that the independent perspective be reflected in the nominations process for the board of directors, as well as the process for assigning members of the board of directors or other persons to the abovementioned class of committees. Thus, proposed § 49.20(c)(1)(i)(B) also required each registered SDR to establish, maintain, and enforce policies and procedures to ensure that such nominations and assignment processes adequately incorporate an independent perspective. In addition to the independent perspective requirement, the Commission proposed to promote the transparency of governance arrangements through proposed § 49.20(c)(1)(ii), which required that a registered SDR meet certain reporting requirements relating to its board of directors, as well as each SDR committee of the type mentioned above.[248]

The Commission received no comments regarding the reporting requirements in § 49.20(c)(1)(ii) and has adopted this regulation as proposed. The Commission received three comment letters regarding its proposed independent perspective requirement.[249]

DTCC recommended that SDR conflicts of interest be mitigated through the imposition of structural governance requirements designed to ensure an independent perspective on the board of directors and committees, as well as broad representation from all classes of market participants.[250] In addition, DTCC indicated that an SDR should have governance that is independent from its affiliates and that such independence and the broad representation of market participants would support the Commission's open access provisions.[251] Barnard suggested that the Commission require an SDR to have independent public directors on their boards of directors and any committee that has authority to act on behalf of the board directors or amend or constrain the action of the board of directors.[252] Reval recommended that the Commission prohibit a representative of a reporting entity from sitting on a board committee that

[240] SDR NPRM *supra* note 8 at 80933 n.116.

[241] CL–Council *supra note 51* at 1.

[242] *Id.* at 2.

[243] CL–TriOptima *supra* note 51 at 5.

[244] *Id.*

[245] Section 21(f)(2) of the CEA, 7 U.S.C. 24a(f)(2).

[246] SDR NPRM *supra* note 8 at 80917 (discussing the importance of the independent perspective in mitigating conflicts of interest).

[247] *Id.*

[248] Specifically, the Commission proposed to require an SDR to submit the following within thirty (30) days after an election of the board of directors: (i) For the board of directors, as well as each such committee, a list of all members; (ii) a description of the relationship, if any, between such members and the SDR or its affiliates; and (iii) any amendments to the policies and procedures that the SDR maintains with respect to consideration of the independent perspective. *See* SDR NPRM *supra* note 8 at 80933.

[249] *See* CL–DTCC II, CL–Barnard and CL–Reval II *supra* note 51.

[250] CL–DTCC I *supra* note 51 at 16.

[251] *Id.*

[252] CL–Barnard *supra* note 51 at 3.

nominates public directors or governs compliance, or on any other relevant committee.[253]

The Commission agrees with DTCC regarding the importance of open access, and notes that proposed §§ 49.20 and 49.21 complement the proposed SDR open access requirements set forth in § 49.27. The Commission notes that an SDR could choose to have governance that is independent from affiliates, as one of a number of complementary methods to ensure the consideration of an independent perspective. However, the Commission declines to include a ''fair representation'' requirement as DTCC recommends. Section 21(f)(2) of the CEA requires an SDR to establish governance arrangements that are transparent (i) to fulfill public interest requirements; and (ii) to support the objectives of the Federal Government, owners, and participants. The Commission observes that even if an SDR is governed by a broad cross-section of market participants, such governance may not serve the public interest. For example, if an SDR is governed by three constituencies with equal voice and two are conflicted (but in the same direction), the decision of such conflicted constituencies would stand.

With respect to requiring an SDR to include public directors on its board of directors and any committee that has authority to act on behalf of the board directors or amend or constrain the action of the board of directors, the Commission declines to mandate the method in which an SDR incorporates the consideration of an independent perspective on its board of directors or committees. As discussed below, the Commission believes that it is appropriate to afford SDRs more flexibility in determining their ownership, and governance, structures. The Commission notes that an SDR's implementation of the ''public director'' concept (*e.g.*, as explicitly set forth for DCOs, DCMs and SEFs) would be one method of meeting the requirement to consider an independent perspective with a greater degree of certainty.

The Commission also declines to adopt Reval's recommendation with respect to the board and committee nominations processes. The Commission believes that the inclusion of an independent perspective in the board nominations process, as well as on board committees that govern compliance (or other relevant committees), is sufficient to counterbalance the perspective of reporting entities that sit on such bodies, especially given the Commission's preference to afford SDRs flexibility. Accordingly, the Commission is adopting the ''independent perspective'' requirement in § 49.20(c)(1) as proposed.

(c) Structural Governance Requirements and Limitations on Ownership of Voting Equity and the Exercise of Voting Rights

Although the Commission did not propose specific structural governance requirements relating to the composition of the Board of Directors and the establishment of board committees for SDRs or limitations on ownership of SDR voting equity and the exercise of voting rights, the Commission requested comment on the imposition of such requirements and limitations in the SDR NPRM.[254] Six commenters [255] addressed the necessity of such requirements for SDRs, and two commenters [256] discussed the effect of such requirements on competition.

AFR, Barnard and Better Markets [257] suggested that, at a minimum, the SDR governance regulations should contain the same board composition requirements and ownership and voting limitations that the Commission proposed for DCOs, DCMs, and SEFs in the Conflicts of Interest Notice of Proposed Rulemaking.[258] AFR submitted that ''the information controlled by SDRs can create conflicts that are potentially as great as many of the conflicts that could exist for other derivatives infrastructure organizations'' such as DCOs, DCMs, and SEFs,[259] while Better Markets submitted that the potential conflicts of interest for an SDR stem from the SDR being dominated by or subject to the direct or indirect influence of their major customers—large financial institutions which generate the data that an SDR collects, manages and distributes.[260] For these reasons, both AFR and Better Markets believe that SDR governance regulations should parallel the governance rules of a DCO, DCM and SEF.

Only one commenter stated that ownership and voting limitations should not be considered for SDRs.[261] DTCC indicated that the imposition of such limitations ''would be an imprecise tool with which to achieve the policy goals of the Commission regarding conflicts of interest.'' [262]

Reval and TriOptima expressed the concern that, as proposed, §§ 49.20 and 49.21 would create an ''uncompetitive environment'' by deterring independent service providers from registering as SDRs.[263] Both Reval and TriOptima recommended that the Commission impose certain structural governance requirements and/or ownership and voting limitations to market participants that own or control an SDR to mitigate such an anticompetitive effect. Specifically, Reval recommended that the Commission require that (i) no financial entity, swap dealer, or major swap participant be allowed to become an SDR, (ii) no SDR permit its equity or

[253] CL–Reval *supra* note 51 at 5.

[254] SDR NPRM *supra* note 8 at 80917.

[255] *See* CL–AFR, CL–Barnard, CL–Better Markets, CL–DTCC I, CL–Reval and CL–TriOptima *supra* note 51.

[256] *See* CL–Reval and CL–TriOptima *supra* note 51.

[257] CL–AFR *supra* note 51 at 2; CL–Barnard, *supra* note 51 at 3 (stating that there should be a level playing field between SDRs and DCOs with respect to board membership requirements and ownership and voting limits); and CL–Better Markets *supra* note 51 at 10.

[258] Commission, Notice of Proposed Rulemaking: Requirements For Derivatives Clearing Organizations, Designated Contract Markets, And Swap Execution Facilities Regarding The Mitigation Of Conflicts Of Interest, 75 FR 63732 (Oct. 18, 2010) (''Conflicts of Interest NPRM''). In the Conflicts of Interest NPRM, the Commission proposed rules to mitigate potential conflicts of interest in the operation of a DCO, DCM, and SEF through (i) structural governance requirements and (ii) limits on the ownership of voting equity and the exercise of voting power. The proposed structural governance requirements include composition requirements for DCO, DCM, or SEF Boards of Directors. Specifically, such boards must be composed of at least 35 percent, but no less than two, public directors. With respect to limits on ownership of voting equity and the exercise of voting power, the proposed rules limit DCM or SEF members (and related persons) from beneficially owning more than twenty (20) percent of any class of voting equity in the registered entity or from directly or indirectly voting an interest exceeding twenty (20) percent of the voting power of any class of equity interest in the registered entity. With respect to a DCO only, the proposed rules require a DCO to choose one of two alternative limits on the ownership of voting equity or the exercise of voting power. Under the first alternative, no individual member may beneficially own more than twenty (20) percent of any class of voting equity in the DCO or directly or indirectly vote an interest exceeding twenty (20) percent of the voting power of any class of equity interest in the DCO. In addition, the enumerated entities, whether or not they are DCO members, may not collectively own on a beneficial basis more than forty (40) percent of any class of voting equity in a DCO, or directly or indirectly vote an interest exceeding forty (40) percent of the voting power of any class of equity interest in the DCO. Under the second alternative, no DCO member or enumerated entity, regardless of whether it is a DCO member, may own more than five (5) percent of any class of voting equity in the DCO or directly or indirectly vote an interest exceeding five (5) percent of the voting power of any class of equity interest in the DCO. The proposed rules also provide a procedure for the DCO to apply for, and the Commission to grant, a waiver of the limits specified in the first and second alternative.

[259] CL–AFR *supra* note 51 at 2.

[260] CL–Better Markets *supra* note 51 at 9–10.

[261] *See* CL–DTCC I and CL–DTCC II *supra* note 51 at 16 and 2, respectively.

[262] *Id.*

[263] CL–Reval *supra* note 51 at 5 and CL–TriOptima *supra* note 51 at 4.

debt to be held by any market participant that, together with its related persons, would have more than 5 percent of the notional principal swap volume in the asset class for which the SDR is registering, and (iii) no SDR permit any market participant to hold more than 5 percent of its equity (or alternatively, 20 percent, if the Commission believes that 5 percent is too low a threshold).[264] TriOptima recommended that potential conflicts of interest and compliance with the applicable Core Principles be addressed by more tailored rules that distinguish between ''Independent SDRs'' and ''Tied SDRs,'' which are actually or presumptively, controlled by swap market participants.[265] Therefore, TriOptima suggested that the Commission adopt a two-tiered approach to mitigating SDR conflicts of interest.[266] Under this approach, ''Tied SDRs'' would be subject to the full panoply of conflicts of interest and governance requirements, including (i) restrictions on ownership and voting rights, (ii) provisions for board nominations procedures and public directors, and (iii) requirements for policies and procedures to ensure that board members and certain committees do not favor the interests of a control group. In contrast, ''Independent SDRs'' would be subject only to requirements that concentrate on procedures, reporting and examination, which would ensure that changes in the SDR's business, governance structure or organization do not adversely affect impartiality.[267]

In determining the appropriate regulatory approach for the governance and the mitigation of potential conflicts of interest in the operation of DCOs, DCMs, SEFs and SDRs, the Commission examined the ways in which such entities exercised discretion in performing their respective functions. The Commission notes that the discretion exercised by a DCO, DCM or SEF with respect to their ability to influence participation on the entity (*e.g.*, execution, clearing membership, portfolio compression) or the acceptance of all trades in an asset class differs significantly from that of an SDR. The Commission agrees with DTCC that an SDR lacks discretion similar to that exercised by DCOs, DCMs and SEFs in its collection and maintenance of data related to swap transactions in that ''the SDR is not defining the reporting party, timeliness, or content for public dissemination, and similarly the SDR is not defining the reporting party, content, or process for regulatory access. The SDR does not have significant influence over the inclusion or omission of information in the reporting process, nor does it control the output of the process.'' [268] Accordingly, the Commission believes that it is appropriate to afford SDRs more flexibility in determining their ownership and governance structures, in contrast to DCOs, DCMs and SEFs and declines to impose additional structural governance requirements and ownership and voting limitations on SDRs. However, the Commission may in the future re-examine SDR governance requirements based on changing conditions and/or market developments.

The Commission has also considered and rejected Reval and TriOptima's recommendations to impose limitations on SDR ownership and voting equity as well as separate regulatory schemes for independent and tied/market participant owned or controlled SDRs. Preliminarily, the Commission notes that the Dodd-Frank Act neither endorses nor discourages a particular SDR market structure (*e.g.*, the ''public utility'' or the ''for-profit'' model); from a policy perspective, so long as an entity complies with the CEA and the regulations thereunder, the Commission has no preference whether the entity is an ''Independent SDR,'' a ''Tied SDR,'' or a market-participant owned or controlled SDR. The Commission acknowledges that control of an SDR by one or more reporting entities may lead to conflicts of interest; however, the Commission notes that ownership is only one form of control. The Commission believes that the substantive requirements (*e.g.*, transparency of governance arrangements, consideration of an independent perspective, policies and procedures on conflicts of interest) proposed in part 49 appropriately mitigate SDR conflicts of interest, especially in conjunction with (i) non-discrimination requirements regarding access and fees; and (ii) limitations on disclosure and use of non-public information. Moreover, the Commission notes that these substantive requirements are the minimum requirements necessary to ensure the adequacy of governance arrangements and the amelioration of conflicts of interest, for an ''Independent SDR,'' a ''Tied SDR,'' or a market-participant owned or controlled SDR.

(d) Substantive Requirements for SDR Boards of Directors (and Certain SDR Committees)

The Commission proposed a number of substantive requirements for SDR boards of directors and certain SDR committees to mitigate existing and potential conflicts of interest. Proposed § 49.20(c)(5) required that the SDR board of directors, SDR senior management, and members of any SDR committee that has the authority to (i) act on behalf of the board of directors; or (ii) amend or constrain the actions thereof, in each case, have the following attributes: (a) Sufficiently good reputations; (b) the requisite skills and expertise to fulfill their responsibilities in the management and governance of the registered SDR; (c) a clear understanding of such responsibilities; and (d) the ability to exercise sound judgment about SDR affairs.

In addition to the expertise requirement, the Commission proposed other substantive requirements in § 49.20(c) to enhance the accountability of SDR boards of directors to the Commission.

The Commission received one comment regarding the substantive requirements for SDR boards of directors and certain committees. DTCC addressed the expertise requirement in proposed § 49.20(c)(5). DTCC recognized the value of requiring that an SDR board incorporate an independent perspective, but questioned whether potential directors that do not directly participate in the markets would have ''sufficient, timely, and comprehensive expertise on issues critical to the extraordinarily complex financial operations of an SDR.'' [269]

Since the operations of an SDR are not specialized in the same manner as, for example, a DCO, the Commission questions whether the ''comprehensive'' expertise referenced by DTCC is necessary. The Commission is not persuaded that it will be difficult to find directors that can (i) bring an independent perspective; and (ii) sufficient, timely and comprehensive expertise. In addition, the Commission is not convinced that directors with an independent perspective would lack incentive to acquire any necessary

[264] CL–Reval *supra* note 51 at 4. Reval suggested that bank-related trade repositories be permitted to be a third-party reporting entity that can, on behalf of its owners, report to a registered SDR.

[265] CL–TriOptima *supra* note 51 at 4. TriOptima defines a Tied SDR as an SDR with voting stock that is more than 50 percent owned or controlled, directly or indirectly, by one or more market participants, or where a majority of its board was nominated or appointed, directly or indirectly, by one or more market participants, or where the Commission has determined, after examination and review, that an SDR is under effective control of one or more market participants. TriOptima defines an Independent SDR as one that meets none of the above criteria.

[266] CL–TriOptima *supra* note 51 at 4.

[267] *Id.*

[268] CL–DTCC I *supra* note 51 at 16.

[269] CL–DTCC I *supra* note 51 at 16–17.

expertise (especially because such directors may be removed). Accordingly, the Commission is adopting § 49.20(c)(5) as proposed.

The Commission received no comments on the proposed substantive requirements mandated by § 49.20(c)(1)(i)(C) and § 49.20(c)(2)–(4) and is adopting these regulations as proposed.

4. Conflicts of Interest (Core Principle 3)—§ 49.21

In the SDR NPRM, the Commission discussed the conflicts of interest that a registered SDR may confront in its operations.[270] As the Commission noted, such conflicts may involve (i) discrimination against certain reporting entities in SDR access, pricing, and provision of services; and (ii) unfair or anticompetitive disclosure or use of SDR Information.[271] The Commission noted that such conflicts of interest may originate in the control of an SDR by one reporting entity or a small subset of reporting entities (a ''control group''). Such control may result from representation on SDR governing bodies, whether through (i) ownership of voting equity or the exercise of voting rights; or (ii) other direct or indirect means. As the Commission stated, a control group may compete with other reporting entities in the execution or clearing of swap transactions and may have an incentive to leverage its influence over the registered SDR to gain a competitive advantage in relation to other reporting entities.

In addition, the Commission discussed the commercial value of swap data and SDR analyses of SDR information and the incentive that a control group may have to ''(i) limit or burden access to such analyses on a discriminatory basis; or (ii) disclose or use the data of other reporting entities for its own competitive purposes (*e.g.*, front-running).'' [272] The Commission also stated that ''the control group may also have an incentive to cause the SDR to provide such data to an affiliate for derivative applications or ancillary services (especially if such applications or services are bundled).'' [273]

The Commission is concerned that a control group can dominate an SDR to further its economic interests to the detriment of other reporting entities. The Commission proposed § 49.21 to implement Core Principle 3 and to mitigate this and other conflicts that may arise in the operation of an SDR. Proposed § 49.21(a) required each registered SDR to establish and enforce rules to minimize conflicts of interest in the decision-making process of the SDR, and establish a process for resolving such conflicts of interest. The Commission also proposed in § 49.21(b) that each registered SDR maintain and enforce rules (i) that would identify, on an ongoing basis, existing and potential conflicts of interest; and (ii) that would enable the SDR to make decisions if a conflict exists. As stated in the SDR NPRM, the Commission believes such rules should require, at a minimum, the recusal of any person involved in the conflict from such decision-making.

The Commission received three comments on the identification of conflicts of interest and proposed § 49.21.[274] AFR expressed concern regarding the vulnerability of SDRs to significant conflicts of interest that could interfere with their public utility mission.[275] Specifically, AFR expressed concern that ''the owners of SDRs could use preferential access to the information gathered to favor some market participants at the expense of others, or to deny transparent pricing information to customers.'' [276] DTCC reiterated its view that potential conflicts of interest are best addressed by open access provisions, governance that is independent from its affiliates, and a market participant owned SDR.[277] ABC/CIEBA voiced concerns relating to swap counterparties who are SDs/MSPs electing the SDR to be used where the SD/MSP has an ownership or governance interest in the SDR.

For swaps that could be cleared by multiple SDRs, ABC/CIEBA suggested that, if the Commission required the swap counterparty that is not the SD/MSP to elect the SDR to be used, then such requirement may address potential conflicts of interest where the SD/MSP has an ownership or governance interest in a particular SDR and then attempts to steer reported trades to the SDR.[278]

The Commission is adopting § 49.21(a) and (b) as proposed. The Commission believes that the substantive requirements of §§ 49.20 and 49.21 (*e.g.,* transparency of governance arrangements, consideration of an independent perspective, policies and procedures on conflicts of interest) appropriately mitigate SDR conflicts of interest, especially in conjunction with (i) non-discrimination requirements regarding access and fees; and (ii) limitations on disclosure and use of non-public information. In addition, § 49.21 simply requires an SDR to have policies and procedures to (i) identify, on an ongoing basis, existing and potential conflicts of interest; and (ii) make decisions in the event of a conflict of interest. Even assuming that the specified requirements resolve all current conflicts of interest, they may not be sufficient to address future conflicts. Thus, the Commission believes that having policies and procedures to resolve future as well as current conflicts is central to compliance with Core Principle 3. With respect to ABC/CIEBA's comment, the Commission believes that if an SD/MSP elects to report transactions at an SDR that it owns or governs, that action may constitute a SD/MSP conflict (presuming that such election does not serve the interests of its swap counterparties), but not an SDR conflict under Core Principle 3. The Commission will consider this comment in connection with its final rulemaking for Swap Data Recordkeeping and Reporting Requirements.[279]

5. Core Principle Compliance

Both proposed § 49.20(d) and § 49.21(c) required the SDR's CCO to review the compliance of the SDR with Core Principles 2 and 3, respectively. The Commission received one comment letter discussing SDR and DCO core principle compliance. CME suggested that a DCO that is also registered as an SDR should be able to achieve compliance with SDR core principles by demonstrating compliance with applicable DCO core principles.[280] The Commission has considered CME's comment and maintains that DCOs which are SDRs are responsible for compliance with the SDR core principles. Should a particular DCO core principle be identical in its requirements to an SDR core principle, compliance with the latter could be demonstrated by showing compliance with the former.[281]

[270] SDR NPRM *supra* note 8 at 80918–80919.

[271] *Id.* at 80916 n.106. In addition, the Commission stated that ''the existence of such conflicts may frustrate the public interest, as well as the objectives of the Federal Government, certain owners, and participants, in facilitating the reporting of swap transactions. Therefore, in establishing governance arrangements that are transparent as to (i) the sources of such control and (ii) the decisions resulting from such control, the SDR may be satisfying Core Principles 2 and 3 simultaneously.'' *Id.*

[272] *Id.* at 80919.

[273] *Id.*

[274] *See* CL–AFR, CL–DTCC I and CL–ABC/CIEBA *supra* note 51.

[275] CL–AFR *supra* note 51 at 1.

[276] *Id.* at 2.

[277] CL–DTCC I and CL–DTCC II *supra* note 51 at 17 and 2, respectively.

[278] CL–ABC/CIEBA *supra* note 51 at 13.

[279] *See* Data NPRM *supra* note 6.

[280] CL–CME *supra* note 51 at 2–3.

[281] The Commission reiterates that if a DCO registers as an SDR the DCO would be expected to meet the more stringent set of rules to the extent that the SDR and DCO final rules on governance

*E. Additional Duties*

In addition to the core principles set forth above in section D, section 21(f)(4) of the CEA authorized the Commission to prescribe additional duties for SDRs for the purpose of minimizing conflicts of interest, protecting data, ensuring compliance and guaranteeing the safety and security of the SDR. In its SDR NPRM, the Commission proposed four additional duties that would require an SDR to (i) adopt and implement system safeguards, including BC–DR plans; (ii) maintain sufficient financial resources; (iii) furnish to market participants a disclosure document setting forth the risks and costs associated with using the services of the SDR; and (iv) provide fair and open access to the SDR and fees that are equitable and non-discriminatory. In connection with final part 49 regulations, the Commission has adopted only three of the four proposed additional duties pursuant to section 21(f)(4). The Commission has determined that the statutory authority for adopting proposed § 49.24 relating to system safeguards is properly and adequately established in section 21(c)(8) of the CEA, and this is not an additional duty imposed under the authority of section 21(f)(4). Accordingly, the Commission believes that it is unnecessary to use its discretion under section 21(f)(4) of the CEA to adopt § 49.24. A description of the three additional duties and related comments are discussed in turn below.

1. Financial Resources—§ 49.25

Proposed § 49.25(a)(1) required an SDR to maintain sufficient financial resources to fulfill its responsibilities as set forth in proposed § 49.9 and the core principles set forth in proposed § 49.19. As described in the SDR NPRM, the Commission believes that ''requiring SDRs to maintain sufficient financial resources will help to ensure the protection of the swap data maintained by the SDR as well as the safety and security of the SDR.'' [282]

Proposed § 49.25(b) established that the financial resources relied upon by the SDR to meet its obligations under paragraph (a) may include the SDR's own capital and any other financial resource acceptable to the Commission.[283] Additionally, proposed § 49.25(c) provided that an SDR must compute, at least on a quarterly basis, its financial resource requirement, making a reasonable calculation of its projected operating costs over a 12-month period. The proposed rule allowed the SDR reasonable discretion in determining the methodology used to compute such projected operating costs, although the Commission reserved the right to review the methodology utilized by the SDR and require changes as appropriate.[284] Similarly, under proposed § 49.25(d), an SDR must undertake to compute, at least quarterly, ''the current market value of each financial resource used to meet its obligations under [§ 49.25(a)]'' with appropriate reductions in value (haircuts) applied to reflect market and credit risk.

The Commission requested comment on ''whether the methodology set forth [in § 49.25] for determining sufficient financial resources would provide the necessary resources to ensure the financial integrity of the SDR.'' [285] If not, the Commission requested that commenters submit different methodologies or manner for calculating sufficient SDR financial resources.[286]

The Commission received three comments relating to the financial resources required of SDRs.[287] While the letters were generally supportive of the proposed rules and their objectives, the commenters articulated concern with respect to (1) the length of the resource requirement; (2) the types of financial resources required by the Commission; (3) the use of a parent company's financial resources for purposes of § 49.25; and (4) the reporting of an SDR's solvency ratio.

One area of concern was the proposed requirement in § 49.25(a)(3) that an SDR's financial resources would only be considered sufficient if their value were equal to the total operating costs of the SDR for a period of at least one year. Reval believed that SDRs should not be required to have 12 months of operating expenses on an on-going basis. It argued that requiring 12 months of operating expenses on hand ''would not be how most businesses operate and would be prohibitive to many new businesses from forming an SDR * * *.'' [288] In addition, it noted that such a requirement would ''be a constraint limiting the SDRs from: improving technology, having the proper resources, and making other long-term investments.'' [289] Chris Barnard, on the other hand, articulated support for the ''requirement that an SDR maintain financial resources exceeding the total amount that would cover its operating costs for a 1-year rolling period.'' [290]

A second area of concern was the types of financial resources deemed acceptable by the Commission in proposed § 49.25(b). Reval's comment letter argued for broader allowances in the measures used to determine whether an SDR has sufficient resources. It suggested the Commission consider an SDR's profitability, level of positive operating cash flow, and cash balance. Reval also suggested that perhaps initially an SDR should be allowed to demonstrate sufficient working capital either directly, or through its parent company, or from debt, letters of credit or capital call structures. Under Reval's plan, after an initial 12-month period an SDR should ''be able to demonstrate that it has adequate financial support from one or more of the following: positive operating cash flow, six months of operating expenses on hand, or profitability on a quarterly basis.'' [291]

Reval and TriOptima offered comments on parent company contributions to SDR resources and, conversely, on their contribution to an SDR's calculated resource requirements for purposes of § 49.25. Reval suggested that ''[n]ot allowing the SDR to be financially supported by a parent company may also limit the pool of companies willing to register to become an SDR as it would involve raising new capital for a start-up business.'' [292] TriOptima believes that the ''proposed rule should be drafted broadly enough to recognize that an SDR may be a stand-alone entity or a unit or division of a larger entity'' and that the financial resource requirements be limited to the activities of the SDR ''and not to the broader activities of the entity as a whole.'' [293]

Lastly, Chris Barnard suggested that, in addition to the proposed requirements in § 49.25, an SDR should be required to calculate and regularly publish a solvency ratio and that such ratio should not fall below 105%.[294] Barnard also believes that the ''CFTC should be immediately notified when the Solvency Ratio falls below 105%.'' [295]

Proposed § 49.25 was intended to ensure the protection of the swap data maintained by the SDRs, the financial

and conflicts of interest differ. *See also* SDR NPRM *supra* note 8 at 80899 n.9.

[282] SDR NPRM *supra* note 8 at 80937.

[283] *Id.*

[284] *Id.*

[285] SDR NPRM *supra* note 8 at 80920.

[286] *Id.*

[287] *See* CL–Barnard, CL–Reval and CL–TriOptima *supra* note 51.

[288] CL–Reval *supra* note 51 at 10.

[289] *Id.*

[290] CL–Barnard *supra* note 51 at 4. The Commission notes that its proposal under § 49.25(a)(3) required that the financial resource of an SDR be at least equal to its operating costs for at least one year, calculated on a rolling basis.

[291] CL–Reval *supra* note 51 at 10–11.

[292] CL–Reval *supra* note 51 at 10.

[293] CL–TriOptima letter *supra* note 51 at 6.

[294] CL–Barnard *supra* note 51 at 4.

[295] CL–Barnard *supra* note 51 at 4.

safety and security of SDRs, and an orderly wind-down of individual SDRs without disruption to the markets., The framework established by the Dodd-Frank Act and envisioned in the Commission's proposed regulations places important responsibilities upon all SDRs to serve as centralized storehouses of swap transaction data, facilitate regulators' surveillance of swaps markets, and help mitigate systemic risk in the financial system. As described above, SDRs' responsibilities will include accepting swap data from counterparties, confirming the accuracy of the swap data, and maintaining data according to standards prescribed by the Commission. SDRs may also disseminate swap transaction data to the public, on a real-time basis, and will engage in monitoring, screening, and analyzing swap data to assist the Commission in the fulfillment of its regulatory objectives with respect to the swap markets. Given the vital importance of the functions described above, the Commission believes that adequate financial resource requirements are of the upmost importance for all SDRs. Accordingly, the Commission disagrees with Reval's suggestion that an SDR should be subject to the proposed financial resource requirements only for the initial 12 months, and to a lower standard after the first year of operation, as the important responsibilities placed upon an SDR continue past its first year of operation. Additionally, sufficient resources to execute an orderly wind-down will be crucial to any SDR no matter how long it has been in business. The Commission believes that proposed § 49.25(a) strikes a proper balance between the potential barrier to entry posed by its financial resources requirements, on the one hand, and the protection of a systemically important entity, on the other.[296]

The Commission acknowledges the detailed alternatives articulated in Reval's comment letter regarding the types of financial resources that should be acceptable in satisfaction of the requirements proposed in § 49.25(a). In particular, Reval suggested that measures to determine if an SDR has sufficient resources to ensure the financial integrity of the SDR could include the SDRs profitability, level of positive operating cash flow, and cash balance. After considering these alternative measures, however, the Commission has determined to adopt § 49.25(b) as proposed. The Commission again notes that the purpose of proposed § 49.25 was not only to ensure the continued viability of an operating SDR, but also the orderly wind-down of a failing SDR. As such, the intent of the rule is to be certain that each SDR has sufficient capital on hand to cover its operating costs for one year, regardless of its profitability or cash flow; Reval's proposed alternatives do not capture this intent. The Commission emphasizes that the provision § 49.25(b)(2) stating that the acceptable financial resources include an SDR's own capital and ''any other financial resources deemed acceptable by the Commission'' was meant to capture other types of resources on a case-by-case basis and provide flexibility to SDRs and the Commission.[297]

The Commission also disagrees with Reval that, at least initially, an SDR should be able to demonstrate sufficient working capital through a letter of credit or similar type of credit facility. The Commission clarifies that a letter of credit should not be taken into account in calculating the financial resource requirement in proposed § 49.25(a). However, an SDR may be able to take into account a committed letter of credit or line of credit for the six month liquidity requirement in proposed § 49.25(e) if there are no, or very few, restrictions on the credit and, for example, the credit is available even if the SDR's financial position changes in a materially adverse manner.

Finally, the Commission is not adopting Reval's recommendation that an SDR should be allowed to be financially supported by a parent company. The Commission believes that when relying on the resources of a parent company, there is a risk that future capital contributions, even if contractually obligated, will not be paid if an SDR must wind-down its business. Due to the risk of potential harm caused from possible data loss and market disruptions, the Commission does not view this as a viable alternative. Conversely, the Commission does agree with TriOptima that an SDR's financial resource requirements should be limited to the activities of the SDR and not to the broader activities of the parent company.

The Commission also declines to adopt Barnard's recommendation that an SDR be required to calculate and publish its solvency ratio. Accordingly, for the reasons discussed above, the Commission is adopting § 49.25 as proposed.

3. Disclosure Requirements of Swap Data Repositories—§ 49.25

The Commission proposed that SDRs furnish market participants a disclosure document (''SDR Disclosure Document'') setting forth the risks and costs associated with using the services of the SDR. Specifically, § 49.26 required that each SDR Disclosure Document contain the following information:

- The SDR's criteria for providing others with access to services offered and data maintained by the SDR;
- The SDR's criteria for those seeking to connect to or link with the SDR;
- A description of the SDR's policies and procedures regarding its safeguarding of data and operational reliability, as described in proposed § 49.24;
- The SDR's policies and procedures designed to protect the privacy and confidentiality of any and all swap transaction information that the SDR receives from market participants, as described in proposed § 49.16;
- The SDR's policies and procedures regarding its non-commercial and/or commercial use of the swap data;
- The SDR's dispute resolution procedures involving market participant;
- A description of all the SDR's services, including any ancillary services;
- The SDR's updated schedule of any fees, rates, dues, unbundled prices, or other charges for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates; and
- A description of the SDR's governance arrangements.

The Commission in proposing this disclosure requirement believed it would benefit market participants and the swap market generally by helping to (i) minimize conflicts of interest; and (ii) ensure SDR compliance with its statutory responsibilities and duties.

The Commission received a comment from DTCC related to the proposal that SDRs furnish a disclosure document outlining the costs and risks of using such services.[298] DTCC noted in particular the requirements set forth in § 49.26 and indicated that they provide market participants with sufficient disclosure of the costs and risks through disclosure documents and other information provided on their Web site.

[296] The Commission in the final adoption of § 49.25(a)(2), relating to DCOs that also operate as SDRs, revised the reference to DCO financial resource requirements to refer to § 39.11 of the Commission's Regulations rather than ''core principles.''

[297] For example, the Commission believes that commitments from equity investors to provide the resources necessary to fulfill the SDR's responsibilities would satisfy the requirements of § 49.25(b).

[298] CL–DTCC I *supra* note 51 at 25.

The Commission believes that the prominent posting of the SDR Disclosure Document itself or the information contained in the SDR Disclosure Document on an SDR's Web site is sufficient for compliance with this § 49.26.

The Commission notes that the disclosure of SDR costs and risks will provide market participants with information regarding SDR operations that is essential for informed decision-making. Specifically, the Commission believes that it is especially important for market participants to know an SDR's policies and procedures relating to the safeguarding and use of reported data as well as the operational capability and reliability of the SDR.

After reviewing § 49.26 generally and the comment received, the Commission is adopting § 49.26 as proposed.

4. Access and Fees—§ 49.27

The Commission proposed in § 49.27 to establish open, non-discriminatory access to the services provided by SDRs. The Commission believes that the Dodd-Frank Act requires SDRs to provide services on a non-discriminatory basis based largely on the requirement in section 2(a)(13)(G) of the CEA [299] that all swap transactions be reported to an SDR. The Commission further believes that the intent and purpose of section 21 of the CEA [300] is for SDRs to provide open and equal access to its services. Consistent with the principles of open and equal access to SDR services, the Commission submits that the fees or charges adopted by an SDR must also be equitable and otherwise non-discriminatory.

(a) Access

As proposed, § 49.27(a) required that the services provided by SDRs be available to all market participants, such as DCMs, SEFs, DCOs, SDs, MSPs and any other counterparty, on a fair, open and equal basis. SDRs that register and agree to accept swap data in a particular asset class (such as interest rates or commodities) could not offer their services on a discriminatory basis to select market participants or select categories of market participants. The Commission continues to believe that access should be fair, open and equal.

The Commission received four comment letters from interested parties relating to open access.[301] Several additional comments relating to fees (discussed below) that raise open access issues will also be discussed in connection with the fee provisions of § 49.27(b).

ABC/CIEBA asserted that the ''open access'' provision set forth in proposed § 49.27(a) could allow an SDR to set discriminatory restrictions on the type of swap transaction terms it could receive to the detriment of benefit and pension plans. ABC/CIEBA requested the Commission in its adoption of § 49.27(a) provide additional clarity that an SDR may not ''* * * require, as a condition to reporting a swap transaction or providing information to an SDR, that a counterparty be exposed to more liability (via a user agreement or otherwise) than it would have otherwise been exposed to had its transaction not been reported to the SDR.'' [302]

The Commission in the SDR NPRM recognized the potential difficulty for plan fiduciaries in managing benefit plans, and accordingly, proposed § 49.10(c) to partly address concerns regarding the modification or invalidation of swap transaction terms. In addition, § 49.27(a), as proposed, was intended to prevent discriminatory access to SDR services.

The Commission believes that ABC/CIEBA's proposed clarification is overly broad, and may place an SDR in a position to determine whether any given counterparty will be exposed to additional liability—even a non-reporting counterparty's. The Commission submits that this could place the SDR in a position of evaluating risks outside of the statutory mandate imposed by the Dodd-Frank Act. Therefore, the Commission believes that the measures proposed in §§ 49.10(c) and 49.27(a) to prevent modification and invalidation and to ensure fair and equal access adequately address ABC/CIEBA's concerns.

DTCC commented that SDRs should provide open access to services offered while also preserving the trading parties' control over the reported data maintained by the SDR.[303] DTCC specifically believes that agents of a reporting party (such as a SEF, DCO, confirmation facility or other service provider) must be acting on behalf of the reporting counterparty and submits that the particular SDR for which the trade is reported should be based on the counterparty's selection and not by the SEF, DCO, confirmation facility or other service provider.

Although the Commission largely shares DTCC's views regarding the authority of the reporting counterparty to choose or select the particular SDR for the reporting of swaps, the Commission submits that this authority to select a particular SDR may be contractually delegated to other parties. In addition, the rules and regulations of a particular SEF, DCM or DCO may provide for the reporting to a particular SDR. However, the Commission notes that this would not prevent the counterparties from also reporting their swap transaction data to an additional SDR for recordkeeping and other risk management or ancillary purposes consistent with the requirements set forth in proposed part 45 of the Commission's Regulations. Accordingly, the Commission believes that the reporting of swap transaction data to SDRs is adequately addressed in proposed part 45 of the Commission's Regulations [304] and section 4r(3) of the CEA.

MarkitSERV commented that it generally supports the proposed open access and fee provision set forth in § 49.27.[305] However, MarkitSERV believes that if § 49.27 is implemented, as proposed, it may have some unintended consequences. In particular, MarkitSERV asserted that without clarification as to the meaning of ''non-discriminatory'' fees and ''preferential pricing arrangements,'' the ''dealer-pays'' fee structure historically used by SDR-like entities could be seen as preferential.

MarkitSERV believes that the current ''dealer pays'' pricing model ensures fair and open access because buy-side participants are often smaller entities that may find it difficult to afford SDR fees. MarkitSERV is concerned that without clarification the proposed regulation could cause an increase in costs for buy-side market participants, and thereby, discourage the use of SDRs. The Commission believes that this argument ignores the statutory mandate that all swaps whether cleared or uncleared must be reported to an SDR.[306]

The Commission further believes that, consistent with fair, open and equal access, an SDR may appropriately utilize any pricing model subject to § 49.27(b)'s requirement that such fees be non-discriminatory. The Commission notes that ''open access'' and ''non-discriminatory'' fees are complementary notions of fair dealing and open market access that are necessary in order for compliance with the statutory mandate

[299] *See* section 727 of the Dodd-Frank Act.

[300] *See* section 728 of the Dodd-Frank Act.

[301] *See* CL–ABC/CIEBA, CL–DTCC II and CL–MarkitServ I *supra* note 51.

[302] CL–ABC/CIEBA *supra* note 51 at 5.

[303] CL–DTCC II *supra* note 51 at 3.

[304] *See* Data NPRM *supra* note 6.

[305] CL–MarkitServ I *supra* note 51.

[306] Section 2(a)(13)(G) of the CEA, 7 U.S.C. 2(a)(13)(G).

set forth in the Dodd-Frank Act that all swaps be reported to an SDR.

The Commission also received several comments in connection with the issue of bundling or tying of SDR regulatory services with ancillary services.[307] DTCC urged the Commission to prohibit the bundling of core regulatory services mandated by the Dodd-Frank and part 49 with non-core or ancillary services. Similarly, MarkitSERV also recommended that the SDR regulations be amended to explicitly prohibit tying of core services and ancillary services. MarkitSERV also commented that SDRs be allowed (but not required) to offer an array of services that are ancillary to those narrowly defined duties outlined in the Dodd-Frank Act and part 49. TriOptima requested clarification on the ability of an SDR or its affiliates to offer ancillary services on terms commercially agreed to between the SDR and its customer/subscriber.

The Commission believes that it is appropriate for SDRs to offer ancillary services to market participants. However, SDRs in offering such ancillary services are prohibited from bundling these services with mandated regulatory services such as swap data reporting. Accordingly, the Commission is revising § 49.27 to clarify that SDRs are prohibited from requiring market participants to make use of SDR ancillary services in order to gain access to the SDR's mandated regulatory services.

For the reasons discussed above, the Commission is adopting § 49.27(a) largely as proposed with the modification relating to bundling noted above.

(b) Fees

As proposed, § 49.27(b) ensured that fees or other charges established by an SDR are not used as a means to deny access to some market participants by employing disparate and/or discriminatory pricing. The Commission continues to be concerned that SDRs could attempt to adopt disparate pricing for performing their statutory duties and obligations set forth in section 21 of the CEA. The Commission believes that such action would be inconsistent with Core Principle 3 discussed above, the CEA generally, and the guiding principles set forth in the Dodd-Frank Act.

The Commission recognizes that SDRs will be subjected to significant costs both in connection with part 49, as well as the recordkeeping and reporting of swap data as proposed in part 45 and real-time public reporting as proposed in part 43.[308] These costs, in part, include the ability to accept and maintain reported swaps data, technology, personnel, technical support and appropriate BC–DR plans. Accordingly, § 49.27(b), as proposed, seeks to ensure that the fees charged to reporting parties are equitable and do not become an artificial barrier to access. The Commission is concerned that the swaps markets are dominated by a select number of financial entities and related utilities, and therefore, sought through proposed § 49.27 to promote fair and open competition for SDR services.

As proposed, § 49.27(b) prohibited SDRs from offering preferential pricing arrangements to any market participant, including volume discounts or reductions, unless such discounts or reductions apply to all market participants uniformly and are not otherwise established in a manner that would effectively limit the application of such discount or reduction to a market participant or a select number of market participants. Proposed § 49.27 also would require SDRs to provide fee transparency to market participants through its Web site as well as in the Disclosure Document discussed above in § 49.26.

The Commission received seven comment letters relating to SDR pricing from various interested parties.[309]

Reval commented that the core component of pricing will be a per transaction charge with each SDR having varying costs and quality of service. Reval thought that a comparison of pricing among SDRs may be difficult because of the many aspects that will comprise SDR pricing. Reval submitted that SDRs should be able to charge for client implementation, consulting or development services that are separate and apart from the ''core'' regulatory services of SDR reporting. Given the level of transparency as proposed by the Commission in § 49.27, Reval expects robust price competition under the assumption that several SDRs become registered.

MarkitSERV generally supported the principle set forth in proposed § 49.27 that fees charged by SDRs must be equitable and established in a uniform and non-discriminatory manner. However, as discussed above, MarkitSERV questioned the application of ''non-discriminatory'' fees and ''preferential pricing arrangements,'' based on its belief that current repository fee structures are preferential. For example, MarkitSERV commented that current trade repositories commonly require only dealer participants to pay for the cost of reporting swaps.[310]

As discussed above, MarkitSERV is concerned that, without clarification, the regulation as proposed could increase the costs for end-users (buy-side participants) and thereby discourage end-users from using SDRs. In addition to the reasons discussed above, the Commission believes that this argument fails to address the reporting regime set forth in the Data NPRM and section 4r of the CEA, and further, assumes that a single entity serves as the SDR so that buy-side participants are unable to ''shop'' for competitive pricing.

MarkitSERV recommended that the Commission explicitly endorse the ''dealer pays'' commercial model. DTCC echoed MarkitSERV's approach with its view that fee structures should reflect an ''at cost'' pricing model with only SDs subject to fees.[311] Alternatively, MarkitSERV thought the Commission could clarify § 49.27, as proposed, so that different fee structures for different classes of participants would not be deemed discriminatory as long as the pricing model is not discriminatory within those classes. In addition, MarkitSERV also asserted that adopting a ''reporting party pays'' pricing model would meet the Commission's objectives of uniform and non-discriminatory fees. Lastly, MarkitSERV asserted that the application of § 49.27 to ancillary services may prove detrimental to the market. MarkitSERV believes that because ancillary services are non-core services, and therefore, may be provided independently by un-regulated third-party service providers, these services should be priced commercially and consistently with market practices if they are also offered by SDRs.

Sungard acknowledged the Commission's rationale for applying an

[307] *See* CL–DTCC, CL–MarkitSERV, CL–MarkitSERV II and CL–TriOptima *supra* note 51. The Commission understands ancillary services to consist of asset servicing; confirmation, verification and affirmation facilities; collateral management, settlement, trade compression and netting services; valuation, pricing and reconciliation functionalities; position limits management; dispute resolution; and counterparty identify verification.

[308] *See* SDR NPRM *supra* note 8 and Real-Time NPRM *supra* note 28.

[309] *See* CL–Reval I, CL–MarkitSERV I, CL–Sungard, CL–DTCC I, CL–AFR and CL–Better Market *supra* note 51.

[310] CL–MarkitSERV I *supra* note 51 at 4. The Commission submits in a reporting party fee pricing model that reporting fees paid by SD/MSP reporting counterparties to an SDR would be factored into the pricing between the SD/MSP and its buy-side customer so that the buy-side customer does not directly pay for reporting.

[311] CL–DTCC I *supra* note 51 at 3.

equitable standard to fees charged by SDRs and supports the Commission's decision in § 49.27 to refrain from acting as a ''rate setter'' with respect to the establishment of SDR fees. Sungard specifically noted that proposed § 49.27(b)(3) does not call for specific Commission review and approval of fees. The Commission notes that although SDR fees would not be ''approved,'' any and all fees charged by SDRs will be filed with the Commission and subject to sufficient transparency and disclosure via the SDR's Web site and SDR Disclosure Document. AFR recommended that all market participants be treated equally by requiring SDRs to provide the Commission with a justification for its fees.

The Commission does not endorse or adopt any particular business or pricing model but instead believes that any regulation should permit a variety of business models to flourish. Accordingly, the Commission is adopting § 49.27 as proposed. The Commission submits that a determination of what may constitute an ''equitable'' and ''non-discriminatory'' price must be performed on a case-by-case basis. In response to DTCC, the Commission believes that the cost of offering a service or product is not determinative, but is one factor in this analysis.[312] The Commission in proposing § 49.27 was careful not to designate or sanction any particular pricing or business model relating to SDRs. Instead, the Commission seeks to foster or encourage competition as the best way in which to keep swap reporting costs to a minimum.

Given the varying cost structures and business models that may emerge, the Commission will not approve or set ''fees.'' In addition, the Commission believes that the Dodd-Frank Act and the CEA requires the Commission, to the extent possible, to promote competition between and among various SDRs. The Commission notes that § 49.27 would prohibit SDRs from establishing fees in a manner that restrict fair, free and open access to SDR services.

Both AFR and Better Markets argue that the Commission should prohibit volume discounts in SDR pricing based on their belief that most reporting flow will be ''dealer dominated,'' and therefore, unfairly discriminate against non-SDs/MSPs (*i.e.* end-users). This may be true for more ''customized'' swap transactions; however, for those more standardized transactions that may be executed on a SEF or DCM, reporting to an SDR would be part of the SEF's or DCM's transaction services. Accordingly, the reporting flow in these cases would be determined by the SEF or DCM and not the SD/MSP. In addition, SDs/MSPs will be required to negotiate customer agreements with non-SD/MSP counterparties so that volume pricing discounts should otherwise be reflected in the pricing structure to the non-SD/MSP counterparty. This will especially be the case because any fees charged by SDRs for services must be transparent and disclosed publicly.

Accordingly, the Commission will permit volume discounts as long as these discounts are not structured in a way that is anti-competitive. However, the Commission expects to study the effect of volume discounts that are offered by SDRs, and will re-evaluate both its view and § 49.27, if warranted.

With respect to MarkitSERV and DTCC's comments relating to the ''dealer pays'' commercial pricing model, the Commission is not entirely persuaded regarding this recommendation but does agree that an SDR may appropriately utilize a pricing model by which the reporting entity is required to pay the SDR reporting fees. In this manner, the reporting entity—SD, MSP or non-SD/MSP—and its counterparty will as part of their agreement negotiate the payment of SDR fees. Consistent with MarkitSERV's comments, the Commission believes that SDRs may charge participants a reasonable fee to recoup additional costs associated with accepting and processing ''customized'' reportable transactions to the SDR.

### *F. Procedures for Implementing Swap Data Repository Rules*

The Commission's part 40 regulations contain provisions related to submissions to the Commission by registered entities of new products and rules. In order to implement new statutory provisions imposed by the Dodd-Frank Act, the Commission has adopted amendments to its part 40 rules.[313] These amendments implement a new statutory framework for certification and approval procedures for new products, new rules and rule amendments submitted to the Commission by registered entities and, as relevant to this rulemaking, include new registered entities such as SDRs.

In this connection, the Commission proposed § 49.8 to conform to the framework established in the part 40 rules. The proposed rule provided that an applicant for registration as an SDR may request that the Commission approve, pursuant to section 5c(c) of the CEA, any or all of its rules and subsequent amendments, either prior to implementation or, notwithstanding the provisions of section 5c(c)(2) of the CEA, at any time thereafter, under the procedures established in § 40.5 of the Commission's Regulations. Under the proposal, rules of an SDR not voluntarily submitted for prior Commission approval as described above must be submitted to the Commission with a certification that the rule or rule amendment complies with the CEA and Commission Regulations under the procedures specified in § 40.6.

The Commission received no comments on § 49.8. Based on its review of the proposed regulation and the absence of comments, the Commission is adopting § 49.8 as proposed.

## III. Effectiveness and Transition Period

Consistent with section 754 of the Dodd-Frank Act, part 49 of the Commission's Regulations will be effective on October 31, 2011 (''Effective Date''). Once part 49 is effective, the Commission will accept applications to register as an SDR on new Form SDR adopted by the Commission in this Adopting Release.[314] As explained below and as noted elsewhere in this Adopting Release, the compliance date for various regulatory requirements is contingent upon the adoption and effectiveness of other, related, regulatory provisions and definitions. Because the Commission believes that the suite of rules implementing the Dodd-Frank Act are complex and interconnected, it has determined that implementation can best be accomplished through a separate rulemaking. The Commission expects in this separate rulemaking to establish an implementation and phase-in plan for

[312] *See e.g.* Report of SEC Advisory Committee On Market Information: A Blueprint For Responsible Change (September 14, 2001) (known as the ''Seligman Report'') available at *http://www.sec.gov/divisions/marketreg/marketinfo/finalreport.htm. See also,* SEC, Concept Release: Regulation of Market Information Fees and Revenues, Securities Exchange Act Release No. 42208 (December 9, 1999), 64 FR 70613 (December 17, 1999). Cost basis pricing in connection with national securities exchange market data fees was recently discussed in *NetCoalition* v. *Securities and Exchange Commission,* 615 F.3d 525 (DC Cir. 2010).

[313] *See* Part 40 *supra* note 21.

[314] The Commission notes that although it is unable to mandate registration as an SDR prior to the effective date of the swap definition rulemaking, SDRs can file applications with, and be granted approval, on a provisional basis, prior to that date. *See* Commission and SEC, Notice of Proposed Joint Rulemaking: Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement;'' Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 76 FR 29818 (May 23, 2011). Authority for registration in advance of an effective date is provided in section 712(f) of the Dodd-Frank Act, 15 U.S.C. 8302(f).

the numerous rulemakings related to the Dodd-Frank Act.[315]

The Commission in this Adopting Release has not established a ''compliance date'' for SDRs that differs from the effective date of part 49. The Commission believes that the adoption of registration requirements (including a provisional registration) and applicable statutory duties and core principles does not itself necessitate a delayed compliance date with part 49 for registered SDRs. In particular, the adoption of the provisional registration process set forth in § 49.3(b) should provide SDR applicants with sufficient time to fully comply with part 49 while at the same time permitting those SDR that are operational to function. Entities that currently operate in a manner similar to an SDR and seek to be registered under part 49 will require operational and systems changes in order to comply with part 49. For those entities that do not currently operate as a repository or in a similar capacity, the Commission believes that significant operational and technology resources would be required in order for such entities to register and comply with part 49.

The Commission notes that SDRs will not otherwise be fully operational as of the effective date of part 49 but instead will require an implementation or compliance period based on requirements for reporting swap transaction data as well as the real-time dissemination of swap data that are the subject of separate rulemakings by the Commission.[316] In both the Data and Real-Time Rulemakings, a delayed effectiveness date or compliance date is likely given the complexities and technology changes that must be implemented on an industry-wide basis.

## IV. Related Matters

### *A. Paperwork Reduction Act*

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number issued by the Office of Management and Budget (''OMB''). The final part 49 rules result in information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[317] The Commission submitted its proposing release and supporting documentation to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve, and assign a new control number for, the collections of information covered by the proposing release. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the proposing release,[318] are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed in the NPRM.[319] Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. The Commission received no comment on its burden estimates or on any other aspect of the information collection requirements contained in its proposing release.

The title for the collection of information under part 49 is ''Swap Data Repositories Registration and Regulatory Requirements.'' OMB has approved and assigned OMB control number 3038–0086 to this collection of information.

### *B. Cost-Benefit Considerations*

Section 15(a) of the CEA explicitly requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA. In particular, costs and benefits must be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas depending upon the nature of the regulatory action.

Section 728 of the Dodd-Frank Act provides the Commission with authority to adopt and implement rules and regulations regarding the registration and regulation of SDRs. Pursuant to that authority the Commission proposed the adoption of new part 49 to the Commission's regulations to require persons that meet the definition of an SDR to register and comply with specific duties and core principles enumerated in section 21 as well as other requirements that the Commission may prescribe by regulation. In particular, the Commission proposed to (1) create a new part 49 of its regulations for the registration and regulation of SDRs and (2) the adoption of a new form, Form SDR, to register as an SDR with the Commission.

The cost-benefit discussion in the proposing release[320] analyzed the costs and benefits of adopting new part 49 to the market generally and to the limited number of potential entities expected to register as SDRs. Specifically, the Commission determined that the proposed regulations would benefit market participants and the public by improving transparency in the swaps market and fostering competition in the data and trade repository industries. In addition, by providing regulators with access to the data maintained by SDRs, the Commission believed that its proposal would promote greater risk management and give global regulators a better measure of systematic risk

[315] In connection with the SDR Rulemaking, the Commission received fourteen comments that directly relate to implementation and phase-in. These comments resulted from the Commission re-opening of the comment period for several rulemakings, including the SDR Rulemaking, and a request for comment on the order in which it should consider final rulemakings made under the Dodd-Frank Act. See Commission, Reopening and Extension of Comment Periods for Rulemakings Implementing the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 25274 (May 4, 2011). Comments addressing implementation and phase-in were received from: (1) Working Group of Commercial Energy Firms (''WGCEF'') on March 23, 2011; (2) CME on March 23, 2011; (3) Financial Services Roundtable on April 6, 2011; (4) Financial Services Forum, Futures Industry Association, International Swaps and Derivatives Association and the Securities Industry and Financial Markets Association on May 4, 2011; (5) Financial Services Roundtable, on May 12, 2011; (6) Swaps & Derivatives Market Association on June 1, 2011; (7) AII on June 2, 2011; (8) Wholesale Markets Brokers' Association Americas on June 3, 2011; (9) Encana on June 7, 2011; (10) Chris Barnard on June 8, 2011; (11) Alternative Investment Management Association on June 10, 2011; (12) Futures Industry Association, Institute of International Bankers, International Swaps and Derivatives Association, Investment Company Institute, Securities Industry and Financial Markets Association, U.S. Chamber of Commerce on June 10, 2011; (13) AII on June 10, 2011; and (14) MarkitSERV on June 10, 2011. All comment letters are available through the Commission Web site at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=939.*

[316] *See* Data NRPM and Real-Time NPRM *supra* notes 6 and 28, respectively.

[317] 44 U.S.C. 3301 *et seq.*

[318] SDR NPRM *supra* note 8 at 80923–80925.

[319] *Id.* at 80925.

[320] SDR NPRM *supra* note 8 at 80925.

throughout the financial markets.[321] The Commission stated in the SDR NPRM that the failure to enact proposed part 49 regulations would be a cost measured by the absence of transparency in the swaps market. This determination was based on the belief that costs would appear as a result of market inefficiencies related to price discovery and risk management and the inability of regulators to properly monitor systemic risk.[322]

The Commission has considered the costs and benefits of the final regulations pursuant to section 15(a) of the Act. The Commission has considered the public comments received regarding costs and benefits in response to the SDR NPRM. A discussion of the final regulations in light of section 15(a) factors is set out immediately below, followed by a discussion of comments on cost-benefit considerations received in response to the SDR NRPM.

1. Protection of Market Participants and the Public

The Commission believes that the registration and regulation of SDRs under part 49 of the Commission's Regulations will serve to better protect market participants by providing the Commission and other regulators with important oversight tools to monitor, measure, and comprehend the swaps markets. It is expected that the Commission's surveillance and enforcement capabilities will accordingly be enhanced by the adoption of part 49. In addition, the greater transparency to be furnished by mandated reporting to SDRs will also better improve the management of systemic risk throughout the financial markets by the Commission as well as the FSOC and OFR.

The Commission has estimated that the initial start up cost for the estimated 15 SDR registrants to become registered under part 49 is between $105.5 and $135.5 million, including between $60 and $90 million for initial technological capital costs.[323] Ongoing operations are estimated to be between $47.07 and $77.072 million annually for all SDRs, which includes between $30 and $60 million dedicated to ongoing annual technological costs.[324]

The Commission is unable to estimate accurately the cost of recordkeeping given existing technologies, the current state of the swaps market and the potential growth in the future. The difficulty in estimating future and ongoing costs for SDRs is significantly related to the range of duties that can vary by asset class as well as the probability that SDR responsibilities will increase and change over time.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission believes that the adoption of the SDR regulation set forth in part 49 together with the swap data recordkeeping and reporting requirements proposed in part 45 will provide a robust source of information on activities in the swaps market that is expected to promote increased efficiency and competition. To date, the swaps market generally has been characterized by a lack of transparency with a select number of dealers dominating the business. Although dealers will likely continue to have a significant presence in the swaps market, the transparency that is envisioned in the Dodd-Frank Act and thereby implemented by part 49 is expected to provide enhanced competition for services, and accordingly, lead to greater efficiencies for market participants executing swap transactions.

In addition, greater transparency for the Commission and other regulators will provide better oversight of the swaps market and its various market participants. Specifically, based on § 49.17, SDRs will provide transaction data, including price points and counterparty matches, to a host of regulatory agencies (including the Commission) providing regulators additional tools for various surveillance and enforcement programs. This type of transparency is currently unavailable to regulators monitoring the swaps market. In addition, empirical data obtained from SDRs will also be employed by the Commission and other regulatory agencies to further study the behavior of the swaps market.

The Commission also believes that the introduction of SDRs will further automate the execution and reporting of swap transactions. This is likely to benefit market participants and reduce transactional risks through SDRs and related service providers offering important ancillary services such as confirmation and matching services, valuations, pricing, reconciliation functions, position limits management, dispute resolution and counterparty identification. The ability of regulators to access the swap data maintained by SDRs will assist regulators to, among other things, monitor risk exposures of individual counterparties to swap transactions, monitor concentrations of risk exposure, and evaluate systemic risk. In addition, the ability of DCOs to also register as SDRs will help regulators better identify the significant participants in the swap market and better assess their financial exposures.

The Commission believes that the ''cost'' of the ''public'' or regulatory function of an SDR could potentially conflict with its commercial interests. This is especially true for those SDRs that seek registration that are privately-owned and managed. As a result, the Commission in adopting § 49.17(g) and § 49.21 has sought to identify various conflicts inherent in SDR operations with the expectation that these conflicts be minimized to the greatest extent possible.

The Commission notes that SDRs could potentially commercialize the swap transactional data that is reported to it through relationships and alliances with various market data vendors and similar firms. Moreover, the disclosure of certain proprietary swap data potentially could compromise the submitters' intellectual property rights or proprietary interests—for example, investment strategies, technology systems and algorithmic trading systems. The Commission has attempted to minimize this possibility through the adoption of § 49.17(g) which prohibits the commercial use of data by SDRs unless consented to by the reporting party. The Commission believes that ancillary services provided by SDRs or related entities may also create incentives for SDRs to further promote such ancillary services. This conflict could be manifested in the manner in which swaps are required to be reported and through various legal provisions in user agreements between the SDR and reporting party.

In the Commission's view, fees charged by SDRs for reporting and storage of data will depend upon a

[321] *Id.*

[322] *Id.*

[323] These estimates were provided to the Office of Management and Budget in compliance with the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.* The estimates were arrived at by considering the document entitled ''Possible Role for NFA as a Utility for Swap Transactions,'' which appears on the NFA Web site at *http://www.cftc.gov/ucm/groups/public@swaps/documents/file/derivative13sub083110-nfa.pdf.* These estimates do not include personnel costs. Because the Commission has not regulated the swap market, it has not previously collected data on actual costs. Accordingly, the Commission solicited comment on any aspect of the reporting and recordkeeping burdens associated with the proposed rules, including the accuracy of the Commission's estimates of the burdens, in connection with OMB's review of the proposed rules and the attendant information collections. *See* SDR NPRM *supra* note 8 at 80925. No comments were received. The Commission's submissions to OMB, including supporting documentation, may be obtained by visiting the Web site RegInfo.gov.

[324] This estimate was obtained in consultation with the Commission's IT staff.

number of factors including, but not limited to, the (1) SDR's cost structure; (2) availability of competitors; and (3) regulatory oversight of fees. A variety of different business models could develop whereby the reporting and storage of data to the SDR is but one facet of the SDR's operations with various ancillary services taking on greater importance.

Because of the global nature of the swaps market, ''regulatory arbitrage'' could occur in connection with the reporting of swap data to an SDR or repository if there are significant differences in the regulatory regimes in the U.S. and abroad. In such a scenario, SDs could find it advantageous to report their trades to a foreign-based repository that is not subject to the stringent requirements embodied in the Dodd-Frank Act. The Commission and other regulators globally have been working to reduce the instances of regulatory arbitrage that may occur in connection with the regulation of the swaps markets. In particular, regulators have focused on SDRs and the reporting of swaps as an area that should be relatively consistent or uniform worldwide. The Commission continues to work with other regulators to coordinate and harmonize laws and regulations relating to SDRs or repositories.

3. Price Discovery

The Commission believes that part 49, together with such Dodd-Frank Act requirements as mandatory clearing and trading, will promote greater price efficiency and increased competition for swaps and other related financial instruments. Part 49's provisions relating to regulator access will permit the Commission, other domestic regulators and foreign regulators to examine potential price discrepancies and other trading inconsistencies in the swaps market.

The Commission notes that requirements set forth in § 49.13, relating to an SDR's obligation to confirm the accuracy of reported data, will create additional cost burdens for SDRs that may marginally increase based on the scope and volume of data transmitted. In adopting § 49.13, the Commission recognizes the potential cost burdens of this regulation based on section 21(c)(2) of the CEA, and has sought to reduce the effect on SDRs by permitting an SDR to rely on the accuracy of reported data if submitted by an electronic matching/confirmation platform.

Where there are multiple SDRs for a particular asset class, the Commission is concerned that swap data may be vulnerable to fragmentation due to the potential for swaps in such an asset class to be reported to more than one SDR. In addition, the Commission submits that permitting a DCO acting as an SDR to limit its reporting to ''cleared'' swap transactions would further fragment data reporting.[325] The Commission also notes that if SDR regulations adopted by the Commission and the SEC significantly diverge, SDRs and market participants would accordingly be subject to potentially higher fees and charges because of conflicting and/or duplicative requirements.

4. Sound Risk Management Practices

The Commission believes that part 49 and related part 45, which addresses the reporting and recordkeeping of swap transactions by all market participants, will greatly strengthen the risk management practices of the swap industry. Prior to this time, participants in the swaps markets have operated largely unregulated and without obligation to disclose transactions to regulators and/or the public. The Dodd-Frank Act specifically changed the transparency of the swaps market with the adoption of section 21 of the CEA and the establishment of SDRs as the entity to which swap transaction data will be reported and maintained for the use of regulators. The Commission believes that the reporting of all swap transactions to an SDR will serve to improve risk management practices by market participants through better knowledge of open positions and SDR services related to various trade, collateral, and risk management practices that are likely to be offered. The Commission notes that total transaction costs incurred by market participants will invariably increase as a result of additional reporting and business conduct obligations.

As adopted, § 49.17 (c) provides the Commission with direct electronic access to SDR data on a real-time basis. This access will enable the Commission to better monitor the swap market and promptly react to potential market emergencies from unreasonable risks and exposures. In addition, the requirement that SDRs have in place a CCO—mandated by section 21(e) of the CEA and implemented in § 49.22—will further support the importance of risk management and proper conflict of interest management going forward.

Consistent with the Dodd-Frank Act, part 49 provides that swap data reported and maintained by SDRs will be made available to both U.S. and foreign regulators in an effort to increase global transparency and reduce systemic risk. Because of the global and international aspects of the swaps market, the Commission has sought, to the extent possible, to coordinate and cooperate with foreign regulators in order to facilitate access to swap data.

To ensure that swap data will not impermissibly be disclosed or breached, potentially subjecting SDRs and the Commission to litigation risks and expenses, the Dodd-Frank Act in section 21(d) of the CEA mandated that domestic and foreign regulators (except for Supervisory Appropriate Foreign Regulators) must execute a confidentiality and indemnification agreement with the SDR prior to receiving access to SDR information. Section 49.18, implementing section 21(d) of the CEA, provides that other domestic and foreign regulators must comply with the confidentiality requirements set forth in section 8 of the CEA relating to the swap data that is to be provided by the registered SDR. This confidentiality and indemnification agreement would require the regulator to indemnify the SDR and the Commission for any expenses arising from litigation relating to the information provided under section 8 of the CEA. The Commission received a comment regarding access to SDR data by foreign regulators that raised concerns with respect to confidentiality and the role of the Commission as a gatekeeper.[326]

The Commission believes that regulator access (both domestic and foreign) to the data held by an SDR is essential for appropriate risk management to be performed by regulators. This is especially important for regulators to be able to monitor the swap market and certain participants relating to systemic risk.

5. Other Public Interest Considerations

The Commission believes that increased transparency resulting from the data collected from SDRs will facilitate greater understanding of how the swaps market interacts with and affects financial markets and the overall economy. Increased transparency and disclosure through SDRs to various

[325] *See* CL–CME *supra* note 51.

[326] *See* CL–MFA *supra* note 51 at 3–4. MFA urged that the Commission actively participate in verifying the validity of access requests by foreign regulators. The Commission believes it is inappropriate to place unnecessary burdens on foreign regulators' access to swap data held by U.S. SDRs. The confidentiality and indemnification agreement required to be executed between the SDR and foreign regulators, as well as any memorandum of understanding MOU between the Commission and foreign regulators, should ensure that data is accessed appropriately and maintained confidentially.

regulators will support oversight and enforcement efforts and capabilities. In addition, empirical data that will be provided to the Commission from SDRs in all asset classes should provide the Commission, legislators and the public with a better understanding of the market, thereby producing more effective public policy to reduce overall systemic risk.

The Dodd-Frank Act and implementing regulations such as part 49 will likely have extraterritorial effects because of the global nature of the swaps market and market participant operations. Consequently, the Commission is cognizant of the potential for part 49 to overlap with foreign regulations with respect to repositories or SDRs that also operate in foreign jurisdictions. Duplicative or overlapping regulations would potentially burden SDRs and firms that operate globally. The Commission in implementing part 49 expects to rely on foreign regulators and regulations to the extent possible consistent with the Dodd-Frank Act. However, section 4(c) of the CEA, as amended by the Dodd-Frank Act, severely limits the Commission's ability to accommodate SDRs because of the prohibition against providing any exemptive relief under section 21.

Pursuant to section 2(a)(13)(G) and proposed part 43 of the Commission's regulations, the Commission expects SDRs to play a significant role in the public dissemination of swap data. Because it is likely that SDRs will assume a major role in the real time dissemination of swap data, SDRs may incur greater costs in the development of increased technology and operational resources. The Commission is unable presently to quantify those costs; they will be addressed in the context of the part 43 rules.

6. Comments

In the SDR NPRM, the Commission solicited comment on its consideration of these costs and benefits. The Commission received two comments with respect to the cost benefit analysis in the SDR NPRM.[327] In addition, several market participants commented more generally that the registration procedures as proposed by the Commission in part 49 are burdensome and could be revised to reduce the burden on applicants for registration.[328] CME Group asserted that the Commission's primary focus in implementing the Dodd-Frank Act should be on the least costly, least burdensome and most efficient alternatives available. In that regard, CME suggested that DCOs that are also SDRs can achieve compliance with SDR core principles by demonstrating compliance with analogous DCO core principles. By the same token, CME urges that the Commission offer registration relief to DCOs wishing to register as SDRs in order to reduce the burden of filing duplicative materials. After careful consideration, the Commission has concluded, first, that the burden of filing duplicative materials is limited to the costs of providing these materials electronically. Second, with respect to core principle compliance, where a particular DCO core principle is identical in its requirements to an SDR core principle, the Commission believes that compliance with the latter could be demonstrated by compliance with the former. Potential non-U.S. SDRs expressed concern with respect to the burden of registering in multiple countries or jurisdictions. The Dodd-Frank Act does not permit exceptions to its registration requirements; however, as noted above in the discussion related to registration, the Commission is undertaking to work cooperatively with foreign regulators toward establishing, where appropriate, a form of recognition regime to partly alleviate the perceived burden.[329]

Consistent with section 15(a) of the CEA, the Commission believes that part 49 as adopted is in the public interest and will further protect participants and the public, promote efficiency, competition and the financial integrity of financial markets, promote accurate and efficient price discovery, enhance sound risk management practices and address other public interest considerations such as access to SDR data by other domestic and foreign regulators.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* requires that agencies consider the impact of their rules on small businesses. The Commission noted in the proposing release that although it has established certain definitions of ''small entity'' to be used in evaluating the impact of its rules under the RFA,[330] it had not previously addressed the question of whether SDRs are small entities for purposes of the RFA. For the reasons set forth in the proposing release, the Commission determined that, similar to DCOs and DCMs, SDRs are not ''small entities'' for purposes of the RFA. Accordingly, the Chairman, on behalf of the Commission, certified in the NPRM pursuant to 5 U.S.C. 605(b) that the actions to be taken herein will not have a significant economic impact on a substantial number of small entities.[331]

## V. List of Subjects

### List of Subjects in 17 CFR Part 49

Swap data repositories; registration and regulatory requirements.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, as amended, and in particular sections 8a(5) and 21 of the Act, the Commission hereby adopts an amendment to Chapter I of Title 17 of the Code of Federal Regulation by adding a new part 49 as follows:

## PART 49—SWAP DATA REPOSITORIES

Sec.
49.1 Scope.
49.2 Definitions.
49.3 Procedures for registration.
49.4 Withdrawal from registration.
49.5 Equity interest transfers.
49.6 Registration of successor entities.
49.7 Swap data repositories located in foreign jurisdictions.
49.8 Procedures for implementing registered swap data repository rules.
49.9 Duties of registered swap data repositories.
49.10 Acceptance of data.
49.11 Confirmation of data accuracy.
49.12 Swap data repository recordkeeping requirements.
49.13 Monitoring, screening and analyzing swap data.
49.14 Monitoring, screening and analyzing end-user clearing exemption claims by individual and affiliated entities.
49.15 Real-time public reporting of swap data.
49.16 Privacy and confidentiality requirements of swap data repositories.

[327] CL–CME and CL–NFPE Coalition *supra* note 51.

[328] *See* CL–CME, CL–Foreign Banks, CL–TriOptima, CL–Regis-TR and CL–DTCC I *supra* note 51. These comments are discussed above in connection with the Commission's registration procedures set forth in § 49.3.

[329] *See* CL–NFPE Coalition *supra* note 51. As a separate matter, the NFPE Coalition highlighted what it views as the potential increased burden on end-users who employ swaps to hedge against commercial risk. The NFPE Coalition expressed concern that non-financial entities would be treated in a substantially similar manner as swap dealers or financial services firms, thereby unnecessarily increasing the burdens on such non-financial entities. The Commission believes that these concerns are more properly addressed in the Data and Real-Time Reporting rulemakings. *See* Data NPRM *supra* note 6 and Real-Time NPRM *supra* note 28.

[330] The Commission previously has established that, because of the central role they play in the regulatory scheme concerning futures trading, the importance of futures trading in the national economy, and the stringent requirements of the CEA, DCOs and DCMs are not small entities. *See* SDR NPRM *supra* note 8 at 80926.

[331] SDR NPRM *supra* note 8 at 80926.

49.17 Access to SDR data.
49.18 Confidentiality and indemnification agreement.
49.19 Core principles applicable to registered swap data repositories.
49.20 Governance arrangements (Core Principle 2).
49.21 Conflicts of interest (Core Principle 3).
49.22 Chief compliance officer.
49.23 Emergency policies and procedures.
49.24 System safeguards.
49.25 Financial resources.
49.26 Disclosure requirements of swap data repositories.
49.27 Access and fees.
Appendix A to Part 49—Form SDR

**Authority:** 7 U.S.C. 12a and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

### § 49.1 Scope.

The provisions of this part apply to any swap data repository as defined under Section 1a(48) of the Act which is registered or is required to register as such with the Commission pursuant to Section 21(a) of the Act.

### § 49.2 Definitions.

(a) As used in this part:

*(1) Affiliate.* The term ''*affiliate*'' means a person that directly, or indirectly, controls, is controlled by, or is under common control with, the swap data repository.

*(2) Asset Class.* The term ''asset class'' means the particular broad category of goods, services or commodities underlying a swap. The asset classes include credit, equity, interest rates, foreign exchange, other commodities, and such other asset classes as may be determined by the Commission.

*(3) Commercial Use.* The term ''*commercial use*'' means the use of swap data held and maintained by a registered swap data repository for a profit or business purposes. The use of swap data for regulatory purposes and/or responsibilities by a registered swap data repository would not be considered a commercial use regardless of whether the registered swap data repository charges a fee for reporting such swap data.

*(4) Control.* The term ''control'' (including the terms ''*controlled by*'' and ''*under common control with*'') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

*(5) Foreign Regulator.* The term ''*foreign regulator*'' means a foreign futures authority as defined in Section 1a(26) of the Act, foreign financial supervisors, foreign central banks and foreign ministries.

*(6) Independent Perspective.* The term ''*independent perspective*'' means a viewpoint that is impartial regarding competitive, commercial, or industry concerns and contemplates the effect of a decision on all constituencies involved.

*(7) Market Participant.* The term ''*market participant*'' means any person participating in the swap market, including, but not limited to, designated contract markets, derivatives clearing organizations, swaps execution facilities, swap dealers, major swap participants, and any other counterparties to a swap transaction.

*(8) Non-affiliated third party.* The term ''*non-affiliated third party*'' means any person except:

(i) The swap data repository;

(ii) The swap data repository's affiliate; or

(iii) A person employed by a swap data repository and any entity that is not the swap data repository's affiliate (and ''non-affiliated third party'' includes such entity that jointly employs the person).

*(9) Person Associated with a Swap Data Repository.* The term ''*person associated with a swap data repository*'' means:

(i) Any partner, officer, or director of such swap data repository (or any person occupying a similar status or performing similar functions);

(ii) Any person directly or indirectly controlling, controlled by, or under common control with such swap data repository; or

(iii) Any person employed by such swap data repository.

*(10) Position.* The term ''*position*'' means the gross and net notional amounts of open swap transactions aggregated by one or more attributes, including, but not limited to, the:

(i) Underlying instrument;

(ii) Index, or reference entity;

(iii) Counterparty;

(iv) Asset class;

(v) Long risk of the underlying instrument, index, or reference entity; and

(vi) Short risk of the underlying instrument, index, or reference entity.

*(11) Registered Swap Data Repository.* The term ''*registered swap data repository*'' means a swap data repository that is registered under Section 21 of the Act.

*(12) Reporting Entity.* The term ''*reporting entity*'' means those entities that are required to report swap data to a registered swap data repository. These reporting entities include designated contract markets, swaps execution facilities, derivatives clearing organizations, swap dealers, major swap participants and certain non-swap dealers/non-major swap participant counterparties.

*(13) SDR Information.* The term ''*SDR Information*'' means any information that the swap data repository receives or maintains.

*(14) Section 8 Material.* The term ''*Section 8 Material*'' means the business transactions, trade data, or market positions of any person and trade secrets or names of customers.

*(15) Swap Data.* The term ''*swap data*'' means the specific data elements and information set forth in part 45 of this chapter that is required to be reported by a reporting entity to a registered swap data repository.

(b) *Defined Terms.* Capitalized terms not defined in this part shall have the meanings assigned to them in § 1.3 of this chapter.

### § 49.3 Procedures for registration.

(a) *Application Procedures.* (1) An applicant, person or entity desiring to be registered as a swap data repository shall file electronically an application for registration on Form SDR provided in appendix A to this part, with the Secretary of the Commission at its headquarters in Washington, DC in a format and in the manner specified by the Secretary of the Commission in accordance with the instructions contained therein.

(2) The application shall include information sufficient to demonstrate compliance with core principles specified in Section 21 of the Act and the regulations thereunder. Form SDR consists of instructions, general questions and a list of Exhibits (documents, information and evidence) required by the Commission in order to determine whether an applicant is able to comply with the core principles. An application will not be considered to be materially complete unless the applicant has submitted, at a minimum, the exhibits as required in Form SDR. If the application is not materially complete, the Commission shall notify the applicant that the application will not be deemed to have been submitted for purposes of the 180-day review procedures.

(3) *180-Day Review Procedures.* The Commission will review the application for registration as a swap data repository within 180 days of the date of the filing of such application. In considering an application for registration as a swap data repository, the staff of the Commission shall include in its review, an applicant's past relevant submissions and compliance history. At or prior to

the conclusion of the 180-day period, the Commission will either by order grant registration; extend, by order, the 180-day review period for good cause; or deny the application for registration as a swap data repository. The 180-day review period shall commence once a completed submission on Form SDR is submitted to the Commission. The determination of when such submission on Form SDR is complete shall be at the sole discretion of the Commission. If deemed appropriate, the Commission may grant registration as a swap data repository subject to conditions. If the Commission denies an application for registration as a swap data repository, it shall specify the grounds for such denial. In the event of a denial of registration for a swap data repository, any person so denied shall be afforded an opportunity for a hearing before the Commission.

(4) *Standard for Approval.* The Commission shall grant the registration of a swap data repository if the Commission finds that such swap data repository is appropriately organized, and has the capacity: to ensure the prompt, accurate and reliable performance of its functions as a swap data repository; comply with any applicable provisions of the Act and regulations thereunder; carry out its functions in a manner consistent with the purposes of Section 21 of the Act and the regulations thereunder; and operate in a fair, equitable and consistent manner. The Commission shall deny registration of a swap data repository if it appears that the application is materially incomplete; fails in form or substance to meet the requirements of Section 21 of the Act and part 49; or is amended or supplemented in a manner that is inconsistent with this § 49.3. The Commission shall notify the applicant seeking registration that the Commission is denying the application setting forth the deficiencies in the application, and/or the manner in which the application fails to meet the requirements of this part.

(5) *Amendments and Annual Filing.* If any information reported on Form SDR or in any amendment thereto is or becomes inaccurate for any reason, whether before or after the application for registration has been granted, the swap data repository shall promptly file an amendment on Form SDR updating such information. In addition, the swap data repository shall annually file an amendment on Form SDR within 60 days after the end of each fiscal year.

(6) *Service of Process.* Each swap data repository shall designate and authorize on Form SDR an agent in the United States, other than a Commission official, who shall accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the swap data repository to enforce the Act and the regulations thereunder.

(b) *Provisional Registration.* The Commission, upon the request of an applicant, may grant provisional registration of a swap data repository if such applicant is in substantial compliance with the standards set forth in paragraph (a)(4) of this section and is able to demonstrate operational capability, real-time processing, multiple redundancy and robust security controls. Such provisional registration of a swap data repository shall expire on the earlier of: the date that the Commission grants or denies registration of the swap data repository; or the date that the Commission rescinds the temporary registration of the swap data repository. This paragraph (b) shall terminate within such time as determined by the Commission. A provisional registration granted by the Commission does not affect the right of the Commission to grant or deny permanent registration as provided under paragraph (a)(3) of this section.

(c) *Withdrawal of Application for Registration.* An applicant for registration may withdraw its application submitted pursuant to paragraph (a) of this section by filing with the Commission such a request. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application for registration was pending with the Commission, and shall not prejudice the filing of a new application by such applicant.

(d) *Reinstatement of Dormant Registration.* Before accepting or re-accepting swap transaction data, a dormant registered swap data repository as defined in § 40.1(e) of this chapter shall reinstate its registration under the procedures set forth in paragraph (a) of this section; provided, however, that an application for reinstatement may rely upon previously submitted materials that still pertain to, and accurately describe, current conditions.

(e) *Delegation of Authority.* (1) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or the Director's delegates, with the consultation of the General Counsel or the General Counsel's delegates, the authority to notify an applicant seeking registration as a swap data repository pursuant to Section 21 of the Act that the application is materially incomplete and the 180-day period review period is extended.

(2) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this paragraph.

(3) Nothing in this paragraph prohibits the Commission, at its election, from exercising the authority delegated in paragraph (e)(1) of this section.

(f) *Request for Confidential Treatment.* An applicant for registration may request confidential treatment for materials submitted in its application as set forth in §§ 40.8 and 145.9 of this chapter. The applicant shall identify with particularity information in the application that will be subject to a request for confidential treatment.

**§ 49.4 Withdrawal from registration.**

(a)(1) A registered swap data repository may withdraw its registration by giving notice in writing to the Commission requesting that its registration as a swap data repository be withdrawn, which notice shall be served at least sixty days prior to the date named therein as the date when the withdrawal of registration shall take effect. The request to withdraw shall be made by a person duly authorized by the registrant and shall specify:

(i) The name of the registrant for which withdrawal of registration is being requested;

(ii) The name, address and telephone number of the swap data repository that will have custody of data and records of the registrant;

(iii) The address where such data and records will be located; and

(iv) A statement that the custodial swap data repository is authorized to make such data and records available in accordance with § 1.44.

(2) Prior to filing a request to withdraw, a registered swap data repository shall file an amended Form SDR to update any inaccurate information. A withdrawal of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities or events occurring during the time that the facility was designated by the Commission.

(b) A notice of withdrawal from registration filed by a swap data repository shall become effective for all matters (except as provided in this paragraph (b)) on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such swap data repository

consents or which the Commission, by order, may determine as necessary or appropriate in the public interest.

(c) *Revocation of Registration for False Application.* If, after notice and opportunity for hearing, the Commission finds that any registered swap data repository has obtained its registration by making any false or misleading statements with respect to any material fact or has violated or failed to comply with any provision of the Act and regulations thereunder, the Commission, by order, may revoke the registration. Pending final determination whether any registration shall be revoked, the Commission, by order, may suspend such registration, if such suspension appears to the Commission, after notice and opportunity for hearing, to be necessary or appropriate and in the public interest.

**§ 49.5 Equity interest transfers.**

(a) *Equity transfer notification.* Upon entering into any agreement(s) that could result in an equity interest transfer of ten percent or more in the swap data repository, the swap data repository shall file a notification of the equity interest transfer with the Secretary of the Commission at its headquarters in Washington, *DC* in a format and in the manner specified by the Secretary of the Commission, no later than the business day, as defined in § 40.1 of this chapter, following the date on which the swap data repository enters into a firm obligation to transfer the equity interest. The swap data repository shall also amend any information that is no longer accurate on Form SDR consistent with the procedures set forth in § 49.3 of this part.

(b) *Required information.* The notification must include and be accompanied by: any relevant agreement(s), including any preliminary agreements; any associated changes to relevant corporate documents; a chart outlining any new ownership or corporate or organizational structure; a brief description of the purpose and any impact of the equity interest transfer; and a representation from the swap data repository that it meets all of the requirements of Section 21 of the Act and Commission regulations adopted thereunder. The swap data repository shall keep the Commission apprised of the projected date that the transaction resulting in the equity interest transfer will be consummated, and must provide to the Commission any new agreements or modifications to the original agreement(s) filed pursuant to this section. The swap data repository shall notify the Commission of the consummation of the transaction on the day in which it occurs.

(c) *Certification.* (1) Upon a transfer of an equity interest of ten percent or more in a registered swap data repository, the registered swap data repository shall file with the Secretary of the Commission at its headquarters in Washington, *DC* in a format and in the manner specified by the Secretary of the Commission, a certification that the registered swap data repository meets all of the requirements of Section 21 of the Act and Commission regulations adopted thereunder, no later than two business days, as defined in § 40.1 of this chapter, following the date on which the equity interest of ten percent or more was acquired. Such certification shall state whether changes to any aspects of the swap data repository's operations were made as a result of such change in ownership, and include a description of any such change(s).

(2) The certification required under this paragraph may rely on and be supported by reference to an application for registration as a swap data repository or prior filings made pursuant to a rule submission requirement, along with any necessary new filings, including new filings that provide any and all material updates of prior submissions.

**§ 49.6 Registration of successor entities.**

(a) In the event of a corporate transaction, such as a re-organization, merger, acquisition, bankruptcy or other similar corporate event, that creates a new entity, in which the swap data repository continues to operate, the swap data repository shall request a transfer of the registration, rules, and other matters, no later than 30 days after the succession. The registration of the predecessor shall be deemed to remain effective as the registration of the successor if the successor, within 30 days after such succession, files an application for registration on Form SDR, and the predecessor files a request for vacation of registration on Form SDR *provided, however,* that the registration of the predecessor swap data repository shall cease to be effective 90 days after the application for registration on Form SDR is filed by the successor swap data repository.

(b) If the succession is based solely on a change in the predecessor's date or state of incorporation, form of organization, or composition of a partnership, the successor may, within 30 days after the succession, amend the registration of the predecessor swap data repository on Form SDR to reflect these changes. This amendment shall be an application for registration filed by the predecessor and adopted by the successor.

**§ 49.7 Swap data repositories located in foreign jurisdictions.**

Any swap data repository located outside of the United States applying for registration pursuant to § 49.3 of this part shall certify on Form SDR and provide an opinion of counsel that the swap data repository, as a matter of law, is able to provide the Commission with prompt access to the books and records of such swap data repository and that the swap data repository can submit to onsite inspection and examination by the Commission.

**§ 49.8 Procedures for implementing registered swap data repository rules.**

(a) *Request for Commission approval of rules.* An applicant for registration as a swap data repository may request that the Commission approve under Section 5c(c) of the Act, any or all of its rules and subsequent amendments thereto, prior to their implementation or, notwithstanding the provisions of Section 5c(c)(2) of the Act, at anytime thereafter, under the procedures of § 40.5 of this chapter.

(b) Notwithstanding the timeline under § 40.5(c) of this chapter, the rules of a swap data repository that have been submitted for Commission approval at the same time as an application for registration under § 49.3 of this part or to reinstate the registration of a dormant registered swap data repository, as defined in § 40.1 of this chapter, will be deemed approved by the Commission no earlier than when the swap data repository is deemed to be registered or reinstated.

(c) *Self-certification of rules.* Rules of a registered swap data repository not voluntarily submitted for prior Commission approval pursuant to paragraph (a) of this section must be submitted to the Commission with a certification that the rule or rule amendment complies with the Act or rules thereunder pursuant to the procedures of § 40.6 of this chapter, as applicable.

**§ 49.9 Duties of registered swap data repositories.**

(a) *Duties.* To be registered, and maintain registration, as a swap data repository, a registered swap data repository shall:

(1) Accept swap data as prescribed in § 49.10 for each swap;

(2) Confirm, as prescribed in § 49.11, with both counterparties to the swap the accuracy of the swap data that was submitted;

(3) Maintain, as prescribed in § 49.12, the swap data described in part 45 of the

Commission's Regulations in such form and manner as provided therein and in the Act and the rules and regulations thereunder;

(4) Provide direct electronic access to the Commission (or any designee of the Commission, including another registered entity) as prescribed in § 49.17;

(5) Provide the information set forth in § 49.15 to comply with the public reporting requirements set forth in Section 2(a)(13) of the Act;

(6) Establish automated systems for monitoring, screening, and analyzing swap data as prescribed in § 49.13;

(7) Establish automated systems for monitoring, screening and analyzing end-user clearing exemption claims as prescribed in § 49.14;

(8) Maintain the privacy of any and all swap data and any other related information that the swap data repository receives from a reporting entity as prescribed in § 49.16;

(9) Upon request of certain appropriate domestic and foreign regulators, provide access to swap data and information held and maintained by the swap data repository as prescribed in § 49.17;

(10) Adopt and establish appropriate emergency policies and procedures, including business continuity and disaster recovery plans, as prescribed in § 49.23 and § 49.24.

(11) Designate an individual to serve as a chief compliance officer who shall comply with § 49.22; and

(12) Subject itself to inspection and examination by the Commission.

(b) This Regulation is not intended to limit, or restrict, the applicability of other provisions of the Act, including, but not limited to, Section 2(a)(13) of the Act and rules and regulations promulgated thereunder.

**§ 49.10 Acceptance of data.**

(a) A registered swap data repository shall establish, maintain, and enforce policies and procedures for the reporting of swap data to the registered swap data repository and shall accept and promptly record all swap data in its selected asset class and other regulatory information that is required to be reported pursuant to part 45 and part 43 of this chapter by designated contract markets, derivatives clearing organizations, swap execution facilities, swap dealers, major swap participants and/or non-swap dealer/non-major swap participant counterparties.

(1) *Electronic Connectivity.* For the purpose of accepting all swap data as required by part 45 and part 43, the registered swap data repository shall adopt policies and procedures, including technological protocols, which provide for electronic connectivity between the swap data repository and designated contract markets, derivatives clearing organizations, swaps execution facilities, swap dealers, major swap participants and/or certain other non-swap dealer/non-major swap participant counterparties who report such data. The technological protocols established by a swap data repository shall provide for the receipt of swap creation data, swap continuation data, real-time public reporting data, and all other data and information required to be reported to such swap data repository. The swap data repository shall ensure that its mechanisms for swap data acceptance are reliable and secure.

(b) A registered swap data repository shall set forth in its application for registration as described in § 49.3 the specific asset class or classes for which it will accept swaps data. If a swap data repository accepts swap data of a particular asset class, then it shall accept data from all swaps of that asset class, unless otherwise prescribed by the Commission.

(c) A registered swap data repository shall establish policies and procedures reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the confirmation or recording process of the swap data repository. The policies and procedures must ensure that the swap data repository's user agreements are designed to prevent any such invalidation or modification.

(d) A registered swap data repository shall establish procedures and provide facilities for effectively resolving disputes over the accuracy of the swap data and positions that are recorded in the registered swap data repository.

**§ 49.11 Confirmation of data accuracy.**

(a) A registered swap data repository shall establish policies and procedures to ensure the accuracy of swap data and other regulatory information required to be reported by part 45 that it receives from reporting entities or certain third-party service providers acting on their behalf, such as confirmation or matching service providers.

(b) A registered swap data repository shall confirm the accuracy of all swap data that is submitted pursuant to part 45.

(1) *Confirmation of data accuracy for swap creation data as defined in part 45.*

(i) A registered swap data repository has confirmed the accuracy of swap creation data that was submitted directly by a counterparty if the swap data repository has notified both counterparties of the data that was submitted and received from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors.

(ii) A registered swap data repository has confirmed the accuracy of swap creation data that was submitted by a swap execution facility, designated contract market, derivatives clearing organization, or third-party service provider who is acting on behalf of a counterparty, if the swap data repository has complied with each of the following:

(A) The swap data repository has formed a reasonable belief that the swap data is accurate;

(B) The swap data that was submitted, or any accompanying information, evidences that both counterparties agreed to the data; and

(C) The swap data repository has provided both counterparties with a 48 hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the swap data.

(2) *Confirmation of data accuracy for swap continuation data as defined in part 45.*

(i) A registered swap data repository has confirmed the accuracy of the swap continuation data that was submitted directly by a counterparty if the swap data repository has notified both counterparties of the data that was submitted and provided both counterparties with a 48 hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the data.

(ii) A registered swap data repository has confirmed the accuracy of swap continuation data that was submitted by a swap execution facility, designated contract market, derivatives clearing organization, or third-party service provider who is acting on behalf of a counterparty, if the swap data repository has complied with each of the following:

(A) The swap data repository has formed a reasonable belief that the swap data is accurate; and

(B) The swap data repository has provided both counterparties with a 48 hour correction period after which a counterparty is assumed to have acknowledged the accuracy of the swap data.

(c) A registered swap data repository shall keep a record of corrected errors that is available upon request to the Commission.

**§ 49.12 Swap data repository recordkeeping requirements.**

(a) A registered swap data repository shall maintain its books and records in accordance with the requirements of part 45 of this chapter regarding the swap data required to be reported to the swap data repository.

(b) A registered swap data repository shall maintain swap data (including all historical positions) throughout the existence of the swap and for five years following final termination of the swap, during which time the records must be readily accessible by the swap data repository and available to the Commission via real-time electronic access; and in archival storage for which such swap data is retrievable by the swap data repository within three business days.

(c) All records required to be kept pursuant to this Regulation shall be open to inspection upon request by any representative of the Commission and the United States Department of Justice. Copies of all such records shall be provided, at the expense of the swap data repository or person required to keep the record, to any representative of the Commission upon request, either by electronic means, in hard copy, or both, as requested by the Commission.

(d) A registered swap data repository shall comply with the real time public reporting and recordkeeping requirements prescribed in § 49.15 and part 43 of this chapter.

(e) A registered swap data repository shall establish policies and procedures to calculate positions for position limits and any other purpose as required by the Commission, for all persons with swaps that have not expired maintained by the registered swap data repository.

**§ 49.13 Monitoring, screening and analyzing swap data.**

(a) *Duty to Monitor, Screen and Analyze Data.* A registered swap data repository shall monitor, screen, and analyze all swap data in its possession in such a manner as the Commission may require. A swap data repository shall routinely monitor, screen, and analyze swap data for the purpose of any standing swap surveillance objectives which the Commission may establish as well as perform specific monitoring, screening, and analysis tasks based on ad hoc requests by the Commission.

(b) *Capacity to Monitor, Screen and Analyze Data.* A registered swap data repository shall establish and maintain sufficient information technology, staff, and other resources to fulfill the requirements in this § 49.13 in a manner prescribed by the Commission. A swap data repository shall monitor the sufficiency of such resources at least annually, and adjust its resources as its responsibilities, or the volume of swap transactions subject to monitoring, screening, and analysis, increase.

**§ 49.14 Monitoring, screening and analyzing end-user clearing exemption claims by individual and affiliated entities.**

A registered swap data repository shall have automated systems capable of identifying, aggregating, sorting, and filtering all swap transactions that are reported to it which are exempt from clearing pursuant to Section 2(h)(7) of the Act. Such capabilities shall be applicable to any information provided to a swap data repository by or on behalf of an end user regarding how such end user meets the requirements of Sections 2(h)(7)(A)(i), 2(h)(7)(A)(ii), and 2(h)(7)(A)(iii) of the Act and any Commission regulations thereunder.

**§ 49.15 Real-time public reporting of swap data.**

(a) *Scope.* The provisions of this § 49.15 apply to real-time public reporting of swap data, as defined in part 43 of this chapter.

(b) *Systems to Accept and Disseminate Swap Data In Connection With Real-Time Public Reporting.* A registered swap data repository shall establish such electronic systems as are necessary to accept and publicly disseminate real-time swap data submitted to meet the real-time public reporting obligations of part 43 of this chapter. Any electronic systems established for this purpose must be capable of accepting and ensuring the public dissemination of all data fields required by part 43 of this chapter.

(c) *Duty to Notify the Commission of Untimely Data.* A registered swap data repository must notify the Commission of any swap transaction for which the real-time swap data was not received by the swap data repository in accordance with part 43 of this chapter.

**§ 49.16 Privacy and confidentiality requirements of swap data repositories.**

(a) Each swap data repository shall:

(1) Establish, maintain, and enforce written policies and procedures reasonably designed to protect the privacy and confidentiality of any and all SDR Information that is not subject to real-time public reporting set forth in part 43 of this chapter. Such policies and procedures shall include, but are not limited to, policies and procedures to protect the privacy and confidentiality of any and all SDR Information (except for swap data disseminated under part 43) that the swap data repository shares with affiliates and non-affiliated third parties; and

(2) Establish and maintain safeguards, policies, and procedures reasonably designed to prevent the misappropriation or misuse, directly or indirectly, of:

(i) Section 8 Material;

(ii) Other SDR Information; and/or

(iii) Intellectual property, such as trading strategies or portfolio positions, by the swap data repository or any person associated with the swap data repository. Such safeguards, policies, and procedures shall include, but are not limited to,

(A) limiting access to such Section 8 Material, other SDR Information, and intellectual property,

(B) standards controlling persons associated with the swap data repository trading for their personal benefit or the benefit of others, and

(C) adequate oversight to ensure compliance with this subparagraph.

(b) Swap data repositories shall not, as a condition of accepting swap data from reporting entities, require the waiver of any privacy rights by such reporting entities.

(c) Subject to Section 8 of the Act, swap data repositories may disclose aggregated swap data on a voluntary basis or as requested, in the form and manner, prescribed by the Commission.

**§ 49.17 Access to SDR data.**

(a) *Purpose.* This Section provides a procedure by which the Commission, other domestic regulators and foreign regulators may obtain access to the swaps data held and maintained by registered swap data repositories. Except as specifically set forth in this Regulation, the Commission's duties and obligations regarding the confidentiality of business transactions or market positions of any person and trade secrets or names of customers identified in Section 8 of the Act are not affected.

(b) *Definitions.* For purposes of this § 49.17, the following terms shall be defined as follows:

(1) *Appropriate Domestic Regulator.* The term ''*Appropriate Domestic Regulator*'' shall mean:

(i) The Securities and Exchange Commission;

(ii) Each prudential regulator identified in Section 1a(39) of the Act with respect to requests related to any of such regulator's statutory authorities, without limitation to the activities listed for each regulator in Section 1a(39);

(iii) The Financial Stability Oversight Council;

(iv) The Department of Justice;

(v) Any Federal Reserve Bank;

(vi) The Office of Financial Research; and

(vii) Any other person the Commission deems appropriate.

(2) *Appropriate Foreign Regulator.* The term ''*Appropriate Foreign Regulator*'' shall mean those Foreign Regulators with an existing memorandum of understanding or other similar type of information sharing arrangement executed with the Commission and/or Foreign Regulators without an MOU as determined on a case-by-case basis by the Commission.

(i) *Filing Requirements.* For those Foreign Regulators who do not currently have a memorandum of understanding with the Commission, the Commission has determined to provide the following filing process for those Foreign Regulators that may require swap data or information maintained by a registered swap data repository. The filing requirement set forth in this § 49.17 will assist the Commission in its analysis of whether a specific Foreign Regulator should be considered ''appropriate'' for purposes of Section 21(c)(7) of the Act.

(A) The Foreign Regulator is required to file an application in the form and manner prescribed by the Commission.

(B) The Foreign Regulator in its application is required to provide sufficient facts and procedures to permit the Commission to analyze whether the Foreign Regulator employs appropriate confidentiality procedures and to satisfy itself that the information will be disclosed only as permitted by Section 8(e) of the Act.

(ii) The Commission in its analysis of Foreign Regulator applications shall be satisfied that any information potentially provided by a registered swap data repository will not be disclosed except in limited circumstances, such as an adjudicatory action or proceeding involving the Foreign Regulator, as identified in Section 8 of the Act.

(iii) The Commission reserves the right in connection with any determination of an ''Appropriate Foreign Regulator'' to revisit or reassess a prior determination consistent with the Act.

(3) *Direct Electronic Access.* For the purposes of this regulation, the term ''direct electronic access'' shall mean an electronic system, platform or framework that provides Internet or Web-based access to real-time swap transaction data and also provides scheduled data transfers to Commission electronic systems.

(c) *Commission Access.*

(1) *Direct Electronic Access.* A registered swap data repository shall provide direct electronic access to the Commission or the Commission's designee, including another registered entity, in order for the Commission to carry out its legal and statutory responsibilities under the Act and related regulations.

(2) *Monitoring Tools.* A registered swap data repository is required to provide the Commission with proper tools for the monitoring, screening and analyzing of swap transaction data, including, but not limited to, Web-based services, services that provide automated transfer of data to Commission systems, various software and access to the staff of the swap data repository and/or third-party service providers or agents familiar with the operations of the registered swap data repository, which can provide assistance to the Commission regarding data structure and content. These monitoring tools shall be substantially similar in analytical capability as those provided to the compliance staff and the Chief Compliance Officer of the swap data repository.

(3) *Authorized Users.* The swap transaction data provided to the Commission by a registered swap data repository shall be accessible only by authorized users. The swap data repository shall maintain and provide a list of authorized users in the manner and frequency determined by the Commission.

(d) *Other Regulators.* (1) *General Procedure for Gaining Access to Registered Swap Data Repository Data.* Appropriate Domestic Regulators and Appropriate Foreign Regulators seeking to gain access to the swap data maintained by a swap data repository are required to apply for access by filing a request for access with the registered swap data repository and certifying that it is acting within the scope of its jurisdiction.

(2) *Appropriate Domestic Regulator with Regulatory Responsibility over a Swap Data Repository.* An Appropriate Domestic Regulator that has regulatory jurisdiction over a swap data repository registered with it pursuant to a separate statutory authority that is also registered with the Commission pursuant to this chapter is not subject to this paragraph (d) and § 49.18(b) as long as the following conditions are met:

(i) The Appropriate Domestic Regulator executes a memorandum of understanding or similar information sharing arrangement with the Commission; and

(ii) The Commission, consistent with Section 21(c)(4)(A) of the Act, designates the Appropriate Domestic Regulator to receive direct electronic access.

(3) *Appropriate Foreign Regulator with Regulatory Responsibility over a Swap Data Repository.* An Appropriate Foreign Regulator that has supervisory authority over a swap data repository registered with it pursuant to foreign law and/or regulation that is also registered with the Commission pursuant to this chapter is not otherwise subject to this paragraph (d) and § 49.18(b).

(4) *Obligations of the Registered Swap Data Repository in Connection with Appropriate Domestic Regulator or Appropriate Foreign Regulator Requests for Data Access.*

(i) A registered swap data repository shall promptly notify the Commission regarding any request received by an Appropriate Domestic Regulator or Appropriate Foreign Regulator to gain access to the swaps transaction data maintained by such swap data repository.

(ii) The registered swap data repository shall notify the Commission electronically in a format specified by the Secretary of the Commission.

(5) *Timing.* Once the swap data repository provides the Commission with notification of a request for data access by an Appropriate Domestic Regulator or Appropriate Foreign Regulator as required by paragraph (d)(2) of this section, such swap data repository shall provide access to the requested swap data.

(6) *Confidentiality and Indemnification Agreement.* Consistent with § 49.18 of this part, the Appropriate Domestic Regulator or Appropriate Foreign Regulator prior to receipt of any requested data or information shall execute a ''Confidentiality and Indemnification Agreement'' with the registered swap data repository as set forth in Section 21(d) of the Act.

(e) *Third-Party Service Providers to a Registered Swap Data Repository.* Access to the data and information maintained by a registered swap data repository may be necessary for certain third parties that provide various technology and data-related services to a registered swap data repository. Third-party access to the swap data maintained by a swap data repository is permissible subject to the following conditions:

(1) Both the registered swap data repository and the third party service provider shall have strict confidentiality procedures that protect data and information from improper disclosure.

(2) Prior to swap data access, the third-party service provider and the

registered swap data repository shall execute a ''Confidentiality Agreement'' setting forth minimum confidentiality procedures and permissible uses of the information maintained by the swap data repository that are equivalent to the privacy procedures for swap data repositories outlined in § 49.16.

(f) *Access by Market Participants.* (1) *General.* Access of swap data maintained by the registered swap data repository to market participants is generally prohibited.

(2) *Exception.* Data and information related to a particular swap that is maintained by the registered swap data repository may be accessed by either counterparty to that particular swap.

(g) *Commercial Uses of Data Accepted and Maintained by the Registered Swap Data Repository Prohibited.* Swap data accepted and maintained by the swap data repository generally may not be used for commercial or business purposes by the swap data repository or any of its affiliated entities.

(1) The registered swap data repository is required to adopt and implement adequate ''firewalls'' or controls to protect the reported swap data required to be maintained under § 49.12 of this part and Section 21(b) of the Act from any improper commercial use.

(2) *Exception.* (A) The swap dealer, counterparty or any other registered entity that submits the swap data maintained by the registered swap data repository may permit the commercial or business use of that data by express written consent.

(B) Swap data repositories shall not as a condition of the reporting of swap transaction data require a reporting party to consent to the use of any reported data for commercial or business purposes.

(3) Swap data repositories responsible for the public dissemination of real-time swap data shall not make commercial use of such data prior to its public dissemination.

**§ 49.18 Confidentiality and indemnification agreement.**

(a) *Purpose.* This section sets forth the obligations of registered swap data repositories to execute a ''Confidentiality and Indemnification Agreement'' in connection with providing access to swap data to certain domestic and foreign regulators.

(b) *Confidentiality and Indemnification Agreement.* Prior to the registered swap data repository providing access to the swap data with any Appropriate Domestic Regulator or Appropriate Foreign Regulator as defined in § 49.17(b), the swap data repository shall receive a written agreement from each such entity stating that the entity shall abide by the confidentiality requirements described in Section 8 of the Act relating to the swap data that is provided; and each such entity shall agree to indemnify the swap data repository and the Commission for any expenses arising from litigation relating to the information provided under Section 8 of the Act.

(c) *Certain Appropriate Domestic and Foreign Regulators with Regulatory Responsibility over a Swap Data Repository.* The requirements set forth above in paragraph (b) shall not apply to certain Appropriate Domestic and Foreign Regulators with regulatory responsibility over a swap data repository as described in § 49.17(d)(2) and (3). The swap data repository and such Appropriate Domestic or Foreign Regulator in each case is required to comply with Section 8 of the Act and any other relevant statutory confidentiality provisions.

**§ 49.19 Core principles applicable to registered swap data repositories.**

(a) *Compliance with Core Principles.* To be registered, and maintain registration, a swap data repository shall comply with the core principles as described in this paragraph. Unless otherwise determined by the Commission by rule or regulation, a swap data repository shall have reasonable discretion in establishing the manner in which the swap data repository complies with the core principles described in this paragraph.

(b) *Antitrust Considerations (Core Principle 1).* Unless necessary or appropriate to achieve the purposes of the Act, a registered swap data repository shall avoid adopting any rule or taking any action that results in any unreasonable restraint of trade; or imposing any material anticompetitive burden on trading, clearing or reporting swaps.

(c) *Governance Arrangements (Core Principle 2).* Registered swap data repositories shall establish governance arrangements as set forth in § 49.20.

(d) *Conflicts of Interest (Core Principle 3).* Registered swap data repositories shall manage and minimize conflicts of interest and establish processes for resolving such conflicts of interest as set forth in § 49.21.

(e) *Additional Duties (Core Principle 4).* Registered swap data repositories shall also comply with the following additional duties:

(1) *Financial Resources.* Registered swap data repositories shall maintain sufficient financial resources as set forth in § 49.25;

(2) *Disclosure Requirements of Registered Swap Data Repositories.* Registered swap data repositories shall furnish an appropriate disclosure document setting forth the risks and costs of swap data repository services as detailed in § 49.26; and

(3) *Access and Fees.* Registered swap data repositories shall adhere to Commission requirements regarding fair and open access and the charging of any fees, dues or other similar type charges as detailed in § 49.27.

**§ 49.20 Governance arrangements (Core Principle 2).**

(a) *General.* (1) Each registered swap data repository shall establish governance arrangements that are transparent to fulfill public interest requirements, and to support the objectives of the Federal Government, owners, and participants.

(2) Each registered swap data repository shall establish governance arrangements that are well-defined and include a clear organizational structure with consistent lines of responsibility and effective internal controls, including with respect to administration, accounting, and the disclosure of confidential information. § 49.22 of this part contains rules on internal controls applicable to administration and accounting. § 49.16 of this part contains rules on internal controls applicable to the disclosure of confidential information.

(b) *Transparency of Governance Arrangements.* (1) Each registered swap data repository shall state in its charter documents that its governance arrangements are transparent to support, among other things, the objectives of the Federal Government pursuant to Section 21(f)(2) of the Act.

(2) Each registered swap data repository shall, at a minimum, make the following information available to the public and relevant authorities, including the Commission:

(i) The mission statement of the registered swap data repository;

(ii) The mission statement and/or charter of the board of directors, as well as of each committee of the registered swap data repository that has:

(A) The authority to act on behalf of the board of directors or

(B) The authority to amend or constrain actions of the board of directors;

(iii) The board of directors nomination process for the registered swap data repository, as well as the process for assigning members of the board of directors or other persons to

any committee referenced in paragraph (b)(2)(ii) of this section;

(iv) For the board of directors and each committee referenced in paragraph (b)(2)(ii) of this section, the names of all members;

(v) A description of the manner in which the board of directors, as well as any committee referenced in paragraph (b)(2)(ii) of this section, considers an Independent Perspective in its decision-making process, as § 49.2(a)(14) of this part defines such term;

(vi) The lines of responsibility and accountability for each operational unit of the registered swap data repository to any committee thereof and/or the board of directors; and

(vii) Summaries of significant decisions implicating the public interest, the rationale for such decisions, and the process for reaching such decisions. Such significant decisions shall include decisions relating to pricing of repository services, offering of ancillary services, access to swap data, and use of Section 8 Material, other SDR Information, and intellectual property (as referenced in § 49.16 of this part). Such summaries of significant decisions shall not require the registered swap data repository to disclose Section 8 Material or, where appropriate, information that the swap data repository received on a confidential basis from a reporting entity.

(3) The registered swap data repository shall ensure that the information specified in paragraph (b)(2)(i) to (vii) of this section is current, accurate, clear, and readily accessible, for example, on its Web site. The swap data repository shall set forth such information in a language commonly used in the commodity futures and swap markets and at least one of the domestic language(s) of the jurisdiction in which the swap data repository is located.

(4) Furthermore, the registered swap data repository shall disclose the information specified in paragraph (b)(2)(vii) of this section in a sufficiently comprehensive and detailed fashion so as to permit the public and relevant authorities, including the Commission, to understand the policies or procedures of the swap data repository implicated and the manner in which the decision implements or amends such policies or procedures. A swap data repository shall not disclose minutes from meetings of its board of directors or committees to the public, although it shall disclose such minutes to the Commission upon request.

(c) *The Board of Directors.* (1) *General.* (i) Each registered swap data repository shall establish, maintain, and enforce (including, without limitation, pursuant to paragraph (c)(4) of this Regulation) written policies or procedures:

(A) To ensure that its board of directors, as well as any committee that has:

(*1*) Authority to act on behalf of its board of directors or

(*2*) Authority to amend or constrain actions of its board of directors, adequately considers an Independent Perspective in its decision-making process;

(B) To ensure that the nominations process for such board of directors, as well as the process for assigning members of the board of directors or other persons to such committees, adequately incorporates an Independent Perspective; and

(C) To clearly articulate the roles and responsibilities of such board of directors, as well as such committees, especially with respect to the manner in which they ensure that a registered swap data repository complies with all statutory and regulatory responsibilities under the Act and the regulations promulgated thereunder.

(ii) Each registered swap data repository shall submit to the Commission, within thirty days after each election of its board of directors:

(A) For the board of directors, as well as each committee referenced in paragraph (c)(1)(i)(A) of this section, a list of all members;

(B) A description of the relationship, if any, between such members and the registered swap data repository or any reporting entity thereof (or, in each case, affiliates thereof, as § 49.2(a)(1) of this part defines such term); and

(C) Any amendments to the written policies and procedures referenced in paragraph (c)(1)(i) of this section.

(2) *Compensation.* The compensation of non-executive members of the board of directors of a registered swap data repository shall not be linked to the business performance of such swap data repository.

(3) *Annual Self-Review.* The board of directors of a registered swap data repository shall review its performance and that of its individual members annually. It should consider periodically using external facilitators for such reviews.

(4) *Board Member Removal.* A registered swap data repository shall have procedures to remove a member from the board of directors, where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap data repository.

(5) *Expertise.* Each registered swap data repository shall ensure that members of its board of directors, members of any committee referenced in paragraph (c)(1)(i)(A) of this Regulation, and its senior management, in each case, are of sufficiently good repute and possess the requisite skills and expertise to fulfill their responsibilities in the management and governance of the swap data repository, to have a clear understanding of such responsibilities, and to exercise sound judgment about the affairs of the swap data repository.

(d) *Compliance with Core Principle.* The chief compliance officer of the registered swap data repository shall review the compliance of the swap data repository with this core principle.

**§ 49.21 Conflicts of interest (Core Principle 3).**

(a) *General.* (1) Each registered swap data repository shall establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository, and establish a process for resolving such conflicts of interest.

(2) Nothing in this section shall supersede any requirement applicable to the swap data repository pursuant to § 49.20 of this part.

(b) *Policies and Procedures.* (1) Each registered swap data repository shall establish, maintain, and enforce written procedures to:

(i) Identify, on an ongoing basis, existing and potential conflicts of interest; and

(ii) Make decisions in the event of a conflict of interest. Such procedures shall include rules regarding the recusal, in applicable circumstances, of parties involved in the making of decisions.

(2) As further described in § 49.20 of this part, the chief compliance officer of the registered swap data repository shall, in consultation with the board of directors or a senior officer of the swap data repository, as applicable, resolve any such conflicts of interest.

(c) *Compliance with Core Principle.* The chief compliance officer of the registered swap data repository shall review the compliance of the swap data repository with this core principle.

**§ 49.22 Chief compliance officer.**

(a) *Definition of Board of Directors.* For purposes of this part 49, the term ''board of directors'' means the board of directors of a registered swap data repository, or for those swap data repositories whose organizational structure does not include a board of directors, a body performing a function similar to that of a board of directors.

(b) *Designation and qualifications of chief compliance officer.* (1) *Chief Compliance Officer Required.* Each registered swap data repository shall establish the position of chief compliance officer, and designate an individual to serve in that capacity.

(i) The position of chief compliance officer shall carry with it the authority and resources to develop and enforce policies and procedures necessary to fulfill the duties set forth for chief compliance officers in the Act and Commission regulations.

(ii) The chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.

(2) *Qualifications of Chief Compliance Officer.* The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position and shall be subject to the following requirements:

(i) No individual disqualified from registration pursuant to Sections 8a(2) or 8a(3) of the Act may serve as a chief compliance officer.

(ii) The chief compliance officer may not be a member of the swap data repository's legal department or serve as its general counsel.

(c) *Appointment, Supervision, and Removal of Chief Compliance Officer.* (1) *Appointment and Compensation of Chief Compliance Officer Determined by Board of Directors.* A registered swap data repository's chief compliance officer shall be appointed by its board of directors. The board of directors shall also approve the compensation of the chief compliance officer and shall meet with the chief compliance officer at least annually. The appointment of the chief compliance officer and approval of the chief compliance officer's compensation shall require the approval of the board of directors. The senior officer of the swap data repository may fulfill these responsibilities. A swap data repository shall notify the Commission of the appointment of a new chief compliance officer within two business days of such appointment.

(2) *Supervision of Chief Compliance Officer.* A registered swap data repository's chief compliance officer shall report directly to the board of directors or to the senior officer of the swap data repository, at the swap data repository's discretion.

(3) *Removal of Chief Compliance Officer by Board of Directors.* (i) Removal of a registered swap data repository's chief compliance officer shall require the approval of the swap data repository's board of directors. If the swap data repository does not have a board of directors, then the chief compliance officer may be removed by the senior officer of the swap data repository;

(ii) The swap data repository shall notify the Commission of such removal within two business days; and

(iii) The swap data repository shall notify the Commission within two business days of appointing any new chief compliance officer, whether interim or permanent.

(d) *Duties of Chief Compliance Officer.* The chief compliance officer's duties shall include, but are not limited to, the following:

(1) Overseeing and reviewing the swap data repository's compliance with Section 21 of the Act and any related rules adopted by the Commission;

(2) In consultation with the board of directors, a body performing a function similar to the board, or the senior officer of the swap data repository, resolving any conflicts of interest that may arise including:

(i) Conflicts between business considerations and compliance requirements;

(ii) Conflicts between business considerations and the requirement that the registered swap data repository provide fair and open access as set forth in § 49.27 of this part; and

(iii) Conflicts between a registered swap data repository's management and members of the board of directors;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violation of the Act and any rules adopted by the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and Commission regulations relating to agreements, contracts, or transactions, and with Commission regulations under Section 21 of the Act, including confidentiality and indemnification agreements entered into with foreign or domestic regulators pursuant to Section 21(d) of the Act;

(5) Establishing procedures for the remediation of noncompliance issues identified by the chief compliance officer through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(6) Establishing and following appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues; and

(7) Establishing and administering a written code of ethics designed to prevent ethical violations and to promote honesty and ethical conduct.

(e) *Annual Compliance Report Prepared by Chief Compliance Officer.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report, that at a minimum, contains the following information covering the time period since the date on which the swap data repository became registered with the Commission or since the end of the period covered by a previously filed annual compliance report, as applicable:

(1) A description of the registered swap data repository's written policies and procedures, including the code of ethics and conflict of interest policies;

(2) A review of applicable Commission regulations and each subsection and core principle of Section 21 of the Act, that, with respect to each:

(i) Identifies the policies and procedures that are designed to ensure compliance with each subsection and core principle, including each duty specified in Section 21(c);

(ii) Provides a self-assessment as to the effectiveness of these policies and procedures; and

(iii) Discusses areas for improvement, and recommends potential or prospective changes or improvements to its compliance program and resources;

(3) A list of any material changes to compliance policies and procedures since the last annual compliance report;

(4) A description of the financial, managerial, and operational resources set aside for compliance with respect to the Act and Commission regulations;

(5) A description of any material compliance matters, including noncompliance issues identified through a compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint, and explains how they were resolved; and

(6) A certification by the chief compliance officer that, to the best of his or her knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete.

(f) *Submission of Annual Compliance Report by Chief Compliance Officer to the Commission.* (1) Prior to submission of the annual compliance report to the Commission, the chief compliance officer shall provide the annual compliance report to the board of the registered swap data repository for its review. If the swap data repository does not have a board, then the annual compliance report shall be provided to the senior officer for their review. Members of the board and the senior officer may not require the chief compliance officer to make any changes to the report. Submission of the report

to the board or senior officer, and any subsequent discussion of the report, shall be recorded in board minutes or similar written record, as evidence of compliance with this requirement.

(2) The annual compliance report shall be provided electronically to the Commission not more than 60 days after the end of the registered swap data repository's fiscal year, concurrently with the filing of the annual amendment to Form SDR that must be submitted to the Commission pursuant to § 49.3(a)(5) of this part.

(3) Promptly upon discovery of any material error or omission made in a previously filed compliance report, the chief compliance officer shall file an amendment with the Commission to correct any material error or omission. An amendment shall contain the oath or certification required under paragraph (e)(67) of this section.

(4) A registered swap data repository may request the Commission for an extension of time to file its compliance report based on substantial, undue hardship. Extensions for the filing deadline may be granted at the discretion of the Commission.

(g) *Recordkeeping.* (1) The registered swap data repository shall maintain:

(i) A copy of the written policies and procedures, including the code of ethics and conflicts of interest policies adopted in furtherance of compliance with the Act and Commission regulations;

(ii) Copies of all materials, including written reports provided to the board of directors or senior officer in connection with the review of the annual compliance report under paragraph (f)(1) of this section and the board minutes or similar written record of such review, that record the submission of the annual compliance report to the board of directors or senior officer; and

(iii) Any records relevant to the registered swap data repository's annual compliance report, including, but not limited to, work papers and other documents that form the basis of the report, and memoranda, correspondence, other documents, and records that are:

(A) Created, sent or received in connection with the annual compliance report and

(B) Contain conclusions, opinions, analyses, or financial data related to the annual compliance report.

(2) The registered swap data repository shall maintain records in accordance with § 1.31 of this chapter.

**§ 49.23 Emergency authority policies and procedures.**

(a) *Emergency Policies and Procedures Required.* A registered swap data repository shall establish policies and procedures for the exercise of emergency authority in the event of any emergency, including but not limited to natural, man-made, and information technology emergencies. Such policies and procedures shall also require a swap data repository to exercise its emergency authority upon request by the Commission. A swap data repository's policies and procedures for the exercise of emergency authority shall be transparent to the Commission and to market participants whose swap transaction data resides at the swap data repository.

(b) *Invocation of Emergency Authority.* A registered swap data repository's policies and procedures for the exercise of emergency authority shall enumerate the circumstances under which the swap data repository is authorized to invoke its emergency authority and the procedures that it shall follow to declare an emergency. Such policies and procedures shall also address the range of measures that it is authorized to take when exercising such emergency authority.

(c) *Designation of Persons Authorized to Act in an Emergency.* A registered swap data repository shall designate one or more officials of the swap data repository as persons authorized to exercise emergency authority on its behalf. A swap data repository shall also establish a chain of command to be used in the event that the designated person(s) is unavailable. A swap data repository shall notify the Commission of the person(s) designated to exercise emergency authority.

(d) *Conflicts of Interest.* A registered swap data repository's policies and procedures for the exercise of emergency authority shall include provisions to avoid conflicts of interest in any decisions made pursuant to emergency authority. Such policies and procedures shall also include provisions to consult the swap data repository's chief compliance officer in any emergency decision that may raise potential conflicts of interest.

(e) *Notification to the Commission.* A registered swap data repository's policies and procedures for the exercise of emergency authority shall include provisions to notify the Commission as soon as reasonably practicable regarding any invocation of emergency authority. When notifying the Commission of any exercise of emergency authority, a swap data repository shall explain the reasons for taking such emergency action, explain how conflicts of interest were minimized, and document the decision-making process. Underlying documentation shall be made available to the Commission upon request.

**§ 49.24 System safeguards.**

(a) Each registered swap data repository shall, with respect to all swap data in its custody:

(1) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk through the development of appropriate controls and procedures and the development of automated systems that are reliable, secure, and have adequate scalable capacity;

(2) Establish and maintain emergency procedures, backup facilities, and a business continuity-disaster recovery plan that allow for the timely recovery and resumption of operations and the fulfillment of the duties and obligations of the swap data repository; and

(3) Periodically conduct tests to verify that backup resources are sufficient to ensure continued fulfillment of all duties of the swap data repository established by the Act or the Commission's regulations.

(b) A registered swap data repository's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(1) Information security;

(2) Business continuity—disaster recovery planning and resources;

(3) Capacity and performance planning;

(4) Systems operations;

(5) Systems development and quality assurance; and

(6) Physical security and environmental controls.

(c) In addressing the categories of risk analysis and oversight required under paragraph (b) of this section, a registered swap data repository should follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(d) A registered swap data repository shall maintain a business continuity—disaster recovery plan and business continuity—disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations. Such duties and obligations include, without limitation, the duties

set forth in § 49.9 and the core principles set forth in § 49.19; and maintenance of a comprehensive audit trail. The swap data repository's business continuity—disaster recovery plan and resources generally should enable resumption of the swap data repository's operations and resumption of ongoing fulfillment of the swap data repository's duties and obligations during the next business day following the disruption.

(e) Registered swap data repositories determined by the Commission to be critical swap data repositories are subject to more stringent requirements as set forth below.

(1) Each swap data repository that the Commission determines is critical must maintain a disaster recovery plan and business continuity and disaster recovery resources, including infrastructure and personnel, sufficient to enable it to achieve a same-day recovery time objective in the event that its normal capabilities become temporarily inoperable for any reason up to and including a wide-scale disruption.

(2) A same-day recovery time objective is a recovery time objective within the same business day on which normal capabilities become temporarily inoperable for any reason up to and including a wide-scale disruption.

(3) To ensure its ability to achieve a same-day recovery time objective in the event of a wide-scale disruption, each swap data repository that the Commission determines is critical must maintain a degree of geographic dispersal of both infrastructure and personnel such that:

(i) Infrastructure sufficient to enable the swap data repository to meet a same-day recovery time objective after interruption is located outside the relevant area of the infrastructure the entity normally relies upon to conduct activities necessary to the reporting, recordkeeping and/or dissemination of swap data, and does not rely on the same critical transportation, telecommunications, power, water, or other critical infrastructure components the entity normally relies upon for such activities; and

(ii) Personnel sufficient to enable the swap data repository to meet a same-day recovery time objective, after interruption of normal swap data reporting, recordkeeping and/or dissemination by a wide-scale disruption affecting the relevant area in which the personnel the entity normally relies upon to engage in such activities are located, live and work outside that relevant area.

(4) Each swap data repository that the Commission determines is critical must conduct regular, periodic tests of its business continuity and disaster recovery plans and resources and its capacity to achieve a same-day recovery time objective in the event of a wide-scale disruption. The swap data repository shall keep records of the results of such tests, and make the results available to the Commission upon request.

(f) A registered swap data repository that is not determined by the Commission to be a critical swap data repository satisfies the requirement to be able to resume operations and resume ongoing fulfillment of the swap data repository's duties and obligations during the next business day following a disruption by maintaining either:

(1) Infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations, duties and obligations as a registered swap data repository following any disruption of its operations; or

(2) Contractual arrangements with other registered swap data repositories or disaster recovery service providers, as appropriate, that are sufficient to ensure continued fulfillment of all of the swap data repository's duties and obligations following any disruption of its operations, both with respect to all swaps reported to the swap data repository and with respect to all swap data contained in the swap data repository.

(g) A registered swap data repository shall notify Commission staff promptly of all:

(1) Systems malfunctions;

(2) Cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity; and

(3) Any activation of the swap data repository's business continuity-disaster recovery plan.

(h) A registered swap data repository shall give Commission staff timely advance notice of all:

(1) Planned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems; and

(2) Planned changes to the swap data repository's program of risk analysis and oversight.

(i) A registered swap data repository shall provide to the Commission upon request current copies of its business continuity and disaster recovery plan and other emergency procedures, its assessments of its operational risks, and other documents requested by Commission staff for the purpose of maintaining a current profile of the swap data repository's automated systems.

(j) A registered swap data repository shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. It shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities. Both types of testing should be conducted by qualified, independent professionals. Such qualified independent professionals may be independent contractors or employees of the swap data repository, but should not be persons responsible for development or operation of the systems or capabilities being tested. Pursuant to §§ 1.31, 49.12 and 45.2 of the Commission's Regulations, the swap data repository shall keep records of all such tests, and make all test results available to the Commission upon request.

(k) To the extent practicable, a registered swap data repository should:

(1) Coordinate its business continuity-disaster recovery plan with those of swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, and major swap participants who report swap data to the swap data repository, and with those regulators identified in Section 21(c)(7) of the Act, in a manner adequate to enable effective resumption of the registered swap data repository's fulfillment of its duties and obligations following a disruption causing activation of the swap data repository's business continuity and disaster recovery plan;

(2) Participate in periodic, synchronized testing of its business continuity—disaster recovery plan and the business continuity—disaster recovery plans of swap execution facilities, designated contract markets, derivatives clearing organizations, swap dealers, and major swap participants who report swap data to the registered swap data repository, and the business continuity—disaster recovery plans required by the regulators identified in Section 21(c)(7) of the Act; and

(3) Ensure that its business continuity—disaster recovery plan takes into account the business continuity—disaster recovery plans of its telecommunications, power, water, and other essential service providers.

**§ 49.25 Financial resources.**

(a) *General rule.* (1) A registered swap data repository shall maintain sufficient financial resources to perform its

statutory duties set forth in § 49.9 and the core principles set forth in § 49.19.

(2) An entity that operates as both a swap data repository and a derivatives clearing organization shall also comply with the financial resource requirements applicable to derivatives clearing organizations under § 39.11 of this chapter.

(3) Financial resources shall be considered sufficient if their value is at least equal to a total amount that would enable the swap data repository, or applicant for registration, to cover its operating costs for a period of at least one year, calculated on a rolling basis.

(4) The financial resources described in this paragraph (a) must be independent and separately dedicated to ensure that assets and capital are not used for multiple purposes.

(b) *Types of financial resources.* Financial resources available to satisfy the requirements of paragraph (a) of this section may include:

(1) The swap data repository's own capital; and

(2) Any other financial resource deemed acceptable by the Commission.

(c) *Computation of financial resource requirement.* A registered swap data repository shall, on a quarterly basis, based upon its fiscal year, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a) of this section. The swap data repository shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) *Valuation of financial resources.* At appropriate intervals, but not less than quarterly, a registered swap data repository shall compute the current market value of each financial resource used to meet its obligations under paragraph (a) of this section. Reductions in value to reflect market and credit risk (haircuts) shall be applied as appropriate.

(e) *Liquidity of financial resources.* The financial resources allocated by the registered swap data repository to meet the requirements of paragraph (a) shall include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, the swap data repository may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.

(f) *Reporting requirements.* (1) Each fiscal quarter, or at any time upon Commission request, a registered swap data repository shall report to the Commission the amount of financial resources necessary to meet the requirements of paragraph (a), the value of each financial resource available, computed in accordance with the requirements of paragraph (d); and provide the Commission with a financial statement, including the balance sheet, income statement, and statement of cash flows of the swap data repository or of its parent company. Financial statements shall be prepared in conformity with generally accepted accounting principles (GAAP) applied on a basis consistent with that of the preceding financial statement.

(2) The calculations required by this paragraph shall be made as of the last business day of the swap data repository's fiscal quarter.

(3) The report shall be filed not later than 17 business days after the end of the swap data repository's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the swap data repository.

**§ 49.26 Disclosure requirements of swap data repositories.**

Before accepting any swap data from a reporting entity or upon a reporting entity's request, a registered swap data repository shall furnish to the reporting entity a disclosure document that contains the following written information, which shall reasonably enable the reporting entity to identify and evaluate accurately the risks and costs associated with using the services of the swap data repository:

(a) The registered swap data repository's criteria for providing others with access to services offered and swap data maintained by the swap data repository;

(b) The registered swap data repository's criteria for those seeking to connect to or link with the swap data repository;

(c) A description of the registered swap data repository's policies and procedures regarding its safeguarding of swap data and operational reliability to protect the confidentiality and security of such data, as described in § 49.24;

(d) The registered swap data repository's policies and procedures reasonably designed to protect the privacy of any and all swap data that the swap data repository receives from a reporting entity, as described in § 49.16;

(e) The registered swap data repository's policies and procedures regarding its non-commercial and/or commercial use of the swap data that it receives from a market participant, any registered entity, or any other person;

(f) The registered swap data repository's dispute resolution procedures;

(g) A description of all the registered swap data repository's services, including any ancillary services;

(h) The registered swap data repository's updated schedule of any fees, rates, dues, unbundled prices, or other charges for all of its services, including any ancillary services; any discounts or rebates offered; and the criteria to benefit from such discounts or rebates; and

(i) A description of the registered swap data repository's governance arrangements.

**§ 49.27 Access and fees.**

(a) *Fair, Open and Equal Access.* (1) A registered swap data repository, consistent with Section 21 of the Act, shall provide its services to market participants, including but not limited to designated contract markets, swap execution facilities, derivatives clearing organizations, swap dealers, major swap participants and any other counterparties, on a fair, open and equal basis. For this purpose, a swap data repository shall not provide access to its services on a discriminatory basis but is required to provide its services to all market participants for swaps it accepts in an asset class.

(2) Consistent with the principles of open access set forth in paragraph (a)(1) of this Regulation, a registered swap data repository shall not tie or bundle the offering of mandated regulatory services with other ancillary services that a swap data repository may provide to market participants.

(b) *Fees.* (1) Any fees or charges imposed by a registered swap data repository in connection with the reporting of swap data and any other supplemental or ancillary services provided by such swap data repository shall be equitable and established in a uniform and non-discriminatory manner. Fees or charges shall not be used as an artificial barrier to access to the swap data repository. Swap data repositories shall not offer preferential pricing arrangements to any market participant on any basis, including volume discounts or reductions unless such discounts or reductions apply to all market participants uniformly and are not otherwise established in a manner that would effectively limit the application of such discount or reduction to a select number of market participants.

(2) All fees or charges are to be fully disclosed and transparent to market

participants. At a minimum, the registered swap data repository shall provide a schedule of fees and charges that is accessible by all market participants on its Web site.

(3) The Commission notes that it will not specifically approve the fees charged by registered swap data repositories. However, any and all fees charged by swap data repositories must be consistent with the principles set forth in paragraph (b)(1) of this section.

## Appendix A to Part 49—Form SDR

## COMMODITY FUTURES TRADING COMMISSION

## FORM SDR

SWAP DATA REPOSITORY APPLICATION OR AMENDMENT TO APPLICATION FOR

## REGISTRATION REGISTRATION INSTRUCTIONS

***Intentional misstatements or omissions of material fact may constitute federal criminal violations (7 U.S.C. § 13 and 18 U.S.C. § 1001) or grounds for disqualification from registration.***

## DEFINITIONS

Unless the context requires otherwise, all terms used in this Form SDR have the same meaning as in the Commodity Exchange Act, as amended, and in the Regulations of the Commission thereunder.

For the purposes of this Form SDR, the term ''Applicant'' shall include any applicant for registration as a swap data repository or any registered swap data repository that is amending Form SDR.

## GENERAL INSTRUCTIONS

1. Form SDR and Exhibits thereto are to be filed with the Commodity Futures Trading Commission by Applicants for registration as a swap data repository, or by a registered swap data repository amending such registration, pursuant to Section 21 of the Commodity Exchange Act and the regulations thereunder. Upon the filing of an application for registration, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views and arguments concerning such application. No application for registration shall be effective unless the Commission, by order, grants such registration.

2. Individuals' names shall be given in full (Last Name, First Name, Middle Name).

3. Signatures must accompany each copy of the Form SDR filed with the Commission. If this Form SDR is filed by a corporation, it must be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, this Form SDR must be signed in the name of the limited liability company by a member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, this Form SDR must be signed in the name of the partnership by a general partner authorized; if filed by an unincorporated organization or association which is not a partnership, it must be signed in the name of the organization or association by the managing agent, i.e., a duly authorized person who directs, manages or who participates in the directing or managing of its affairs.

4. If Form SDR is being filed as an initial application for registration, all applicable items must be answered in full. If any item is not applicable, indicate by ''none,'' ''not applicable,'' or ''N/A'' as appropriate.

5. Under Section 21 of the Commodity Exchange Act and the regulations thereunder, the Commission is authorized to solicit the information required to be supplied by this form from Applicants for registration as a swap data repository and from registered swap data repositories amending their registration. Disclosure of the information specified on this form is mandatory prior to processing of an application for registration as a swap data repository. The information will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant. The Commission may determine that additional information is required from the Applicant in order to process its application. An Applicant is therefore encouraged to supplement this Form SDR with any additional information that may be significant to its operation as a swap data repository and to the Commission's review of its application. **A Form SDR which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form SDR, however, shall not constitute any finding that the Form SDR has been filed as required or that the information submitted is true, current or complete.**

6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission pursuant to the Freedom of Information Act and Commission Regulation § 145.9, information supplied on this form will be included routinely in the public files of the Commission and will be available for inspection by any interested person. The Applicant must identify with particularity the information in these exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulations § 40.8, and § 145.9.

## UPDATING INFORMATION ON THE FORM SDR

1. Section 21 requires that if any information contained in Items 1 through 17, 23, 29, and Item 53 of this application, or any supplement or amendment thereto, is or becomes inaccurate for any reason, an amendment must be filed promptly, unless otherwise specified, on Form SDR correcting such information.

2. Registrants filing Form SDR as an amendment (other than an annual amendment) need file only the first page of Form SDR, the signature page (Item 13), and any pages on which an answer is being amended, together with such exhibits as are being amended. The submission of an amendment represents that all unamended items and exhibits remain true, current and complete as previously filed.

## ANNUAL AMENDMENT ON THE FORM SDR

Annual amendments on the Form SDR shall be submitted within 60 days of the end of the Applicant's fiscal year. Applicants must complete the first page and provide updated information or exhibits.

An Applicant may request an extension of time for submitting the annual amendment with the Secretary of the Commission based on substantial, undue hardship. Extensions for filing annual amendments may be granted at the discretion of the Commission.

## WHERE TO FILE

File registration application and appropriate exhibits electronically with the Commission at the Washington, D.C. headquarters in a format and in the manner specified by the Secretary of the Commission.

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

# FORM SDR

SWAP DATA REPOSITORY
APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

_____

**Exact name of Applicant as specified in charter**

_____

**Address of principal executive offices**

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **APPLICATION FOR PROVISIONAL REGISTRATION**, complete in full and check here.

☐ If this is an **AMENDMENT** to an application, or to an effective registration (other than an annual amendment) list all items that are amended and check here and list below.

☐ If this is an **ANNUAL AMENDMENT** to an application, or to an effective registration (other than an annual amendment) list all items that are amended and check here and list below.

_____
_____
_____
_____

**GENERAL INFORMATION**

1. Name under which business is/will be conducted, if different than name specified above:

_____

2. If name of business is being amended, state previous business name:

_____

3. Contact information, including mailing address if different than address specified above:

_____
Number and Street

_____
City State Country Zip Code

_____
Main Phone Number Fax

_____
Website URL E-mail Address

4. List of principal office(s) and address(es) where swap data repositories activities are conducted

| Office | Address |
|---|---|
| | |
| | |
| | |
| | |

5. If Applicant is a successor to a previously registered swap data repository, please complete the following:

a. Date of succession

_____

b. Full name and address of predecessor registrant

_____
Name

_____
Number and Street

_____
City State Country Zip Code

_____ _____ _____
Phone Number Fax Number E-mail Address

6. Furnish a description of the function(s) that the Applicant performs or proposes to perform:

_____

_____

_____

Please indicate which asset class(es) the Applicant intends to serve:

- ☐ Interest Rate
- ☐ Equity
- ☐ Credit
- ☐ Foreign Exchange
- ☐ Commodity (Specify) _____
- ☐ Other (Specify) _____

**BUSINESS ORGANIZATION**

7. Applicant is a:

- ☐ Corporation
- ☐ Partnership
- ☐ Limited Liability Company

☐ Other (Specify) _____

8. Date of formation: _____

9. Jurisdiction of organization: _____

List all other jurisdictions in which Applicant is qualified to do business (including non-US jurisdictions):

_____

_____

10. List all other regulatory licenses or registrations of Applicant (or exemptions from any licensing requirement) including with non-US regulators:

_____

_____

11. Fiscal Year End: _____

12. Applicant agrees and consents that the notice of any proceeding before the Commission in connection with its application may be given by sending such notice by certified mail to the person named below at the address given.

_____
Print Name and Title

_____
Number and Street

_____
City State Zip Code

_____ _____ _____
Phone Number Fax Number E-mail Address

**SIGNATURES**

13. The Applicant had duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ day of _____, 20_____. The Applicant and the undersigned represent hereby that all information contained herein is true, current and complete. It is understood that all required items and Exhibits are considered integral parts of this form and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____
Name of Applicant

By:_____
Manual Signature of Authorized Person

_____
Print Name and Title of Signatory)

## EXHIBITS INSTRUCTIONS

The following exhibits must be included as part of Form SDR and filed with the Commodity Futures Trading Commission by each Applicant seeking registration as a swap data repository, or by a registered swap data repository amending such registration, pursuant to Section 21 of the Commodity Exchange Act and regulations thereto. Such exhibits must be labeled according to the items specified in this Form. If any exhibit is not applicable, please specify the exhibit letter and indicate by "none," "not applicable," or "N/A" as appropriate. The Applicant must identify with particularity the information in these exhibits that will be subject to a request for confidential treatment and supporting documentation for such request pursuant to Commission Regulation §40.8, and §145.9.

If the Applicant is a newly formed enterprise and does not have the financial statements required pursuant to Items 25 and 26 of this form, the Applicant should provide *pro forma* financial statements for the most recent six months or since inception, whichever is less.

### EXHIBITS I – BUSINESS ORGANIZATION

14. Attach as **Exhibit A** any person who owns ten (10) percent or more of Applicant's equity or possesses voting power of any class, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of Applicant. "Control" for this purpose is defined in Commission Regulation §49.2(a)(3).

    State in Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

15. Attach as **Exhibit B** to this application a narrative that sets forth the fitness standards for the board of directors and its composition including the number or percentage of public directors.

    Attach a list of the present officers, directors (including an identification of the public directors), governors (and, in the case of an Applicant not a corporation, the members of all standing committees grouped by committee), or persons performing functions similar to any of the foregoing, of the swap data repository or of the entity identified in Item 16 that performs the swap data repository activities of the Applicant, indicating for each:

    a. Name
    b. Title
    c. Date of commencement and, if appropriate, termination of present term of position
    d. Length of time each present officer, director, or governor has held the same position
    e. Brief account of the business experience of each officer and director over the last five (5) years
    f. Any other business affiliations in the securities industry or OTC derivatives industry
    g. A description of:
        (1) any order of the Commission with respect to such person pursuant to Section 5e of the Act;
        (2) any conviction or injunction within the past 10 years;
        (3) any disciplinary action with respect to such person within the last five (5) years;
        (4) any disqualification under Sections 8b, and 8d of the Act.
        (5) any disciplinary action under Section 8c of the Act.
        (6) any violation pursuant to Section 9 of the Act.
    h. For directors, list any committees on which they serve and any compensation received by virtue of their directorship.

16. Attach as **Exhibit C** to this application the following information about the chief compliance officer who has been appointed by the board of directors of the swap data repository or a person or group performing a function similar to such board of directors:
    a. Name
    b. Title
    c. Dates of commencement and termination of present term of office or position
    d. Length of time the chief compliance officer has held the same office or position
    e. Brief account of the business experience of the chief compliance officer over the last five (5) years
    f. Any other business affiliations in the derivatives/securities industry or swap data repository industry
    g. A description of:
        (1) any order of the Commission with respect to such person pursuant to Section 5e of the Act;
        (2) any conviction or injunction within the past 10 years;
        (3) any disciplinary action with respect to such person within the last five (5) years;
        (4) any disqualification under Sections 8b, and 8d of the Act.
        (5) any disciplinary action under Section 8c of the Act.
        (6) any violation pursuant to Section 9 of the Act.

17. Attach as **Exhibit D** a copy of documents relating to the governance arrangements of the Applicant, including, but not limited to:
    a. the nomination and selection process of the members on the Applicant's board of directors, a person or group performing a function similar to a board of directors (collectively, "board"), or any committee that has the authority to act on behalf of the board, the responsibilities of each of the board and such committee, and the composition of each board and such committee; and
    b. a description of the manner in which the composition of the board allows the Applicant comply with applicable core principles, regulations, as well as the rules of the Applicant.
    c. a description of the procedures to remove a member of the board of directors , where the conduct of such member is likely to be prejudicial to the sound and prudent management of the swap data repository.

18. Attach as **Exhibit E** a narrative or graphic description of the organizational structure of the Applicant. Note: If the swap data repository activities are conducted primarily by a division, subdivision, or other segregable entity within the Applicant's corporation or organization, describe the relationship of such entity within the overall organizational structure and attach as Exhibit E only such description as applies to the segregable entity. Additionally, prove any relevant jurisdictional information, including any and all jurisdictions in which the Applicant or any affiliated entity is doing business and registration status, including pending application (e.g., country, regulator, registration category, date of registration). In addition, include a description of the lines of responsibility and accountability for each operational unit of the Applicant to (i) any committee thereof and/or (ii) the board.

19. Attach as **Exhibit F** a copy of the conflicts of interest policies and procedures implemented by the Applicant to minimize conflicts of interest in the decision-making process of the swap data repository and to establish a process for the resolution of any such conflicts of interest.

20. Attach as **Exhibit G**, a list of all affiliates of the swap data repository and indicate the general nature of the affiliation. Provide a copy of any agreements entered into or to be entered by the swap data repository, including partnerships or joint ventures, or its participants, that will enable the Applicant to comply with the registration requirements and core principles specified in Section 21 of the Commodity Exchange Act. With regard to an affiliate that is a parent company of the Applicant, if such parent controls the Applicant, an Applicant must provide (i) the board composition of the parent, including public directors, and (ii) all ownership information requested in Exhibit A for the parent. "Control" for this purpose is defined in Commission Regulation §49.2(a)(3).

21. Attach as **Exhibit H** to this application a copy of the constitution, articles of incorporation or association with all amendments thereto, and existing by-laws, rules or instruments corresponding

thereto, of the Applicant. A certificate of good standing dated within one week of the date of the application shall be provided.

22. Where the Applicant is a foreign entity seeking registration or filing an amendment to an existing registration, attach as **Exhibit I,** an opinion of counsel that the swap data repository, as a matter of law, is able to provide the Commission with prompt access to the books and records of such swap data repository and that the swap data repository can submit to onsite inspection and examination by the Commission.

23. Where the Applicant is a foreign entity seeking registration, attach as **Exhibit I-1,** to designate and authorize an agent in the United States, other than a Commission official, to accept any notice or service of process, pleadings, or other documents in any action or proceedings brought against the swap data repository to enforce the Act and the regulations thereunder.

24. Attach as **Exhibit J**, a current copy of the Applicant's rules as defined in Commission Regulation §40.1, consisting of all the rules necessary to carry out the duties as a swap data repository.

25. Attach as **Exhibit K**, a description of the Applicant's internal disciplinary and enforcement protocols, tools, and procedures. Include the procedures for dispute resolution.

26. Attach as **Exhibit L,** a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. Include the name of the court or agency in which the proceeding(s) are pending, the date(s) instituted, and the principal parties thereto, a description of the factual basis alleged to underlie the proceeding(s) and the relief sought. Include similar information as to any such proceeding(s) known to be contemplated by the governmental agencies.

**EXHIBITS II — FINANCIAL INFORMATION**

27. Attach as **Exhibit M** a balance sheet, statement of income and expenses, statement of sources and application of revenues and all notes or schedules thereto, as of the most recent fiscal year of the Applicant. If a balance sheet and statements certified by an independent public accountant are available, such balance sheet and statement shall be submitted as Exhibit M.

28. Attach as **Exhibit N** a balance sheet and an income and expense statement for each affiliate of the swap data repository that also engages in swap data repository activities as of the end of the most recent fiscal year of each such affiliate.

29. Attach as **Exhibit O** the following:

    a. A complete list of all dues, fees and other charges imposed, or to be imposed, by or on behalf of Applicant for its swap data repository services and identify the service or services provided for each such due, fee, or other charge.

    b. Furnish a description of the basis and methods used in determining the level and structure of the dues, fees and other charges listed in paragraph a of this item.

    c. If the Applicant differentiates, or proposes to differentiate, among its customers, or classes of customers in the amount of any dues, fees, or other charges imposed for the same or similar services, so state and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services, and any other factors, that account for such differentiations.

**EXHIBITS III — OPERATIONAL CAPABILITY**

30. Attach as **Exhibit P** copies of all material contracts with any swap execution facility, clearing agency, central counterparty, or third-party service provider. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used. In addition, include a list of swap execution facilities, clearing agencies, central counterparties, and third-party service providers with

whom the Applicant has entered into material contracts. Where swap data repository functions are performed by a third party, attach any agreements between or among the Applicant and such third party, and identify the services that will be provided.

31. Attach as **Exhibit Q** any technical manuals, other guides or instructions for users of, or participants in, the market.

32. Attach as **Exhibit R** a description of system test procedures, test conducted or test results that will enable the Applicant to comply, or demonstrate the Applicant's ability to comply with the core principles for swap data repositories.

33. Attach as **Exhibit S** a description in narrative form or by the inclusion of functional specifications, of each service or function performed as a swap data repository. Include in Exhibit S a description of all procedures utilized for the collection, processing, distribution, publication and retention (e.g., magnetic tape) of information with respect to transactions or positions in, or the terms and conditions of, swaps entered into by market participants.

34. Attach as **Exhibit T** a list of all computer hardware utilized by the Applicant to perform swap data repository functions, indicating where such equipment (terminals and other access devices) is physically located.

35. Attach as **Exhibit U** a description of the personnel qualifications for each category of professional employees employed by the swap data repository or the division, subdivision, or other segregable entity within the swap data repository as described in Item 16.

36. Attach as **Exhibit V** a description of the measures or procedures implemented by Applicant to provide for the security of any system employed to perform the functions of a swap data repository. Include a general description of any physical and operational safeguards designed to prevent unauthorized access (whether by input or retrieval) to the system. Describe any circumstances within the past year in which the described security measures or safeguards failed to prevent any such unauthorized access to the system and any measures taken to prevent a reoccurrence. Describe any measures used to verify the accuracy of information received or disseminated by the system.

37. Attach as **Exhibit W** copies of emergency policies and procedures and Applicant's business continuity-disaster recovery plan. Include a general description of any business continuity-disaster recovery resources, emergency procedures, and backup facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its duties and obligations as a swap data repository following any disruption of its operations.

38. Where swap data repository functions are performed by automated facilities or systems, attach as **Exhibit X** a description of all backup systems or subsystems that are designed to prevent interruptions in the performance of any swap data repository function as a result of technical malfunctions or otherwise in the system itself, in any permitted input or output system connection, or as a result of any independent source. Include a narrative description of each type of interruption that has lasted for more than two minutes and has occurred within the six (6) months preceding the date of the filing, including the date of each interruption, the cause and duration. Also state the total number of interruptions that have lasted two minutes or less.

39. Attach as **Exhibit Y** the following:

a. For each of the swap data repository functions:

(1) quantify in appropriate units of measure the limits on the swap data repository's capacity to receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function (e.g., number of inquiries from remote terminals);

(2) identify the factors (mechanical, electronic or other) that account for the current limitations reported in answer to (1) on the swap data repository's capacity to

receive (or collect), process, store or display (or disseminate for display or other use) the data elements included within each function;

b. If the Applicant is able to employ, or presently employs, the central processing units of its system(s) for any use other than for performing the functions of a swap data repository, state the priorities of assignment of capacity between such functions and such other uses, and state the methods used or able to be used to divert capacity between such functions and such other uses.

## EXHIBITS IV — ACCESS TO SERVICES AND DATA

40. Attach as **Exhibit Z** the following:

a. As to each swap data repository service that the Applicant provides, state the number of persons who presently utilize, or who have notified the Applicant of their intention to utilize, the services of the swap data repository.

b. For each instance during the past year in which any person has been prohibited or limited in respect of access to services offered by the Applicant as a swap data repository, indicate the name of each such person and the reason for the prohibition or limitation.

c. Define the data elements for purposes of the swap data repository's real-time public reporting obligation. Appendix A to Part 43 of the Commission's Regulations (Data Elements and Form for Real-Time Reporting for Particular Markets and Contracts) sets forth the specific data elements for real-time public reporting.

41. Attach as **Exhibit AA** copies of any agreements governing the terms by which information may be shared by the swap data repository, including with market participants. To the extent that form contracts are used by the Applicant, submit a sample of each type of form contract used.

42. Attach as **Exhibit BB** a description of any specifications, qualifications or other criteria that limit, are interpreted to limit, or have the effect of limiting access to or use of any swap data repository services furnished by the Applicant and state the reasons for imposing such specifications, qualifications, or other criteria, including whether such specifications, qualifications or other criteria are imposed.

43. Attach as **Exhibit CC** any specifications, qualifications, or other criteria required of participants who utilize the services of the Applicant for collection, processing, preparing for distribution, or public dissemination by the Applicant.

44. Attach as **Exhibit DD** any specifications, qualifications, or other criteria required of any person, including, but not limited to, regulators, market participants, market infrastructures, venues from which data could be submitted to the Applicant, and third-party service providers who request access to data maintained by the Applicant.

45. Attach as **Exhibit EE** policies and procedures implemented by the Applicant to review any prohibition or limitation of any person with respect to access to services offered or data maintained by the Applicant and to grant such person access to such services or data if such person has been discriminated against unfairly.

## EXHIBITS — OTHER POLICIES AND PROCEDURES

46. Attach as **Exhibit FF**, a narrative and supporting documents that may be provided under other Exhibits herein, that describe the manner in which the Applicant is able to comply with each core principle and other requirements pursuant to Commission Regulation §49.19.

47. Attach as **Exhibit GG** policies and procedures implemented by the Applicant protect the privacy of any and all swap information that the swap data repository receives from reporting entities.

48. Attach as **Exhibit HH** a description of safeguards, policies, and procedures implemented by the Applicant to prevent the misappropriation or misuse of (a) any confidential information received by the Applicant, including, but not limited to "Section 8 Material" and "SDR Information," as those terms are defined in Commission Regulation §49.2, about a market participant or any of its customers; and/or (c) intellectual property by Applicant or any person associated with the Applicant for their personal benefit or the benefit of others.

49. Attach **Exhibit II** policies and procedures implemented by the Applicant regarding its use of the SDR information that it receives from a market participant, any registered entity, or any person for non-commercial and/or commercial purposes.

50. Attach as **Exhibit JJ** procedures and a description of facilities of the Applicant for effectively resolving disputes over the accuracy of the transaction data and positions that are recorded in the swap data repository.

51. Attach as **Exhibit KK** policies and procedures relating to the Applicant's calculation of positions.

52. Attach as **Exhibit LL** policies and procedures that are reasonably designed to prevent any provision in a valid swap from being invalidated or modified through the procedures or operations of the Applicant.

53. Attach as **Exhibit MM** a plan to ensure that the transaction data and position data that are recorded in the Applicant continue to be maintained after the Applicant withdraws from registration as a swap data repository, which shall include procedures for transferring the transaction data and position data to the Commission or its designee (including another registered swap data repository).

Issued in Washington, DC, on August 4, 2011, by the Commission.

**David A. Stawick,**

*Secretary of the Commission.*

## Appendix To Swap Data Repositories: Registration Standards, Duties and Core

### Principles—Commission Voting Summary

**Note:** The following Appendix will not appear in the Code of Federal Regulations.

## Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Chilton and O'Malia voted in the affirmative; Commissioner Sommers voted in the negative.

## Appendix 2—Chairman Gary Gensler Statement

I support the final rulemaking to establish registration and regulatory requirements for swap data repositories (SDRs). When this rule is fully implemented, all swaps—whether cleared or uncleared—will be reported to an SDR registered with the Commodity Futures Trading Commission (CFTC). Registration will enable the Commission and other regulators to monitor market participants for compliance with the Dodd-Frank Wall Street Reform and Consumer Protection Act as well as CFTC regulations. The rule implements congressional direction that the Commission and other regulators have direct access to the information maintained by SDRs. It requires SDRs to verify the accuracy and completeness of all of the swaps data they accept. It also contains provisions to permit SDRs to aggregate certain information for regulators and the public. This rule will enhance transparency in the swaps market and help reduce systemic risk.

[FR Doc. 2011–20817 Filed 8–31–11; 8:45 am]

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# FEDERAL REGISTER

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Part III

## Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 417, 422, and 423

Medicare Program; Medicare Advantage and Prescription Drug Benefit Programs; Final Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Parts 417, 422, and 423**

**[CMS–4131–F and CMS 4138–F]**

**RIN 0938–AP24 and 0938–AP52**

# Medicare Program; Medicare Advantage and Prescription Drug Benefit Programs

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule finalizes revisions to the regulations governing the Medicare Advantage (MA) program (Part C), prescription drug benefit program (Part D) and section 1876 cost plans including conforming changes to the MA regulations to implement statutory requirements regarding special needs plans (SNPs), private fee-for-service plans (PFFS), regional preferred provider organizations (RPPO) plans, and Medicare medical savings accounts (MSA) plans, cost-sharing for dual-eligible enrollees in the MA program and prescription drug pricing, coverage, and payment processes in the Part D program, and requirements governing the marketing of Part C and Part D plans.

**DATES:** *Effective Date:* Except as otherwise specified these regulations are effective on October 31, 2011.

**FOR FURTHER INFORMATION CONTACT:**

Vanessa Duran, (410) 786–8697 and Heather Rudo, (410) 786–7627, General information.

Christopher McClintick, (410) 786–4682, Part C issues.

Lisa Thorpe, (410) 786–3048, Part D issues.

Frank Szeflinski, (303) 844–7119, Part C payment issues.

Camille Brown, (410) 786–0274, Marketing issues.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established a new ''Part C'' in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) which established the current MA program. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) established the Part D program and made significant revisions to Part C provisions governing the Medicare Advantage (MA) program. The MMA directed that important aspects of the Part D program be similar to, and coordinated with, regulations for the MA program. Generally, the provisions enacted in the MMA took effect January 1, 2006. The final rules implementing the MMA for the MA and Part D prescription drug programs appeared in the January 28, 2005 **Federal Register** on (70 FR 4588 through 4741 and 70 FR 4194 through 4585, respectively).

As we gained more experience with the MA program and the prescription drug benefit program, we proposed to revise areas of both programs and issued a proposed rule on May 16, 2008 (73 FR 28556) that would have clarified existing policies or codified current guidance for both programs. The Medicare Improvements for Patients and Providers Act (MIPPA) (Pub. L. 110–275), enacted on July 15, 2008, called upon the Secretary to revise the marketing requirements for Part C and Part D plans in several areas. MIPPA also enacted changes with respect to Special Needs Plans (SNPs), Private Fee-For-Service plans (PFFS), Quality Improvement Programs, the prompt payment of Part D claims, and the use of Part D data. With the exceptions noted in this final rule, MIPPA required that these new rules take effect at a date specified by the Secretary, but no later than November 15, 2008.

Because several of these proposed regulatory revisions in our May 16, 2008 proposed rule were overtaken by statutory provisions in MIPPA, the MIPPA provisions superseded our proposed rulemaking in these areas. For example, some provisions in our May 16, 2008 proposed rule addressed issues in areas in which MIPPA required that we establish marketing limits no later than November 15, 2008. As a result, we implemented all provisions addressed in our May 16, 2008 proposed rule, and later overtaken by MIPPA provisions, in our September 18, 2008 and November 14, 2008 interim final rules with comment (IFCs). We finalized the non-MIPPA related provisions of our May 16, 2008 proposed rule in our January 16, 2009 final rule with comment period.

This final rule finalizes the MIPPA-related provisions of our September 18, 2008 IFC (73 FR 54226), our November 14, 2008 IFC (73 FR 67406), our November 21, 2008 correction notice (73 FR 70598), and one provision on two SNP-related statutory definitions that was finalized with a comment period in our January 16, 2009 final rule with comment period (74 FR 2881).

## II. Provisions of This Final Rule

Revisions made in this final rule govern section 1876 cost contract plans and the MA and prescription drug benefit programs. Several of the final provisions affect both the MA and Part D programs. In our discussion that follows, we note when a provision affects both the MA and prescription drug benefit, and we include in section II.C. of this final rule, a table comparing the final Part C and Part D program changes by specifying each issue and the sections of the Code of Federal Regulations that we are revising for both programs.

### *A. Changes to the Regulations in Part 422—Medicare Advantage Program*

#### 1. Special Needs Plans

Congress authorized special needs plans (SNPs) as a type of Medicare Advantage (MA) plan designed to enroll individuals with special needs. The three types of special needs individuals eligible for enrollment in a SNP identified in the MMA include—(1) Institutionalized individuals (defined in § 422.2 as an individual continuously residing, or expecting to continuously reside, for 90 days or longer in a long term care facility); (2) individuals entitled to medical assistance under a State Plan under title XIX of the Act; or (3) other individuals with severe or disabling chronic conditions that would benefit from enrollment in a SNP.

As of January 2011, there are 455 SNP plan benefit packages (PBPs) in operation nationwide. These SNP PBPs include 298 dual-eligible SNP (D–SNP) PBPs, 92 chronic care SNP (C–SNP) PBPs, and 65 institutional SNP (I–SNP) PBPs.

##### a. Model of Care (§ 422.101(f))

Section 164 of MIPPA added care management requirements for all SNPs effective January 1, 2010, as set forth in section 1859(f)(5) of the Act (42 U.S.C. 1395w–28(f)). The new mandate required dual-eligible, institutional, and chronic condition SNPs to implement care management requirements which have two explicit components: an evidence-based model of care and a battery of care management services. While the revisions made in our September 18, 2008 IFC simply reflected the substance of the new MIPPA provisions, our May 16, 2008 proposed rule proposed other, related provisions which were finalized in our January 12, 2009 final rule.

The first component of the new mandate enacted in section 164 of MIPPA is a requirement for an evidence-based model of care with an appropriate

network of providers and specialists that meet the specialized needs of the SNP target population. We received a few comments on our September 18, 2008 IFC about whether we would issue evidence-based guidelines for the model of care, but we did not in our September 18, 2008 IFC implement this mandate to endorse any particular set of evidence-based guidelines or protocols; instead, we expected that SNPs would develop such guidelines and protocols based on the specific elements to be included in the model of care as found in the 2008 and 2009 Call Letters. We expected that SNPs would be able to use resources such as the Agency for Healthcare Research and Quality (AHRQ, *http://www.ahrq.gov/*). AHRQ does not endorse any particular set of evidence-based guidelines or protocols; however, its Web site includes access to nationally-recognized evidence-based practices. The second component is a battery of care management services that includes: (1) A comprehensive initial assessment and annual reassessments of an individual's physical, psychosocial, and functional needs; (2) an individualized plan of care that includes goals and measurable outcomes, including specific services and benefits to be provided; and (3) an interdisciplinary team to manage care. In addition, MIPPA mandated a periodic audit of SNPs to ensure SNPs meet the model of care requirements.

We also have issued guidance on the SNP model of care in our 2008 and 2009 Call Letters. In addition, care coordination and the presence of a provider network comprised of clinical experts pertinent to a SNP's target population have long been the cornerstones of the SNP model of care.

In this final rule, we are revising § 422.101(f)(1), which was effective January 1, 2010, to correct a typo. The phrase that we are replacing is ''indentifying goals,'' and adding ''identifying goals'' in its place.

b. Definitions: Institutional-Equivalent and Severe or Disabling Chronic Condition (§ 422.2)

Section 164 of MIPPA, *inter alia,* modified the requirements and definitions pertaining to an institutional special needs individual and a ''severe or disabling chronic condition'' special needs individual, without specifically defining the relevant terms. In response to our May 16, 2008 proposed rule regarding eligibility for institutional-level individuals and severe or disabling chronic condition individuals, we received public comments that requested that we propose two additional SNP definitions. Accordingly, in our January 12, 2009 final rule with comment period in which we added definitions based on comments from the May 16, 2008 proposed rule, we specified the following definitions for ''Institutional Equivalent'' and ''Disabling Chronic Condition.''

''Institutional-equivalent'' means, for the purpose of defining a special needs individual, an MA eligible individual who is living in the community, but requires an institutional level of care (LOC). The determination that the individual requires an institutional LOC must be made by—

- The use of a State assessment tool from the State in which the individual resides; and
- An assessment conducted by an impartial entity with the requisite knowledge and experience to accurately identify whether the beneficiary meets the institutional LOC criteria.

In States and territories that do not have an existing institutional LOC tool, the individual must be assessed using the same methodology that specific State uses to determine institutional LOC for Medicaid nursing home eligibility.

In our January 12, 2009 final rule with comment period, we specified that the determination of institutional LOC must be made using a State assessment tool because States have extensive experience in making LOC determinations. We also specified that this LOC determination also be made by an additional entity, other than the Medicare Advantage Organization (MAO), to ensure the impartially of the assessment.

''Severe or Disabling Chronic Condition'' means, for the purposes of defining a special needs individual, an MA eligible individual who has one or more co-morbid and medically complex chronic conditions that are substantially disabling or life-threatening; has a high risk of hospitalization or other significant adverse health outcomes; and requires specialized delivery systems across domains of care.

We did not receive any comments on these definitions. As such, they are adopted without modification in this final rule.

c. Dual-Eligible SNPs and Contracts With States (§ 422.107)

Section 164(c) of MIPPA modified section 1859(f)(3)(D) of the Act to require that, effective January 1, 2010, all MA organizations offering new dual-eligible SNPs (D–SNPs), or seeking to expand the service area of existing D–SNPs, have a contract with the State Medicaid agency(ies) in the State(s) in which the D–SNP operates to provide benefits, or to arrange for the provision of benefits to individuals entitled to receive medical assistance under title XIX of the Act. In order to implement this requirement, we specified in our (74 FR 54226) IFC published on September 18, 2008 that the contract with the State Medicaid agency(ies) must include, at minimum: (1) The MAO's responsibility to provide or arrange for Medicaid benefits; (2) the category(ies) of eligibility covered under the D–SNP; (3) the Medicaid benefits covered under the D–SNP; (4) the cost-sharing protections covered under the D–SNP; (5) the identification and sharing of information on Medicaid provider participation; (6) the verification of enrollee's eligibility for both Medicare and Medicaid; (7) the service area covered by the D–SNP; and (8) the contract period for the D–SNP. We further clarified that States are not required to enter into these contracts with a particular plan or any SNP in the state at all, and that we would not permit D–SNPs without State contracts to expand their service areas in 2010. We also specified that, for contract year 2010, MAOs with existing D–SNPs may continue to operate in their existing service area without a State Medicaid Agency contract, provided they meet all other statutory requirements, including care management and quality improvement program requirements. We set forth these requirements at § 422.107.

*Comment:* Many commenters supported requiring the collaboration between MAOs offering D–SNPs and State Medicaid agencies. However, the majority of comments that offered qualified support raised questions and concerns about operational issues related to the submission of these State Medicaid Agency contracts to CMS. Several commenters contended that variation in State contracting and procurement processes make it difficult for D–SNPs to obtain State Medicaid Agency contracts by CMS' deadline, and requested that we give D–SNPs additional time and flexibility, on a case by case basis, to meet our contracting deadlines.

*Response:* We appreciate the commenters' support for the requirement that D–SNPs contract with the State Medicaid agencies in the States within which the D–SNPs operate. Although we appreciate the information about how D–SNPs are impacted by our State Medicaid Agency contract submission deadlines, we are not modifying the provision to address the operational issues that the commenters raised because we do not

believe that rulemaking is the appropriate vehicle for addressing such issues. However, we note, that while we are not addressing these specific operational concerns in this final rule, we provided operational guidance to MAOs well in advance of the 2012 contract submission deadline. Additional guidance for the 2013 contract submission deadline will be included in the 2013 SNP Application, the Call Letter for CY 2013, and in any additional HPMS memoranda about the D–SNP–State Medicaid agency contract requirement.

*Comment:* A number of commenters that submitted comments sought clarification on the States' obligations to contract with D–SNPs, including whether a State Medicaid agency is required to enter into contracts with all D–SNPs that seek to operate in its State. One commenter expressed concern about being able to contract with all of the D–SNPs that operate in its State because of budgetary concerns and contended that this MIPPA requirement to contract with D–SNPs conflicts with its established Medicaid managed care models. A few commenters suggested that CMS hold D–SNPs harmless if the D–SNP made a good faith effort to contract and the State Medicaid agencies either refused to contract with the D–SNP at all or refused to include the required provisions of § 422.107(c) in the contract between the DSNP and the State Medicaid agency. Several of these commenters requested that CMS provide incentives and assistance to States to contract with D–SNPs and facilitate the contracting process between D–SNPs and the State Medicaid agencies. By contrast, one commenter recommended that CMS communicate with State Medicaid agencies about D–SNPs that seek to operate in its State so the State can let CMS know what SNPs it will not contract with, thereby alleviating CMS' burden of reviewing SNPs with which a State will not contract.

*Response:* As explicitly provided in section 164(c)(4) of MIPPA, States are not under any obligations to contract with D–SNPs and can decline a D–SNP's request to enter into a contract for any reason. D–SNPs must still comply with the State contract requirements as established in section 164(c) and our regulations at § 422.107. However, as required by MIPPA and modified by the Affordable Care Act of 2010, to operate during contract year 2013 and beyond, all D–SNPs must secure a State Medicaid Agency contract containing, at minimum, all provisions listed in § 422.107(c); existing D–SNPs that do not obtain a required contract with their State Medicaid agency(ies) will not be permitted to continue. We do not believe that Congress intended that we hold D–SNPs harmless if the D–SNP made a good faith effort to contract and the State Medicaid agencies either refused to contract with the D–SNP at all or refused to include the required provisions. As required by section 164(c) of MIPPA, and in an effort to facilitate the contracting process between State Medicaid agencies and D–SNPs, we have established a State Resource Center to provide States with helpful information as they engage in contract negotiations with D–SNPs. This State Resource Center is designed to facilitate integration and coordination of benefits, policies, and day-to-day business processes between State Medicaid agencies and D–SNPs, and was also developed to provide a forum for States to make inquiries and share information with CMS and each other about the coordination of State and Federal policies pertaining to SNPs. States and D–SNPs seeking assistance with these requirements may e-mail at *State_Resource_Center@cms.hhs.gov,* or visit the State Resource Center Web site at *https://www.cms.hhs.gov/SpecialNeedsPlans/05_StateResourceCenter.asp.* We are, therefore, finalizing this provision without further modification.

*Comment:* Several commenters requested clarification on the meaning of ''providing benefits, or arranging for benefits to be provided'' under § 422.107(b), which states that ''[t]he MA organization retains responsibility under the contract for providing benefits, or arranging for benefits to be provided, for individuals entitled to receive medical assistance under title XIX * * *''. A few commenters sought confirmation that, with this language, CMS is not requiring D–SNPs to provide the Medicaid benefits directly to the dual-eligible beneficiary; rather, these commenters suggested that they should be able to subcontract with another entity for the provision of the benefits. Additionally, one commenter questioned whether States may enter into a State Medicaid Agency contract with a D–SNP under which the SNP does not have a contractual obligation to provide any Medicaid benefits. As noted by this commenter, such an option would enable States to facilitate the continued operation of D–SNPs without creating a conflict with the State's existing managed care models.

*Response:* D–SNPs may provide Medicaid benefits directly, or under contract with another entity, but must retain responsibility for the Medicaid benefits. States and D–SNPs identify the package of Medicaid benefits included under the D–SNP in their contract negotiations. The requirement that the D–SNP retain responsibility for the Medicaid benefits does not allow for a MIPPA compliant State Medicaid Agency contract under which the SNP does not have a contractual obligation to provide any Medicaid benefits. We are, therefore, finalizing this provision without further modification.

*Comment:* Many commenters questioned and sought clarification on the minimum contract requirements specified in § 422.107(c) and questioned whether various existing contracting arrangements between MAOs and States (that is, HIPAA business associate agreements or existing contracts between States and Medicaid managed care organizations) would satisfy the requirements of § 422.107(c). Commenters also requested we clarify: (1) The meaning of ''provide or arrange for Medicaid benefits'' under § 422.107(c)(1); (2) whether under § 422.107(c)(2), the State Plan governs the categories of dual eligible beneficiaries to be specified under the State contract, and whether the D–SNP must serve all duals in a State as opposed to smaller subsets of the State's dual-eligible population; (3) the scope of Medicaid benefits to be covered under the SNP; (4) the meaning ''cost sharing provisions under the SNP''; (5) the meaning of ''identification and sharing of information on Medicaid provider participation''; (6) the meaning of ''verification of enrollee's eligibility for both Medicare and Medicaid''; (7) whether the Medicaid managed care contract service area must match up with the D–SNP service area; and (8) whether CMS will accept contracts with evergreen clauses.

*Response:* In order to comply with the State Medicaid Agency contract requirements under section 164 of MIPPA, all contracts must, at minimum, contain the provisions outlined in § 422.107(c). We are unable to make a blanket determination that certain agreements between SNPs and State Medicaid agencies do or do not contain all of the required provisions; rather, we will review each contract individually for each required element to determine compliance. To provide D–SNPs more information on these requirements, we released and will continue to update additional guidance through the Medicare Managed Care Manual and other guidance vehicles (that is, HPMS memos) on the minimum contract requirements specified in § 422.107. Additionally, the following explanations provide some further

clarification on the required contract provisions:

• *The MA organization's responsibility, including financial obligations, to provide or arrange for Medicaid benefits:* This requirement under § 422.107(c) simply requires that the contract between the D–SNP and the State Medicaid agency clearly outline the process by which the D–SNP will provide or arrange for Medicaid benefits and specify how the Medicare and Medicaid benefits will be integrated and/or coordinated. The meaning of ''provide or arrange for Medicaid benefits'' is previously discussed in response to the previous comment regarding the meaning of these terms under § 422.107(b).

• *The category(ies) of eligibility for dual-eligible beneficiaries to be enrolled under the SNP, including the targeting of specific subsets:* This contract provision must specify the population of dual-eligible beneficiaries eligible to enroll in the D–SNP, and any enrollment limitations for Medicare beneficiaries under this D–SNP must parallel any enrollment limitations under the Medicaid program and Medicaid State Plan. A D–SNP contract with a State Medicaid agency may be for the State's entire population of dual-eligible beneficiaries or may cover certain categories of dual-eligible individuals. To the extent a State Medicaid agency excludes specific groups of dual eligibles from their Medicaid contracts or agreements, those same groups must be excluded from enrollment in the SNP, provided that the enrollment limitations parallel the structure and care delivery of the State Medicaid program. For organizations that contract with the State as a Medicaid managed care plan, enrollment in the D–SNP must be limited to the dual-eligible beneficiaries permitted to enroll in that organization's Medicaid managed care contract.

• *The Medicaid benefits covered under the SNP:* This State contract provision must specify information on benefit design and administration, and delineate plan responsibility to provide or arrange for benefits. The contract should specify the Medicaid benefits offered under the State Plan as well as those benefits the D–SNP will offer that go beyond what is required under Original Medicare.

• *The cost-sharing protections covered under the SNP:* The State Medicaid Agency contract should include the limitation on out of pocket costs for the applicable categories of dual eligible beneficiaries (for example, full benefit dual-eligible individuals). D–SNPs must enforce limits on out-of-pocket costs for dual-eligibles, and contracts between D–SNPs and State Medicaid agencies must specify that the D–SNP will not impose cost-sharing requirements on specified dual-eligible individuals that would exceed the amounts permitted under the State Medicaid Plan if the individual were not enrolled in the D–SNP.

• *The identification and sharing of information on Medicaid provider participation:* Meeting this contracting element requires that the information provided include a process for the State to identify and share information on providers contracted with the State Medicaid agency for inclusion in the SNP provider directory. Although CMS does not require all providers to accept both Medicare and Medicaid, the D–SNP's Medicare and Medicaid networks should meet the needs of the dual-eligible population served.

• *The verification of enrollee's eligibility for both Medicare and Medicaid:* The contract must describe in detail how the State Medicaid agency will provide D–SNPs with access to real time information to verify eligibility of enrolled dual eligible members.

• *The service area covered by the SNP:* The State contract provision must clearly identify the covered service area in which the State has agreed the D–SNP may operate. The D–SNPs service area cannot exceed the service area specified in the State Medicaid Agency contract. By contrast, the Medicaid managed care service area can exceed or include more counties than the D–SNP service area.

• *The contract period for the SNP:* The State Medicaid Agency contract requires a contract term covering at least January 1 through December 31 of the relevant MA contract year. If the State is unable to meet this required contract term provision, the D–SNP may include an evergreen clause within the contract and provide information about when the State issues updates to its existing contracts with evergreen clauses. Therefore, we are finalizing this provision without modification.

*Comment:* One commenter sought clarification about whether a D–SNP with authority to operate without a State Medicaid Agency contract can increase enrollment in the existing counties in its service area.

*Response:* D–SNPs that are permitted to operate in contract year 2012 without a State Medicaid Agency contract are also permitted to increase enrollment in the counties in their existing service area. Section 164(c) of MIPPA provided that all new D–SNPs must have contracts with the State Medicaid agencies in the States in which the D–SNPs operate. This provision allowed existing D–SNPs that were not seeking to expand their service areas the authority to continue operating without a State contract through the 2010 contract year. In 2010, section 3205 of the Affordable Care Act extended this provision for existing, non-expanding D–SNPs through the end of the 2012 contract year. As such, for contract year 2012, D–SNPs are only required to have a signed State Medicaid Agency contract to operate if they: (1) Are offering a new D–SNP-type in CY 2012; (2) are expanding the service area of an existing D–SNP type in CY 2012; (3) offered a new D–SNP type in CY 2010 or CY 2011; or (4) expanded the service area of an existing D–SNP during either of these 2 contract years. Since our April 2011 final rule (76 FR 21563) entitled, Medicare Program: Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Changes, finalized changes to § 422.107(d)(1)(ii) such that existing D–SNPs can operate without State Medicaid contracts through CY 2012, provided they do not expand their service areas, the regulatory text changes we made to § 422.107(d)(1)(ii) in our September 18, 2008 IFC have been superseded. Therefore, in this final rule, we are not finalizing the regulatory text changes to § 422.107(d)(1)(ii) that we described in our September 18, 2008 IFC.

*Comment:* Two commenters sought clarification on whether MIPPA's State Medicaid Agency contract requirement applies only to D–SNPs or to all SNPs types that serve and enroll dual-eligible beneficiaries. One commenter suggested this provision broadly apply to all SNP types.

*Response:* Section 164(c) of MIPPA requires that D–SNPs contract with the State Medicaid agencies in the States in which the D–SNP operates to provide benefits, or arrange for benefits to be provided, for individuals entitled to receive medical assistance under title XIX. This requirement is found in section 164(c) of MIPPA under a subsection starting with the statutory text ''ADDITIONAL REQUIREMENTS FOR DUAL SNPS.'' Further, this provision specifically refers to a specialized MA plan for special needs individuals described in subsection (b)(6)(B)(ii), which we have interpreted in past guidance to mean D–SNPs. As such, it is clear that Congress only intended that this State contract requirement apply to D–SNPs, and not C–SNPs and I–SNPs that enroll dual-eligible beneficiaries. Therefore, we are finalizing this provision without modification.

d. SNPs and Quality Improvement Program (§ 422.152)

Section 164 of MIPPA amended section 1852(e)(3)(A) of the Act to add clause (ii) and added a new paragraph (6) to section 1857(d) of the Act. Section 1852(e)(3)(A)(ii) of the Act requires that data collected, analyzed, and reported as part of the plan's quality improvement (QI) program must measure health outcomes and other indices of quality at the plan level with respect to the model of care (MOC) as required in section 1859(f)(2) through (5) of the Act. As a Medicare Advantage (MA) plan, each SNP must implement a documented QI program for which all information is available for submission to CMS or for review during monitoring visits. The focus of the SNP QI program should be the monitoring and evaluation of the performance of its MOC (see § 422.101(f)). In the September 18, 2008 IFC, we stated that, no later than January 1, 2010, the program should be executed as a three-tier system of performance improvement.

The first tier of this program consisted of collection and analysis of data on quality and outcome to enable beneficiaries to compare and select among health coverage options. As part of the first tier implementation and to pilot the development of comparative measures to facilitate beneficiary choice, SNPs were required to collect, analyze, and submit 13 Healthcare Effectiveness Data and Information Set (HEDIS®) measures and three National Committee on Quality Assurance (NCQA) structure and process measures in CY 2008. Since CY 2008, we have required SNPs to submit eight HEDIS® and six NCQA structure and process measures.

The second tier of the QI program for SNPs was effective on January 1, 2010 and was implemented consistent with the requirements § 422.152(g). As we articulated in our September 18, 2008 IFC, § 422.152(g) reflects the requirement under section 1852(e)(3)(A)(ii) of the Act, added by MIPPA, that SNPs collect, analyze, and report data that measures the performance of their plan-specific MOC. SNPs may measure the effectiveness of their MOCs, as required under § 422.152(g), using a variety of plan-determined methodologies, such as claims data, record reviews, administrative data, clinical outcomes, and other existing valid and reliable measures (for example, Assessing Care of Vulnerable Elders (ACOVE) measures, Minimum Data Set (MDS), HEDIS®, Health Outcomes Survey (HOS), and the Outcome and Assessment Information Set (OASIS)) at the plan level to evaluate the effectiveness of the process of care and clinical outcomes. Specifically, each SNP must measure the effectiveness of its MOC through the collection, aggregation, analysis, and reporting of data that demonstrate: Access to care; improvement in beneficiary health status; staff implementation of the MOC as evidenced by measures of care structure and process from the continuity of care domain; comprehensive health risk assessment; care management through an individualized plan of care; provision of specialized clinical expertise targeting its special needs population through a provider network; coordination and delivery of services and benefits through transitions across settings and providers; coordination and delivery of extra services and benefits that meet the needs of the most vulnerable beneficiaries; use of evidence-based practices and/or nationally recognized clinical protocols; and the application of integrated systems of communication. As we specified in our September 18, 2008 IFC, each SNP must coordinate the systematic collection of data using indicators that are objective, clearly defined, and based on measures having established validity and reliability. We further clarified that the indicators should be selected from a variety of quality and outcome measurement domains such as functional status, care transitioning, disease management, behavioral health, medication management, personal and environmental safety, beneficiary involvement and satisfaction, and family and caregiver support. We also stated that SNPs must document all aspects of their QI program, including data collection and analysis, actions taken to improve the performance of the MOC, and the participation of the interdisciplinary team members and network providers in QI activities.

We are currently implementing the third tier of the QI program, which is the required reporting of monitoring data, that consists of a prescribed sample of data that SNPs collect under the second tier of the QI program to measure their performance under their MOCs. MA organizations must currently collect and report ''data that permits the measurement of health outcomes and other indices of quality.'' Accordingly, MA organizations must collect and report data from the HEDIS®, HOS, and CAHPS® instruments, as well as the SNP structure and process measures. We make these performance data available to the public (on a summary basis and at the plan level).

The Affordable Care Act (ACA) requires that, starting in 2012, all SNPs be approved by the National Committee on Quality Assurance (NCQA) based on standards developed by the Secretary. In our April 2011 final rule (76 FR 21466–21448), we specified that the SNP MOC would be the basis of NCQA's approval of SNPs. We developed the standards and scoring criteria for each of the 11 elements of the MOC for the NCQA to use for the SNP approval process.

Section 1857(d)(6) of the Act stipulates that we will conduct reviews of the SNP MOC in conjunction with the periodic audits of the MA organizations. During 2010 and 2011, we conducted a pilot study to assist us in determining the best methods for assessing the MOCs once they were implemented by the SNPs. We will expand this effort in 2012, by assessing a sample of the SNPs that attained a 3-year approval as a result of the NCQA SNP approval process that was mandated under the Affordable Care Act. This assessment will help us ensure that SNPs are providing care consistent with their approved MOC and to identify MAOs' strengths and weaknesses in implementing their MOCs. We also hope to use this information to identify best practices to share with plans and the public.

After considering comments we received, we are finalizing these provisions without modification.

*Comment:* One commenter viewed this provision as a positive addition to demonstrating the value and effectiveness of the SNP model. To ensure successful implementation and to improve clarity the commenter offered the following suggestions:

- Section 422.152(g)(2)—To ensure that CMS, contracting plans, and other interested parties are referring to the same standard, the commenter suggested that the regulation specify the source of the domains referenced (for example, CMS, NCQA, NIH).
- Section 422.152(g)(2)(viii)—The commenter was concerned that the delivery of extra services and benefits to meet the specialized needs of the most vulnerable beneficiaries may conflict with current CMS guidance on MA bids and benefits. The commenter requests that CMS clarify how a SNP would provide a different benefit set or set of services to those populations as the term ''extra services and benefits'' seems to imply.
- Section 422.152(g)(2)(x)—The commenter believes that the use of the term ''plans demonstrating use of integrated systems of communication''

is unclear and requests that CMS provide additional clarification as to the intent of the measure CMS references.

*Response:* We appreciate the commenter's interest in this issue. With respect to § 422.152(g)(2), we are using the definitions of domains as described by the Care Continuum Alliance, formerly the Disease Management Association of America. An integrated system of communication is the system the plan employs to communicate with all of its stakeholders—providers, beneficiaries, the public and regulatory agencies. This definition is included in Chapter 5 of the Medicare Managed Care Manual (''Quality Improvement Program''). The chapter, which is part of the Publication 100–16, may be accessed online at *http://www.cms.hhs.gov/Manuals/IOM.*

We expect MA organizations offering SNPs to incorporate some or all of the following benefits that exceed the basic required Medicare A and B benefits offered by other MA products available in the same service area—(1) No or lower beneficiary cost-sharing; (2) longer benefit coverage periods for inpatient services; (3) longer benefit coverage periods for specialty medical services; (4) parity (equity) between medical and mental health benefits and services; (5) additional preventive health benefits (for example, dental screening, vision screening, hearing screening, age-appropriate cancer screening, risk-based cardiac screening); (6) social services (for example, connection to community resources for economic assistance); (7) transportation services; and (8) wellness programs to prevent the progression of chronic conditions.

Finally, in § 422.152(g)(2)(x), we state that, as part of its quality program, a SNP must incorporate use of integrated systems of communication as evidenced by measures from the care coordination domain. An integrated system of communication is the system the plan employs to communicate with all of its stakeholders—providers, beneficiaries, the public and regulatory agencies. An example of an integrated communication system is a call center that might, as a reminder, reach out to clients in advance of their scheduled appointments.

*Comment:* One commenter expressed the view that current CMS policy in the area of allowed extra services and benefits to meet the needs of vulnerable beneficiaries is unclear, resulting in instability of benefit packages (for example, an extra benefit of independent living skills was approved one year and disapproved the next year). The commenter also contends that CMS' policy is not applied consistently across organizations, resulting in an unlevel playing field for some MAOs. Another commenter advised that the plan's care management approach may be more a matter of ''how'' and ''when'' benefits are provided and reimbursed than what extra benefits and services are provided.

*Response:* We have provided guidance to MA organizations offering SNPs that they should incorporate some or all of the following benefits that exceed the basic required Medicare A and B benefits offered by other MA products available in the same service area—(1) No or lower beneficiary cost-sharing; (2) longer benefit coverage periods for inpatient services; (3) longer benefit coverage periods for specialty medical services; (4) parity (equity) between medical and mental health benefits and services; (5) additional preventive health benefits (for example, dental screening, vision screening, hearing screening, age-appropriate cancer screening, risk-based cardiac screening); (6) social services (for example, connection to community resources for economic assistance); (7) transportation services; and (8) wellness programs to prevent the progression of chronic conditions. As the commenter asserts, as important as the provision of ''extra'' services is plans' appropriate management of all benefits—both those covered by Parts A and B and those that extend or enrich Parts A and B services or provide supplemental benefits—for their particular populations is equally as important to us. With respect to the commenters' assertion that our policy is not applied consistently across organizations, we note that our bid review process very carefully scrutinizes permissible supplemental benefits across all MA plan.

*Comment:* A commenter stated that the term ''health status,'' in reference to the second-tier language in the September 18, 2008 IFC, can be interpreted in a variety of ways. In an effort to promote consistent compliance by SNPs, the commenter recommends that CMS provide an explanation of the meaning of the term. The commenter also stated that depending upon the beneficiary's disease state, the course of the beneficiary's medical condition may be expected to result in declining health status. The commenter recommends that CMS revise the regulation to accommodate this circumstance.

*Response:* We have not provided a specific definition of health status, as it is more appropriate for SNPs to apply a definition that is appropriate for its population. We understand that for beneficiaries with certain medical conditions, the natural course of the disease will result in a decline in health status and death. However, our intent is to improve health status for the overall Medicare population.

*Comment:* Several commenters contended that health outcomes cannot be achieved without consideration of other quality of life indicators, such as adequate housing, engagement in meaningful activities, employment/community activities, and self-determination. These commenters suggested that meaningful measures of outcomes and quality should include personal experience outcomes. One of the commenters urged CMS to consider how ''improvement in health status'' will apply to persons whose care plan is focused on maintaining current functioning, delaying decline, or approaching the end of life.

*Response:* We agree that health outcomes are linked to many other factors in a patient's life. We intend to continue to explore best practices for measuring health outcomes in the Medicare population. We will also consider how ''improvement in health status'' will apply to persons whose care plan is focused on maintaining current functioning, delaying decline, or approaching the end of life.

*Comment:* One commenter noted that the regulation identifies data collection, analysis, and reporting as well as audit requirements in its QI system but that it does not provide in-depth specifications. The commenter suggests that such measures and specifications need further development and should be integrated with State's quality measures and data requirements.

*Response:* Since the publication of the September 18, 2008 IFC, we have issued guidance to plans regarding in-depth data specifications in various guidance vehicles, including HPMS memoranda. Much of this guidance is also consolidated in Chapter 5 of the Medicare Managed Care Manual, ''Quality Improvement Program.''

We are currently revising the process that MA organizations will use to submit their 2012 Chronic Care Improvement Programs (CCIPs) and Quality Improvement Projects (QIPs) and automating collection within a new module in the Health Plan Management System (HPMS). We are also revising and streamlining the templates that MA organizations will use for CCIP and QIP submission through the Paperwork Reduction Act process. The new format will allow MA organizations to demonstrate how the CCIP and/or QIP is developed, implemented and analyzed on a continuous cycle and to show where improvements in care occur. We

will provide more detailed guidance and timelines, as well as in-depth training on the new CCIP and QIP tools in the fall of 2011. We are also developing an MA quality Web page, which we intend to use to provide important information to external stakeholders, including MA organizations.

With respect to the commenter's specific concern about integration of quality data specifications with those of individual States, we note that is it not currently possible to integrate Medicare and Medicaid quality reporting requirements at this time. However, this is an issue we are currently exploring in coordination with the Federal Coordinated Health Care Office (FCHO).

*Comment:* Several commenters advised that States have many quality assurance requirement processes in place for Medicaid as such the new requirements must not conflict/override/interfere with current Medicaid contract requirements. According to the commenters, SNPs are concerned that they will be forced to try and reconcile conflicting Medicare and Medicaid requirements with States without clear guidance from CMS. Areas of potential overlap include care plans, initial/annual health risk assessments, performance measures, and appeals and grievances.

*Response:* We understand the potential for conflicting requirements and are currently working with the FCHO to consider ways of more closely aligning Medicare and Medicaid requirements.

The FCHO published the Alignment Initiative on May 16, 2011. This Initiative is focused on the new Office's efforts to address misalignments between Medicare and Medicaid, including extensive treatment and discussion of differing Medicare and Medicaid requirements for integrated managed care plans, including SNPs. CMS is reviewing the extensive comments that it has received and is working on addressing issues identified by this Office and commenters. Further guidance will be forthcoming.

*Comment:* One commenter questioned how continuum of care is defined. The commenter urged that CMS be careful not to encroach on the right of State Medicaid agencies to define what benefits to include in its contracts with SNPs.

*Response:* We have no intention of encroaching on State Medicaid agencies' rights to define the Medicaid benefits that are available for the dual eligible population. Continuum of care refers to patients receiving the care that is appropriate for managing their specific health conditions. We recommend using the Care Continuum Alliance's definition as a resource. Additional information on continuum of care can be found at *http://www.carecontinuum.org.*

*Comment:* One commenter believed there was a lack of evidence based guidelines for some populations, such as specific disability groups; the commenter suggests that CMS should include language allowing locally recognized protocols to permit maximum flexibility. Another commenter stated that an evidence base does not exist for the co-morbid populations most likely to receive care via SNPs.

*Response:* We understand that evidence-based practice in medicine is a growing field and, as such, acknowledge that there may not be evidence-based protocols for all clinical conditions and co-morbidities. We do, however, expect plans to institute evidence-based protocols and practices that are available and appropriate for their patient population. Where there is no evidence-based guidance, then we expect that the plan will seek guidance from their account manager at the regional office and, in conjunction with CMS, determine the best approach to implement.

*Comment:* One commenter expressed concern that SNPs which have high cost, high need dual populations will be compared with other SNPs serving other subsets of the population without an appropriate risk adjustment and stratification system. The commenter questions whether CMS has a plan for making fair comparisons of data across such differences in populations among D–SNPs, as well as between C–SNPs, I–SNPs, and D–SNPs.

Another commenter questioned how there can be comparisons across different types of SNPs when the populations are so different. The commenter recommends that CMS exclude integrated, full benefit D–SNPs from the requirements.

*Response:* We understand that there are differences in SNP populations. The MOC is the vehicle for SNPs to identify, implement, provide, and coordinate appropriate health care for their specific target populations. Effecting the type of data comparisons recommended by the commenter would require us to develop data measures specific to each SNP type. At this time, we do not anticipate developing such measures. We are aware, however, of the measurement issues that SNPs with small enrollments face. We are currently focusing our attention on these issues in order to refine our measures for SNPs, including those with low enrollments. One way we are addressing this concern is through a contract to develop outcome measures for MA organizations, as well as for SNPs more specifically. Through this contract we are reviewing all current SNP measures and developing measures where there are gaps, including for SNPs with low enrollment. We expect this work on outcome measures to be completed in late 2014.

We do not agree with the commenter that fully integrated dual eligible SNPs should be exempt from data reporting requirements. All SNP types must comply with our requirements.

*Comment:* One commenter contended that reporting quality data by PBP/plan would result in many low enrollment SNPs not having any members in the denominator, or so few that the data/rates would not be meaningful. The commenter recommends that quality data instead be reported by SNP type (for example, D–SNP) to ensure CMS and beneficiaries have meaningful data for plan comparison purposes.

*Response:* We understand that there are potentially SNPs with very low enrollment (small denominators). Because of this, we currently have data reported at the contract level. We understand that plans with small enrollments, especially SNPs, may not have the data resources available to them to track and monitor quality on an ongoing basis. However, SNPs are required to collect HEDIS® data using selected measures that have been developed just for plans with smaller enrollments. These data, as well as the NCQA structure and process measures, should be used to track and monitor areas that could benefit from ongoing quality improvement. Also, small plans may have encounter data or other data specific to the operations of their organization that could be useful for quality improvement.

As part of our continued effort to explore measures that are more sensitive for plans with low enrollment, we are developing outcome measures for the MA program, including SNPs. We will also conduct a pilot study to test the measures (for example, measures that address health outcomes related to coordination of care and transitions of care), as well as a larger study to validate the measures. One of our goals is to incorporate some of these measures into the MA plan rating system. This work will also assist us in developing measures to address the concerns of plans with low enrollment that cannot report using some of the current measures in the CAHPS®; HEDIS®,

and/or HOS instruments. We expect to complete our work in late 2014.

*Comment:* One commenter advised that they have heard concerns from both States and plans regarding the stringency of the QI requirements and their potential impact on plans' stability.

*Response:* We appreciate the commenter's interest in this issue. We believe that improving quality and having the data to demonstrate these improvements will help support the stability and viability of the program.

*Comment:* One commenter recommended that CMS promptly issue guidance with operational instructions implementing the 2008 SNP Chronic Condition Panel Final Report. MIPPA restricted enrollment in C–SNPs to special needs individuals that ''have one or more co-morbid and medically complex chronic conditions that are substantially disabling or life-threatening, have a high risk of hospitalization or other significant adverse health outcomes, and require specialized delivery systems across domains of care.''

*Response:* Fifteen SNP-specific chronic conditions were recommended by the panel and adopted beginning with the CY 2009 plan year. The Special Needs Plan Chronic Condition Panel Final Report was made public on November 12, 2008. The final report is available on the CMS Web site at: *https://www.cms.gov/SpecialNeedsPlans/Downloads/SNP_CC_Panel_Final_Report.zip.*

*Comment:* In questioning how the new requirements to collect, analyze, and report data as well as new requirements for MOC, care management, *etc.,* relate to existing CCI, HEDIS, and structure and process measures, one commenter urged CMS to work closely with SNPs and NCQA to minimize any new data reporting burdens, to prevent duplication of data collection and reporting efforts and to maximize use of existing structure and process measures to the extent possible in meeting new reporting requirements. The commenter also requested that CMS take into consideration the development time required to ensure accurate and complete data as well as provide technical specifications well in advance (for example, plans should have the technical specifications 6 months in advance). In addition, the commenter requested, that since SNPs have to meet both standard MA reporting as well as SNP-specific reporting, CMS take into account the total data and reporting burden on SNPs and consider staggering reporting of any new SNP requirements, similar to the process for Part C reporting.

*Response:* We are sensitive to the potential overlap of QI data reporting requirements. As part of our overall QI strategy, are carefully and systematically evaluating the impact of data collection requirements related to QI in an attempt to decrease burden and prevent duplication, while achieving our programmatic goals. Where possible, we will attempt to stagger reporting requirements.

Many of the measures that we have received comments on are included in the 5-star plan rating system. We are looking systematically at all of our QI reporting tools and measures and making a number of changes. For example, we are in the process of improving and implementing new reporting tools for the CCIPs and the QIPs for the CY 2012 reporting cycle. We expect that these new reporting tools will decrease the data collection and reporting burden for all MA organizations. We are also developing a module in HPMS that will allow for this reporting process to be automated. CMS is committed to continuing to review and to assess the measures to address these concerns.

We acknowledge that the NCQA structure and process measures overlap heavily with the MOC and QI reporting requirements. The structure and process measures were developed in an effort to identify SNP-specific measures that are not affected by a plan's enrollment size. Another goal of these measures is to evaluate some of the specific features of SNPs that make them unique among MA plans. These measures cannot replace the QIPs, since QIPs are a tool for evaluating weaknesses in the overall QI program for and MA organization, as well as monitoring the impact of any intervention that was implemented to mitigate a specific problem.

Similarly, the MOC serves a unique purpose by ensuring that SNPs design a clinical care program to address the health care needs of the specific vulnerable populations they serve. The MOC is not a data collection system but, rather, a framework for coordinating the key evidence based elements critical to providing integrated, high quality care to vulnerable patients.

We are looking systematically at all of our QI reporting tools and measures, and are in the process of making changes to eliminate some of the burden on plans. For example, we are in the process of streamlining and improving the CCIP and QIP reporting tools. By improving the reporting tools we expect to use in the 2012 reporting cycle we expect to decrease the burden for completing the data collection and reporting. We are also developing automating the submission process through an HPMS module.

*Comment:* One commenter recommended that CMS require the data to be reported uniformly. The commenter pointed out that the first tier purpose of the QI program to provide data on quality and outcomes to enable beneficiaries to compare and select from among health coverage options and the second tier purpose for measuring essential components of the MOC using a variety of plan-determined methodologies discussed in the rule do not appear to require uniform data reporting that would promote comparisons among plans.

*Response:* We appreciate the commenter's interest in this issue. We understand the need for uniformity in reporting and will strive to incorporate this principle in the QI program.

d. Special Needs Plans and Other MA Plans With Dual-Eligibles: Responsibility for Cost-Sharing (§ 422.504(g)(1)) and Written Disclosure of Cost-Sharing Requirements (§ 422.111(b)(2)(iii))

(1) Comprehensive Written Disclosure Requirement for Dual Eligible SNPs (§ 422.111(b)(2)(iii))

Section 164(c)(1) of MIPPA requires that plan sponsors offering D–SNPs must provide each prospective enrollee, prior to enrollment, with a comprehensive written statement that describes the benefits and cost-sharing protections that the individual would be entitled to under the D–SNP and the relevant State Medicaid plan. The comprehensive written statement must include the benefits that the individual is entitled to under Medicaid (Title XIX), the cost-sharing protections that the individual is entitled to under Medicaid (Title XIX), and a description of which of these benefits and cost-sharing protections are covered under the D–SNP. This provision is effective January 1, 2010. In the September 18, 2008 IFC (73 FR 54226), we introduced the regulations at § 422.111(b)(2)(iii) to reflect these statutory requirements, and are finalizing it without modification in this final rule.

*Comment:* One commenter mentioned that it believed that CMS's current marketing materials for duals were confusing and inaccurate. The commenter expressed support for the comprehensive written statement requirement, which it believed would provide dual eligible enrollees with crucial information on a plan's cost-sharing benefits.

*Response:* We agree that the comprehensive written statement will help dual-eligible beneficiaries make more informed enrollment choices.

*Comment:* One commenter stated that the comprehensive written statement provision, as written in the interim final rule, was narrower than the corresponding section of MIPPA, which requires that CMS establish a standard content and format for the notice concerning cost sharing protections and Medicare and Medicaid benefits. The commenter also recommended adding language to the rule to specify that the comprehensive written statement must include a statement of the benefits that the SNP provides.

*Response:* We disagree with the commenter's assertion that we should modify the rule to specifically reference CMS's responsibility to establish a standard content and format for the comprehensive written notice. Section 164(c)(1) of MIPPA (section 1859(f)(3)(c) of the Act) directly mandates that CMS determine the form and content of the comprehensive written statement. Regulatory language is neither a necessary nor appropriate means of effectuating this statutory directive to the agency. Therefore, we are not adding this language to the final rule.

In addition, the language in the regulatory text for this provision includes the requirement that the comprehensive written statement must include a description of the benefits and cost-sharing protections that the D–SNP provides. We do not believe this provision requires further clarification.

*Comment:* Two commenters requested clarification on the format and administration of the requirements established in this provision. One commenter suggested that CMS develop a simple template that States could use to describe their Medicaid benefits, and requested that CMS clarify how the written statement could be modified to reflect States' mid-year benefit changes. The commenter additionally asked CMS to define the role of the CMS Central Office and CMS Regional offices in coordinating the flow of information between States and SNPs. Another commenter asked CMS to clarify whether a plan that included this information on its Evidence of Coverage (EOC) document would be compliant with the comprehensive written statement requirement.

*Response:* We are not modifying the provision to address the operational issues that the commenters raised. We do not believe that rulemaking is the appropriate vehicle for addressing comments on the operational issues related to the comprehensive written statement requirement. We will address operational issues related to the comprehensive written statement requirement for D–SNPs through operational guidance vehicles (for example, call letters, manual chapters, and HPMS memoranda). We anticipate that this future guidance will address the commenters' concerns regarding the operational aspects of the comprehensive written disclosure requirement.

(2) Limitation on Cost-Sharing for Certain Dual Eligible Special Needs Individuals (§ 422.504(g)(1))

Section 165 of MIPPA, which revised section 1852(a) of the Act, prohibits D–SNPs from imposing cost-sharing requirements on full benefit dual-eligible individuals and Qualified Medicare Beneficiaries (QMBs), as described in sections 1935(c)(6) and 1905(p)(1) of the Act, that would exceed the cost-sharing amounts permitted under the State Medicaid plan if the individual were not enrolled in the D–SNP. The effective date of this provision is January 1, 2010.

*Comment:* One commenter asked CMS to clarify the difference between this provision's requirement that limits cost-sharing for full benefit dual-eligible beneficiaries and the prohibition on balance billing Qualified Medicare Beneficiaries (QMBs) that is established in 1903(n) of the Act. The commenter also requested that CMS explain the difference between this provision and provisions that hold beneficiaries harmless in instances of non-payment by a health plan or a State Medicaid Agency. Another commenter asked CMS to clarify how a plan should construct its benefits and its bid for full benefit duals when the liability of the State varies by the reimbursement level in its State Medicaid plan.

*Response:* We will continue to provide all MA plans, including D–SNPs, with guidance on the bid submission process. We do not believe that it is appropriate to address issues relating to plan bids through formal rulemaking. Unlike the statutory prohibition on QMB balance billing that outlines State cost-sharing responsibilities and provider billing requirements, this requirement at § 422.504(g)(1)) limits the cost-sharing that MA plans may impose on their full benefit and zero-cost-share dual eligible enrollees. We are not describing the requirements of balance billing or ''hold harmless'' provisions in detail in this preamble, as they are outside the scope of this final rule.

*Comment:* One commenter requested that CMS address how this requirement would apply to D–SNPs that enroll dual eligible individuals who are not all eligible for full State Medicaid benefits. The commenter also suggested that CMS strengthen its language regarding States' cost-sharing responsibility. Finally, the commenter noted its belief that the protection of full-benefit dual eligible beneficiaries from cost-sharing above Medicaid levels should extend to full benefit dual eligible beneficiaries in all MA plans, not just those who are enrolled in SNPs.

*Response:* In our January 2009 final rule (74 FR 1499) entitled, ''Medicare Program; Medicare Advantage and Prescription Drug Benefit Programs: Negotiated Pricing and Remaining Revisions,'' we extended the cost-sharing requirements that MIPPA imposed on D–SNPs to all MA plans. We also applied this cost-sharing protection to individuals who belong to any Medicaid dual eligibility category for which the State provides a zero cost-share. Our January 2009 final rule (74 FR 1499) replaced and superseded the language in our September 18, 2008 IFC, and finalized changes to § 422.504(g)(1)(iii). Therefore, in this final rule, we are not finalizing the regulatory text changes to § 422.504(g)(1)(iii) that we described in our September 18, 2008 IFC.

(3) Private Fee-For-Service (PFFS) Plans

(a) Changes in Access Requirements for PFFS Plans

Section 162(a)(3) of MIPPA amended section 1852(d)(4)(B) of the Act to require, effective January 1, 2010, that PFFS plans meeting access standards based on signed contracts meet access standards with respect to a particular category of provider by establishing contracts or agreements with a sufficient number and range of providers to meet the access and availability standards described in section 1852(d)(1) of the Act. Section 1852(d)(1) of the Act describes the requirements that MA organizations offering a ''network'' MA plan must satisfy when selecting providers to furnish benefits covered under the plan.

In the September 18, 2008 IFC, we revised § 422.114(a)(2)(ii) to reflect this new statutory requirement. We did not receive any comments on this requirement; therefore, we are finalizing the revisions to § 422.114(a)(2) as described in the September 18, 2008 IFC.

(b) Requirement for Certain Non-Employer PFFS Plans to Use Contract Providers

Section 162(a)(1) of MIPPA added a new paragraph (5) to section 1852(d) of the Act. The new paragraph creates a requirement for certain non-employer MA PFFS plans to establish contracts with providers. Specifically, for plan year 2011 and subsequent plan years, MIPPA required that non-employer/union MA PFFS plans (employer/union sponsored PFFS plans were addressed in a separate provision of MIPPA) that are operating in a network area (as defined in section 1852(d)(5)(B) of the Act) must meet the access standards described in section 1852(d)(4). As noted above, section 1852(d)(4)(B) of the Act as amended by MIPPA, requires that PFFS plans must have contracts with a sufficient number and range of providers to meet the access and availability standards described in section 1852(d)(1) of the Act. Therefore, we stated in the September 18, 2008 IFC that these PFFS plans may no longer meet the access standards by paying not less than the Original Medicare payment rate and having providers deemed to be contracted, as provided under § 422.216(f).

''Network area'' is defined in section 1852(d)(5)(B) of the Act, for a given plan year, as the area that the Secretary identifies (in the announcement of the risk and other factors to be used in adjusting MA capitation rates for each MA payment area for the previous plan year) as having at least two network-based plans (as defined in section 1852(d)(5)(C) of the Act) with enrollment as of the first day of the year in which the announcement is made. For plan year 2011, we informed PFFS plans of the network areas in the announcement of CY 2010 MA capitation rates, which was published on the first Monday of April 2009. We used enrollment data for January 1, 2009 to identify the location of network areas.

''Network-based plan'' is defined in section 1852(d)(5)(C) of the Act as (1) an MA plan that is a coordinated care plan as described in section 1851(a)(2)(A)(i) of the Act, excluding non-network regional PPOs; (2) a network-based MSA plan; or (3) a section 1876 cost plan. Types of coordinated care plans (CCPs) that meet the definition of a ''network-based plan'' are HMOs, PSOs, local PPOs, as well as regional PPOs with respect to portions of their service area in which access standards are met through establishing written contracts or agreements with providers. MIPPA specified that the term ''network-based plan'' excluded a regional PPO that meets access requirements in its service area substantially through the authority of § 422.112(a)(1)(ii), rather than through written contracts. Section 422.112(a)(1)(ii) permits regional PPOs to meet access requirements using methods other than written agreements with providers (that is, allowing members to see non-contract providers at in-network cost sharing in areas where the plan does not have established a network of contracted providers).

We stated in the September 18, 2008 IFC that, for purposes of determining the network area of a PFFS plan, we will determine whether any network-based plans with enrollment exist in each of the counties in the United States. Beginning in plan year 2011, in counties where there is availability of two or more network-based plans (such as an HMO plan, a PSO plan, a local PPO plan, a network regional PPO plan, a network-based MSA plan, or a section 1876 cost plan), a PFFS plan operating in these counties must establish a network of contracted providers to furnish services in these counties in accordance with the amended section 1852(d)(4)(B) of the Act. In such counties, a PFFS plan would no longer be able to meet access requirements through providers deemed to have a contract with the plan at the point of service in these counties. In counties where there are no network-based plan options, or only one other network-based plan, the statute allows PFFS plans to continue to meet access requirements in accordance with section 1852(d)(4) of the Act and § 422.114(a)(2). Regardless of whether a PFFS plan meets access requirements through deeming or is subject to the requirement that it establish a network of providers with signed contracts, providers who do not have a contract with the PFFS plan may continue to be deemed to have a contract with the plan if the deeming conditions described in § 422.216(f) are met.

An existing PFFS plan may have some counties in its current service area that meet the definition of a network area and other counties that do not. We also stated that, in order to operationalize section 162(a)(1) of MIPPA, we will not permit a PFFS plan to operate a mixed model where some counties in the plan's service area are considered network areas and other counties are considered non-network areas. Beginning in plan year 2011, an MA organization offering a PFFS plan will be required to create separate plans within its existing service areas where it is offering PFFS plans based on whether the counties located in those service areas are considered network areas or not. For example, if an existing PFFS plan has some counties in its current service area that are network areas and other counties that are non-network areas, then in order to operate in this service area in plan year 2011 and subsequent plan years, the MA organization must establish a unique plan with service area consisting of the counties that are network areas and another plan with service area consisting of the counties that are non-network areas. Consequently, the PFFS plan operating in the counties that are network areas must establish a network of contracted providers in these counties in accordance with section 1852(d)(4)(B) of the Act in order to meet access requirements. The PFFS plan operating in the counties that are not network areas can continue to meet access requirements under § 422.114(a)(2) by paying rates at least as high as rates under Medicare Part A or Part B to providers deemed to have a contract with the plan if the conditions described in § 422.216(f) are met. The MA organization must file separate plan benefit packages for the PFFS plan that will operate in network areas and the plan that will operate in non-network areas.

We stated in the September 18, 2008 IFC that for purposes of making the judgment of provider network adequacy for PFFS plans that will be required to operate using a network of contracted providers in plan year 2011 and afterwards, we will apply the same standards for PFFS plans that we apply to coordinated care plans. To determine where a PFFS plan's proposed network meets access and availability standards, we will follow the procedure described in the section above on ''Changes in access requirements for PFFS plans.''

We are finalizing the revisions to § 422.114(a)(3) as described in the (73 FR 54226) IFC published on September 18, 2008 IFC to reflect the requirements found in section 162(a)(1) of MIPPA for non-employer PFFS plans.

*Comment:* A few commenters urged CMS to modify the definition of a ''network area'' to mean an area with CCPs offered by two different organizations in order to ensure that there is real competition in the area.

*Response:* MIPPA defines ''network area,'' for a given plan year, as the area that the Secretary identifies (in the announcement of the risk and other factors to be used in adjusting MA capitation rates for each MA payment area for the previous plan year) as ''having at least 2 network-based plans with enrollment as of the first day of the year in which the announcement is

made.'' ''Network-based plan'' is defined in MIPPA as (1) an MA plan that is a coordinated care plan as described in section 1851(a)(2)(A)(i) of the Act, excluding non-network regional PPOs; (2) a network-based MSA plan; or (3) a section 1876 cost plan. We interpret ''having at least 2 network-based plans'' to mean that there are at least 2 plans, which meet the definition of a network-based plan, that are offered by the same MA organization or by different MA organizations. We believe this interpretation is consistent with the statutory requirements for identifying network areas. We do not believe we have the statutory authority to interpret the definition of a network area in a different manner.

*Comment:* A commenter recommended that network-based plans ''with enrollment'' should be defined as plans with a minimum enrollment threshold of 5,000 in MSAs with a population of more than 250,000 and 1,500 in all other areas. The commenter stated that establishing a minimum membership standard would ensure that the CCPs that remain in the market are stable and minimize the possibility of future plan exit and further MA member disruption.

*Response:* MIPPA defines ''network area,'' for a given plan year, as the area that the Secretary identifies (in the announcement of the risk and other factors to be used in adjusting MA capitation rates for each MA payment area for the previous plan year) as ''having at least 2 network-based plans with enrollment as of the first day of the year in which the announcement is made.'' We interpret the phrase ''with enrollment'' to mean that a network-based plan is required to have at least 1 beneficiary enrolled in the plan in order to be counted for purposes of identifying the location of the network areas. We believe that interpreting ''with enrollment'' any differently would result in an artificial threshold and would not be consistent with the statute.

*Comment:* A commenter recommended that CMS provide preliminary information about CY 2011 network areas, based on January 1, 2009, enrollment data, in the CY 2010 announcement and later update this information in the CY 2011 announcement to reflect January 1, 2010, enrollment data. The commenter further stated that the 2010 data and resulting network areas should be the basis for determining PFFS plan compliance with the MIPPA requirement for CY 2011. Another commenter recommended that once CMS denotes a county as a network area, that county should keep the network area designation. The commenter stated that counties should not switch from network to non-network status over time, even if one of the two CCPs in the county exit.

*Response:* The methodology for identifying the location of network areas for a given plan year is specified in the statutory definition of a ''network area.'' MIPPA defines ''network area,'' for a given plan year, as the area that the Secretary identifies (in the announcement of the risk and other factors to be used in adjusting MA capitation rates for each MA payment area for the previous plan year) as ''having at least 2 network-based plans with enrollment as of the first day of the year in which the announcement is made.'' We accordingly used enrollment data as of January 1, 2009, to identify the network areas for plan year 2011. The methodology we used to identify the list of network areas for plan year 2011 is consistent with statutory requirements. The statute also requires us to update the list of network areas for each plan year, and not doing so would be inconsistent with the intent of the statute. Because of this requirement, we cannot allow counties to keep a network designation when one or more of the network-based plans in those counties exits the market because the county no longer meets the network designation criteria.

*Comment:* A commenter urged that CMS recognize that MA organizations are in the process of creating PPOs and other MA plans in areas that are likely to be network areas in 2011, and therefore establish a passive enrollment process whereby PFFS enrollees in network areas automatically enroll in their current sponsor's replacement product (if one is available) on January 1, 2011, unless the beneficiary affirmatively chooses to join another plan or return to fee-for-service Medicare.

*Response:* On April 16, 2010, we released guidance via HPMS on the renewal and non-renewal options for MA organizations for CY 2011. We allowed non-network PFFS plans to transition their enrollees to their full network PFFS plans in CY 2011. We extended this same option to PFFS plans for CY 2012 via the CY 2012 Final Call Letter. However, we do not believe it would be appropriate to allow transition of enrollees from one MA plan type (for example, PFFS plan) to another MA type (for example, HMO or PPO plan), as this would be a change from an ''open'' model to a closed network.

*Comment:* A commenter recommended that CMS permit PFFS plans to employ a mixed model for complying with the network access standards imposed by MIPPA.

*Response:* We believe that requiring MA organizations offering PFFS plans to have separate contracts for their non-network, partial, and full network plans would allow these organizations to better manage their plans and allow CMS to more effectively oversee these plans. We also believe that not permitting PFFS plans to offer a mixed model would help beneficiaries to better distinguish among the three types of PFFS plans.

*Comment:* A commenter recommended that CMS establish a special e-mail box for any PFFS-related MIPPA questions and use the questions submitted to the e-mail box to develop timely guidance issued before the annual Call Letter.

*Response:* All of the PFFS-related provisions in this rule became effective prior to the publication of this final rule. Since we already released operational guidance to assist with the implementation of these provisions, we do not believe it would be useful to establish an e-mail box for PFFS-related MIPPA questions at this time. We note that plans may submit questions about these provisions to their Regional Office Account Manager.

(c) Requirement for All Employer/Union Sponsored PFFS Plans to Use Contracts With Providers

Section 162(a)(2) of MIPPA amended section 1852(d) of the Act by adding a new requirement for employer/union sponsored PFFS plans. For plan year 2011 and subsequent plan years, MIPPA required that all employer/union sponsored PFFS plans under section 1857(i) of the Act meet the access standards described in section 1852(d)(4) of the Act only through entering into written contracts or agreements in accordance with section 1852(d)(4)(B) of the Act, and not, in whole or in part, through establishing payment rates meeting the requirements under section 1852(d)(4)(A) of the Act. We revised § 422.114(a) in the September 2008 IFC to reflect this statutory change. Specifically, the changes to § 422.114(a) set forth how an MA organization that offers a PFFS plan must demonstrate to CMS that it can provide sufficient access to services covered under the plan. We stated in the September 18, 2008 IFC (73 FR 54226) that, in order to meet the access requirements beginning plan year 2011, an employer/union sponsored PFFS plan must establish written contracts or

agreements with a sufficient number and range of health care providers in its service area for all categories of services in accordance with the access and availability requirements described in section 1852(d)(1) of the Act. An employer/union sponsored PFFS plan will not be allowed to meet access requirements by establishing payment rates for a particular category of provider that are at least as high as rates under Medicare Part A or Part B. We also stated that while an employer/union-sponsored PFFS plan must meet access standards through signed contracts with providers, providers that have not signed contracts can still be deemed to be contractors under the deeming procedures in 1852(j)(6) of the Act that currently apply.

We added paragraph (a)(4) to § 422.114 in order to reflect this new statutory requirement for employer/union sponsored PFFS plans.

*Comment:* A commenter recommended that CMS provide more clarification regarding network access standards for employer-sponsored PFFS plans. The commenter stated that CMS should adopt access standards that are unique to each group plan and eventually adopt access standards that evaluate provider access based on the population eligible for enrollment.

*Response:* Currently, we do not review Health Service Delivery (HSD) tables for employer/union sponsored PFFS plans to determine whether the plans meet our network access standards. However, these plans must ensure that their enrollees have adequate access to providers consistent with Chapter 9 of the Medicare Managed Care Manual.

We are finalizing § 422.114(a)(4) as described in the September 18, 2008 IFC to reflect the new requirement found in section 162(a)(2) of MIPPA for employer/union sponsored PFFS plans.

(d) Variation in Payment Rates to Providers

Section 162(b) of MIPPA added a clarification to the definition of an MA PFFS plan found at section 1859(b)(2) of the Act. Prior to MIPPA, the statute defined an MA PFFS plan as an MA plan that pays providers at a rate determined by the plan on a fee-for-service basis without placing the provider at financial risk; does not vary the rates for a provider based on the utilization of that provider's services; and does not restrict enrollees' choice among providers who are lawfully authorized to provide covered services and agree to accept the plan's terms and conditions of payment. Section 162(b) of MIPPA added that although payment rates generally cannot vary based on utilization of services by a provider, an MA PFFS plan is permitted to vary the payment rates for a provider based on the specialty of the provider, the location of the provider, or other factors related to the provider that are not related to utilization. However, this section of MIPPA allowed MA PFFS plans to increase payment rates for a provider based on increased utilization of specified preventive or screening services. Section 162(b) of MIPPA was effective at the time of publication of the September 18, 2008 IFC.

In the September 18, 2008 IFC, we revised paragraph (a)(3)(ii) of § 422.4 and paragraph (a) of § 422.216 to add the clarifications found in section 162(b) of MIPPA. We did not receive any comments on our revisions; therefore, we are finalizing the revisions to § 422.4(a)(3) and § 422.216(a) as described.

3. Revisions to Quality Improvement Programs § 422.152

a. Requirement for MA PFFS and MSA Plans to Have a Quality Improvement Program

Section 163(a) of MIPPA repealed, effective January 1, 2010, the statutory exemption found at section 1852(e)(1) of the Act for MA PFFS plans and MSA plans from the requirement that MA plans have quality improvement programs meeting specified statutory requirements. We stated in the September 18, 2008 IFC that, beginning plan year 2010, each MA PFFS and MSA plan must have an ongoing quality improvement program that meets the requirements under § 422.152(a). We also revised § 422.152(a) to delete language exempting PFFS and MSA plans from having quality improvement programs.

MAOs that offer one or more MA plans must have for each of their plans a QI program under which it meets all of the following requirements:

- Has a chronic care improvement program (CCIP), that meets the requirements of § 422.152(c), and addresses populations identified by CMS based on a review of current quality performance.
- Conducts quality improvement projects (QIP) that can be expected to have a favorable effect on health outcomes and enrollee satisfaction, meets the requirements of § 422.152(d), and addresses areas identified by CMS.
- Encourages providers to participate in CMS and Health and Human Service (HHS) QI initiatives.

1. • Develops and maintains a health information system.

2. • Contracts with an approved Medicare CAHPS vendor to conduct the Medicare CAHPS satisfaction survey of Medicare enrollees.

3. • Includes a program review process for formal evaluation that addresses the impact and effectiveness of its QI programs at least annually.

4. • Corrects problems for each plan.

Finally, MAOs must ensure that, (1) their reported data are accurate and complete, (2) they maintain health information for CMS review as requested, (3) they conduct an annual review of their overall QI program, and (4) they take action to correct problems revealed through complaints and QI program performance evaluation findings.

We did not receive any comments on this requirement; therefore, we are finalizing the revisions to § 422.152(a) as described in the September 18, 2008 IFC.

b. Data Collection Requirements for MA PFFS and MSA Plans

Section 1852(e)(3)(A)(i) of the Act amended by section 163(b)(1) of MIPPA by adding that MA PFFS and MSA plans must provide for the collection, analysis, and reporting of data that permits the measurement of health outcomes and other indices of quality, but these requirements for PFFS and MSA plans cannot exceed the requirements established for MA local plans that are PPO plans beginning in plan year 2011 and are subject to an exception for plan year 2010 (as discussed below).

The statute provided a special rule that applies for plan year 2010, when MA PFFS and MSA plan quality requirements are not restricted to the data collection requirements established for MA local plans that are PPO plans under § 422.152(e). Instead, they must, for 2010 only, meet the data collection requirements with respect to administrative claims data, as specified in CMS guidance. We interpreted this exception to mean that for plan year 2010, MA PFFS and MSA plans are required to report quality data based on administrative claims data from all providers that include contract, deemed (applicable to PFFS plans only), and non-contract providers.

In the September 18, 2008 IFC, we added paragraph (h) to § 422.152 to describe the data collection requirements for MA PFFS and MSA plans. We stated that for plan year 2010, MA PFFS and MSA plans are not subject to the limitations under § 422.152(e)(1)(i) and must meet the data collection requirements using administrative claims data only. We also

stated that for plan year 2011 and subsequent plan years, MA PFFS and MSA plans are subject to data collection requirements that may not exceed the requirements specified in § 422.152(e) for MA local plans that are PPO plans.

*Comment:* A commenter suggested that CMS create an exception to the data collection requirements for 2010 for PFFS plans that will terminate in 2011.

*Response:* In the 2010 Call Letter, we stated that MA organizations that will terminate their PFFS or MSA contracts effective January 1, 2011 will not be required to submit a HEDIS report for 2010 for those contracts.

We are finalizing § 422.152(h) as described in the September 2008 IFC to reflect the new quality data collection requirements for PFFS and MSA plans.

c. Data Collection Requirements for MA Regional Plans

Section 163(b)(2) of MIPPA deleted clause (ii) of section 1852(e)(3)(A) of the Act. Section 1852(e)(3)(A)(ii) had provided for CMS to establish separate regulatory requirements for MA regional plans relating to the collection, analysis, and reporting of data that permit the measurement of health outcomes and other indices of quality and also provided that these requirements for MA regional plans could not exceed the requirements established for MA local plans that are PPO plans. Furthermore, section 163(b)(3) of MIPPA amended section 1852(e)(3)(iii) of the Act by adding that MA regional plans are subject to the data collection requirements under section 1852(e)(3)(A)(i) of the Act only to the extent that data are furnished by providers who have a contract with the MA regional plan. This provision is effective for plan years beginning on or after 2010 and allows for consistent data collection requirements between MA local plans that are PPO plans and MA regional plans.

We received no comments on this section and no change to regulatory text is needed since existing language in § 422.152(e) describes the requirements for MA local plans that are PPO plans as well as MA regional plans. Therefore we are finalizing this section without modification.

4. Phase-Out of Indirect Medical Education Component of MA Capitation Rate (§ 422.306)

In our September 18, 2008 IFC we noted that section 161 of MIPPA added a new paragraph (4) to 1853(k) of the Act, which directed the Secretary to phase-out indirect medical education (IME) amounts from MA capitation rates with a maximum adjustment percentage per year of 0.60 percent. We explained that implementation of the IME payment phase-out began in plan year 2010. Each year after 2010 the maximum adjustment percentage was to increase up to an additional 0.60 percent until the entire IME portion of the MA capitation rate in an area is reduced to zero. We stated that PACE programs are excluded from the IME payment phase-out. Finally, we stated that payment to teaching facilities for IME expenses for MA plan enrollees will continue to be made under section 1886(d)(11) of the Act by Original Medicare. We stated that we were adding a new paragraph (c) to § 422.306 to reflect this statutory IME phase-out.

We received no comments on this provision and are finalizing our regulatory changes without modification.

*B. Changes to the Part D Prescription Drug Benefit Program*

1. Use of Prescription Drug Event Data for Purposes of Section 1848(m) of the Act (423.322(b))

Section 132 of MIPPA revised section 1848(m) of the Act, as added and amended by section 131 of MIPPA, to provide incentive payments to eligible professionals for successful electronic prescribing. A successful electronic prescriber for a reporting period is one who meets the requirements for submitting data on electronic prescribing quality measures or, if the Secretary determines appropriate, submitted a sufficient number (as determined by the Secretary) of prescriptions under Part D during the reporting period. Congress added paragraph (3)(iv) to section 1848(m) of the Act to permit the Secretary to use the data regarding drug claims (prescription drug event data) submitted for payment purposes under the authority of section 1860D–15 of the Act as necessary for purposes of carrying out section 1848(m), notwithstanding the limitations set forth under section 1860D–15(d)(2)(B) and (f)(2) of the Act.

Consistent with the authority granted to the Secretary regarding the use of the prescription drug event data for purposes of section 1848(m) of the Act, in the IFC we revised § 423.322(b) to remove the restriction placed on officers, employees and contractors of the HHS when using these data in accordance with section 1848(m) of the Act.

*Comment:* A commenter questioned whether MAOs are required to pay e-prescribing incentive payments and if so, whether the payment will be based on MAO or national data.

*Response:* This provision relates to the extended authority granted under MIPAA for the Secretary to use prescription drug event data for purposed of providing incentives payments for e-prescribing. The commenter's questions are specific to e-prescribing requirements and, therefore, are outside the scope of the final rule. However, as stated in the 2010 Call Letter dated March 30, 2009, payments to physicians who are contracted with MAOs are generally governed by the terms of the contract, and it is up to the MAO whether to take the e-prescribing incentive payment into account in establishing the amount the physician is paid.

We are finalizing this provision without change.

2. Elimination of Medicare Part D Late Enrollment Penalties Paid by Subsidy Eligible Individuals (§ 423.46 and § 423.780)

In the September 18, 2008 interim final rule (73 FR 54208), we stated that each year since the beginning of the Medicare prescription drug program we had conducted a Medicare payment demonstration that provided that Medicare beneficiaries who qualified for the low-income subsidy for Medicare prescription drug coverage were able to enroll in a Medicare prescription drug plan with no penalty. We stated the demonstration had tested the number and characteristics of the beneficiaries that benefited from waiver of the late enrollment penalty (LEP), and the cost of the waiver to Medicare. Originally this payment demonstration allowed certain Medicare beneficiaries to enroll in a Medicare prescription drug plan in 2006 with no LEP. Under the original waiver, we did not collect the LEP from beneficiaries who enrolled in Medicare Part D in 2006 and were either eligible for the low-income subsidy or lived in an area affected by Hurricane Katrina. This payment demonstration was amended to include beneficiaries who were eligible for the low-income subsidy and enrolled ''late'' in Medicare Part D in 2007 and 2008.

Section 114 of MIPPA revised the statute to waive the late enrollment penalty for subsidy eligible individuals. Accordingly, we revised our regulation at § 423.780(e) in order to reflect this MIPPA change. Under the revised regulation, we will no longer charge subsidy eligible individuals (defined in § 423.773) a late enrollment penalty. This eliminated the need for the LEP payment demonstration. Finally, we stated this provision was effective January 1, 2009, when the current demonstration ended. We stated that we

were also are making a conforming change to § 423.46(a) to reflect the fact that subsidy eligible individuals may enroll in Medicare prescription drug plan with no penalty.

We received no comments on these provisions and are finalizing our regulatory changes without modification.

3. Prompt Payment of Clean Claims (§ 423.505 and § 423.520)

Section 171 of MIPPA amended sections 1860–12(b) and 1857(f) of the Act by adding provisions with regard to prompt payment by prescription drug plans (PDPs) and Medicare Advantage prescription drug (MA–PD) plans, both of which are Part D sponsors as defined in § 423.4. We codified these new requirements in § 423.505 and § 423.520 of the September 18, 2008 interim final rule.

In accordance with the new sections 1860D–12(b)(4) and 1857(f)(3)(A) of the Act, and as codified in § 423.520 effective January 1, 2010, CMS' contract with Part D sponsors must include a provision requiring sponsors to issue, mail, or otherwise transmit payment for all clean claims submitted by network pharmacies—except for mail-order and long-term care pharmacies—within specified timeframes for electronic and all other (non-electronically submitted) claims.

Consistent with section 1860D–12(b)(4)(A)(ii) of the Act, a clean claim is defined in § 423.520(b) of the regulations as a claim that has no defect or impropriety—including any lack of any required substantiating documentation—or particular circumstance requiring special treatment that prevents timely payment of the claim from being made under the requirements of § 423.520.

As provided in section 1860D–12(b)(4)(B) of the Act and codified in § 423.520(a)(1)(i) and § 423.520(a)(1)(ii), Part D sponsors must make payment for clean claims within 14 days of the date on which an electronic claim is received and within 30 days of the date on which non-electronically submitted claims are received. Consistent with MIPPA, § 423.520(a)(2)(i) and (ii) define receipt of an electronic claim as the date on which the claim is transferred, and receipt of a non-electronically submitted claim as the 5th day after the postmark day of the claim or the date specified in the time stamp of the transmission, whichever is sooner.

Additionally, as provided in section 1860D–12(b)(4)(D)(i) of the Act and as codified in § 423.520(c)(1), a claim will be deemed to be a clean claim to the extent that the Part D sponsor that receives the claim does not issue notice to the submitting network pharmacy of any deficiency in the claim within 10 days after an electronic claim is received and within 15 days after a non-electronically submitted claim is received. A claim deemed to be a clean claim must be paid by the sponsor within 14 days (for an electronic claim) or 30 days (for a non-electronic claim) of the date on which the claim is received, as provided in § 423.520(a)(1)(i) and § 423.520(a)(1)(ii).

*Comment:* One commenter suggested that we clarify that the word ''day'' as used throughout these provisions means ''calendar day.''

*Response:* Section 1860D–12(b)(4)(B) defines the term ''applicable number of calendar days'' as ''14 days'' with respect to electronic claims and ''30 days'' with respect to non-electronic claims. Elsewhere in the statute, Congress simply used the term ''days.'' Since Congress did not define ''days,'' nor use another more restrictive term, such as ''business days,'' we interpret ''calendar days'' and ''days'' to have the same meaning for purposes of the prompt pay requirements and thus have simply used the term ''days'' throughout the regulation.

*Comment:* Several commenters asserted that claims that are electronically adjudicated at point of sale (POS) should be deemed ''clean claims'' that are payable within 14 days, with no retroactive review allowed during the 10-day period for sponsors to provide notice of deficiencies. These commenters suggested that issues such as eligibility issues which are discovered during the 10-day period should be resolved among plans.

*Response:* We believe that section 1860D–12(b)(4)(D)(i) clearly provides that claims are deemed to be clean if the Part D sponsor involved does not provide notice to the claimants of any deficiencies within the statutory time period, which is 10 days for claims submitted electronically. The fact that a Part D sponsor adjudicates an electronic claim at POS does not preclude the sponsor from notifying the claimant of a deficiency within the ten day period. While a sponsor's failure to pay a claim can cause the claim to be deemed clean pursuant to section 1860D–12(b)(4)(D)(iii) of the Act, payment of the claim in and of itself does not deem it to be a clean claim under the Act. Since the statute did not provide a time period for a pharmacy to cure a deficiency, we expect that such a time period would be a matter of negotiation between the parties, as well as whether payment for such a claim may be retracted in the meantime.

Under section 1860D–12(b)(4)(D)(ii) of the Act and in § 423.520(c)(2) of the regulations, if the Part D sponsor determines that a submitted claim is not a clean claim, it is required to notify the submitting pharmacy that the claim has been determined not to be clean, specify all the defects or improprieties rendering the claim not a clean claim, and list all additional information necessary for the sponsor to properly process and pay the claim. This notification must be provided within 10 days after an electronic claim is received, and within 15 days after a non-electronic claim is received.

Once the submitting pharmacy resubmits the claim with the additional information specified by the Part D sponsor as necessary for properly processing and paying the claim, the sponsor has 10 days, consistent with section 1860D–12(b)(4)(D)(iii) of the Act, and, as specified in § 423.520(c)(3), provide notice to the submitting pharmacy of any defect or impropriety in the resubmitted claim. If the sponsor does not provide notice to the submitting pharmacy of any defect or impropriety in the resubmitted claim within 10 days of the sponsor's receipt of such claim, the resubmitted claim is deemed to be a clean claim and must be paid consistent with the timeframes specified in § 423.520(a)(1) (within 14 days of the date on which a resubmitted electronic claim is received and within 30 days of the date on which a non-electronically resubmitted claim is received).

*Comment:* Several commenters stated that CMS should clarify the September 18, 2008 IFC to limit the number of requests plans can make for additional information about a non-clean claim to one request and to only information readily available to pharmacies. The commenters provided the example of a plan asking for proof of eligibility on the 10th day after receiving a non-clean electronic claim, and then waiting an additional 10 days after receipt of this additional documentation to request information on fulfillment of prior authorization requirements.

*Response:* The statute and IFC State that if a Part D sponsor determines that a submitted claim is not a clean claim, it must notify the submitting pharmacy within the specified time period and ''such notification must specify all defects or improprieties in the claim and must list all additional information necessary for the proper processing and payment of the claim.'' Since the statute and regulation use the term ''notification'' in the singular and use the phrases ''all defects and improprieties'' and ''all additional

information necessary,'' we believe this provision plainly requires plans to identify all of the problems with the claim in a single notice and, therefore, plans cannot make multiple requests for additional information during the applicable time period (10 days for a non-clean electronic claim and 15 days for a non-clean non-electronic claim). Therefore, we disagree that a clarification of the regulation text is needed on this point. In addition, we believe that the statute and September 18, 2008 IFC, which state that a claim is deemed to be a clean claim if the Part D sponsor that receives the claim does not provide notice to the submitting network pharmacy of any defect or impropriety in the claim within ten days after the date on which *additional* information is received, is intended only to provide a timeframe for a sponsor to notify a pharmacy of previously requested information that was not received or is still deficient, or of a new deficiency raised by the additional information received, and is not intended to permit Part D sponsors to request new information for the first time to cure a deficiency that could have been identified in the original claim submission. Therefore, we agree and have revised § 423.520(c)(2)(ii) to clarify that a Part D sponsor may only provide notice of any remaining defects or improprieties in the claim, or of any new deficiencies raised by the additional information.

*Comment:* One commenter noted that there appeared to be an error in § 423.520(c)(3) in referencing only § 423.520(a)(1)(i) and (ii).

*Response:* We agree with the commenter that the regulation should be drafted more clearly. While the regulation as currently written mirrors the statute in only cross-referencing the timeframe for paying a clean claim, and not the timeframe for deeming a claim clean where a sponsor does not provide timely written notice of any deficiencies, we believe it is clear that the intent of the statute is for sponsors to pay claims that are deemed clean within the time frame for paying a clean claim. Section 1860D–12(b)(4)(D)(i) of the Act is clear that claims that are not contested within the applicable timeframes are deemed clean. Therefore, we have revised the regulation accordingly to reference the timeframes for paying a clean claim in § 423.505(a)(1)(i) and (ii) and the timeframes for contesting a claim in (c)(1)(i) and (ii).

With respect to the act of payment itself, in accordance with section 1860D–12(b)(4)(D)(iv) of the Act, § 423.520(d) specifies that payment for a clean claim is considered to have been made on the date payment for an electronic claim is transferred. Payment for a clean claim is considered to have been made on the date payment for a non-electronic claim is submitted to the United States Postal Service or common carrier, respectively.

*Comment:* One commenter suggested that the payment date for electronic claims should be when the transaction is initiated, and payment for non-electronic claims should be when payment is given to the USPS or common carrier. Other commenters disagreed, suggesting that payment for electronic claims should be the date when funds are made available to the provider, and that there should be no exceptions in batch payments—meaning all payments in a batch should be made available to the provider on or before the 14th day after the date on which the earliest clean electronic claim of the batch was received.

*Response:* Section 1860D–12(b)(4)(D)(iv) of the Act states plainly that payment of a clean claim is considered to have been made on the date on which the payment is transferred (for electronic claims) and the date the payment is submitted to the U.S. Postal Service or common carrier for delivery. Section 423.520(d) is consistent with the statute. We interpret the term ''transferred'' to mean when payment has been made to the payee. Thus, for an electronic claim, this would be the date on which funds will be posted to the payee's (or its agent's) account. For a non-electronic claim, we interpret ''submitted'' to mean the date when the payment is postmarked by the USPS or recorded as received by a common carrier. Payment for all claims must meet applicable statutory and regulatory timeframes, regardless of whether the claims are paid in batches or not.

To the extent that a Part D sponsor does not issue, mail, or otherwise transmit payment for a clean claim within 14 days of the date on which an electronic claim is received and within 30 days of the date on which a non-electronically submitted claim is received, as specified in § 423.520(a)(1), section 1860D–12(b)(4)(C) of the Act requires that the sponsor pay interest to the submitting pharmacy. As required under section 1860D–12(b)(4)(C)(i) of the Act, and as codified in § 423.520(e)(1), the Part D sponsor must pay such interest at a rate equal to the weighted average of interest on 3-month marketable Treasury securities determined for such period, increased by 0.1 percentage point for the period beginning on the day after the required payment date and ending on the date on which the payment is made under § 423.520(d). For purposes of CMS payments to Part D sponsors for qualified prescription drug coverage, any interest amounts paid under § 423.520(e)(1) do not count against the Part D sponsor's administrative costs, nor are they treated as allowable risk corridor costs, under § 423.308. In other words, the Part D sponsor is fully liable for any interest payments for claims not paid timely, consistent with § 423.520(d). In accordance with section 1860D–12(b)(4)(C)(ii) of the Act and as codified in § 423.520(e)(2), CMS may determine that a Part D sponsor will not be charged interest under § 423.520(e)(1) as appropriate, including in exigent circumstances such as natural disasters and other similar unique and unexpected events that prevent timely claims processing. We will make such determinations on a case-by-case basis at the sponsor's request.

*Comment:* One commenter suggested that CMS's authority is limited when determining exigent circumstances under which plans will not be charged interest on late paid claims and that the language was too broad.

*Response:* We agree that the language in § 423.520(e)(2) could be interpreted as giving us slightly broader authority than MIPPA bestowed. Therefore, we have revised the section to more closely track the statutory language.

The Act addressed payment of claims by electronic funds transfer (EFT). Section 1860D–12(b)(4)(E) of the Act and § 423.520(f) require that a Part D sponsor pay all electronically submitted clean claims by EFT if the submitting network pharmacy requests payment via EFT or has previously requested payment via EFT. For ease of sponsor execution, the requirement that payment be provided via EFT if a sponsor has previously requested EFT payment means that any such previous request must have occurred during the current contract year. This requirement also means that all Part D sponsors must have the capacity to pay via EFT so that they may pay via EFT any of their network pharmacies requesting payment for submitted claims in this manner. In addition, under § 423.520(f), for any payment made via EFT, the Part D sponsor may also make remittance electronically.

In accordance with section 1860D–12(b)(4)(F)(i) of the Act and as codified in § 423.520(g)(1), the requirements in § 423.520 do not in any way prohibit or limit a claim or action that any individual or organization may have against a pharmacy, provider, or Part D sponsor that is unrelated to the new

requirements in § 423.520. Further, as provided under section 1860D–12(b)(4)(F)(ii) of the Act and § 423.520(g)(2), consistent with any applicable Federal or State law, a Part D sponsor may not retaliate against an individual, provider, or pharmacy for any such claim or action. Finally, as provided under section 1860d–12(b)(4)(G) of the Act and codified in § 423.520(h), any determination that a claim submitted by a network pharmacy is a clean claim as defined in § 423.520(b) must not be construed as a positive determination regarding the claim's eligibility for payment under Title XVIII of the Act. In addition, any determination that a claim is a clean claim as defined in § 423.520(b) of the Act is not an indication that the government approves, or acquiesces regarding the submitted claim and does not relieve any party of civil or criminal liability, nor offer defense to any administrative, civil, or criminal action, with respect to the submitted claim. We received no comments on § 423.520(f), § 423.520(g), or § 423.520(h).

In addition to adding a new § 423.520 to reflect the prompt payment requirements of section 1860D–12(b)(4) of the Act, we amended § 423.505(b) to include the prompt payment provisions as one of the required elements of the contract between CMS and the Part D sponsor. Therefore, § 423.505(b)(19) required that, effective contract year 2010, the contract between CMS and the Part D sponsor must include the prompt payment provisions at § 423.520.

We also amended § 423.505(i)(3) with respect to contracts or written arrangements between Part D sponsors and pharmacies or other providers, first tier, downstream and related entities to ensure that Part D sponsors' contracts with these entities include prompt payment provisions consistent with § 423.520. Section 423.505(i)(3)(vi) thus required that sponsors' pharmacy contracts include the prompt payment provisions of § 423.520. We review pharmacy contract templates (except for mail-order and LTC pharmacy templates) for new applicants to ensure the addition of these prompt payment provisions. To the extent that such agents are authorized to receive payment on behalf of a participating pharmacy for claims submitted to a Part D sponsor, there is no distinction between a pharmacy and its agent for purposes of the prompt payment provisions at § 423.520. Thus, the prompt payment provisions at § 423.520 extend to an agent authorized to receive payment for claims submitted to a Part D sponsor, as long as it is in compliance with all Federal and State laws. We received no comments on these provisions.

The revisions to the regulations reflecting the previously-described MIPPA prompt payment provisions were all effective on January 1, 2010. We are finalizing these provisions with the amendments previously described.

4. Submission of Claims by LTC Pharmacies (§ 423.505)

Section 172 of MIPPA amended sections 1860D–12(b) and 1857(f)(3) of the Act to add a provision on the submission of claims by pharmacies located in or having a contract with a long term care facility. Effective January 1, 2010, new sections 1860D–12(b)(5) and 1857(f)(3)(B) of the Act direct us to incorporate into each contract CMS enters into with a Part D sponsor a provision addressing the submission of claims by long-term care pharmacies. Specifically, our contracts with Part D sponsors must provide that long-term care pharmacies must have not less than 30 days, nor more than 90 days, to submit claims to the sponsor for reimbursement under the plan. We codified this new statutory contract requirement at § 423.505(b)(20). Effective January 1, 2010, this provision applies to any claim submitted by a long-term care pharmacy, as defined in § 423.100.

Effective contract year 2010, new sections 1860D–12(b)(5) and 1857(f)(3)(B) of the Act require that CMS contracts with Part D sponsors include a provision requiring sponsors to provide long-term care pharmacies (as defined in § 423.100) not less than 30 days, nor more than 90 days, to submit claims for reimbursement under the plan. In addition to adding this requirement to the contract provisions specified in § 423.505(b), in the IFC we amended § 423.505(i) to specify that timeframes for submission of claims by long-term care pharmacies must be contained in Part D sponsor contracts with the long-term care pharmacies. As provided in § 423.505(i)(3)(vii), all sponsor contracts with long-term care pharmacies must contain a provision that establishes timeframes, consistent with § 423.505(b)(20), for the submission to the sponsor of claims for reimbursement.

*Comment:* Two commenters stated the 90-day limit for claims submission is problematic given the time required to process Medicaid applications, the retroactivity of many Medicaid eligibility determinations, and the time lags associated with updates to State eligibility data bases. These commenters noted that LTC pharmacies are holding receivables for copayments for beneficiaries who have Medicaid pending or are dual eligible, but whose status has not been updated or who had a retroactive Medicaid effective date.

The commenters recommended that CMS codify in the regulation the statement in our September 18, 2008 IFC preamble that the statute does not eliminate CMS' policy requiring a new timely filing period for claims incurred during a period of retroactive Medicaid eligibility, or specify in the PDP contract that this provision does not preclude a LTC pharmacy from rebilling when the claim was not paid fully or correctly, or clarify the 90 days applies only to ''clean claims.''

*Response:* This provision applies to claims for reimbursement of prescription drugs—not to claims adjustments resulting from retroactive changes affecting the beneficiary's cost-sharing, premiums and plan benefit phase (such as changes in low-income subsidy (LIS) status). Since the publication in the September 18, 2008 IFC, we published proposed and final rules on October 22, 2009 (74 FR 54634) and April 15, 2010 (75 FR 19678), respectively. In the April 2010 final rule, we codified at § 423.464 and § 423.466 our previous policy guidance requiring sponsors to make retroactive claim adjustments and take into account other payer contributions as part of the coordination of benefits. We also added a new timeliness standard at § 423.466 to require adjustment and issuance of refunds or recovery notices within 45 days of the sponsor's receipt of the information necessitating the adjustment.

The specific change at § 423.464 added a new paragraph (g)(7) to require sponsors to account for payments by State Pharmaceutical Assistance Programs (SPAPs) and other providers of prescription drug coverage in reconciling retroactive claims adjustments that create overpayments and underpayments, as well as to account for payments made and for amounts being held for payment, by other individuals for entities. We acknowledged in the preamble of the April 2010 final rule (75 FR 19724) that pharmacies are not providers of other prescription drug coverage, but noted it was our intention to apply the 45-day limit to all retroactive changes. As a result, we also amended § 423.800 to add a new paragraph (e) to make it clear that the 45-day timeframe applies to adjustments involving pharmacies and beneficiaries, including LTC pharmacies holding cost-sharing amounts due. The new paragraph (e) requires sponsors to process retroactive adjustments to cost-sharing for low-income subsidy

individuals and any resulting refunds and recoveries within the timeframe specified in § 423.466(a). We note that by definition ''adjustments'' can only be made to previously adjudicated claims.

*Comment:* One commenter recommended the regulatory text explicitly address retroactive Part D enrollment for dual eligible beneficiaries and continue to operate under the CMS May 25, 2007 policy guidance requiring the use of the date of Medicaid notification to establish a timely claims filing period under § 423.505(b)(20). The commenter noted that this would ensure beneficiaries and other parties, including pharmacies, have the opportunity to request reimbursement for claims incurred during the retroactive Part D enrollment period.

*Response:* We stated in the September 18, 2008 IFC preamble that the new LTC pharmacy claim submission requirement would not eliminate the requirement for Part D sponsors to provide a new timely claims filing period for claims incurred by dual eligible beneficiaries during a period of retroactive Part D enrollment as specified in May 25, 2007 memorandum. However, since the publication in the September 18, 2008 IFC, we have changed the manner in which these claims are processed. Beginning in January 2010, CMS implemented a demonstration project, known as the low-income newly eligible transition (NET) program, to handle retroactive Part D enrollment. Under the demonstration, a single, competitively procured Part D sponsor covers all Part D prescription drug claims for all periods of retroactive coverage for full benefit dual eligible and SSI-eligible individuals, as well as point-of-sale coverage at the pharmacy for certain LIS individuals who are not yet enrolled in a Part D plan. Beneficiaries who are retroactively auto/facilitated enrolled by CMS and LIS beneficiaries confirmed eligible for the demonstration are temporarily enrolled in the demonstration contractor's plan. These beneficiaries are then prospectively auto/facilitated enrolled in a qualified PDP.

Because the low-income NET demonstration eliminates the routine need for sponsors to reimburse claims incurred by individuals eligible for the program during periods of retroactive Part D enrollment, there is no longer a need for Part D sponsors to provide the special transition period required by the May 25, 2007 memorandum. This policy change is described in section 50.10 of the updated Coordination of Benefits (COB) chapter of the Medicare Prescription Drug Benefit Manual issued on March 19, 2010 which is available on the CMS Web site at *http://www.cms.gov/PrescriptionDrugCovContra/Downloads/Chapter14.pdf.* Beneficiaries and pharmacies, including LTC pharmacies, can submit claims incurred during the period of retroactive Part D enrollment to the low-income NET program contractor without timely filing limits during the period of enrollment in the low-income NET program and for up to 180 days following the beneficiary's disenrollment from the program. Claims filing requirements are specified in the CMS contract with the low-income NET program contractor. As a result, we do not believe it is necessary to revise the regulatory language to address retroactive Part D enrollment.

*Comment:* One commenter argued that the timeframe for claims submission is too restrictive for ICF/MR and IMD business cycles and noted further that PDP contract negotiations with LTC institutions can take 6 to12 months, so flexible timeframes are necessary.

*Response:* We recognize that the statutory timeframes for LTC pharmacy claims submission may not be aligned with previous billing practices, but we have no authority to revise the statutory timeframes to provide the flexibility sought by the commenter.

After considering the comments received in response to the September 18, 2008 IFC, we are finalizing these provisions without change.

5. Regular Update of Prescription Drug Pricing Standard (§ 423.505)

Section 173 of MIPPA amended sections 1860D–12(b) and 1857(f)(3) of the Act, effective January 1, 2009, to add a provision on the regular updating of prescription drug pricing standards. In accordance with new sections 1860D–12(b)(6) and 1857(f)(3)(C) of the Act, which we codified in § 423.505(b)(21) effective January 1, 2009, CMS' contracts with Part D sponsors must include a provision requiring sponsors to regularly update any prescription drug pricing standard they use to reimburse network pharmacies based on the cost of the drug (for example, average wholesale price, wholesale average cost, average manufacturer price average sales price). As codified in § 423.505(b)(21)(i) and § 423.505(b)(21)(ii), these updates, if applicable, must occur on January 1 of each contract year and not less frequently than every 7 days thereafter.

We also amended § 423.505(i)(3) with respect to contracts or written arrangements between Part D sponsors and pharmacies or other providers, first tier, downstream and related entities to ensure that Part D sponsors' contracts with these entities include provisions for regularly updating any prescription drug pricing standard used by sponsors to reimburse their network pharmacies, as provided in § 423.505(b)(21). Specifically, § 423.505(i)(3)(viii)(A) requires that sponsors' pharmacy contracts include the pricing standard update requirements at § 423.505(b)(21), if applicable, and § 423.505(i)(3)(viii)(B) further specified that a Part D sponsor's pharmacy contract must indicate the source used by the Part D sponsor for making such pricing updates.

We review pharmacy contract templates (except for mail-order and LTC pharmacy templates) for new applicants beginning for contract year 2010 to ensure the addition of this provision, if applicable.

*Comment:* One commenter requested a definition of ''prescription drug pricing standard.''

*Response:* We do not believe that such a definition is necessary at this time. The preamble to the September 18, 2008 interim final rule provided the following examples of prescription drug pricing standards: ones that are based on ''wholesale average cost, average manufacturer price, average sales price.'' We believe these examples sufficiently illustrate what is meant by a prescription drug pricing standard—that is, it is an accepted methodology based on published drug pricing. We believe that defining the standard beyond this may be overly prescriptive and might not be flexible enough to evolve with industry changes. Also, we are prohibited under the section 1860D–11(i)(1) of the Act from interfering in negotiations between sponsors and network pharmacies, and we presume such negotiations would address if a ''prescription drug pricing standard'' will be used between the parties.

*Comment:* There were several related comments submitted by a number of commenters about the applicability of prescription drugs pricing standards and the 7-day update requirement, which were: (1) Plans must promptly use updated standards to actually process claims; (2) plans should have to update benchmark prices to reflect price on date of service if plans could have access to such data; (3) plans should have to use a benchmark provider that updates data at least weekly; and (4) plans should not be able to now update their standards every seven days if they previously updated more frequently or have access to more frequent updates.

*Response:* Section 1860D–12(b)(6) requires that if a Part D sponsor ''uses

a standard for reimbursement of pharmacies based on the cost of a drug,'' the sponsor must update the standard on January 1 of the year and not less frequently than once every 7 days.'' We believe the statute's use of the word ''*reimbursement,''* here makes it clear that Part D sponsors must not only update prescription drugs pricing standards but actually *use* them to reimburse claims. Nevertheless, we have clarified the language of § 423.505(b)(21) to apply to prescription drug pricing standards used for reimbursement by Part D sponsors. Further, the statute plainly indicates that updates must occur at least every 7 days, but does not contemplate that we could require more frequent updates—though we note that a Part D sponsor can arrange with its contracted pharmacies to make more frequent updates. Finally, the statute is silent on the issue of whether sponsors must use the price on the date of service (DOS) to process a claim. The statute does not address this issue, and we believe it is best decided by the parties. Thus, pricing used to process Part D claims can be no older than 7 days, when a prescription drug pricing standard is used for reimbursement. This is consistent with our previous subregulatory guidance issued as a memo titled, ''Guidance for regulations in the IFC on September 15, 2008, in which we stated, ''* * * sponsors must ensure they design their internal processes to ensure that fee schedules tied to any drug pricing standard are updated within these prescribed timeframes, and that all claims are adjudicated in accordance with appropriately updated fee schedules.'' However, pharmacies are not precluded from negotiating with Part D sponsors for more frequent updating, or for DOS pricing to be used, or for a particular standard to be applied, for that matter.

*Comment:* Several commenters stated that CMS should require plans to maintain current pricing for 60 days while plans and pharmacies negotiate new pricing when benchmarks are eliminated or methods for deriving benchmarks materially altered.

*Response:* Section 173 of MIPPA did not address this issue. In the absence of specific direction on this point, we believe Congress intended to leave that issue to the discretion of the Part D sponsors and its contracted pharmacies. Also, as previously noted, we are prohibited under section 1860D–11(i)(1) of the Act from interfering in negotiations between sponsors and network pharmacies, and therefore, we presume these matters would be addressed in the negotiations between the parties. However, we note that the regulation requires that if a standard is used, it be identified in the contract between the parties, and of course any existing contract between the parties that identifies a standard would have to be amended according to the amendment terms of the contract if the pricing standard were to change.

In the September 18, 2008 interim final rule, we stated that we are aware that some pharmacies, particularly independent pharmacies, work with agents for purposes of negotiating and signing contracts with Part D sponsors on their participating pharmacies' behalf, and that to the extent that such agents are authorized to receive payment on behalf of a participating pharmacy for claims submitted to a Part D sponsor, there is no distinction between a pharmacy and its agent for purposes of the drug pricing standard update requirements at § 423.505(b)(21). Thus, we stated the drug pricing standard update requirements at § 423.505(b)(21) extend to an agent authorized to receive payment for claims submitted to a Part D sponsor, as long as it is in compliance with all Federal and State laws. We received no comments on these provisions.

The regulations reflecting the previously described MIPAA provisions on the regular update of prescription drug pricing standards were all effective January 1, 2009. We are finalizing these provisions as corrected on November 21, 2008 (73 FR 70598) with the amendments previously described.

6. Use of Part D Data (§ 423.505(m))

On May 28, 2008, prior to the passage of MIPPA, CMS published a final regulation (73 FR 30664) regarding the collection and use of Part D claims data. This regulation resolved the statutory ambiguity between section 1860D–12(b)(3)(D) and section 1860D–15 of the Act. One of the incorporated provisions at section 1860D–12(b)(3)(D) of the Act, is section 1857(e)(1) of the Act, which provides broad authority for the Secretary to add terms to the contracts with Part D sponsors, including terms that require the sponsor to provide the Secretary, ''with such information as the Secretary may find necessary and appropriate.'' As we stated in our final rule on Part D claims data, we believe that the broad authority of section 1860D–12(b)(3)(D) of the Act authorizes CMS to collect the same prescription drug event data we currently collect to properly pay sponsors under the statute for other purposes unrelated to payment. However, we acknowledged that section 1860D–15 of the Act contains provisions that might be viewed as limiting such collection, thus compelling us to clarify the Secretary's broad authority under section 1860D–12(b)(3)(D) in our final regulation. Accordingly, in the final Part D data rule, we implemented the broad authority of section 1860D–12(b)(3)(D) of the Act to permit the Secretary to collect claims data that are collected for Part D payment purposes for other research, analysis, reporting, and public health functions.

Section 181 of MIPPA amended section 1860D–12(b)(3)(D) to make clear that, notwithstanding any other provision of law, information provided to the Secretary under the application of section 1857(e)(1) may be used for purposes of carrying out Part D, and may be used to improve public health through research on the utilization, safety, effectiveness, quality, and efficiency of healthcare services. Thus, MIPPA further strengthened our final rule on Part D claims data and confirms our authority to use claims data collected under 1860D–12 of the Act for purposes of reporting to the Congress and the public, conducting evaluations of the overall Medicare program, making legislative proposals to Congress, and conducting demonstration projects.

While MIPPA did not alter our ability to collect and use data for purposes outlined in our final rule on Part D claims data, section 181 of MIPPA added a provision with respect to the disclosure of claims data to Congressional support agencies. Specifically, section 181 of MIPPA added clause (ii) to section 1860D–12(b)(3)(D) of the Act, which requires the Secretary to make data collected under section 1860D–12(b)(3)(D) of the Act available to Congressional support agencies, in accordance with their obligations to support Congress as set out in their authorizing statutes, for the purposes of conducting Congressional oversight, monitoring, making recommendations, and analysis of the Part D program. In our previously issued final rule on Part D claims data, we specified that we would only release the minimum data necessary to Congressional oversight agencies in accordance with our data sharing policies. Section 1860D–12(b)(3)(D) of the Act, as amended, removed the minimum necessary data restriction when data are requested by a Congressional support agency that is requesting the data in accordance with its obligation to support Congress as set out in its authorizing statute.

Section 423.505(f)(3) of the regulations now requires that Part D plan sponsors must submit all data elements included as part of their drug claims ''for purposes deemed necessary

and appropriate by the Secretary, including, but not limited to,'' reporting to Congress and the public on the operation of the Part D program, conducting evaluations of the overall Medicare program, making legislative proposals, conducting demonstrations and pilot projects, supporting care coordination and disease management programs, supporting quality improvement and performance measurement activities, and populating personal health care records. Prior to the issuance of the September 18, 2008 IFC, § 423.505(m)(1) of the regulations provided that with respect to data collected under § 423.505(f)(3), ''CMS may release the minimum data necessary for a given purpose to Federal executive branch agencies, congressional oversight agencies, States, and external entities in accordance with the applicable Federal laws, CMS data sharing procedures, and subject, in certain cases to encryption and or aggregation of certain sensitive information.'' MIPPA revised section 1860D–12(b)(3)(D) of the Act to provide specifically that information collected pursuant to this section be made available to Congressional support agencies, in accordance with their obligations to support Congress as set out in their authorizing statutes, for the purposes of conducting Congressional oversight, monitoring, making recommendations, and analysis of the Medicare Part D program. Consistent with this new statutory provision, in the September 18, 2008 IFC, we revised § 423.505(m)(1) of our regulations, to omit any reference to ''Congressional oversight agencies.'' We also added a new paragraph (m)(3) to § 423.505 specifying that the Secretary will make the information collected under § 423.505(f)(3) available to Congressional support agencies for the purposes of conducting congressional oversight, monitoring, making recommendations, and analysis of the Medicare program.

We used the same definition for Congressional support agencies in § 423.505(m)(3) that we previously used for Congressional oversight agencies in the regulation at § 423.505(m)(1)(iv). As with the definition of Congressional oversight agencies at § 423.505(m)(1)(iv), we did not include the Congressional Research Service (CRS) as a Congressional support agency unless it is requesting the data on behalf of a Congressional committee consistent with 2 U.S.C. 166(d)(1). As previously explained in the preamble to the final rule on Part D claims data (73 FR 30664), when CRS is not acting as the agent of a Congressional committee, it does not have the same authority to request data from departments or agencies of the United States, and would be restricted in the same manner as external entities when requesting prescription drug event data.

We received no comments on this section, and therefore are finalizing these provisions without modification.

7. Exemptions From Income and Resources for Determination of Eligibility for Low-Income Subsidy (§ 423.772)

Section 1860D–14 of the Act describes the rules for determining financial eligibility for the Medicare Part D Low-Income Subsidy (LIS). These rules closely conform to the Supplemental Security Income (SSI) methodology for determining financial eligibility. Section 116 of MIPPA amended the types of income and resources to be taken into consideration for determining financial eligibility for LIS to deviate from the SSI methodology in two areas. Specifically, section 116 of MIPPA amended 1860D–14(a)(3) of the Act by exempting from the determination of LIS the following:

- Support and maintenance furnished in kind from income.
- Value of any life insurance policy from resources.

Support and maintenance furnished in kind is any food or shelter that is given to the applicant/spouse or received because someone else pays for it. This includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewage, and garbage collection services.

Life insurance policy includes whole life, term, and products that combine features of whole life and term policies.

In general, it is the responsibility of the Social Security Administration to determine eligibility for LIS. However, the CMS maintain in regulation broad parameters for income and resources for the Medicare Part D Low-Income Subsidy. These regulations also govern how State Medicaid agencies process LIS applications when individuals apply there. In order for CMS regulations to conform to the new law, we are updating our regulations to reflect the new exclusions from income and resources.

In order to reflect these changes, we revised the definitions of ''income'' and ''resources'' in § 423.772.

The amendments made by this provision were effective with respect to LIS applications filed on or after January 1, 2010.

We did not receive any comments and are therefore finalizing these provisions without modification.

*C. Changes to the MA and Prescription Drug Benefit Programs*

In order to assist readers in understanding how the final provisions we discuss in this section apply to both programs, we are including Table 1, which highlights the provisions affecting both programs and the pertinent sections of Parts 422 and 423.

TABLE 1—PROVISIONS AFFECTING BOTH THE PART C AND PART D PROGRAMS

| Provision | Part 422 subpart | Part 422 CFR section | Part 423 subpart | Part 423 CFR section |
|---|---|---|---|---|
| Disclosure of plan information | Subpart C | 422.111 | Subpart C | |
| Marketing: Standards for MA/Part D marketing: | Subpart V | 422.2268 | Subpart V | 423.2268 |
| • Nominal gifts | | | | |
| • Scope of marketing | | | | |
| • Co-branding | | | | |
| • Including plan type in plan name | | | | |
| Marketing: reporting terminations | Subpart V | 422.2272 | Subpart V | 423.2272 |
| Marketing: | Subpart V | 422.2274 | Subpart V | 423.2274 |
| • Broker and agent compensation | | | | |
| • Training and testing | | | | |

1. Disclosure of Plan Information (§ 422.111)

Section 164 of MIPPA revised section 1859(f) of the Act to require, effective January 1, 2010, disclosure of SNP plan information to beneficiaries. In order to reflect the MIPPA changes, the September 18, 2008 IFC added a new paragraph (b)(iii) to § 422.111. The addition requires dual-eligible SNPs to provide the information specified in § 422.111(b) 15 days before the annual coordinated election period to each prospective enrollee, both prior to enrollment and at least annually thereafter. We developed a model comprehensive statement for beneficiaries that could be included with any description of benefits offered by the SNP plan.

We did not receive comments on this provision. Therefore, we are finalizing this provision without modification.

2. Medicare Advantage and Prescription Drug Program Marketing Requirements (New Subparts V)

a. General

With this final rule, we are finalizing the provision of our September 18, 2008, and November 14, 2008 interim final rules with comment periods ((73 FR 54226) and (73 FR 67406), respectively). With the exception of the provisions relating to including plan type in the name of the plan (effective January 1, 2010), and the reporting by plans of agent and broker terminations to States (effective January 1, 2009), all of the Part C and Part D marketing requirements discussed below were effective upon publication of our September 18, 2008 and November 10, 2008 IFCs.

b. Standards for MA and PDP Marketing (§ 422.2268 and § 423.2268)

We received a number of comments on the provisions contained in § 422.2268 and § 423.2268 requesting clarification or pointing out areas of disagreement with the provisions. These comments were as follows:

(1) Nominal Gifts (§ 422.2268(b) and § 423.2268(b))

Plan sponsors are required to limit the offering of gifts and other promotional items to potential enrollees at promotional events to those gifts of ''nominal value'' that are offered to all potential enrollees.

*Comment:* One commenter requested clarification on the meaning of ''all potential enrollees'' in relation to the provision of nominal gifts at promotional events.

*Response:* By ''all potential enrollees,'' we mean anyone in attendance at the event. Additionally, we specify that when plan sponsors provide nominal gifts at promotional events, anyone in attendance can get a gift. There should be no further requirements for gift receipt beyond attendance at the event. For example, at an event, the plan sponsor offers small piggy banks as a nominal gift. The plan sponsor cannot require that an attendee provide an address or phone number in order to receive the gift.

(2) Limiting the Scope of Health Care Products To Be Discussed (§ 422.2268(g) and (h) and § 423.2268(g) and (h))

Any appointment with a beneficiary involving the marketing of health care related products (for example, where Medicare supplement, MA, and/or stand-alone PDP will be discussed) must be limited by the plan sponsor to the scope agreed upon by the beneficiary. In advance of any marketing appointment, the beneficiary must have the opportunity to agree to the range of choices that will be discussed, and that agreement must be ''documented'' by the plan sponsor. Discussion of additional lines of plan business (for example, MA, MA–PD, PDP or Medigap) not identified prior to the individual appointment requires a separate appointment that may not be rescheduled until 48 hours after the initial appointment, unless requested by the beneficiary.

*Comment:* We received several comments on the requirement that the scope of the appointment be documented. Some commenters stated that the requirement for such documentation is a hassle for seniors to complete in advance of the appointment. A commenter believed that seniors get so much paper and complicated forms that they appreciate ''simple'' communications, and suggested they would be put off by needing to complete some form documenting the scope of their appointment in order to speak to an agent. While the commenter appreciated the efforts of CMS to protect the public and regulate agents, he did not believe that a documentation requirement was the best way to accomplish either goal. Yet another commenter found requiring that a scope of appointment form be filled out in advance of appointments and home visits to be a reasonable protection for beneficiaries. However, this commenter also believed that requiring a scope of appointment form for a walk-in visit at an office or during seminars confuses the beneficiary since they do not understand why they have to sign a form when they have voluntarily initiated a walk-in visit or attending a seminar. Also, some commenters supported the scope of appointment requirements, but believed that requiring the provision in the proposed rule that 48 hours pass before a return visit to discuss additional health-related lines of business puts an unreasonable burden on the beneficiary and an added cost to plans and ultimately to enrollees. Also mentioned by these commenters as problematic was the difficulty this requirement poses for rural agents due to driving distances to meet face-to-face with beneficiaries that end up being costly and difficult to reschedule. We received additional comments pertaining to a specific draft form for use in documenting the scope of an appointment.

*Response:* We believe the scope of appointment requirement is necessary beneficiary protection to document a beneficiary's agreement to an appointment and the content of the discussion during the appointment. We disagree with the commenter suggesting that filling out a form documenting the scope of the appointment creates a hassle for seniors and note that agents/brokers play a significant role in providing guidance and advice to beneficiaries when selecting health plan options including assistance with filling out applications. Because of their unique position, agents/brokers have the opportunity to unduly influence beneficiary choices. Therefore, we believe that the scope of appointment should be documented regardless of whether the beneficiaries walk into an agent's office without an appointment seeking information. For example, if during the discussion of the agreed upon plan products, the beneficiary requests information regarding other products, it does no good to require the beneficiary to return (or the agent to come to the beneficiary) 48-hours later to continue the discussion. Instead, an expansion of the scope should be documented and the discussion may continue. We have also made allowances through operational guidance to accommodate the circumstances of rural agents like those described herein. In response to the comment on the 48-hour waiting period, we have moved this requirement to paragraph (g), and in response to the comments we have provided that a 48-hour waiting period must only be provided where ''practicable.''

Since neither the proposed nor final scope of appointment requirement specifies that a particular format must be used to document appointments, we

are not responding to comments related to any specific formats as that is outside of the scope of these regulations.

*Comment:* A few commenters recommended that CMS exempt the scope of appointment form used by agents/brokers from requiring review and approval by a plan, since agents/brokers represent multiple plans. The commenters do not see any advantage from a beneficiary protection perspective requiring agents/brokers to carry separate approved scope of appointment forms from each plan they represent.

*Response:* MA and PDP sponsors are free to create their own scope of appointment form as long as it makes clear that the potential enrollee understood the scope of the appointment. There is no requirement from CMS that sponsors create their own forms and require agents or brokers to use them. Our requirement is that the scope of appointment be documented. To the extent that sponsors create their own forms for this purpose, CMS does require they have the plan name and logo on them.

*Comment:* A commenter questioned whether any meeting outside the enrollee's home that involves more than one potential enrollee could be considered a sales (or educational) event that does not require scope of appointment documentation.

*Response:* A scope of appointment is not required at educational events. In the case of marketing/sales events, if the event is advertised to the general public, a scope of appointment is not required. On the other hand, if an agent holds a small group event with individuals who were personally invited (or requested the event), a scope of appointment would be required.

*Comment:* A commenter strongly disagreed with the requirement that individual agents send every form documenting the scope of an appointment to the related health plan for every sales appointment, whether or not the beneficiary purchases a policy from the agent or not.

*Response:* The purpose of the scope of appointment documentation requirement is to document each beneficiary appointment with an agent/broker to discuss various Medicare plan products whether or not the beneficiary purchases a policy. While we do not specify how plan sponsors comply, it does hold plan sponsors accountable for complying with the scope of appointment requirements.

*Comment:* A couple commenters questioned whether documentation of the scope of an appointment had to be kept for 10 years on sales calls, and asked about its compliance with the Paperwork Reduction Act (PRA).

*Response:* The scope of appointment documentation is subject to the requirement in the MA regulations that it be maintained for a period of 10 years (§ 422.504(d) and § 423.504(b)(4)). Therefore, if the documentation is in the form of a recorded sales call, that recording is subject to the 10-year maintenance requirement. However, the Scope of Appointment Form, is not subject to PRA requirements because we are not collecting information or specifying the use of a particular format for doing so. If plans choose to use a form to document the scope of appointment, they are required to maintain that documentation.

*Comment:* A commenter requested that the existing scope of appointment documentation requirement and 48-hour cooling off period be applied solely to Medicare Advantage.

*Response:* We disagree and believe beneficiaries deserve the same marketing protection regardless of the nature of the Medicare product being marketed. While the statutory scope of appointment requirements apply to the marketing of all Medicare Advantage (including MA-only) and Prescription Drug plans, we have previously exercised our authority under section 1876(i)(3)(D) of the Act to impose ''necessary and appropriate'' requirements on section 1876 cost plans to require that they comply with MA marketing requirements.

*Comment:* A commenter requested that CMS allow the practice of cold calling beneficiaries.

*Response:* The prohibition against cold calling beneficiaries is set forth in the statute at section 1851(j)(1)(A) of the Act, and thus could not be changed by regulation. The request to do so is outside the scope of this rulemaking.

*Comment:* Several commenters objected to beneficiaries with an existing relationship with an agent as having their ''hands tied'' in discussing Medicare coverage with their agents.

*Response:* We have guidance in the Medicare Marketing Guidelines that describes how agents may interact with beneficiaries after they establish an ongoing relationship with them. For example, agents are not allowed to cold-call beneficiaries or contact beneficiaries unsolicited. However, an agent that has an established relationship with a beneficiary, would be expected to call the beneficiary to provide them with information about benefit options, updates, or plan changes. These follow-up calls would not be considered unsolicited contacts or cold-calls.

*Comment:* A commenter requested that SNPs be allowed to work with trusted referral sources to obtain consent from the beneficiary to be contacted by the plan. The trusted referral source could include a family member, physician, social service providers, home health agency staff or other entities that are committed to the best interests of the beneficiary. Such a ''trusted referral source'' would, under the commenter's suggested approach, help the beneficiary execute a business reply form by explaining the scope of the marketing appointment and documenting beneficiary consent. In the view of the commenter, it would allow plans to deal with language, literacy and other barriers to effective direct mail marketing, comply with cold call and appointment rules, and protect the best interests of the beneficiary. In addition, the commenter requested that plans be able to bring a scope of appointment form to marketing meetings in cases where the agent is marketing to their beneficiary.

*Response:* Beneficiaries may turn to a number of sources for advice and assistance with making health care choices. However, because providers like physicians, social workers, home health agency staff, and others, are trusted sources of information and are in a position to unduly influence a beneficiary's decision, they must follow the guidance contained in the Medicare Marketing Guidelines with regard to the interactions between beneficiaries and providers. We do appreciate and recognize the marketing challenges faced by special needs plans. However, we believe that these issues are addressed adequately in subregulatory guidance and that further regulation is not necessary. For example, agents may document a new scope of appointment at a marketing meeting when the beneficiary indicates that he or she would like information beyond the scope of the original appointment.

*Comment:* A commenter recommended that we integrate full benefit dual eligibles' need for flexibility in the marketing rules that accommodate the challenges of selling to full benefit dual eligibles, while maintaining adequate protections for vulnerable populations.

*Response:* While we recognize that there may be unique challenges when marketing to the dual eligible population, at this time, CMS believes that additional regulatory changes would not be necessary, beyond the scope of those changes addressed herein. CMS will consider whether further subregulatory guidance is needed.

(3) Use of Names and Logos, Co-Branding (§ 422.2268(n) and § 423.2268(n))

In section 103(b)(1)(B) of MIPPA, the Secretary was charged with ''establish[ing] limitations'' with respect to ''[t]he use of the name or logo of a co-branded provider on Medicare Advantage plan membership and marketing materials.'' Section 103(b)(2) of MIPPA revises the Act to apply these same guidelines to PDP sponsors.

*Comment:* We received mixed comments regarding this provision. One commenter had no major concerns about the co-branding provisions, but another commenter recommended that we clarify that the inclusion of the name and/or logo of the plan's PBM and/or parent company on the member's identification card is not considered ''co-branding'' and so not subject to § 423.2268(n). Another commenter supported the prohibition on displaying names or logos on plan cards. However, the commenter requested clarification regarding ''other marketing materials'' that are subject to a disclaimer, stating that in many cases, the use of a network provider's name will be necessary to convey information to beneficiaries. Such instances could include network directory or brochures (under § 422.2260 and § 423.2260) that list the names of providers in the plan's network. Thus, the commenter believes that a broad use of the term without more clarity on what CMS intends to be captured by its proposal could create confusion to plans and network providers about the range of acceptable practices.

*Response:* We agree that PBMs are not typically co-branding partners; however, PBMs assume different roles in the MA and Part D programs, including: plan sponsor, plan subcontractor, or health care provider (mail order pharmacy). Since beneficiaries may not always understand the relationship of the PBM to the plan sponsor, we believe that including the PBM's name on the identification card may create confusion or lead the beneficiary to interpret this as a co-branding arrangement. Therefore, we believe that the co-branding requirements do apply and the name of the PBM cannot be included on the member identification card. We believe that unless a beneficiary must obtain services from a specific provider organization, the provider organization name should not be included on the ID card. We do not believe that additional clarification in the regulations is necessary regarding the specific materials that are intended as ''other marketing materials.'' We provide further interpretive guidance in the Medicare Marketing Guidelines.

(4) Inclusion of Plan Type in Plan Name (§ 422.2268 and § 423.2268)

Section 103(c)(1) of MIPPA requires that MA organizations and PDP sponsors include the plan type within the name of each plan being offered. For consistency across plans, the plan type is required to be included at the end of the plan name.

*Comment:* One commenter was concerned about the clarity of the regulations containing various references to ''lines of business'' and ''plan type'' in sections § 422.2268(h) and § 422.2268(q) and elsewhere. This commenter believed that the terms are employed somewhat interchangeably, but are not defined explicitly in the regulation. The commenter noted that there is a definition of plan type in § 422.2274(a)(3)(i) but it was unclear as to whether CMS intended that this definition apply throughout the regulation.

*Response:* We clarified the definition of ''plan type'' in the Medicare Marketing Guidelines and include examples of all of the plan type indicators. We do not believe that further regulatory definitions are necessary.

c. Reporting Agent and Broker Terminations (§ 422.2272(d) and § 423.2272(d))

Section 103 of the MIPPA, requires us to expand our proposed requirements on plans that use licensed agents and brokers. In accordance with MIPPA, § 422.2272(d) and § 423.2272(d) implement the requirement that MA organizations and Part D sponsors are required to report to the State in which the MAO or Part D sponsor appoints an agent or broker, the termination of any such agent or broker, including the reasons for the termination if State law requires that the reasons for the termination be reported.

We did not receive any comments on this provision; and are therefore, finalizing this provision without modification.

d. Broker and Agent Compensation (§ 422.2274, § 423.2274)

Section 103(b)(1)(B) of MIPPA revised the Act to charge the Secretary with establishing guidelines to ''ensure that the use of compensation creates incentives for agents and brokers to enroll individuals in the Medicare Advantage plan that is intended to best meet their health care needs.'' Section 103(b)(2) of MIPPA revised the Act to apply these same guidelines to PDP sponsors.

In our November 18, 2008 IFC, we invited comment on the approach taken in that rule to implementing the foregoing requirements. We are particularly interested in comments on whether this goal would be served by: (1) Providing for higher levels of compensation for an initial enrollment in Part C or Part D (given the added costs of explaining how the programs work) than for a change in enrollment from one Part C plan or Part D plan to another, (2) establishing a flat fee schedule; or (3) providing for lower payments in early years and higher payments in the renewal years, or in later renewal years, to incentivize agents or brokers to keep enrollees in the same plan rather than giving them an incentive to move enrollees.

We are also concerned about amounts paid to Field Marketing Organizations (FMOs) or similar typoes of entities for their services that do not necessarily flow down to the agent or broker who deals with the beneficiary. Specifically, we are concerned that these FMOs or other similar entities could engage in a ''highest bidders'' for their services.

We received a number of comments from plan sponsors, individuals, and trade associations, concerning compensation. These covered aspects of compensation including: compensation rules, structures and rates, and data. A summary of the comments we received and our responses follow:

(1) Compensation Rules

*Comment:* Commenters recommended varied approaches, including: providing generous initial compensation payments and no renewal payments, eliminating renewal payments, paying renewals on a declining scale, paying compensation based on enrollment type (SEP, ICEP/ICP), creating special compensation structures for PDPs, and relying on market forces. Reasons given for these recommendations included: renewal payments increase costs, diverted money could be better spent on benefits, and the compensation payments reduce efficiency.

*Response:* We believe that our current compensation processes have reduced the incidence of aggressive marketing and encourage agents and brokers to assist beneficiaries with making health care decision based on the beneficiaries' interests. We have done this by implementing a process that encourages agents and brokers to develop long-term relationships with beneficiaries. Thus, the 6-year compensation cycle is intended to recognize that beneficiaries need assistance from year-to-year in

understanding plan benefit changes so they can ensure that they are in the appropriate plan to meet their needs.

While we agree that the amount of work required to adequately explain the various Medicare product lines to beneficiaries will vary based on the beneficiaries' prior knowledge of the program, we believe that we have developed a process that recognizes the difference in experience of the beneficiary as well as the uniqueness of each product type. We have done this by allowing agents to be paid initial compensation for *unlike* plan changes, changes among MA/MA–PD, PDP, and 1876 cost plans. For *like* plan changes (MA/MA–PD to MA/MA–PD, PDP to PDP, or cost to cost), agents, and brokers are paid renewal compensation.

(2) Compensation Structures and Rates

*Comment:* Commenters expressed the concern that the variation allowed plans in developing compensation structures could potentially create financial incentives for agents to push low-value (less expensive) plans or MA products (over PDPs); leading to increased ''cherry picking'' or steering by independent agents and brokers.

*Response:* We believe that some variation in compensation is unavoidable. For example, the amount of work required to explain to a beneficiary the benefits, policies, and procedures of a particular MA plan compared with the amount of work required to explain to a beneficiary the benefits, policies, and procedures of a PDP are quite different. One would not expect for the compensation to be the same. Furthermore, we think that making the amounts for both plans the same would only incentivize agents to maximize profits by aggressively selling the plan that takes the least amount of time to explain.

At the time that our November 10, 2008 IFC was promulgated, we collected historical agent and broker compensation data from Medicare plan sponsors. Analysis of that data resulted in the establishment by us of fair-market value cut-off amounts (FMV). We then allowed plan sponsors to adjust their 2009 compensation amounts to an amount at or below the FMV. This allowed plan sponsors to be competitive in the marketplace while simultaneously limiting the high-end amount. We believe these amounts limit the variation in compensation paid to agents and brokers selling Medicare plans within specific geographic areas.

In addition to the fair-market value cut-off amounts, we implemented a strong surveillance and compliance program as well as a number of operational policy changes designed to strengthen beneficiary protections against aggressive and deceptive marketing practices by agents or brokers. We implemented enrollment verification processes that require plans to verify with beneficiaries that they are enrolling in the plan of their choice and understand the benefits of that plan. We also require plans to report terminated agents or brokers to State Departments of Insurance. We believe that with these policy refinements and the existing rules requiring plans to recover all payments for an enrollment from agents or brokers when a rapid disenrollment occurs provide necessary protections for beneficiaries as they make their health care choices.

*Comment:* We also received comments requesting that we create single commissions by product type (MA, MA–PD, PDP), create a flat rate for all product types that is the same for new plans as well as renewals, equalize commissions across all product types, or set benchmarks. In addition, commenters recommended that we limit the ability of agents and brokers to contract with multiple organizations and allow market forces to strengthen all Medicare plan products through competition.

*Response:* Since the issuance of our November 10, 2008 IFC, we released the FMV cut-off amounts, which are essentially benchmarks. These amounts set ceilings for agent or broker compensation payments for enrollments based on geographic areas. Because the 2009 FMV amounts were established through a blind bidding process that may have put low-bidding sponsors at a competitive disadvantage. During the summer of 2009, sponsors were allowed the opportunity to adjust their compensation amounts to any amount at or below the FMV. This was an important policy decision because, by regulation, all future compensation amounts are based on the 2009 amount filing.

We believe that setting the FMV cut-off amounts was the best approach because it allows for market forces to act while limiting the amount of spending. We also believe that this approach, along with the compensation regulatory provisions achieves the goals of the policy, and is the most efficient option because it does not require a significant investment of time, money, and staff resources. For example, in order to create a flat rate, we would have to consider a number of variables like individual local market dynamics, the impacts on small versus large plan sponsors, and plan benefit changes from year-to-year. In order to update the rate, we would have to engage in a similar process each subsequent year. Such an endeavor would require additional systems development and staff resources.

(3) Compensation Data

*Comment:* Commenters questioned CMS's ability to gather accurate and reliable market data, found the blind-bidding process unfair, and contended that the 2006 rates were not sustainable market rates. We also received a request to share aggregate data, with plan sponsors, and allow plans to adjust their compensation amounts. A commenter also requested that national plans' rates be included when making local plan comparisons.

*Response:* We recognize the inherent problems with the initial data collection process and that it was a blind-bidding process that potentially disadvantaged plans that submitted more conservative compensation estimates. In the spring of 2009, we published our FMV cut-off amounts based on the historical data submitted by plan sponsors in November 2008. The data included information in local markets for local and national plans. In July 2009, we allowed plan sponsors to adjust their original compensation amount submissions to an amount at or below the FMV. The purpose of this adjustment was to level the playing field allowing plans that initially submitted low compensation amounts (whether due to limited ability to collect historical data or underestimating the current market rates), the opportunity to become more competitive. In 2009, we began requiring plan sponsors to submit the range of amounts (high and low values) they pay their agents and brokers. These amounts are automatically updated from year-to-year and plan sponsors are only required attest to the amount and their continued use of independent agents and brokers. We currently posts plan compensation information on its Web site by State and county.

At this time, we cannot change the way plan sponsors update their annual compensation amounts. However, we will consider this proposal for future rulemaking.

(4) Spending Limits

*Comment:* We received comments requesting that we establish limits on marketing expenditures. One suggestion was for a limit based on the percentage of the sponsor payments rates that can be expended on marketing. Another would apply limits on spending for marketing based on sponsor history of marketing misrepresentation. A third

would place hard caps on spending for marketing to limit the share of per capita payments to sponsors that is diverted away from extra benefits or lower cost sharing.

*Response:* We believe that at this time it is unnecessary to place the types of limits on spending that were recommended by these commenters because, in addition to the establishment of the FMV cut-off amounts, we have in place a sophisticated surveillance and compliance program to monitor the activities of sponsors, agents, and brokers in the marketplace. The program includes the monitoring of marketing events, targeted audits of sponsors, coordination with the State Departments of Insurance, and penalties for sponsors who are not adequately ensuring that their agents or brokers are complying with our rules.

(5) Marketing Entities

*Comment:* We received several comments recommending that we charge plan sponsors a fee or increase existing users' fees that would be used to pay SHIPs and other community volunteer organizations to ''provide beneficiaries with advice and counseling on plan selection.''

*Response:* In our October 2009, proposed rule (74 FR 54634), we solicited public comment on a number of ideas including whether or not State Health Insurance Assistance Programs had the capacity to serve significantly more Medicare beneficiaries. We received a number of comments and suggestions, and as in our April 2010 final rule (75 FR 19678), there were a number of concerns about the adequacy of the funding necessary for SHIPs to serve more Medicare beneficiaries, the ability of SHIPs to create networks to service entire States, and the limits of SHIPs under their current structure to handle increased capacity. In addition to these concerns about the ability to transfer the responsibilities of independent agents and brokers to organizations like SHIPs, we believe that we do not have the statutory authority to increase or create new fees as a means of providing additional resources to SHIPs so that they can increase their capacity.

*Comment:* We also received several comments regarding payments to FMOs which focused on the language the commenter found to be unclear describing the responsibility of plan sponsors to ensure that the payments made by FMOs, are consistent with the compensation regulations. The commenters recommended direct regulation of FMOs or more explicit regulation language pertaining to the payment arrangements between the FMOs and the agents who work for them. One comment compared FMO/agent relationships to real estate broker/agent relationships, and argued for flexibility in the way that FMOs paid agents based on factors like experience and tenure.

*Response:* We agree that while it was always our intent that the compensation rules would apply at all levels including the FMO/writing agent level, our regulations language did not clearly express this intent. Therefore, we are explicitly clarifying our intent in § 422.2274(a)(1)(iv)(A) (B) and § 423.2274(a)(1)(iv)(A) and (B) of this final rule that the compensation rules apply to payments made by plan sponsors to the FMOs, as well as the FMOs'' agents. We also note that our September 18, 2008 IFC provided plan sponsors with the flexibility to use factors like tenure and experience when developing compensation structures.

(6) Employed Agents

*Comment:* Commenters sought clarification of the fact that there were fundamental differences between compensation streams and responsibilities for employed agents and independent agents. These differences included the structure of the payment arrangements (salary and benefits for employees, straight commission for independent agents), responsibilities (employees typically do not maintain a relationship with beneficiaries beyond the point of enrollment), and level of oversight (in-house oversight of employees). A few commenters requested language that exempts employees of plan sponsors and their subcontractors (like call center staff) from the compensation requirements that they believe were intended for independent agents and brokers.

*Response:* We clarified in the preamble of the September 18, 2008, interim final marketing regulations, that customer service representatives were not required to be licensed as long as they were engaged in duties specific to their job as customer service representatives (CSRs) (for example, providing factual responses to beneficiary questions or assisting with the enrollment process of beneficiaries who have decided on their own to enroll in the plan). We also clarified in the same regulations the differences between treatment of employed and independent agents and brokers (contracted). In addition, we have published the Medicare Marketing Guidelines which clarifies these issues and believes that further regulatory clarification is unnecessary.

(8) Recommendations

*Comment:* Several commenters requested that CMS consider the following recommendations:

- Guaranteeing a 7-day reconciliation cycle for payments of compensation.
- Eliminating charge backs for disenrollments.
- Eliminating product specific training.
- Clarifications of policy, definitions, and approach to controlling plan changes.

*Response:* Since the time that public comments were solicited on these regulations, we have put in place a number of operational policies that address the concerns expressed by the commenters. For example, in 2009, we did not have the systems capability to provide plans with information so that they could reconcile payments. Instead, we used an ad hoc report that provided basic information to assist plan sponsors with paying agents appropriately. As of January 2010, we have been providing plan sponsors with an agent and broker compensation report that is generated from the Medicare Advantage and Prescription Drug System (MARX) and delivered with the monthly MARX enrollment reports. Since its implementation, plan sponsors are able to use the system to pay agents timely and accurately. We have also published guidance on a number of policy issues in the Medicare Marketing Guidelines including chargebacks for different types of disenrollments, the relationship of referral fees to total compensation, examples of types of remuneration under the definition of compensation, clarification that the compensation cycle operates on a calendar year, and the exclusion of employer group plans from some of the agent and broker requirements. Therefore, we believe that additional regulatory provisions are unnecessary.

In addition to the aspects of compensation that we have learned through the comments we received on the interim final regulations, we have also identified several areas in our guidance which are not sufficiently clear. For example, we received a number of questions from plan sponsors, agents, and FMOs requesting clarification on the actual months for which agents or brokers could be compensated. The provision in the interim final regulations (§ 422.2274(a)(4) and § 423.2274(a)(4)) stated that ''compensation shall be paid for months 4 through 12.'' The intent of this provision was to ensure that, in the

case of a rapid disenrollment (a disenrollment within the first 3 months of enrollment), agents did not receive compensation. However in subregulatory guidance, we have since clarified the compensation policy around rapid disenrollments by clarifying the circumstances when a disenrollment would not be considered a rapid disenrollment (for example, when a beneficiary moves out of the plan service area within in the first three months of enrollment).

We also learned that plan sponsors were interpreting ''year'' in different ways (§ 422.2274(a)(4) and § 423.2274(a)(4)). Some sponsors were interpreting ''year'' to mean a year from the date of enrollment. Some sponsors have interpreted it to mean a calendar year, while others have interpreted it to mean a fiscal year. We have since clarified in subregulatory guidance that ''year'' means a plan year, from January through December.

We also have learned that plan sponsors and FMOs are unclear about the delineation between the activities that are part of the total compensation amount and those that are outside of our definition of compensation (§ 422.2274(a)(1)(iv) and § 423.2274(a)(1)(iv)). We have clarified in subregulatory guidance that compensation ''for activities other than selling Medicare products'' must be at fair market value. However, we do not intend to define fair market value for these activities.

Lastly, we have learned that plan sponsors are not clear what is meant by ''new compensation'' in § 422.2274(a)(1)(ii) and § 423.2274(a)(1)(ii). By ''new compensation'' we meant that when an unlike plan type change is made, a new 6-year compensation cycle begins. Thus, the agent would receive an initial compensation amount.

After considering the comments received and experience we have gained over the past 3years, we are finalizing these requirements with modification.

e. Agent and Broker Training (§ 422.2274(b) and § 423.2274(b))

Section 103(b)(1)(B) of MIPPA revised the Act to charge the Secretary with establishing ''limitations with respect to the use by a Medicare Advantage organization of any individual as an agent, broker, or other third party representing the organization that has not completed an initial training and testing program and does not complete an annual retraining and testing program.'' Section 103(b)(2) of MIPPA revises the Act to apply these same limitations to PDP sponsors.

In § 422.2274(b) and § 423.2274(b), MA organizations and PDP sponsors are required to train all agents selling Medicare products on Medicare rules, regulations and compliance-related information annually.

In § 422.2274(c) and § 423.2274(c), agents selling Medicare products are required annually to pass written or electronic tests on Medicare rules, regulations and information on the plan products they intend to sell.

*Comment:* A commenter requested clarification of the term ''selling'' as it applies to various roles within a plan. The commenter asserted that confusion exists as to whom ''selling'' pertains. It was asked if all licensed agents being paid any commission or administrative payment by a plan are considered to be ''selling'' MA and Part D plans, or if only the writing agent is considered to be ''selling.'' The commenter further recommended that CMS clarify, in the final rule, that all agents receiving any level of commission must be trained and tested annually to ensure that all levels of the sales force have up-to-date information.

*Response:* We describe who would qualify as ''one who sells'' in the Medicare Marketing Guidelines. In the definitions section of the Medicare Marketing Guidelines we define a Sales Person, or one who sells, as follows: The term ''sales person'' is used in these Medicare Marketing Guidelines to define an individual who markets and/or sells products for a single plan sponsor or numerous plan sponsors. It includes employees, brokers, agents, and all other individuals, entities, and downstream contractors that may be utilized to market and/or sell on behalf of a plan sponsor. While we realize that, in many instances, there may be many individuals involved in selling, it is the intent of the guidance for plans to encompass all possible points of contact which could reasonably be expected to sell and that those contacts are included in their respective training and testing programs.

*Comment:* We received another comment which asserted that regulations requiring more standardized industry training and testing may have some negative impacts on beneficiary choices. While the commenter agreed that in years past not all agents were properly trained and that previous responses encouraged an industry certification process, they suggested that there is too much duplication of training. Specifically, it is mentioned that requiring agents and brokers to receive separate training and certification from each company that they represent for each product, discourages qualified agents and brokers from representing a wide variety of products. The commenter further asserted that agents and brokers would most likely select one or two products to promote due to the duplicative and time-consuming requirements imposed upon them, and that this would be detrimental to Medicare beneficiaries in an environment where choice is critical.

*Response:* While we agree with the commenter that requiring different certifications from separate plan sponsors does create duplication in areas of training and testing in addition to considerable time (depending on the number of certifications desired), it is a requirement that will better protect beneficiaries. Many Medicare beneficiaries have suffered tremendous damages both monetarily and at a cost to their health due to poorly informed sales representatives. The training and testing certification process has been identified by both the industry and Medicare beneficiaries as a good protection. By implementing regulations that provide consistent and routine training and testing of agents, brokers, and all manner of personnel that may conduct sales-related activity, beneficiaries will be less likely to make important health decisions based on incomplete or inaccurate information. We will continue to evaluate the requirements and methods utilized to implement the training and testing in the future.

Since our April 2011 final rule (76 FR 21432) entitled, Medicare Program: Changes to the Medicare Advantage and the Medicare Prescription Drug Benefit Programs for Contract Year 2012 and Other Changes, finalized changes to § 422.2274 and § 423.2274, paragraphs (b) and (c), we are not finalizing these provisions in this final rule.

In § 422.2274(d) and § 423.2274(d), MA organizations and PDP sponsors are required to provide us the information designated by CMS as necessary to conduct oversight of marketing activities.

We received no comments on these provisions and are finalizing them without modification.

In § 422.2274(e) and § 423.2274(e), MA organizations and PDP sponsors are required to comply with State requests for information about the performance of licensed agents or brokers as part of a state investigation into the individual's conduct. We will establish and maintain a memorandum of understanding (MOU) to share compliance and oversight information with States that agree to the MOU.

We received no comments on these provisions and are finalizing them without modification.

*D. Changes to Section 1876 Cost Plans*

1. Clarifying the Conditions Under Which 1876 Cost Plans or Portions of Their Service Areas May Be Prohibited

In the September 2008 IFC, we implemented statutory requirements affecting section 1876 cost contract plans and policies related to the ability to offer cost contract plans when in the same service area or portion of a service area as MA coordinated care plans. Section 1876(h)(5)(C) of the Act prohibits the renewal of a cost plan, or a portion of a cost plan's service area in an area where, during the previous year, two or more organizations offering a local MA plan meet a minimum enrollment test, or two or more organizations offering a regional MA plan meet the same test. The test is that the local or regional plan must have at least 5,000 enrollees in any portion of its service area that includes a Metropolitan Statistical Area (MSA) with a population over 250,000 (enrollment in counties contiguous to the MSA count toward the 5,000) and enrollment of at least 1,500 in the other portion of its service area. Section 167 of MIPPA clarified the application of minimum enrollment requirements by revising paragraphs 1876(h)(5)(C) of the Act.

The MIPPA-based revisions include clarifying in section 1876(h)(5)(C)(iii) of the Act that the two plans triggering the prohibition may not be offered by the same MA organization.

In addition, by revising section 1876(h)(5)(C)(iii)(I) of the Act, MIPPA clarified that if a cost plan's service area falls within more than one MSA with a population over 250,000 and the local or regional plans have a minimum of 5,000 enrollees, the determination to prohibit a plan will be made with respect to each MSA and counties contiguous to each MSA that are not in another MSA with a population of more than 250,000.

If a cost plan's service area or portion of a service area falls in one MSA only, the determination to prohibit a plan will be based on the competing local or regional plans' enrollments in that MSA only.

In order to reflect these changes we revised paragraphs of § 417.402(c)(1) through (3). We received two comments on this provision and, with one exception discussed below, are finalizing the provision as specified in the IFC.

*Comment:* A commenter suggested that we update our regulations at § 417.402(c) to reflect the MIPPA-revised date of January 1, 2010 on or after which CMS will nonπrenew affected service areas of cost contract plans.

*Response:* Subsequent to this comment, new statutory language revised the nonπrenewal date from January 1, 2010 to January 1, 2013. We specified the new timeline in our final rule that appeared in the April 15, 2010 **Federal Register** (76 FR 21732) and that implemented this and other provisions of the Affordable Care Act.

*Comment:* A commenter requested that we clarify in our revision of § 417.402(c)(3) that in determining minimum enrollment in MSAs and contiguous counties we specify that only those contiguous counties are taken into account if not in another MSA with a population of more than 250,000.

*Response:* This clarification is consistent with the statute and we have revised § 417.402(c)(3) accordingly.

## III. Collection of Information Requirements

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to OMB for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

The title, description, and respondent description of the information collection provisions and an estimate of the annual reporting burden were provided in a series of interim final rules, (73 FR 54208) and (73 FR 54226) issued September 18, 2008. Included in the estimate was the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information. We solicited public comment on each of the issues in the interim final rule that contained information collection requirements (ICRs). This final rule requires no new information collection. In the document below, we describe the information collection burden associated with provisions of the interim final rule that we are finalizing.

*A. ICRs Regarding the Model of Care (MOC) Requirements for Special Needs Plans (§ 422.101)*

Section 422.101(f)(1) states that MA organizations offering special needs plans (SNPs) must implement a model of care (MOC) with care management as a centerpiece designed to meet the specialize needs of the plan's targeted enrollees. The burden associated with this requirement is the time and effort put forth by the SNP to establish a MOC that meets the requirements under § 422.101(f). In our September 18, 2008 IFC, we estimated that it would take each SNP 80 hours to meet this requirement in the initial year of development. We estimated that it would take 10 hours per year in subsequent years to revise the MOC based on performance data analysis through the plan's quality improvement program. Existing SNPs already have MOCs and revise, rather than develop, their MOCs in response to this requirement. In our September 18, 2008 IFC, we estimated that the 335 existing SNPs would have a cumulative annual burden of 3,350 hours to revise their MOC. We also estimated that we would approve approximately 150 new SNPs in January 2010, and that these 150 new SNPs would have a cumulative initial year burden of 12,000 hours to develop their MOC, and a cumulative annual burden of 1,500 hours to revise their MOC in subsequent years. We projected the total annual burden to be 3,350 hours in calendar year 2009. We projected that the total annual burden to be 13,500 hours in calendar year 2010 (12,000 hours for SNPs approved to begin operating January 1, 2010 and 1,500 hours for SNPs approved prior to January 1, 2010). In this final rule, we are modifying the annual burden estimate reported in the interim final rule to reflect a significant increase in the number of existing SNPs in 2010 as compared to 335 existing SNPs that we estimated in the interim final rule. We are also modifying the estimate to reflect a significant decrease in the number of new SNPs approved for 2010 as compared to the 150 new SNPs that we estimated in the interim final rule. We estimate that the 544 SNPs existing in 2010 will expend 10 hours per year in

subsequent years to revise the MOC based on performance data analysis through the plan's quality improvement program. Therefore, we estimate a cumulative annual burden of 5,440 hours for these existing SNPs to revise their MOCs. We estimate that the 15 new SNPs approved in 2010 will have a cumulative initial year burden of 1,200 hours (15 new SNPs multiplied by 80 hours in the initial year of development) to develop their MOC, and a cumulative annual burden of 150 hours (15 new SNPs multiplied by 10 hours per year) to revise their MOC in subsequent years.

In our September 18, 2008 IFC, we assumed hourly wages of $37.15 (based on United States Department of Labor (DOL) statistics for a management analyst) plus the added OMB figures of 12 percent for overhead and 36 percent for benefits for a total hourly labor cost of $54.98, respectively, to represent average costs to plans, sponsors, and downstream entities for the provisions discussed in our September 18, 2008 IFC. While we recognized that SNPs may need to utilize medical personnel or senior staff to comply with this requirement, we were unsure of these costs when we developed the cost estimate for this provision in the interim final rule. Therefore, in our September 18, 2008 IFC, we requested comment on the additional cost impact of the MOC requirement on SNPs. We did not receive any comments in response to our request for comment on the cost estimate for this provision. Based on new information regarding the labor wages of staff that review the MOCs we are revising our hourly labor estimate from the estimate we reported in the interim final rule. In this final rule, our estimate of the information collection burden associated with this provision reflects an hourly salary of $55.46 for a GS 13, Step 10 analyst for 2010, with an additional 48 percent increase to account for fringe benefits and overhead. Therefore, we estimate a total hourly labor cost of $82.08, and a total cost (including start-up and annual costs) of $598,068 to implement the requirements of this provision.

*B. ICRs Regarding the State Contracting Requirements for Dual Eligible Special Needs Plans (§ 422.107)*

Section 422.107(a) requires that an MA organization seeking to offer a SNP serving beneficiaries eligible for both Medicare and Medicaid (dual-eligible SNPs) must have a contract with the State Medicaid agency. The MA organization retains responsibility under the contract for providing benefits, or arranging for benefits to be provided, for individuals entitled to receive medical assistance under Title XIX. Such benefits may include long-term care services consistent with State policy.

Section 422.107 also allows MA organizations with an existing dual-eligible SNP without a State Medicaid agency contract to continue to operate through 2010 provided they meet all other statutory requirements, that is, care management and quality improvement requirements and do not expand their service areas.

The burden associated with this requirement is the time and effort put forth by each dual-eligible SNP to contract with the State Medicaid agency. In our September 18, 2008 IFC, we estimated it would take 460 SNPs 18 hours each for 6 months to comply with this requirement (36 hours per year). Therefore, we estimated that the total annual burden associated with this requirement was 16,560 hours. In this final rule, we are revising the estimates we reported in the interim final rule to reflect a significant decrease in the number of SNPs that were required to comply with this requirement in 2010. In 2010, 43 SNPs were required to have State contracts. Therefore, we estimate that it will take 43 SNPs 36 hours to comply with this requirement each year, resulting in a total annual burden of 1,548 hours. In our September 18, 2008 IFC, we assumed hourly wages of $37.15 (based on DOL statistics for a management analyst) plus the added OMB figures of 12 percent for overhead and 36 percent for benefits, respectively, to represent average costs to plans, sponsors and downstream entities for the provisions discussed in the interim final rule. In this final rule, we are updating the labor estimates we reported in our September 18, 2008 IFC to reflect the most recent 2009 data available from the DOL's Bureau of Labor Statistics (BLS) for the hourly wages of management analysts. Therefore, our final labor cost estimate reflects a median hourly rate of $36.18 for a management analyst, and a, 48 percent addition to this hourly rate for overhead and fringe benefits, for a total hourly labor cost estimate of $53.55 per response. We estimate a total annual cost of $82,895 in order to implement this provision's requirements.

*C. ICRs Regarding the Comprehensive Written Statement Requirement for D–SNPs (§ 422.111)*

Section 422.111(b)(2)(iii) states that each SNP must provide for prospective dual-eligible individuals, prior to enrollment, a comprehensive written statement describing cost-sharing protections and benefits that the individual is entitled to under title XVIII and the State Medicaid program under title XIX. This may be developed by the SNPs and distributed by the agents selling Medicare products.

The burden associated with this requirement is the time and effort put forth by each SNP to develop and provide such written statement. In our September 18, 2008 IFC, we estimated that 460 SNPs would be affected annually by this requirement and that it would take each SNP 10 hours to comply with this requirement. Therefore, we estimated that the total annual burden associated with this requirement would be 4,600 hours. In this final rule, we are revising the annual burden estimate we reported in the interim final rule to reflect the most recent information we have regarding the number of D–SNP plan benefit packages (PBPs). In this final rule, we are revising the estimate we reported in the final rule to reflect an increase in the number of D–SNPs affected by this requirement. In 2010, 487 D–PBPs were affected by this requirement. Accordingly, we estimate the total annual burden associated with this requirement is 4,870 hours (10 hours multiplied by 487 D–SNP PBPs). We are also revising our labor cost estimates in this final rule to reflect the most recent hourly wage data available from the BLS. In our interim final rule, we estimated an hourly labor rate of $14.68 for the hourly wages of word processors and typists based on 2006 BLS data. Our labor cost estimate in this final rule assumes a median hourly rate of $15.67, based on the most recent 2009 BLS data available for the hourly wages of word processors and typists. To account for fringe benefits and overhead, we add 48 percent to this hourly rate to obtain a total hourly labor cost estimate of $23.19 per response. We estimate total annual costs of $112,935 in order to implement this provision's requirements.

*D. ICRs Regarding the Access to Services Under an MA Private Fee-for-Service (PFFS) Plan (§ 422.114)*

1. Clarification Regarding Utilization

The revised § 422.114(a)(2)(ii)(A) requires that for plan year 2010 and subsequent plan years, a private fee-for-service (PFFS) plan that meets access requirements, with respect to a particular category of provider, by establishing contracts or agreements with a sufficient number and range of providers must meet the network accessibility and adequacy requirements described in 1852(d)(1) of the Act. This

section of the statute describes the network adequacy requirements that coordinated care plans currently must meet when contracting with providers to furnish benefits covered under the plan.

We use the network adequacy standards established for coordinated care plans in order to determine whether PFFS plans who want to meet access requirements under § 422.114(a)(2)(ii) satisfactorily meet those requirements. Therefore, in our September 18, 2008 IFC, we assumed that there would be no additional burden on PFFS plans in order to comply with § 422.114(a)(2)(ii)(A). We did not receive any comments on our assumption on no additional burden on PFFS plans, and we are not changing this assumption in this final rule.

2. Requirement for Certain Non-Employer PFFS Plans To Use Contract Providers

Section 422.114(a)(3) requires that for plan year 2011 and subsequent plan years, an MA organization that offers a PFFS plan that is operating in a network area as defined in § 422.114(a)(3)(i) meets the access requirements in § 422.114(a)(1) only if the MA organization has contracts or agreements with providers in accordance with the network accessibility and availability requirements described in 1852(d)(1) of the Act.

The burden associated with this requirement is that beginning in plan year 2011, an MA organization offering a PFFS plan is required to create separate plans within its existing service area based on whether the counties located in that service area are considered network areas. In our September 18, 2008 IFC, we estimated the burden of this administrative requirement on the 77 MA organizations that offered 838 non-employer MA PFFS plans at the time that the interim final rule was published. We also estimated that an additional 300 plans would be created as a result of organizations creating separate PBPs for their network area and non-network area plans. We estimated that it would take 2 hours to create a new plan benefit package for a total of 600 hours to create 300 plan benefit packages. We are not modifying this total burden hour estimate in this final rule. However, as stated earlier, we are modifying our estimate of the hourly labor costs incurred through this requirement to reflect the most recent hourly wage data available from the BLS. Therefore, we estimate a total hourly labor cost of $53.55 for this provision, assuming an hourly labor cost of $36.18 for a management analyst in 2009, and a 48 percent increase to account for fringe benefits and overhead. We estimate a total annual cost of $32,130 associated with implementing this provision's requirements.

3. Requirement for all Employer/Union-Sponsored PFFS Plans To Use Contracts With Providers

Section 422.114(a)(4) requires that an employer/union sponsored PFFS plan operating on or after plan year 2011 must establish written contracts or agreements with a sufficient number and range of health care providers in its service area for all categories of services in accordance with the network accessibility and availability requirements described in 1852(d)(1) of the Act.

The burden associated with this requirement is the time and effort necessary for an organization offering an employer/union sponsored PFFS plan to submit the required application to CMS according to § 422.501. In our September 18, 2008 IFC, we estimated that approximately 10 organizations would submit applications for a year, and that it would take each of these organizations approximately 100 hours to complete an application, for a total burden of 1,000 hours for all applicants on an annual basis. We are not modifying this total burden hour estimate in this final rule. However, we are modifying our estimate of the hourly labor costs incurred through this requirement to reflect the most recent hourly wage data available from the BLS. We calculate a total hourly labor cost of $53.55 for this provision assuming the hourly salary of $36.18 for a management analyst in 2009, with a 48 percent increase to account for fringe benefits and overhead. This burden associated with the requirement under § 422.501 imposes $53,550 in annual costs and is captured in OMB #0938–0935. We have updated this PRA package approved under OMB #0938–0935 for this ICR to reflect our revised burden estimates.

*E. ICRs Regarding the Quality Improvement Program (§ 422.152)*

Section 422.152(g) states that MA organizations offering SNPs must conduct a QI program that: (1) Provides for the collection, analysis, and reporting of data that measures health outcomes and indices of quality at the plan level; (2) measures the effectiveness of its MOC; and (3) makes available to CMS information on quality and outcomes measures that will enable—(i) beneficiaries to compare health coverage options; and (ii) CMS to monitor the plan's MOC performance.

The burden associated with this requirement is the time and effort put forth by the SNP to develop, collect, and analyze the quality and health outcomes measures that meet the requirements under § 422.152(g). This requirement is for new and existing SNPs. The cumulative burden on SNPs is reflected in two parts: the burden on plans operating before implementation of this provision in our September 18, 2008 IFC; and the burden on new SNPs that were approved to operate beginning on January 1, 2010.

In our September 18, 2008 IFC, we estimated that it would take each SNP 120 hours to meet this requirement in the initial year of development. We estimated that it would take 40 hours per year in subsequent years to revise the quality and health outcomes measures based on performance data analysis through the plan's quality improvement program. In our September 18, 2008 IFC, we estimated that 335 existing SNPs would have a cumulative annual burden of 40,200 hours (120 hours × 335 plans) to develop the quality and health outcomes measures needed to evaluate their model of care and overall plan performance. In calendar year 2010 and subsequent years, we estimated the existing SNPs would have a cumulative annual burden of 13,400 hours (40 hours × 335 plans) to revise the quality and health outcomes measures based on performance data analysis through the plan's quality improvement program. We anticipated that we would approve 150 new SNPs by January 1, 2010, and that the 150 new SNPs would have a cumulative initial year (calendar year 2010) burden of 18,000 hours (120 hours multiplied by 150 plans) to develop their quality and health outcomes measures needed to evaluate their model of care and overall plan performance, and a cumulative annual burden of 6,000 hours (40 hours multiplied by 150 plans) to revise their model of care in subsequent years.

As stated elsewhere in this section, in this final rule we are modifying our September 18, 2008 IFC estimates to reflect a significant increase in the number of existing SNPs in 2010 as compared to 335 existing SNPs that we estimated in the interim final rule. We are also modifying the estimate to reflect a significant decrease in the number of new SNPs approved for 2010 as compared to the 150 new SNPs that we estimated in the interim final rule.

First, we estimate that the 544 existing SNPs existing in 2010 incurred a cumulative annual burden of 65,280

hours (120 hours × 544 plans) to develop the quality and health outcomes measures needed to evaluate their MOC and overall plan performance. For subsequent years, we estimate that these existing SNPs will have a cumulative annual burden of 21,760 hours (40 hours × 544 plans) to revise the quality and health outcomes measures based on performance data analysis through the plan's quality improvement program. Second, we estimate the 15 new SNPs that CMS approved by January 1, 2010 incurred a cumulative initial year (FY 2010) burden of 1,800 hours (120 hours multiplied by 15 plans) to develop the quality and health outcomes measures needed to evaluate their MOC and overall plan performance. We estimate that these SNPs will have a cumulative annual burden of 600 hours (40 hours multiplied by 15 plans) to revise their MOC in subsequent years. In summary, we are revising our September 18, 2008 IFC estimates in this final rule to reflect a cumulative annual burden of 65,280 hours in calendar year 2009, and a total annual burden of 23,560 hours (21,760 hours for existing SNPs revising their measures, and 1,800 hours for new SNPs developing their measures) for calendar year 2010.

As stated earlier in this section, while we recognized that SNPs may need to utilize medical personnel or senior staff to comply with this requirement, we were unsure of these costs when we developed the cost estimate for this provision in the interim final rule. Therefore, in our September 18, 2008, we requested comment on the additional cost impact of the MOC requirement on SNPs. We did not receive any comments in response to our request for comment on the cost estimate for this provision. However, based on new information regarding the labor wages of staff that review the MOCs we are revising our hourly labor estimate from the $54.98 hourly wage estimate that we reported in the interim final rule. In this final rule, our estimate of the information collection burden associated with this provision reflects an hourly salary of $55.46 for a GS 13, Step 10 analyst for 2010, with an additional 48 percent increase to account for fringe benefits and overhead. Therefore, we estimate a total hourly labor cost of $83.08 to implement the requirements of this provision, resulting in a onetime $5,573,006 start-up cost and $1,857,668 in total annual costs.

*F. ICRs Regarding the Standards for MA Organization Marketing (§ 422.2268)*

Section 422.2268(g) states that MA organizations cannot market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.

The burden associated with this requirement is the time and effort put forth by the MA organization to document a beneficiary's acknowledgement confirming the specific types of choices that the marketing representative is authorized to discuss. In our November 10, 2008 IFC, we stated that the burden associated with these requirements was exempt from the requirements of the PRA as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities. We received no comment on our burden determination in the interim final rule, and are therefore finalizing the burden estimate associated with this ICR without modification.

*G. ICRs Regarding the Licensing of Marketing Representatives and Confirmation of Marketing Resources (§ 422.2272)*

Section 422.2272(d) states that MA organizations must report to the State in which the MA organization appoints an agent or broker, the termination of any such agent or broker, including the reasons for such termination if State law requires that the reasons for the termination be reported.

The burden associated with this requirement is the time and effort put forth by the MA organization to comply with the State requests for information. In our November 10, 2008 IFC, we stated that the burden associated with these requirements is exempt from the requirements of the PRA as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities. We received no comment on our burden determination in our November 10, 2008 IFC, and are therefore finalizing the burden estimate associated with this ICR without modification.

*H. ICRs Regarding the Broker and Agent Compensation and Training of Sales Agents Under MA Organizations (§ 422.2274(b) and § 422.2274(d)) and PDP Sponsors (§ 423.2274(b) and § 423.2274(d))*

Section 422.2274(b) states that if a MA organization markets through independent brokers or agents, they must train and test agents selling Medicare products concerning Medicare rules and regulations specific to the plan products they intend to sell. The burden associated with this requirement is the time and effort put forth by the MA organization to provide training and test agents. In our November 10, 2008 IFC, we stated that the burden associated with these requirements is exempt from the requirements of PRA as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities. We received no comment on our burden determination for § 422.2274(b) in our November 10, 2008 IFC, and are therefore finalizing the burden estimate associated with the § 422.2274(b) ICR without modification.

In our November 10, 2008 IFC, we required all MA plans to post revised compensation structures to brokers or agents that conform precisely to our regulations and guidance under § 422.2274(d). We additionally required every complete submission of a compensation structure to include a signed certification from an authorized senior official within the organization. The burden associated with this requirement was the time and effort put forth by the organization to post the compensation structures and to provide the structures and certification to CMS. In our November 10, 2008 IFC, we estimated it would take each 670 MA organizations 56 hours each to fulfill this requirement for a total of 37,520 hours annually. Although this requirement applied to plans in 2009, we did not require plans to post their compensation structures in 2010 or 2011. Instead, we now require MA organizations to update and attest to their information in the Health Plan Management System (HPMS). This Web-based system in HPMS allows new plans to submit information and automatically updates organization compensation information for existing plans. Once the information has been submitted or reviewed, the system allows the organization to attest to the accuracy of the information. In this final rule, we revise the November 10, 2008 IFC's estimate to reflect this burden. We

believe that the time necessary to complete this process is 2 hours. Based on our revised estimate in this final rule for the number of MA organizations, the total annual burden associated with this requirement is 1,326 hours (663 MA organizations multiplied by 2 hours per response). In this final rule, we are additionally revising our interim final rule hourly labor cost estimate of $14.68 to reflect the most recent 2009 BLS data available. We estimate a median hourly rate of $15.67 for the wages of word processors and typists. To account for fringe benefits and overhead, we add 48 percent to this hourly rate to obtain a total hourly labor cost estimate of $23.19 per response, and a total annual burden cost of $30,750. We are revising the PRA package approved under OCN 0938–0753 to reflect these information requirements.

Section 423.2274(b) requires the Part D sponsor to ensure that agents selling Medicare products are trained on Medicare rules and regulations specific to the plan products they intend to sell. The burden associated with this requirement is the time and effort put forth by the Part D sponsor to provide training and test agents. In our November 10, 2008 IFC, we determined that the burden associated with these requirements was exempt from the requirements of the PRA as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities. We received no comments on our burden determination for § 423.2274(b) in our November 10, 2008 IFC, and are therefore finalizing our burden estimate for § 423.2274(b) without modification.

In our November 10, 2008 IFC, we also required all Medicare PDPs to post revised compensation structures to brokers or agents that conform precisely to our regulations and guidance under § 423.2274(d). Additionally, we required every complete submission of a compensation structure to include a signed certification from an authorized senior official within the organization. The burden associated with this requirement was the PDP's time and effort to post its compensation structures and to provide the structures and certification to CMS. In our November 10, 2008 IFC, we anticipated it would take each Part D sponsor 49 hours to fulfill this requirement and that 87 Part D sponsors would be affected annually for a total of 4,263 hours annually. Although this requirement applied to Part D sponsors in 2009, we did not require Part D sponsors to post their compensation structures in 2010 or 2011. Instead, we now require Part D sponsors to update and attest to their information in the Health Plan Management System (HPMS). This Web-based system in HPMS allows new sponsors to submit information and automatically updates organization compensation information for existing sponsors. Once the information has been submitted or reviewed, the system allows the organization to attest to the accuracy of the information. In this final rule, we revise the November 10, 2008 IFC's estimate to reflect this burden. We believe that the time necessary to complete this process is 2 hours. We are also revising the burden estimate to reflect updated figures for the number of Part D sponsors that were operating in CY 2009. Seventy-nine Part D sponsors are affected annually by this requirement, resulting in a total annual burden of 158 hours (79 Part D sponsors multiplied by 2 hours per response). Our labor cost estimate assumes a median hourly rate of $15.67, based on the most recent 2009 BLS data available) for the hourly wages of word processors and typists. To account for fringe benefits, we add 48 percent to this hourly rate to obtain a total hourly labor cost estimate of $23.19 per response and a total cost estimate of $3,664 annually. We are revising the PRA package approved under OCN 0938–0964 to reflect these information collection requirements.

*I. ICRs Regarding the Prompt Payment for Part D Sponsors (§ 423.520)*

Section 423.520(a)(ii)(2) requires the Part D sponsor to notify the submitting network pharmacy that a submitted claim is not a clean claim. Such notification must specify all defects or improprieties in the claim and must list all additional information necessary for the proper processing and payment of the claim.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to provide proper notification to the network pharmacy. While there is burden associated with this requirement, in our September 18, 2008 IFC, we stated that the burden associated with these requirements is exempt from the requirements of the PRA, as defined in 5 CFR 1320.3(b)(2), because the time, effort, and financial resources necessary to comply with this requirement would be incurred by persons in the normal course of their activities. We received no comment on our burden determination in the interim final rule, and are therefore finalizing the burden estimate without modification.

*J. ICRs Regarding the Standards for Part D Marketing (§ 423.2268)*

Section 423.2268(g) states that Part D organizations cannot market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment.

The burden associated with this requirement is the time and effort put forth by the Part D organization to document a beneficiary's signed acknowledgement confirming the specific types of choices that the marketing representative is authorized to discuss. While there is burden associated with this requirement, in our November 10, 2008 IFC, we stated that the burden associated with these requirements is exempt from the requirements of the PRA as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities. We received no comment on our burden determination in the interim final rule, and are therefore finalizing the burden estimate associated with this ICR without modification.

*K. ICRs Regarding the Licensing of Marketing Representatives and Confirmation of Marketing Resources (§ 423.2272)*

Section 423.2272(d) states that Part D sponsors must report to the State in which the Part D sponsor appoints an agent or broker, the termination of any such agent or broker, including the reasons for such termination if State law requires that the reasons for the termination be reported.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to comply with the State requests for information. While there is burden associated with this requirement, in our November 10, 2008 IFC, we stated that the burden associated with these requirements is exempt from the requirements of the PRA as defined in 5 CFR 1320.3(b)(2) because the time, effort, and financial resources necessary to comply with the requirement would be incurred by persons in the normal course of their activities. We received no comment on our burden determination in the interim final rule, and are therefore finalizing the burden estimate associated with this ICR without modification.

TABLE 2—ESTIMATED FISCAL YEAR REPORTING RECORDKEEPING BURDENS

| Regulation sections | OMB Control No. | Respondents | Burden per response (hours) | Total annual burden (hours) | Hourly labor cost of reporting ($) | Total labor cost ($) | Total capital/ maintenance costs ($) | Total cost ($) |
|---|---|---|---|---|---|---|---|---|
| 422.101(f)(1) | 0938–New | 544 | 10 | 5,440 | 83.08 | 551,651 | 0 | 551,651 |
| (Start-up) | | 15 | 80 | 1,200 | | | | |
| 422.101(f)(1) | 0938–New | 544 | 10 | 5,440,150 | 83.08 | 464,417 | 0 | 46,417 |
| (Annual) | | 15 | 10 | | | | | |
| 422.107(a) | 0938–New | 43 | 36 | 1,548 | 53.55 | 82,895 | 0 | 82,895 |
| 422.111(b)(2) | 0938–New | 487 | 10 | 4,870 | 23.19 | 112,935 | 0 | 112,935 |
| 422.114(a)(3) | 0938–New | 300 | 2 | 600 | 53.55 | 32,130 | 0 | 32,130 |
| 422.114(a)(4) | 0938–0935 | 10 | 100 | 1,000 | 53.55 | 53,550 | 0 | 53,550 |
| 422.152(g) | 0938–New | 544 | 120 | 65,280 | 83.08 | 5,573,006 | 0 | 5,573,006 |
| (Start-up) | | 15 | 120 | 1,800 | | | | |
| 422.152(g) | 0938–New | 544 | 40 | 21,760 | 83.08 | 1,857,668 | 0 | 1,857,668 |
| (Annual) | | 15 | 40 | 600 | | | | |
| 422.2274(d) | 0938–0753 | 663 | 26 | 1,326 | 23.19 | 30,750 | 0 | 30,750 |
| 423.2274(d) | 0938–0964 | 79 | 29 | 158 | 23.19 | 3,664 | 0 | 3,664 |
| Total | | 2.141 | | 111,172 | | 8,762,666 | 0 | 8,762,666 |

## IV. Regulatory Impact Analysis

### *A. Introduction*

We have examined the impacts of this rule as required by Executive Orders 12866 on Regulatory Planning and Review (September 30, 1993) and 13563 on Improving Regulation and Regulatory Review (January 18, 2011). Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final rule has been designated an ''economically significant'' rule under section 3(f)(1) of Executive Order 12866. In addition, this is a major rule under the Congressional Review Act (5 U.S.C. 804(2)). Accordingly, the rule has been reviewed by the Office of Management and Budget.

### *B. Statement of Need*

The purpose of this final rule is to finalize provisions of several interim final rules that provide revisions to the Medicare Advantage (MA) program (Part C) and Prescription Drug Benefit Program (Part D), to implement provisions specified in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), and to make other changes to the regulations based on our continued experience in the administration of the Part C and Part D programs. These latter revisions are necessary to: (1) Clarify various program participation requirements; (2) make changes to strengthen beneficiary protections; (3) strengthen our ability to identify strong applicants for Part C and Part D program participation and remove consistently poor performers; and (4) make other clarifications and technical changes. Refer to section I. of this final rule for background on the interim final rules that we are finalizing. The scope of the analysis of economic impacts for this final rule is limited to the costs and savings associated with the provisions in the interim final rule that we are finalizing.

### *C. Overall Impacts*

The CMS Office of the Actuary has estimated savings and costs to the Federal government as a result of various provisions of this final rule. Tables 4 and 6 detail the breakdown of costs by cost-bearing entity. Specifically, Table 4 describes costs and savings to the Federal government and Table 6 describes costs to MA organizations and/or PDP sponsors and third party entities. As detailed in Table 4, we expect an aggregate net savings to the Federal government of approximately $520 million for fiscal years (FYs) 2010 through 2015 as a result of the provisions in this final rule. This estimate represents $1.02 billion in savings to the Federal government, as a result of the requirement that certain non-employer and all employer private-fee-for-service plans must establish contracts with providers and costs of approximately $500 million as a result of the implementation of prompt payment by prescription drug plans and MA–PD plans from FYs 2010 through 2015. Administrative costs associated with the provisions of the interim final rule as finalized by this final rule add negligibly to the total administrative costs of the MA or Part D programs. Table 6 describes the administrative costs that MA organizations and PDP sponsors will incur ($19.55 million) from FYs 2010 through 2015 as a result of the requirements in this final rule. Refer to section III. of this final rule (Collection of Information Requirements) for additional information on the calculations and assumptions that form the basis of our cost estimates for these provisions.

As described in Table 3 reflecting the costs and savings in this RIA, we conclude that the provisions in this final rule result in a net savings of approximately $500.5 million over FYs 2010 to 2015.

### *D. Detailed Impacts*

1. Provider Contracts for Employer and Non-Employer PFFS Plans (§ 422.114(a)(3) and § 422.114(a)(4))

In our September 18, 2008 IFC, we estimated an incurred savings (before the Part B premium offset) of $780 million for FY 2011 to $1.59 billion in FY 2018 as a result of the requirement that certain non-employer and all employer PFFS plans establish contracts with providers. We arrived at this figure by first determining how many coordinated care plans (excluding regional PPOs) were currently operating in counties that had PFFS plans. We then used this estimate to project how many PFFS plans and members would be subject to the new requirement to set up networks of providers by 2011. Based on the information, as well as the level of payments that these plans receive, we estimated how many members would end up in PFFS plans that did not need to form networks, how

many would be in plans that converted to network PFFS plans, how many would end up in a coordinated care plan, and how many would switch to original Medicare. We used different assumptions for individual plans and for group plans. However, for both group and individual plans, we assumed that most members would remain in a PFFS plan (either network or non-network). For members who stayed in either a network or non-network PFFS plan, we assumed a higher plan bid and, therefore, a cost to Medicare. We assumed a savings for those beneficiaries that we believed would enroll in a MA coordinated care plan, and projected an even larger savings for beneficiaries that would enroll in original fee-for-service (FFS) Medicare. We assumed that 20 percent of the 2009 cohort PFFS enrollees would migrate to Medicare FFS in 2011. Based on this projected enrollment, we assumed that the per-capita savings for those migrating would range from 12 to 15 percent, depending on plan type (employer vs. non-employer).

In this final rule, we are revising the cost estimate projected in our September 18, 2008 interim final rule to reflect the actual proportion of 2009 PFFS enrollees who migrated to Medicare FFS as compared to those who remained in an MA plan. Based on an analysis of enrollment in counties with the largest PFFS share in 2009, we estimated that only 6 percent of the 2009 PFFS enrollees migrated to Medicare FFS as a result of the PFFS network requirements; with approximately half of these enrollees having migrated in 2010 and the other half having migrated in 2011. Our revised 6 percent migration assumption is based on actual MA enrollment changes from 2009 to 2011 in countries where PFFS enrollment comprised at least 50 percent of total MA enrollment. We additionally assume a 13 percent per-capita savings for those migrating from PFFS to FFS—a figure that is consistent with the 12 to 15 per-capita savings we estimated in our interim final rule—based upon 2010 data from the Medicare Payment Advisory Commission (MedPAC).

Also, in this final rule, we are modifying the window over which we estimate costs and savings to conform to methodology specified by the Office of Management and Budget (OMB). We begin our measurement of costs and savings in FY 2010, which is the first year that the requirements finalized in this final rule resulted in a monetized impact. We then project the impacts forward over the minimum 5-year outlook window, resulting in costs and savings estimates for the period from FYs 2010 through 2015. In Table 4 we estimate a savings to the Federal government of $1.02 billion over FYs 2010 through 2015 as the result of the requirement that certain non-employer and all employer private-fee-for-service plans must establish contracts with providers. We provide a detailed breakdown of these impacts in Table 5. We indicate the total costs and savings incurred by this provision over FYs 2010 through 2015 in Table 3.

2. Prompt Payment Provisions (§ 423.505 and § 423.520)

In our September 18, 2008 IFC, we estimated that the prompt payment provisions contained this final rule would impose significant costs to PDPs, MA–PD plans, and their subcontractors. We estimated the loss of investment income resulting from the prompt payment provisions would increase the costs of the Part D program by $670 million from FY 2010 through FY 2018. In this final rule, we are revising the cost estimates reported in the interim final rule based on new data projections from the CMS Office of the Actuary (OACT). In our September 18, 2008 IFC, we originally assumed that 80 percent of scripts would be electronic and that the clean claim percentage would be 80 percent. However, we now believe that both of these percentages are too low. We have revised the original estimate under the assumption that 99 percent of claims are electronic and that 95 percent of them are clean claims. This modification results in a higher cost estimates that are reflected in Tables 3 and 4. As stated earlier, in this final rule, we are also modifying the window over which we estimate costs and savings to conform to OMB convention for estimating costs and savings in major rulemaking. Based on the revised estimates and impact analysis window, we estimate a total cost of $500 million to PDPs, MA–PD plans, and their subcontractors from FY 2010 through FY 2015.

TABLE 3—ESTIMATED COSTS AND SAVINGS BY PROVISION FOR FISCAL YEARS 2010 THROUGH 2015

[$ In millions]

| Provision | Regulation section(s) | Fiscal year | | | | | | Total (FYs 2010–2015) ($ in millions) |
|---|---|---|---|---|---|---|---|---|
| | | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | |
| Developing SNP Models of Care (MOC) | 422.101(f)(1) | 0.55 | 0.46 | 0.46 | 0.46 | 0.46 | 0.46 | 2.85 |
| D–SNP Contracting Requirement with States | 422.107(a) | 0.08 | 0.08 | 0.08 | 0.08 | 0.08 | 0.08 | 0.48 |
| Comprehensive Written Statement Requirement for D–SNPs | 422.111(b)(2) | 0.11 | 0.11 | 0.11 | 0.11 | 0.11 | 0.11 | 0.66 |
| Non-employer and Employer PFFS Network Requirements | 422.114(a)<br>422.114(b) | −69.92 | −159.92 | −179.92 | −189.92 | −199.92 | −219.92 | −1,019.52 |
| SNP Quality Requirements | 422.152(g) | 5.57 | 1.86 | 1.86 | 1.86 | 1.86 | 1.86 | 14.87 |
| Training and Testing of Agents and Brokers | 422.2274(d)<br>423.2274(d) | 0.03 | 0.03 | 0.03 | 0.03 | 0.03 | 0.03 | 0.21 |
| Prompt payment by prescription drug plans and MA–PD plans under Part D | 423.505<br>423.520 | 50.0 | 70.0 | 80.0 | 90.0 | 100.00 | 110.00 | 500.00 |
| Total | | −13.58 | −87.38 | −97.38 | −97.38 | −97.38 | −107.38 | −500.45 |

TABLE 4—ESTIMATED COSTS AND SAVINGS TO THE FEDERAL GOVERNMENT FOR FISCAL YEARS 2010 THROUGH 2015

[$ In millions]

| Provision | Regulation section(s) | Fiscal year | | | | | | Total (FYs 2010–2015) ($ in millions) |
|---|---|---|---|---|---|---|---|---|
| | | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | |
| Non-Employer and Employer PFFS Network Requirements | 422.114(a)<br>422.114(b) | −70.00 | −160.00 | −180.00 | −190.00 | −200.00 | −220.00 | −1,020.00 |
| Prompt payment by prescription drug plans and MA–PD plans under Part D | 423.505<br>423.520 | 50.00 | 70.00 | 80.00 | 90.00 | 100.00 | 110.00 | 500.00 |
| Total | | −20.00 | −90.00 | −100.00 | −100.00 | −100.00 | −110.00 | −520.00 |

TABLE 5—ESTIMATED FEDERAL SAVINGS FOR NON-EMPLOYER AND EMPLOYER PFFS NETWORK REQUIREMENTS FOR FISCAL YEARS 2010 THROUGH 2015

[$ In millions]

| | Fiscal year | | | | | | Total (FYs 2010–2015) ($ in millions) |
|---|---|---|---|---|---|---|---|
| | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | |
| Total HI (Part C & FFS) | 40.00 | 90.0 | 100.00 | 110.00 | 120.00 | 130.00 | 590.00 |
| Total SMI (Part C & FFS) | 40.00 | 90.0 | 100.00 | 110.00 | 110.00 | 120.00 | 570.00 |
| Total Medicare (without Part B premium offset) | 80.00 | 180.00 | 200.00 | 220.00 | 230.00 | 250.00 | 1,160.00 |
| Total Medicare (with Part B premium offset) | 70.00 | 160.00 | 180.00 | 190.00 | 200.00 | 220.00 | 1,020.00 |

TABLE 6—ESTIMATED COSTS TO MA ORGANIZATIONS AND PDP SPONSORS FOR FISCAL YEARS 2010 THROUGH 2015

[$ In millions]

| | Regulation section(s) | Fiscal year | | | | | | Total (FYs 2010–2015) ($ in millions) |
|---|---|---|---|---|---|---|---|---|
| | | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | |
| Developing SNP Models of Care (MOC) | 422.101(f)(1) | 0.55 | 0.46 | 0.46 | 0.46 | 0.46 | 0.46 | 2.85 |
| D–SNP Contracting Requirement with States | 422.107(a) | 0.08 | 0.08 | 0.08 | 0.08 | 0.08 | 0.08 | 0.48 |
| Comprehensive Written Statement Requirement for D-SNPs | 422.111(b)(2) | 0.11 | 0.11 | 0.11 | 0.11 | 0.11 | 0.11 | 0.66 |
| Non-employer and Employer PFFS Network Requirements | 422.114(a)(3) | 0.03 | 0.03 | 0.03 | 0.03 | 0.03 | 0.03 | 0.48 |
| | 422.114(a)(4) | 0.05 | 0.05 | 0.05 | 0.05 | 0.05 | 0.05 | |
| SNP Quality Requirements | 422.152(g) | 5.57 | 1.86 | 1.86 | 1.86 | 1.86 | 1.86 | 14.87 |
| Training and Testing of Agents and Brokers | 422.2274(d) | 0.03 | 0.03 | 0.03 | 0.03 | 0.03 | 0.03 | 0.18 |
| | 423.2274(d) | *0.00 | *0.00 | *0.00 | *0.00 | *0.00 | *0.00 | 0.02 |
| Total | | 6.42 | 2.62 | 2.62 | 2.62 | 2.62 | 2.62 | 19.55 |

*Costs appear as zero due to rounding. CMS estimates actual costs of 0.003 million.

*E. Alternatives Considered*

The implementation of all of the economically significant provisions of the interim final rule as finalized by this final rule was directly mandated by MIPPA. Therefore, we did not consider alternative proposals for these self-implementing provisions.

*F. Accounting Statement*

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/index.html*), in Table 7, we have prepared an accounting statement showing the classification of the expenditures associated with the prompt payment provisions of this final rule and the benefits associated with the PFFS network provisions. This table provides our best estimate of the costs and savings as a result of the changes presented in this interim final rule.

TABLE 7—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

| Category | Transfers ($ in millions) |
|---|---|
| **Incurred Savings for the Non-Employer and Employer PFFS Network Provision, FYs 2010–2015** | |
| Annualized Monetized Transfers Using 7% Discount Rate | −164.9. |
| Annualized Monetized Transfers Using 3% Discount Rate | −167.7. |
| From Whom To Whom? | Federal Government to PFFS Plans. |
| **Prompt payment by prescription drug plans and MA–PD plans under Part D, FYs 2010–2015** | |
| Annualized Monetized Transfers Using 7% Discount Rate | 81.1. |
| Annualized Monetized Transfers Using 3% Discount Rate | 82.4. |
| From Whom To Whom? | Federal Government To Part D Sponsors. |
| **Costs for all other (non-marketing) provisions, FYs 2010–2015** | |
| Annualized Monetized Costs Using 7% Discount Rate | 3.0. |
| Annualized Monetized Costs Using 3% Discount Rate | 2.9. |
| Who is Affected? | MAOs/PDP Sponsors. |

## V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), as modified by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121), requires agencies to determine whether proposed or final rules would have a significant economic impact on a substantial number of small entities and, if so, to prepare a Regulatory Flexibility Analysis and to identify in the notice of proposed rulemaking or final rulemaking any regulatory options that could mitigate the impact of the proposed regulation on small businesses. For purposes of the RFA, small entities include businesses that are small as determined by size standards issued by the Small Business Administration, nonprofit organizations, and small governmental jurisdictions). Individuals and States are not included in the definition of a small business entity.

The RFA also requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. The Secretary determined that the September 18, 2008 IFC (73 FR 54226–54254) that we are finalizing would have a significant impact on a substantial number of small entities, such as small retail pharmacies and pharmacy benefit managers (PBMs). The cost impacts for these entities result from the prompt payment provision discussed earlier in this document. We provide a detailed analysis of this provision's impact on small entities in the regulatory impact analysis in our September 18, 2008 IFC (73 FR 54226–54254).

In addition, section 1102(b) of the Act requires us to prepare an analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

## VI. Unfunded Mandates Reform Act Analysis

Section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995, Pub. L. 104–4) requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. In 2011, that threshold is approximately $136 million. This final rule does not mandate any spending by State, local, or Tribal governments, in the aggregate, or by the private sector of $136 million.

## VII. Federalism Analysis

Executive Order 13132 on Federalism (August 4, 1999) establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

## List of Subjects

*42 CFR Part 417*

Administrative practice and procedure, Grant programs—health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs—health, Medicare, Reporting and recordkeeping requirements.

*42 CFR Part 422*

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

*42 CFR Part 423*

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

## PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

■ 1. The authority citation for part 417 continues to read as follows:

**Authority:** Sec. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C., 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

### Subpart A—General Provisions

■ 2. Amend § 417.402 by revising the second sentence of paragraph (c)(3) to read as follows:

**§ 417.402 Effective date of initial regulations.**

* * * * *

(c) * * *

(3) * * *. If the service area includes a portion in more than one MSA with a population of more than 250,000, the minimum enrollment determination is made with respect to each such MSA and counties contiguous to the MSA that are not in another MSA with a population of more than 250,000.

## PART 422—MEDICARE ADVANTAGE PROGRAM

■ 3. The authority citation for part 422 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

## Subpart C—Benefits and Beneficiary Protections

### § 422.101 [Amended]

■ 4. In 422.101, paragraph (f)(1)(ii) is amended by removing the phrase ''indentifying goals'' and adding the phrase ''identifying goals'' in its place.

## Subpart V—Medicare Advantage Marketing Requirements

■ 5. Section 422.2268 is amended by revising paragraphs (g) and (h) to read as follows:

### § 422.2268 Standards for MA organization marketing.

* * * * *

(g) Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment (48 hours in advance, when practicable).

(h) Market additional health related lines of plan business not identified prior to an individual appointment without a separate scope of appointment identifying the additional lines of business to be discussed.

* * * * *

■ 6. Section 422.2274 is amended by revising paragraphs (a)(1)(ii) introductory text, (a)(1)(ii)(B), (a)(1)(iv), and (a)(4) to read as follows:

### § 422.2274 Broker and agent requirements.

(a) * * *

(1) * * *

(ii) The compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into an M A plan is as follows:

* * * * *

(B) For renewals, an amount equal to 50 percent of the initial compensation in paragraph (a)(1)(ii)(A) of this section.

* * * * *

(iv) If the MA organization contracts with a third party entity such as a Field Marketing Organization or similar type entity to sell its insurance products, or perform services (for example, training, customer service, or agent recruitment)—

(A) The total amount paid by the MA organization to the third party and its agents for enrollment of a beneficiary into a plan, if any, must be made in accordance with paragraph (a)(1) of this section; and

(B) The amount paid to the third party for services other than selling insurance products, if any, must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the MA organization to a third party for similar services during each of the previous 2 years.

* * * * *

(4) Compensation may only be paid for the beneficiary's months of enrollment during a plan year (that is, January through December).

(i) Subject to paragraph (a)(4)(ii) of this section, compensation payments may be made up front for the entire current plan year or in installments throughout the year.

(ii) When a beneficiary disenrolls from a plan during the—

(A) First 3 months of enrollment, the plan must recover all compensation paid to agents and brokers.

(B) Fourth through 12th month of their enrollment (within a single plan year), the plan must recover compensation paid to agents and brokers for those months of the plan year for which the beneficiary is not enrolled.

* * * * *

## PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 7. The authority citation for part 423 continues to read as follows:

**Authority:** Sec. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

## Subpart K—Application Procedures and Contracts With Part D Plan Sponsors

■ 8. Amend § 423.505 by revising paragraph (b)(21) introductory text to read as follows:

### § 423.505 Contract provisions.

* * * * *

(b) * * *

(21) Effective contract year 2009 and subsequent contract years, update any prescription drug pricing standard based on the cost of the drug used for reimbursement of network pharmacies by the Part D sponsor on—

* * * * *

■ 9. Amend § 423.520 by revising paragraphs (c)(2)(ii), (c)(3), and (e)(2) to read as follows:

### § 423.520 Prompt payment by Part D sponsors.

* * * * *

(c) * * *

(2) * * *

(ii) *Determination after submission of additional information.* A claim is deemed to be a clean claim under paragraph (b) of this section if the Part D sponsor that receives the claim does not provide notice to the submitting network pharmacy of any remaining defect or impropriety, or of any new defect or impropriety raised by the additional information, in the claim within 10 days of the date on which additional information is received under paragraph (c)(2)(i) of this section. A Part D sponsor may not provide notice of a new deficiency or impropriety in the claim that could have been identified by the sponsor in the original claim submission under this paragraph.

(3) *Obligation to pay.* A claim submitted to a Part D sponsor that is not paid by the Part D sponsor within the timeframes specified in paragraphs (a)(1)(i) and (ii) or contested by the Part D sponsor within the timeframe specified in paragraph (c)(1)(i) and (ii) of this section must be deemed to be a clean claim and must be paid by the Part D sponsor in accordance with paragraph (a) of this section.

* * * * *

(e) * * *

(2) *Authority not to charge interest.* As CMS determines, a Part D sponsor is not charged interest under paragraph (e)(1) in exigent circumstances that prevent the timely processing of claims, including natural disasters and other unique and unexpected events.

* * * * *

## Subpart V—Part D Marketing Requirements

■ 10. Section 423.2268 is amended by revising paragraphs (g) and (h) to read as follows:

### § 423.2268 Standards for Part D marketing.

* * * * *

(g) Market any health care related product during a marketing appointment beyond the scope agreed upon by the beneficiary, and documented by the plan, prior to the appointment (48 hours in advance, when practicable).

(h) Market additional health related lines of plan business not identified prior to an individual appointment without a separate scope of appointment identifying the additional lines of business to be discussed.

* * * * *

■ 11. Section 423.2774 is amended by revising paragraphs (a)(1)(ii) introductory text, (a)(1)(ii)(B), (a)(1)(iv), and (a)(4) to read as follows:

**§ 423.2274 Broker and agent requirements.**

* * * * *

(a) * * *

(1) * * *

(ii) The compensation amount paid to an agent or broker for enrollment of a Medicare beneficiary into a PDP is as follows:

* * * * *

(B) For renewals, an amount equal to 50 percent of the initial compensation in paragraph (a)(1)(ii)(A) of this section.

* * * * *

(iv) If the Part D sponsor contracts with a third party entity such as a Field Marketing Organization or similar type entity to sell its insurance products or perform services (for example, training, customer service, or agent recruitment)—

(A) The total amount paid by the Part D sponsor to the third party and its agents for enrollment of a beneficiary into a plan, if any, must be made in accordance with paragraph (a)(1) of this section; and

(B) The amount paid to the third party for services other than selling insurance products, if any, must be fair-market value and must not exceed an amount that is commensurate with the amounts paid by the Part D sponsor to a third party for similar services during each of the previous 2 years.

* * * * *

(4) Compensation may only be paid for the beneficiary's months of enrollment during a plan year (that is, January through December).

(i) Subject to paragraph (a)(4)(ii) of this section, compensation payments may be made up front for the entire current plan year or in installments throughout the year.

(ii) When a beneficiary disenrolls from a plan during the—

(A) First 3 months of enrollment, the plan must recover all compensation paid to agents and brokers.

(B) Fourth through 12th month of their enrollment (within a single plan year), the plan must recover compensation paid to agents and brokers for those months of the plan year for which the beneficiary is not enrolled.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 5, 2011.

**Marilyn Tavenner,**

*Principal Deputy Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.*

Approved: August 12, 2011.

**Kathleen Sebelius,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2011–22126 Filed 8–26–11; 11:15 am]

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Part IV

## Farm Credit Administration

12 CFR Chapter VI

Board Policy Statements; Rule

## FARM CREDIT ADMINISTRATION

## 12 CFR Chapter VI

## Board Policy Statements

**AGENCY:** Farm Credit Administration.

**ACTION:** Policy statements.

**SUMMARY:** The Farm Credit Administration (FCA) Board recently undertook its 5-year review of FCA Board policy statements. This review resulted in revisions to 14 policy statements that are mostly technical, grammatical, or syntactical. However, a few of the revisions add clarity to the policy statements and other revisions incorporate changes required either by new laws or by changes in the functional statement of operations for some FCA offices.

**DATES:** The effective date is indicated on each individual policy statement set forth below.

**FOR FURTHER INFORMATION CONTACT:** Wendy Laguarda, Assistant General Counsel, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean Virginia 22102–5090, (703) 883–4020, TTY (703) 883–4020.

**SUPPLEMENTARY INFORMATION:** A list of the 14 revised FCA Board policy statements and the text of each are set forth below in their entirety. All FCA Board policy statements may be viewed on FCA's Web site. Please go to *http://www.fca.gov.* Then select ''Laws & Regulations,'' then select ''FCA Handbook,'' then select ''FCA Board Policy Statements.''

### FCA Board Policy Statements

FCA–PS–37 Communications During Rulemaking
FCA–PS–41 Alternative Means of Dispute Resolution
FCA–PS–44 Travel
FCA–PS–53 Examination Philosophy
FCA–PS–59 Regulatory Philosophy
FCA–PS–62 Equal Employment Opportunity and Diversity
FCA–PS–64 Rules for the Transaction of Business of the Farm Credit Administration Board
FCA–PS–65 Release of Consolidated Reporting System Information
FCA–PS–68 FCS Building Association Management Operations Policies and Practices
FCA–PS–71 Disaster Relief Efforts by Farm Credit Institutions
FCA–PS–72 Financial Institution Rating System (FIRS)
FCA–PS–77 Borrower Privacy
FCA–PS–78 Official Names of Farm Credit Institutions
FCA–PS–79 Consideration and Referral of Supervisory Strategies and Enforcement Actions

### Communications During Rulemaking

*FCA–PS–37*

*Effective Date:* 08–JUL–11.

*Effect on Previous Actions:* Replaces previous Farm Credit Administration (FCA or Agency) Board policy on public communications during a rulemaking, adopted March 25th, 1992. *See* 57 FR 11083, April 1, 1992. Amended by NV–11–15 (8–JUL–11).

*Source of Authority:* None.

The FCA Board finds that it is in the public interest and consistent with the requirements of the Administrative Procedure Act to revise its policy on communications with the public during the rulemaking process.

### The FCA Board Hereby Adopts the Following Policy Statement

In keeping with the need to ensure an open, freely accessible, and well-informed rulemaking process while balancing the need for impartiality and fairness, the FCA adopts the following guidelines governing substantive oral communications between the public and Board members and staff during the course of a related rulemaking.

### Before a Rulemaking Begins

Unrestricted communication with the public before rulemaking begins supports and promotes the Agency's efforts to design creative and effective regulatory policy. No specific guidelines apply to that communication.

### From Publication of Notice of Proposed Rulemaking to the End of the Comment Period

After a particular rulemaking has begun with publication of a notice of proposed rulemaking (including publication of an advance notice of proposed rulemaking), FCA encourages members of the public to provide written comments during the public comment period. All written comments are placed in a public file, where they are available for examination and copying during normal business hours. The comments receive careful consideration and become part of the public record of the rulemaking.

Where appropriate, FCA may also conduct public hearings or open meetings to take testimony or hold discussions on a rulemaking. Such opportunities for comment from the public will be announced in advance and the comments received will be placed in the public rulemaking file.

Substantive oral communications during the comment period between FCA personnel, including Board members and staff, and members of the public regarding the subject of an ongoing rulemaking will be summarized in writing and placed in the public rulemaking file. While FCA personnel are always available to explain or clarify proposed rules, if an individual wants to engage FCA personnel in substantive discussion concerning a published proposed rule, he or she should first file a written comment covering the matter to be discussed, particularly if he or she has not already filed a written comment. If new substantive comments are discussed, FCA staff will reduce the substance of such comments to writing, promptly place it in the public rulemaking file, and urge the individual to submit a written comment.

### From the Close of the Comment Period to the Adoption of the Final Rule

From the close of the comment period until adoption of the final rule, substantive discussions between members of the public and FCA personnel relating to the proposed rule should be curtailed. In the interest of fairness, if new facts or arguments must be brought to the attention of the FCA, the communication must be in writing so that it can promptly be placed in the public rulemaking file.

FCA believes these guidelines will help ensure a complete rulemaking record for future agency consideration of the rule or in the event of court review. Further, FCA strongly believes that the rulemaking process must be open and evenhanded in order to avoid even the appearance of impropriety or undue influence that might arise from private communication during certain periods. Finally, if a substantive comment on a proposed rule were transmitted to FCA in a private communication that did not become part of the public record, other members of the public would not have an opportunity to respond to any new arguments or facts contained in that communication. Because FCA believes that its rulemaking process benefits from give and take among commenters who are able to consider each others' comments, this policy statement requires all comments to be placed in the public rulemaking file.

This policy statement does not apply to public communications regarding any rulemaking issue unless and until the matter becomes the subject of a notice of proposed rulemaking. Nothing in the policy statement is meant to affect the ability of FCA to use negotiated rulemakings, open meetings or other types of public forums to augment its rulemaking under section 553 of the Administrative Procedure Act.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

## Alternative Means of Dispute Resolution

*FCA–PS–41*

*Effective Date:* 8–JUL–11.

*Effect on Previous Action:* Originally adopted 16–JUL–92 (*see* 57 FR 33198, July 27, 1992); amended 30–MAY–96; amended 10–FEB–97; amended by NV–11–15 (8–JUL–11).

**Source of Authority:** Administrative Dispute Resolution Act of 1996, Public Law 104–320, 110 Stat. 3870 (1996), and codified at 5 U.S.C. 571 *et seq.*

The Administrative Dispute Resolution Act of 1996 (Act), addresses the concern that traditional methods of dispute resolution, such as litigation and administrative adjudication, have become increasingly time-consuming and expensive. The Act authorizes and encourages greater use of alternative means of dispute resolution (ADR), requiring each Federal agency to adopt a policy addressing the use of ADR.

ADR consists of informal, voluntary procedures used by parties who seek to resolve their disputes by consent. Such procedures include, but are not limited to, mediation, conciliation, facilitation, fact-finding, arbitration, and mini-trials, or any combination thereof. By emphasizing the common goals of the parties and fostering an atmosphere of cooperation, ADR can offer a less contentious and more expeditious alternative to traditional methods of dispute resolution such as litigation and administrative adjudication.

The use of ADR in appropriate circumstances is consistent with the Farm Credit Administration's (FCA or Agency) mission as an agency. To promote a safe and sound, competitive Farm Credit System, the FCA always strives to effectively and efficiently manage its resources. By expediting the resolution of certain disputes, ADR can reduce the FCA's transaction costs, increase the FCA's productivity, and help the FCA accomplish its goals.

### The FCA Board Hereby Adopts the Following Policy Statement

It is the policy of the FCA to resolve disputes in an effective and efficient manner. Many of the disputes encountered by the FCA are resolved most effectively and efficiently through settlement negotiations between the FCA and the other parties to the disputes prior to the initiation, or in the early stages of, more formal litigation or administrative adjudication. The FCA will continue to use settlement negotiations as a method of dispute resolution.

In addition, the FCA will consider whether it is appropriate to use ADR when a dispute arises. In assessing the advisability of using ADR procedures, as defined in 5 U.S.C. 571(3), the FCA will consider whether such procedures are likely to reduce the FCA's transaction costs, increase the FCA's productivity, and help the FCA accomplish its goals of effective regulations and policies and the enhancement of FCA's effectiveness and cost efficiency. The FCA will also consider the factors set forth in 5 U.S.C. 572(b) in deciding whether it is appropriate to use such ADR procedures.

The FCA's Dispute Resolution Specialist (ADR Specialist), designated by the Chairman, is responsible for the implementation of this policy statement. The ADR Specialist is available to assist FCA personnel in considering the appropriate application of ADR procedures. Before deciding whether it is appropriate to use an ADR procedure, FCA personnel will consult with, and obtain the concurrence of, the ADR Specialist or his or her designee.

The ADR Specialist and those FCA personnel involved in resolving disputes are encouraged to attend educational and training programs relating to the theory and application of ADR on a regular basis, as the FCA budget permits.

Based on the voluntary nature of ADR, all parties to a dispute must agree to use an ADR procedure before it can be initiated.

Dated This 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

## Travel

*FCA–PS–44*

*Effective Date:* 8–JUL–11.

*Effect on Previous Actions:* Originally adopted 13–JUN–91; amended 12–NOV–92; amended by NV–11–15 (8–JUL–11).

**Source of Authority:** 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 12 U.S.C. 2242 (Section 5.8 of the Farm Credit Act of 1971, as amended), 41 CFR part 301.

### The FCA Board Hereby Adopts the Following Policy Statement

Members of the Farm Credit Administration (FCA or Agency) Board are not subject to the same requirements regarding allowances for travel and subsistence that generally apply to officers and employees of the United States (§ 5.8 of the Farm Credit Act of 1971, as amended). Nevertheless, it is the general policy of the FCA Board (Board) that Board members will travel on official business in the most economical fashion reasonable under the circumstances.

FCA Board members are subject to Federal laws, rules, and Executive Orders relating to conflicts of interest that may result from accepting gifts, including travel related expenses, from outside sources. Generally, Board members may not accept anything of value from:

- A person seeking official action from, doing business with, or conducting activities regulated by the FCA, or
- A person whose interests may be substantially affected by the performance or nonperformance of our official duties.

Such persons are *prohibited sources.* (*See* Executive Order 12674, as amended; 5 U.S.C. 7353; and 5 CFR part 2635, the Executive Branch-wide standards of ethical conduct issued by the Office of Government Ethics.) An organization is also a *prohibited source* if more than half of its members are *prohibited sources.*

The gift rule under the standards of ethical conduct and the Agency's gift acceptance authority at 31 U.S.C. 1353 outline the limited circumstances in which government officials may accept gifts and the payment of travel expenses from outside sources. Unless an exception applies, ethics rules prevent Board members from accepting gifts offered because of their official positions. Under no circumstances may Board members accept anything of value in return for being influenced in the performance of an official act. The aim of these rules is to prevent an actual conflict of interest or the appearance of a conflict and to uphold public confidence in the integrity of the Government and the Agency.

Except as noted above, third parties may not pay for official Agency expenditures. Because the Agency is responsible for the cost of conducting official business, Board members will ensure that the Agency is billed directly for travel expenses whenever possible (for example, by using a Government issued credit card for travel expenses). On those occasions when direct Agency payment is impossible or impractical (for example, a large group business dinner arranged and paid for in advance by the organizer), Board members will promptly notify the Agency of the obligation and ensure that the payer is promptly reimbursed. Board Members

recognize that it is important not to create the impression that a third party, particularly a prohibited source, is paying for their expenses.

**Travel**

*Transportation*

Board members will use less than first-class accommodations for all modes of transportation except in circumstances where:

1. A Board member must use first-class accommodations because no other space accommodations are reasonably available or where other practical considerations exist (such as to accommodate a disability or other special need);
2. Exceptional security circumstances require it;
3. The conduct of Agency business requires it; or
4. A Board member receives first-class travel benefits on an unsolicited basis from a carrier (such as free first-class coupons) and the benefit cannot be used by the Agency either in the present or the future, cannot be redeemed for cash value, and does not require the redemption of official miles. Under these circumstances, Board members can use the first-class benefit for either official or personal travel.

Board members will use a commercial charter flight at Agency expense only when no commercially scheduled flights are available in time to meet the requirements of the travel or when the charter flight would be more economical than a commercial flight. Board members will avoid the use of private aircraft whenever possible and use them only where commercial or charter flights are not reasonably available or would impose undue hardships. When reporting travel expenses, Board members must adequately justify the use of a commercial charter flight, private aircraft, or first-class accommodations.

*Lodging*

When available and practical, Board members will book lodging at the Government rate or another available reduced rate at hotels and motels. When attending a convention, meeting, or other official activity, Board members will ordinarily obtain lodging at the hotel or motel holding the activity even if reduced rates are available elsewhere. Board members may also book more than one room when necessary for the conduct of official business on the premises.

The Agency will not ordinarily reimburse Board members for lodging in the metropolitan Washington, DC, area. However, lodging may be necessary to take full advantage of a conference.

*Other Expenses for Official Activities*

The FCA will reimburse Board members for the usual and reasonable expenses incurred as a consequence of official activities in the Washington, DC, metropolitan area and in other locations. The Agency will allow the repayment of expenses for:

1. Transportation costs;
2. Meal costs;
3. Registration fees or other fees assessed for attendance or participation;
4. The cost of miscellaneous supplies needed to participate in a particular function or activity; and
5. Other costs we incur by participating in official activities.

The Agency will *not* allow reimbursement of expenses for official activity incurred on behalf of other persons, including relatives, except as provided in the Board policy on Official Function (Representation and Reception) Expenses.

*Form of Payment*

Board members will arrange for official travel using the Agency's travel management system whenever possible. Although Board members may use cash to pay for official travel expenses and seek repayment from the Agency afterwards, whenever possible, the preferred method of payment will be the use of the Government-issued credit card for all official travel expenses.

*Receipts*

When filing claims for reimbursement of travel expenses, Board members will provide receipts for expenses as normally required of other FCA employees under the Federal Travel Regulation, which currently requires receipts for all lodging and travel expenses over $75. However, failure to provide a receipt as normally required is not grounds for denial of a claim. If a receipt is not available, Board members will provide a statement explaining the nature and amount of the expense and the reason for not having a receipt.

**Combining Official Business Travel With Personal Activities**

Although it is permissible to engage in personal activities while on official travel, the purpose of the trip must always be the need to conduct official business. The Agency pays for travel and related expenses incurred in performing official business. However, the Agency may not pay for personal expenses incurred while on official travel. Therefore, it is important to record and allocate expenses carefully to ensure that official expenses are clearly differentiated from personal expenses. Proper handling of Agency expenses is always important, but particularly so when engaging in personal activities while on official Agency business.

The Board is aware that, in certain circumstances, engaging in personal activities while on official travel could create an appearance that personal activities, not official business, prompted the trip. When Board members take a trip to conduct official business, it is usually clear from the nature of the business that the trip is proper and necessary. If there are concerns that personal activities during the trip might suggest otherwise, Board members will consult the DAEO to avoid a possible appearance of impropriety. The Board understands that engaging in official travel that involves a given destination (for example, our home state) on a disproportionate basis may raise questions about whether the travel truly is necessary. Again, Board members will consult with the DAEO about such concerns.

Dated This 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Examination Philosophy**

*FCA–PS–53*

*Effective Date:* 08–JUL–11.
*Effect on Previous Action:* Responds to NV 93–04 (15–JAN–93) and Amends FCA Policy Statement 53 dated 15–JUL–93; amended by NV–11–15 (8–JUL–11).

**Source of Authority:** Sections 5.9 and 5.19 of the Farm Credit Act of 1971, as amended.

**The Farm Credit Administration (FCA or Agency) Board Hereby Adopts the Following Policy Statement**

This policy provides a general philosophy and direction for the examination and oversight of the Farm Credit System (System).

The FCA Board provides for the examination and supervision of each System institution in accordance with the Farm Credit Act of 1971, as amended (the ''Act''). The Board fulfills this responsibility primarily through the Office of Examination (OE). The FCA fulfills its supervision and examination responsibilities for Farmer Mac, a separate government-sponsored enterprise, through its Office of Secondary Market Oversight. OE develops oversight plans, conducts examinations, monitors the System's condition, current and emerging risks,

and develops supervisory strategies to ensure that the System operates in a safe and sound manner and fulfills its public policy purpose. The Act also provides that the Farm Credit System Insurance Corporation (FCSIC) Board of Directors should utilize FCA examiners to conduct examinations of System institutions, to the extent practicable.

*Oversight and Examination*

The FCA Board directs the maintenance of a ''risk-based'' approach to oversight and examination for System institutions, which maximizes OE's effectiveness and strategically addresses the System's safety and soundness and compliance with laws and regulations. The amount of examination resources devoted to a System institution and the scope of an examination will depend on an institution's ability to identify and manage its risks. Accordingly, oversight and examination efforts will be heightened and accompanied by appropriate preventive, corrective, or enforcement actions when institutions are unable or unwilling to address material unsafe and unsound practices or comply with law and regulations. This risk-based approach is critical to maintaining shareholder, investor, and public confidence in the financial strength and future viability of the System.

*Examination Staff and Communications*

The risk-based approach must promote effective communications with System institutions. Examiners are an essential communication link with System institutions through ongoing institution oversight, on-site examinations, meetings with boards and management, and written reports and correspondence. The examination program shall therefore maintain adequately trained examiners who understand the unique risks and opportunities of agriculture, maintain an appropriate level of regulatory and financial industry experience and skills, and communicate and work effectively with System institutions to ensure they remain safe and sound and able to fulfill their public policy purpose.

*Reporting to the FCA Board*

Annually, the Chief Examiner will provide the Board an annual oversight and examination plan (plan) for approval. This plan will:

- Assess the condition of and risks affecting the System at large and in specific institutions;
- Establish priorities and identify staffing, training, and budgetary needs;
- Include an examination schedule that ensures statutory requirements are met; and,
- Include operational objectives and strategies for meeting the plan.

The Chief Examiner will report semi-annually to the Board on the status of, and proposed adjustments to, the plan. The Chief Examiner will also report quarterly on the current condition of the Farm Credit System, emerging risks, and any necessary follow-up strategies.

Dated This 8th Day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Regulatory Philosophy**

*FCA–PS–59*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Originally adopted BM–17–FEB–94–02 (*see* 59 FR 32189, June 22, 1994); *see also* 60 FR 26034, May 16, 1995; amended by NV–11–15 (8–JUL–11).

**Sources of Authority:** Farm Credit Act of 1971, as amended; 12 U.S.C. 2001 *et seq.*

**The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement**

The FCA shall develop regulations consistent with its authorities under the Farm Credit Act of 1971 (Act), as amended, and other relevant statutes. It is the FCA Board's philosophy to (1) promulgate regulations that are necessary to implement the law; (2) support achievement of the Farm Credit System's (System) public mission; and (3) ensure the System's safety and soundness.

The FCA Board will strive to create an environment that promotes the confidence of customers and shareholders, investors, Congress, and the public in the System's financial strength and future viability. The FCA Board believes that safe and sound operations of System institutions will instill: (a) Investor confidence in System debt securities, which helps ensure that adequate funds are available at reasonable rates; and, (b) shareholder/member confidence in each cooperatively owned System institution by ensuring that sufficient financial resources are maintained to support an adequate supply of credit and other services to its shareholders/members in both good and bad times.

FCA will give high priority to issues that enable the System to more effectively accomplish its mission and to those issues that pose significant risks to the successful operation of the System, with the intent of ensuring an adequate and flexible flow of money into rural areas. As such, the FCA Board intends to provide System institutions with the flexibility consistent with changes in law, agriculture, and rural America so institutions can offer high quality, reasonably priced credit and related services to farmers, ranchers, their cooperatives, rural residents, and other entities upon which farming operations are dependent.

The strategies for accomplishing the Board's regulatory philosophy are as follows:

1. We will develop regulations based on a reasoned determination that benefits of any proposed regulation justify its cost.

2. We will focus our regulatory efforts on issues that address identified risks in System institutions or enhance the ability of System institutions to better meet the needs of agriculture and rural America. Preambles to regulations will explain the rationale for the regulatory approach adopted.

3. We will utilize diverse approaches to encourage public participation in the development and review of regulatory proposals in appropriate circumstances.

4. We will emphasize the cooperative principles of a farmer-owned Government-sponsored enterprise by advancing regulatory proposals that encourage farmer- and rancher-borrowers to participate in the management, control, and ownership of their institutions.

5. We will work to eliminate unnecessary regulations that impair the ability of the System to accomplish its mission to serve agriculture and rural America and any regulations that are unduly burdensome, costly, or not based on the law.

The details of how the FCA will implement these strategies will be described in the Agency's Five-Year Strategic and Annual Performance Plans and in its Unified Agenda.

Semi-annually, the Director of the Office of Regulatory Policy (ORP) will provide the Board a proposed Unified Agenda for approval. The Unified Agenda will describe the regulatory projects the Agency plans to work on during the next 12 month period and apply the principles and strategies reflected in this policy. Quarterly, the ORP Director will report to the Board on the status of, and proposed adjustments to, regulatory projects scheduled on the Unified Agenda.

Dated this 8th Day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Equal Employment Opportunity Programs and Diversity**

*FCA–PS–62*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Updates FCA–PS–62 [BM–13–JUL–06–03] (71 FR 46481, 8/14/2006) 7–13–06; amended by NV–11–15 (08–JUL–11).

**Sources of Authority:** Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*); Age Discrimination in Employment Act (29 U.S.C. 621 *et seq.*); Rehabilitation Act of 1973, as amended (29 U.S.C. 721 *et seq.*); Equal Pay Act of 1974 (29 U.S.C. 206(d)); Civil Service Reform Act of 1978 (5 U.S.C. 3112); Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (NO FEAR Act) (5 U.S.C. 2301); Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff *et seq.*);); section 5.9 of the Farm Credit Act of 1971, as amended (12 U.S.C. 2243); Executive Order 11478 (Equal Employment Opportunity in the Federal Government), as amended by Executive Orders 13087 and 13152 to include prohibitions on discrimination based on sexual orientation and status as a parent; Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency); 29 CFR part 1614; Equal Employment Opportunity Commission Management Directives.

**Purpose**

The Farm Credit Administration (FCA or Agency) Board reaffirms its commitment to Equal Employment Opportunity (EEO) and Diversity (EEOD) and its belief that all FCA employees should be treated with dignity and respect. The Board also provides guidance to Agency management and staff for deciding and taking action in these critical areas.

**Importance**

Unquestionably, the employees who comprise the FCA are its most important resource. The Board fully recognizes that the Agency draws its strength from the dedication, experience, and diversity of its employees. The Board is firmly committed to taking whatever steps are needed to protect the rights of its staff and to carrying out programs that foster the development of each employee's potential. We believe an investment in efforts that strongly promote EEOD will prevent the conflict and the high costs of correction for taking no, or inadequate, action in these areas.

**The Farm Credit Administration (FCA) Board Adopts the Following Policy Statement**

It is the policy of the FCA to prohibit discrimination in Agency policies, program practices, and operations. Employees, applicants for employment, and members of the public who seek to take part in FCA programs, activities, and services will be treated fairly. FCA, under the appropriate laws and regulations, will:

- Ensure equal employment opportunity based on merit and qualification, without discrimination because of race, color, religion, sex, age, national origin, disability, sexual orientation, status as a parent, genetic information, or participation in discrimination or harassment complaint proceedings;
- Provide for the prompt and fair consideration of complaints of discrimination;
- Make reasonable accommodations for qualified applicants for employment and employees with physical or mental disabilities under law;
- Provide an environment free from harassment to all employees;
- Create and maintain an organizational culture that recognizes, values, and supports employee and public diversity and inclusion;
- Develop objectives within the Agency's operation and strategic planning process to meet the goals of EEOD and this policy;
- Implement affirmative programs to carry out this policy within the Agency; and
- To the extent practicable, seek to encourage the Farm Credit System to continue its efforts to promote and increase diversity.

**Diversity and Inclusion**

The FCA intends to be a model employer. That is, as far as possible, FCA will build and maintain a workforce that reflects the rich diversity of individual differences evident throughout this Nation. The Board views individual differences as complementary and believes these differences enrich our organization. When individual differences are respected, recognized, and valued, diversity becomes a powerful force that can contribute to achieving superior results. Therefore, we will create, maintain, and continuously improve on an organizational culture that fully recognizes, values, and supports employee diversity. The Board is committed to promoting and supporting an inclusive environment that provides to all employees, individually and collectively, the chance to work to their full potential in the pursuit of the Agency's mission. We will provide everyone the opportunity to develop to his or her fullest potential. When a barrier to someone achieving this goal exists, we will strive to remove this barrier.

**Affirmative Employment**

The Board reaffirms its commitment to ensuring FCA conducts all of its employment practices in a nondiscriminatory manner. The Board expects full cooperation and support from everyone associated with recruitment, selection, development, and promotion to ensure such actions are free of discrimination. All employees will be evaluated on their EEOD achievements as part of their overall job performance. Though staff commitment is important, the role of supervisors is paramount to success. Agency supervisors must be coaches and are responsible for helping all employees develop their talents and give their best efforts in contributing to the mission of the FCA.

**Workplace Harassment**

It is the policy of the FCA to provide a work environment free from unlawful discrimination in any form, and to protect all employees from any form of harassment, either physical or verbal. The FCA will not tolerate harassment in the workplace for any reason. The FCA also will not tolerate retaliation against any employee for reporting harassment or for aiding in any inquiry about reporting harassment.

**Disabled Veterans Affirmative Action Program (DVAAP)**

A disabled veteran is defined as someone who is entitled to compensation under the laws administered by the Veterans Administration or someone who was discharged or released from active duty because of a service-connected disability.

The FCA is committed to increasing the representation of disabled veterans within its organization. Our Nation owes a debt to those veterans who served their country, especially those who were disabled because of service. To honor these disabled veterans, the FCA shall place emphasis on making vacancies known to and providing opportunities for employing disabled veterans.

**Responsibilities**

The Chairman and Chief Executive Officer (CEO) is ultimately responsible for developing and carrying out all EEOD requirements and initiatives in accordance with laws and regulations to fulfill diversity initiatives in approved program plans.

To help in fulfilling these responsibilities the CEO, or designee, will fill the following positions:

- EEO Director and, as appropriate, EEO Coordinator(s);
- Special Emphasis Program Managers required by law or regulation;
- EEO Counselors; and
- EEO Investigators.

Persons in these positions will perform their duties as specified by the CEO or designee and as required by law or regulation. The Head of each Agency office will make such persons available upon request from the EEO Director.

The CEO or EEO Director may also establish standing committees to deal with specific issues as they arise.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

## Rules for the Transaction of Business of the Farm Credit Administration Board

*FCA–PS–64*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Originally adopted by NV–94–05 (07–FEB–94)[FCA–PS–58]; corrected by memo 09–FEB–94; amended by NV–95–03 (13–JAN–95)[FCA–PS–64]; amended by NV–95–18 (20–MAR–95); amended by NV–95–46 (9–AUG–95); amended by BM–24–OCT–95–02; amended by NV–95–69 (02–JAN–96). *See also* 58 FR 6633, Feb. 1, 1993 and 59 FR 17537, Apr. 13, 1994; reaffirmed by NV–96–22 (30–MAY–96); amended by NV–96–36 (26–AUG–96); amended by NV–98–16 (8–MAY–98); amended by NV–99–09 (16–MAR–99); amended by NV–99–25 (24–SEP–99); amended by NV–11–15 (8–JUL–11).

**Source of Authority:** Sections 5.8, 5.9, 5.10, 5.11 and 5.17 of the Farm Credit Act of 1971, as amended.

## The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement

*Rules for the Transaction of Business of the Farm Credit Administration Board*

Purpose, Scope, and Definitions

*Section 1. Purpose and Scope.* These Rules adopted under § 5.8(c) of the Farm Credit Act of 1971, as amended (Act), concerning the transaction of business of the Farm Credit Administration (FCA) Board (Board) supplement the statutes and regulations that govern the procedures and practice of the Board (including, without limitation, the Act, the Sunshine Act, and FCA regulations, 12 CFR 600 *et seq.*). Unless otherwise provided in these Rules, or relevant statutes or regulations, this Board will transact its business in accordance with Robert's Rules of Order (Newly Revised) (most recent edition).

*Section 2. Definitions, Reporting Relationships, and Performance Appraisals.*

- ''Act'' means the Farm Credit Act of 1971, as amended.
- ''Board Member'' means each of the three individuals appointed by the President, by and with the advice and consent of the Senate, to serve as Members of the Board, including the Chairman, unless the context requires otherwise. Each Board Member appraises the performance of his or her staff.
- ''Board Member Staff'' means those employees reporting directly to a Board member such as executive or special assistants, and who are organizationally located within the Office of the Board.
- ''Chairman'' means the Board Member designated by the President to serve as Chairman of the Board. The Chairman also serves as the Agency's Head and Chief Executive Officer (CEO). After consultation with the other Board Members, the Chairman appraises the performance of the Secretary, Equal Employment Opportunity Director, Designated Agency Ethics Official, Chief Operating Officer, and all Office Directors reporting directly to him or her.
- ''Designated Agency Ethics Official'' (DAEO) means an employee of the FCA designated by the Head of the Agency to administer the provisions of Title I of the Ethics in Government Act of 1978, to coordinate and manage the Agency's ethics program, and to provide liaison with the Office of Government Ethics on all aspects of FCA's ethics program. The DAEO reports directly to the Chairman on the Agency's ethics program.
- ''Equal Employment Opportunity (EEO) Director'' means an employee of the FCA designated by the Head of the Agency to administer the provisions of the Agency's EEO program as set forth in 29 CFR part 1614.
- ''General Counsel'' (GC) means an employee of the FCA who serves as the chief legal officer of the Board. The GC reports to the Chairman concerning administrative matters and to the FCA Board on matters of Agency policy. By the nature of the position the GC, as appropriate and necessary, maintains special advisory relationships in confidence with the individual Board Members. The GC must also keep the FCA Board fully informed of all litigation in which the Agency is involved.
- ''Inspector General'' (IG) means an appointed head of the Office of Inspector General (OIG), an independent component of the FCA, established by and responsible for adhering to the IG Act of 1978, as amended. The purpose of the IG is to promote economy, efficiency and effectiveness, and to prevent and detect fraud and abuse in the programs and operations of FCA.
- ''Office Director'' means an employee of the FCA serving as head of an FCA Office, excluding the Inspector General unless specified.
- ''Secretary'' means an employee of the FCA who serves as Secretary to the Board as appointed by the Chairman. The Secretary, or another FCA employee designated by the Chairman, serves as the parliamentarian for the Board. The Secretary keeps permanent and complete records and minutes of the acts and proceedings of the Board.
- ''Sunshine Act'' means the Government in the Sunshine Act, 5 U.S.C. 552b.

### Amendments

*Section 1.* The business of the Board will be transacted in accordance with these Rules, which may be amended from time to time: Provided, however, that upon agreement of at least two Board Members convened in a duly called meeting, the Rules may be waived in any particular instance, except that action may be taken on items at a Special Meeting only in accordance with part I, Article I, § 3(b) of this policy.

*Section 2.* These Rules may be changed or amended by the concurring vote of at least two Board Members upon notice of the proposed change or amendments having been given at least thirty days before such vote.

*Section 3.* These Rules will be reviewed by the Board at least every five years or as needed.

*Section 4.* The Secretary to the Board is hereby delegated authority to make technical, syntactical, and grammatical changes to any Board Policy, provided a redlined complete copy of the policy(ies) is given to each Board member that clearly details each change made at least 30 days prior to the effective date of the change. Any Board member may, within the 30 day period, stop the proposed changes(s) and, if a Board member so desires, put forth the matter for Board consideration.

### Part I—Rules for the FCA Board Meetings

Article I. Board Meetings.
Article II. Board Action.
Article III. Board and Chairman Delegations.

**Article I**

*Board Meetings*

*Section 1. Sunshine Act.* All FCA Board meetings will be announced and conducted in conformance with the Government in the Sunshine Act.

*Section 2. Presiding Officer.* The Chairman will preside at each meeting. In the event the Chairman is unavailable, the other Board Member from the Chairman's political party will preside. If there is no other Board Member from the Chairman's political party, the Board Member serving the longest on the Board will preside.

*Section 3. Calls and Agenda.*

(a) *Regular Meeting.* The Secretary, at the direction of the Chairman, issues a call for items for the agenda to the other Board Members and the Office Directors of FCA. The Secretary provides to the Chairman a list of all the items submitted, including a list of outstanding notational votes and matters voted ''not appropriate for notational vote.'' The Chairman then establishes the agenda to be posted on the Agency's public notice board or on its public Web site at least 1 week before the meeting. The agenda will also be published in the **Federal Register** at least 3 calendar days before the meeting date. At each meeting, the Board votes to approve or amend the agenda established by the Chairman. The Board may amend the agenda to add items that the Board Members believe need to be considered at that meeting.

(b) *Special Meeting.* Special meetings of the Board may be called:

(1) By the Chairman; or

(2) By the other two Board Members; or

(3) If there is at the time a vacancy on the Board, by a single Board Member.

Any call for a Special Meeting will specify the business to be transacted and state the place and time of such meeting. No business will be brought before a Special Meeting that has not been specified in the notice of call of such meeting without the unanimous consent of all Board Members.

(c) *Notice.* The Secretary will give appropriate notice of any and all meetings and make the call for Special meetings. Reasonable efforts to provide such notice to Board Members will be made for all meetings of the Board, but failure of notice will in no case invalidate a meeting or any action taken during that meeting.

*Section 4. Board Materials.* The Secretary will distribute complete Board Meeting Books to each Board Member and their staff at least three full business days before any Regular Meeting. There may be instances when the proposed Board meeting agenda approved by the Chairman may need to be amended prior to a Board meeting to include items that require Board action. In such instances the Secretary will update the Board meeting books with the newly approved item(s) and make the required Sunshine Act disclosures and notices as soon as possible. However, unless agreed to by all Board Members, no vote may be taken on an issue unless the necessary material has been provided to the Board Members not less than twenty-four hours before the meeting to consider such issue.

*Section 5. Supporting Documentation.* The Secretary will maintain one copy of all Board Meeting Book material. All copies of the Board Meeting Book material for Closed Sessions provided to anyone other than the Secretary will be returned to the Secretary for disposal or maintained in a secure location approved by the Secretary. One copy of each Executive Summary provided to a Board Member will be provided to and maintained by the Secretary. Board Meeting Books and Executive Summaries are not part of the minutes of the Board unless expressly incorporated therein.

*Section 6. Telephone Conference.* Any Board Member, including the Chairman, may participate in a meeting of the Board through the use of conference call telephone or similar equipment, provided that all persons participating in the meeting can simultaneously speak to and hear each other. Any Board Member so participating will be deemed present at the meeting for all purposes.

*Section 7. Public Attendance.*

(a) *Attendance.* Members of the public may attend all meetings of the Board except those meetings or portions of meetings that are closed as directed by the Board, consistent with the Sunshine Act.

(b) *Public Appearances before the Board.* While members of the public are invited and encouraged to attend Board meetings, no member of the public has a right to speak in a Board meeting. However, the Board may, in its sole discretion, permit a member of the public to address the Board if he or she provides a written request and statement covering the intended subject matter at least fifteen days before the meeting.

*Section 8. Minutes.*

(a) *Format.* The format of minutes of the Board meetings, unless otherwise stated in these rules or relevant statutes or regulations, will comply with the most recent edition of Robert's Rules of Order and the Sunshine Act. The minutes will clearly identify the date, time, and place of the meeting, the type of meeting held, whether the meeting was open or closed, the identity of Board Members present and, where applicable, that they participated by telephone, and the identity of the Secretary and the GC in attendance, or, in their absence, the names of the persons who substituted for them. The minutes will contain a separate paragraph for each subject matter and will note all main motions or motions to bring a main motion before the Board, except any that were withdrawn. The minutes will not contain any reference to statements made unless a request is specifically made that a statement be made a part of the minutes, or if required by the Sunshine Act. The minutes of meetings will indicate the substance and disposition of any notational votes completed since the last meeting. Except in the case of a voice vote, the Secretary will record the vote of each Board Member on a question or will note a unanimous consent. The Chairman and the Secretary will sign the minutes of the Board meeting, indicating the date of approval by the Board.

(b) *Circulation.* The Chairman and GC will review draft minutes. The Secretary will circulate draft minutes to all Board Members at least one week before their consideration at a Board Meeting. The Secretary will place in all Board Meeting Books copies of the minutes of the meetings of the Board to be voted on at a Board Meeting.

**Article II**

*Board Action*

*Section 1. Affirmative Vote Required.* Action on any matter requires the affirmative vote of at least two Board Members, except as provided in Article III, § 1 of this part.

*Section 2. Records of Board Action.*

(a) *Meetings.* The vote of each Board Member, including the Chairman, on a question voted on at a meeting will be recorded in the minutes. The Chairman may, if there is no objection, call for a voice vote on adjournment or other actions. If a voice vote is taken, its result will be recorded in the minutes.

(b) *Notational Votes.* The Secretary will provide a summary of any action taken by notational vote to the Board Members and Chairman and the action taken will be reflected in the minutes of the next meeting of the Board.

*Section 3. Notational Voting.*

(a) Nothing in these Rules precludes the transaction of business by the circulation of written items (notational votes) to the Board Members.

(b) The Board may use notational voting procedures to decide any matter

that may come before it. Any Board Member may submit a motion to the Secretary for distribution as a notational vote. However, in view of the public policy of openness reflected in the Sunshine Act and the desire to allow any Board Member to present viewpoints to the other Board Members, any Board Member can veto the use of the notational voting procedure for the consideration of any particular matter by voting ''not appropriate for notational vote.''

(c) Upon submission of an item for notational vote, the Secretary will provide each Board Member a complete package of all relevant information and a notational vote ballot specifying the Board Member making the motion, the motion itself, and the deadline for return of the ballot. Within ten business days of receipt, or earlier if the motion requires, each Board Member will act on the matter by returning the ballot to the Secretary. Each Board Member is to indicate his/her position in writing on the ballot in the following manner: (1) Approve, (2) disapprove, (3) abstain, or (4) not appropriate for notational vote.

(d) No partial concurrences or amendments are permitted; however, a Board Member may suggest a revision to the proponent of the motion, subject to compliance with the Sunshine Act, and the proponent may withdraw his or her motion at any time before receipt by the Secretary of all the ballots of all Board Members or the end of the time period provided for on the ballot.

(e) A Board Member who is absent from the office may authorize a staff member to initial the ballot for him/her, provided that the Board Member has a designation memorandum on file with the Secretary.

*Section 4. Board Records.* The Secretary will maintain the records of the Board including, without limitation, the minutes of the Board meetings and notational votes.

**Article III**

*Board and Chairman Delegations*

*Section 1. Two Vacancies/Authority to Act.* In the event two Board Members are not available by reason of recusal, resignation, temporary or permanent incapacitation, or death, to perform the duties of their offices, the Board hereby delegates to the remaining Board Member the authority to exercise, in his/her discretion, the authorities of the FCA granted to the Agency or the Board by statute, regulation or otherwise, except those authorities which are non-delegable. This delegation of authority does not include authority to establish general policy and promulgate rules and regulations, or any delegation expressly prohibited by statute. This delegation will include but is not limited to the exercise of the following powers:

(a) The approval of actions of the Farm Credit System (System) institutions that are required by statute, regulations or otherwise to be approved by the FCA or its Board;

(b) The exercise of all powers of enforcement granted to the FCA by statute, including but not limited to, the authorities contained in 12 U.S.C. 2154, 2154a, 2183, 2202a, and 2261–2274; and

(c) Any actions or approvals required in connection with the conduct of a receivership or conservatorship of a System institution.

Authorities delegated by this Section may be re-delegated, in writing, at the discretion of the remaining Board Member, to other FCA officers or employees.

*Section 2. National Security Emergencies.* Pursuant to Executive Order 12656, as amended, in the event of a national security emergency, if the Chairman is unable to perform his or her duties for any reason, the Chairman, at his or her sole discretion, delegates to the following individuals, in the order mentioned and subject to being available, the authority to exercise and perform all the functions, powers, authority and duties of the Chairman in an acting capacity until such time as either the Chairman can resume his/her position or, if no longer able to serve as Chairman, the President of the United States designates a new Chairman:

(a) Member of the Board of the Chairman's political party;

(b) If there is no other Board Member from the Chairman's political party, the Board Member serving the longest on the Board;

(c) General Counsel.

The Chairman or Acting Chairman will ensure that FCA has an alternative location for its headquarters functions in the event a national security emergency renders FCA's headquarters inoperative. The Chairman or Acting Chairman may establish such branch office or offices of the FCA as are necessary to coordinate its operations with those of other government agencies.

*Section 3. Individual Assignments.* To the extent consistent with law, the Board or the Chairman may offer another Member of the Board a special assignment and define the duties incident thereto, and the Chairman may delegate to another Board Member certain duties and responsibilities of the Chairman.

*Section 4. Other Delegations.* The FCA Board may delegate such authorities as it deems necessary and appropriate. Such delegations are included in Attachments A and B to this policy.

**Part II—Board and Staff Governance**

Article I. Board Governance.
Article II. Staff Governance.

**Article I**

*Board Governance*

*Section 1. General.* The purpose of this part is to ensure the efficient operation of the FCA in light of the various authorities and operational responsibilities of Board and the FCA Chairman and CEO.

The Board recognizes that for the Agency to run efficiently, the Chairman/CEO must have sufficient latitude and discretion to direct the implementation of Board policies and run the Agency's day-to-day affairs. Notwithstanding such latitude, the other Board Members must have access to staff and must be able to request information from staff that they find necessary to fulfill their policy- and rulemaking responsibilities under the Act.

The Chairman/CEO is always free to bring to the Board issues that do not require Board action. Conversely, the Board may involve itself in operational matters ordinarily reserved for the Chairman/CEO if it concludes that they rise to the level of policy due to their sensitivity, seriousness, or controversial nature.

*Section 2. Board Authorities.* The Board, acting as a unit, must manage, administer, and establish policies for the FCA. The Board specifically approves the rules and regulations implementing the Act; provides for the examination, enforcement, and regulation of System institutions; provides for the performance of all the powers, functions, and duties vested in the FCA; and requires any reports deemed necessary from System institutions. The Board also adopts the FCA seal. Each Board Member has the authority to appoint and direct regular, full-time staff in his or her immediate office.

*Section 3. Chairman Authorities.* The Chairman, in carrying out his or her responsibilities, is governed by the general policies adopted by the Board and by such regulatory decisions, findings, and policy determinations as the Board may by law be authorized to make.

The Chairman, in carrying out policies as directed by the Board, acts as spokesperson for the Board and represents the Board and the FCA in official relations within the Federal

Government. Under policies adopted by the Board, the Chairman must consult on a regular basis with the Secretary of the Treasury concerning the exercise of the System's powers under § 4.2 of the Act; the Board of Governors of the Federal Reserve System concerning the effect of System lending activities on national monetary policy; and the Secretary of Agriculture concerning the effect of System policies on farmer, ranchers, and the agricultural economy. As to third persons, all acts of the Chairman will be conclusively presumed to be in compliance with general policies and regulatory decisions, findings, and determinations of the Board.

The Chairman enforces the rules, regulations, and orders of the Board. The Chairman designates attorneys to represent the Agency in any civil proceeding or civil action brought in connection with the administration of conservatorships and receiverships and in civil proceedings or civil actions when so authorized by the Attorney General under provisions of title 28 of the United States Code. The Chairman, subject to the approval of the Board, may establish one or more advisory committees in accordance with the Federal Advisory Committee Act.

The Chairman may not delegate any of the foregoing powers without prior Board approval.

The Chairman also exercises those powers conferred on the Head of the Agency, including the power to make certain designations.

*Section 4. CEO Authorities.* The Chairman of the FCA Board is also the Agency's CEO. The CEO, in carrying out his or her responsibilities, directs the implementation of policies and regulations adopted by the Board and, after consultation with the Board, executes the administrative functions and duties of the FCA.

''Consultation with the Board'' is achieved when the Chairman/CEO makes a good faith attempt to seek advice, guidance, and input from the Board before taking significant action on matters related to the execution of administrative functions or duties.

The Chairman as CEO runs the day-to-day operations of the Agency. This includes the power to implement the policies and regulations adopted by the Board, appoint personnel as necessary to carry out Agency functions, set staff pay and benefits and direct staff. As provided in § 5.11(b) of the Act, the Chairman/CEO appoints heads of major administrative divisions subject to the approval of the Board. In accordance with the IG Act, the IG is appointed by the FCA Board.

The Chairman as CEO may designate to other FCA officers and employees the authority to exercise and perform those powers necessary for the day-to-day management of the Agency.

**Article II**

*Staff Governance*

*Section 1. Authority over Staff.* The Chairman/CEO has authority to hire the personnel necessary to carry out the mission of the Agency and to direct staff, except that each Board Member is entitled to appoint and direct his or her regular, full-time staff within the constraints of the adopted budget for the Office of the Board.

Subject to the approval of the Board, the Chairman/CEO appoints and removes the ''heads of major administrative divisions.'' The Board defines the ''heads of major administrative divisions'' as all Office Directors who are career appointees. The Board must approve the conversion of an existing career position to a non-career (political) position. In accordance with the IG Act, a removal of the IG may only be made upon the written concurrence of a ⅔ majority of the FCA Board.

*Section 2. Organization Chart.* Consistent with its mandate to approve regulations and appointments outlined above, the Board approves the FCA organizational chart down through the Office level along with relevant functional statements for each Office. Authority to make organizational changes within any division rests with the Chairman/CEO, and may be delegated to the Chief Operating Officer or Office Directors. In accordance with the IG Act, the IG has personnel authority for the Office of the Inspector General.

**Part III—Board Operations**

Article I. Committee and Financial Operations, and Other Activities.
Article II. Board Member Travel and Related Expenses.

**Article I**

*Committee and Financial Operations, and Other Activities*

*Section 1. Committee Operations.* To assist the Board in exercising its authority for oversight and approval of the Strategic Plan, the formulation of regulations and policy, and the monitoring and assessment of risk, the Board directs the formation of three committees.

Each Committee Chair will be designated by the Chairman. Each committee will be comprised of the Board Members' Executive Assistants and such Agency staff as determined by the Committee Chair. The Committee Chair will designate a Coordinator with expertise in, or significant accountability for, the activities of the committee. Committees will meet as often as determined by the Committee Chair to achieve committee objectives. The Chairman may also approve the use of external consultants to assist the committees on an as-needed basis.

(a) *Strategic Planning Committee.* The objective of this committee is to provide a forum for Board input on (1) the development of, and periodic updates to, the Strategic Plan, and (2) changes in processes and procedures that will improve the quality of this key Agency document.

(b) *Regulation and Policy Development Committee.* The objective of this committee is to provide a forum to (1) obtain Board input throughout the entire process of developing, modifying, or eliminating individual regulations, (2) discuss changes in processes and procedures that will improve the Agency's regulation and policy development process, and (3) foster open discussion during the development and periodic update of the Agency's regulatory agenda.

(c) *Risk Committee.* The objective of this committee is to provide a forum to (1) facilitate Board awareness of risks to the ongoing mission fulfillment and safety and soundness of the System and Farmer Mac, (2) ensure an integrated and coordinated Agency risk analysis process that effectively uses information from a wide variety of internal and external sources, and (3) foster open discussion about risks to the System and Farmer Mac and the implications of such risks for future Agency operations.

*Section 2. Financial Operations.*

(a) *Budget Approval.* The Chairman, consistent with the provisions of the Act, other law and regulations, and applicable policy, oversees the development of budget proposals and causes the expenditure of funds within approved budgets to meet the Agency's mission and objectives. The Board approves an object class budget for the Agency as a whole and a budget for each office. Any reallocation of funds in excess of $100,000 requires FCA Board approval. Reallocation of funds of $100,000 or less requires the Chairman's approval (or that of the Chairman's designee). The Chief Financial Officer (CFO) will provide a monthly report to the Board on all budgetary reallocations that occur after the FCA Board approves a fiscal year budget. The CFO will also provide a quarterly budget report to the Board that discusses actual performance of the budgeted items. The quarterly

report may be presented during regular Board meetings or during a Board briefing.

The IG, in accordance with the IG Act, transmits a budget estimate specifying an aggregate amount for OIG operations, OIG training needs, and amounts for support of the Council of the Inspectors General on Integrity and Efficiency.

*Section 3. Other Board Operations.*

(a) *Audit Resolution Process.* The Chairman is responsible for overseeing the audit resolution process and, through a designee, for audit resolution implementation and follow-up. However, the Chairman must obtain Board approval of audit resolutions where the issue would normally require Board action. The Inspector General and Audit Follow-up Official will report to the Board the status of any unresolved audit recommendations, unimplemented management decisions, and other issues on a semiannual basis following the Inspector General's Semi-Annual Report to Congress.

(b) *Litigation.* The Chairman has authority to undertake litigation to defend the Agency, consistent with established Board policy. The Board will approve litigation where the Agency is plaintiff, will approve recommendations to the Justice Department to pursue an appeal, and will approve positions advanced in litigation that conflict with existing Board policy or establish a significant new policy. The Chairman's authority to settle certain claims against the Agency have been delegated to the GC provided the GC consults with the Chairman.

(c) *Documents and Communications.*

(1) *Approval, Review, and Consultation.* The FCA Board is responsible for determining the Agency's position on policy. Board Policy Statements should be reviewed at least every five years.

The Board must approve all documents published in the **Federal Register**, including proposed and final FCA regulations, except for notices of effective dates or technical corrections of regulations. Board approval is not necessary prior to **Federal Register** publication of Privacy Act systems notices or notices of other routine or administrative matters unless they raise policy issues requiring Board approval. Bookletters, informational memoranda, and other mass mailings to Farm Credit institutions (except documents listed in Attachment A) must be approved by the Board prior to distribution. Documents may be added to or deleted from Attachment A by Board approval.

The issuance of a ''no action'' letter is a policy matter requiring Board approval. For the purposes of this statement, a ''no action'' letter is a statement to a Farm Credit institution that, notwithstanding any other provision of law or regulation, the Board will take no action against a System institution solely because it engaged in conduct specified in the letter.

Authority to promulgate internal administrative issuances, including FCA Policies and Procedures Manual (PPM) issuances, rests with the Chairman and may be delegated to the Chief Operating Officer. The Chairman will provide the Board with final drafts of PPM issuances and other administrative issuances for an appropriate consultative period if those issuances relate to examination and supervision, audits, internal controls, the budget, the strategic planning process, regulation development, or personnel matters relating strictly to promotion or pay.

(2) *Signature Authority.* Authority to sign official Board documents, including, but not limited to, proposed and final regulations, **Federal Register** notices, no-action letters, minutes, and other Board actions is delegated to the Secretary. After any action by the Board required under paragraph (c)(1) of this section, the Chairman has the authority to sign bookletters, informational memoranda, and other mass mailings to Farm Credit institutions. This signature authority may be delegated to senior staff members.

(3) *Correspondence.* The Chairman approves and signs routine correspondence (that is, correspondence in the ordinary course of business), to members of Congress, correspondence responding to White House referrals, or other correspondence on behalf of the Board or the Agency. The Chairman may delegate approval and signature authority for such correspondence to the Chief Operating Officer or FCA Office Director when the subject matter involves congressional or White House case work. When the subject matter involves the presentation of an Agency position or policy relative to regulations, legislation, or any other significant matter, the Chairman may not delegate authority, and the correspondence must be approved by the Board, except that the Board need not approve a previously approved response or a restatement of previously adopted Board policy. Board approval does not apply when the Chairman is speaking only for him- or herself and includes the appropriate disclaimer. Likewise, on similar matters, Board Members should include appropriate disclaimers. The Chairman or the Chairman's designee has authority to sign acknowledgments or interim responses without Board approval, provided such responses contain no policy statements or only previously approved statements.

(4) *Authentication and Certification of Records and Documents.* The Chairman designates the person authorized and empowered to execute, issue and certify under the seal of the FCA:

- Statements authenticating copies of, or excerpts from official records and files of the FCA;
- Effective periods of regulations, orders, instructions, and regulatory announcements on the basis of the records of the FCA;
- Appointment, qualification, and continuance in office of any officer or employee of the FCA, or any conservator or receiver acting in accordance with the FCA receivership regulations at 12 CFR part 627 on the basis of the records of the FCA.

The Chairman may further empower the designated official(s) to sign official documents and to affix the seal of the FCA thereon for the purpose of attesting the signature of officials of the FCA.

**Article II**

*Board Member Travel and Related Expenses*

*Section 1. Pre-confirmation Travel.* Travel expenses incurred by an FCA Board nominee that are solely for the purpose of attending his or her Senate confirmation hearings will be considered the personal expense of the nominee and will not be reimbursed by FCA. However, consistent with existing Government Accountability Office interpretations, the FCA will pay for a nominee's travel expenses to the Washington, DC metropolitan area (including lodging and subsistence), if payment is approved, in advance whenever practicable, by the Chairman based on a determination that the nominee's travel is related to official business that will result in a substantial benefit to the FCA. That determination will be made on a case-by-case basis and is within the sole discretion of the Chairman. The same standards and policies that apply to the reimbursement of Board Members' travel expenses will apply to the reimbursement of nominee's expenses. As part of the documentation for the approval process, the Chairman must execute a written finding that a nominee's travel would substantially benefit the FCA.

Travel that may result in substantial benefit to the FCA could include meetings, briefings, conferences, or other similar encounters between the nominee and FCA Board Members, office directors, the Chief Operating Officer, or other senior congressional

and executive branch officials, for the purpose of developing substantive knowledge about the FCA, its role, its interaction with other Government entities, or the institutions that it regulates. Meetings or briefings of this nature may enable a nominee to more quickly and effectively assume leadership at the Agency after confirmation by the Senate and could thus substantially benefit the Agency.

*Section 2. Board Member Relocation.* Notwithstanding the provisions of § 5.8(d) of the Act, Board Members will be reimbursed by FCA for travel and transportation expenses incurred in connection with relocation to their first official duty station in accordance with the provisions of the Federal Travel Regulations (FTR). Board Members will be issued a specific prior written authorization by the Chief Human Capital Officer detailing the expenses that may be reimbursed under the current FTR.

*Section 3. Representation and Reception Fund.* Section 5.15(a) of the Act allows the payment of FCA funds for official representation and reception expenses. Expenses incurred from official functions may be paid for with funds from the Representation and Reception (R&R) Fund only under this policy statement and decisions from the Department of Justice or guidance from the Comptroller General of the United States (Comptroller General).

''Official functions'' include meetings and other contacts with the public to explain or further the Agency's mission and typically are activities of the FCA Board, individual Board Members, or other FCA officials acting for the Board. For example, while extending official courtesies to the public on occasions associated with the mission of the Agency, FCA staff may use the R&R Fund to cover catering services, rental of facilities, receptions, coffee, snacks, refreshments, supplies, services and tips.

Consistent with opinions of the Comptroller General, the FCA Board has determined, as a matter of policy, that it will not permit the R&R Fund to be used for events or functions in which attendance is restricted to Agency employees.

Similarly, the R&R Fund may not be used for activities relating solely to ''personal entertainment'' (interpreted by the Comptroller General to include attendance at a sporting event or concert, for example) or for personal favors, even if the entertainment is enjoyed with, or is a favor given to, members of the public, such as Farm Credit System representatives.

The FCA Board has determined, as a matter of policy, that the R&R Fund shall be a fund of last resort and shall not be used for expenses that can properly be classified as another type of Agency expense.

The FCA Board will decide how much to budget for the R&R Fund. The FCA Board will approve any amount available for R&R expenses for the Chairman and each Board Member, and an amount available for general R&R expenses. The amount approved for use by the Chairman and each Board Member will be maintained in their budget code. The amount approved for general R&R will be maintained in a separate budget class code by the Secretary.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Attachment A**

**FCA Communications**

*Part 1—Mass Communications That Do Not Require Review by the FCA Board Prior to Distribution to Farm Credit System Institutions*

1. Issuances or revisions to:

• The FCA Examination Manual, examination criteria, and examination procedures;

• The FCA Uniform Call Report instructions;

• Examination plans and general guidance provided to examiners, except those relating to Agency positions not previously approved by the Board.

2. Requests for information on:

• Call Reports, LARS, or similar data requests;

• Young, beginning, and small farmers and ranchers reports;

• Other reports as required by statute or determined necessary by the Board (consistent with Board instruction).

3. Information that is being provided on:

• Fraudulent activities;

• Removals/suspensions/prohibitions;

• Other related activities.

4. Documents that have been issued by other Federal agencies including regulations, official staff commentary on regulations, and forms;

5. FCA Handbook updates;

6. Annual Report of Assessments and Expenses under 12 CFR 607.11;

7. Office of Inspector General mailings for official purposes;

8. Vacancy Announcements;

9. PPM mailings.

*Part 2—Mass Communications That Contain the Following Matters Require Review by the FCA Board Prior to Distribution to Farm Credit System Institutions*

1. Agency policy;

2. Agency legal interpretations;

3. Substantive Agency positions on examination, corporate or accounting;

4. No-action positions;

5. Any communication listed in part 1 containing any of the matters listed in part 2 would also require review by the FCA Board prior to distribution.

**Attachment B**

**Delegations**

1. The FCA Board delegates to the Chairman the authority to:

a. Sign letters notifying the Chairman of the Boards of Farm Credit System institutions of final approval for *any* approved corporate application, after all conditions for final approval have been met and in accordance with applicable procedures;

b. Execute and issue under the FCA seal the new charter or charter amendment document for such institutions; and

c. Sign certificates of charter after new charters and charter amendments are executed.

The Chairman may re-delegate the authority in item ''a'' to other FCA officers or employees as needed.

2. The FCA Board delegates to the Chairman the authority to approve (preliminary and final) corporate applications from associations requesting to merge or consolidate provided the applications are deemed noncomplex, noncontroversial, and low risk. Applications for mergers or consolidations approved under authority of § 7.8 of the Act will be considered noncomplex, noncontroversial, and low risk if they meet all of the following criteria:

a. The applicant association(s) has a current FIRS rating of 1, 2, or 3 (with no 3-rated association having a formal enforcement action);

b. The continuing or resulting association(s) has a gross loan volume of $500 million or less;

c. The application(s) is consistent with the Act and regulations governing its approval, and

d. There are no policy or precedent-setting decisions embedded in the request.

3. The FCA Board delegates to the Chairman the authority to approve, execute, and issue under the seal of the FCA, amendments to charters requested by Farm Credit associations, limited to name changes and/or headquarters

relocations. The Chairman may redelegate this authority to other FCA officers or employees. However, all official charters or charter amendments must be signed by the Chairman and the Secretary and may not be delegated to other staff.

**Release of Consolidated Reporting System Information**

*FCA–PS–65*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* None. *See* 60 FR 15921, Mar. 28, 1995; amended by NV–11–15 (08–JUL–11).

**Source of Authority:** 12 CFR part 621, subpart D; Freedom of Information Act, 5 U.S.C. 552; 12 CFR part 602; OMB Circular A–130 (Nov. 28, 2000).

**The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement**

*Purpose:* The FCA Board has adopted a policy to disclose reports of condition and performance (Call Reports) and any subsequent reports containing nonexempt information that are produced from the FCA's Consolidated Reporting System (CRS) [hereinafter nonexempt CRS reports]. For purposes of this policy, nonexempt CRS reports are defined as reports produced from the CRS containing information that has been routinely disclosed in Farm Credit System (System) institutions' quarterly and annual financial reports and filed with the FCA.

The nonexempt CRS reports include the Uniform Performance Report (UPR), Uniform Peer Performance Report (UPPR), Six-Quarter Trend Report, Six-Year Trend Report, and Institution Comparison Report. Under this policy, the Call Reports and subsequent reports for the institution that submitted the information will be available to that institution on the FCA Web site approximately 35 days after the end of a quarter or a fiscal year.

*Objectives:* The FCA facilitates the competitive delivery of financial services to agriculture while protecting the public, the taxpayer, and the investor. Consistent with that mission, the FCA endeavors to provide information to System institutions and to the public. Call Reports and other nonexempt CRS reports contain information of value to the Agency, the System, and the public that enables an evaluation of the financial condition of a System institution in comparison to its peers. This information will provide institutions with a succinct assessment of performance, in addition to that provided in the examination process. The FCA believes that implementation of this policy statement will enhance the FCA's information management activities in an efficient, effective, and economical manner consistent with OMB Circular A–130.

*Operating Principles:* Certain information reported to the Agency in compliance with Call Report instructions and not routinely disclosed by an institution, such as asset and liability repricing schedules or loan specific data, will continue to be exempt from disclosure and the FCA will not make it available under this policy statement.

*Availability of Reports:* All nonexempt CRS reports will be available within 45 days after the end of a quarter or a fiscal year free of charge on the FCA Web site.

The FCA often receives special requests for new reports containing nonexempt CRS information not produced from the CRS. Consistent with the Freedom of Information Act, the FCA will grant such special requests when the record is readily reproducible with reasonable efforts. We will assess fees to recover the direct costs of complying with the request, including the cost of collecting, processing, and disseminating the information. The FCA may grant a request for a fee waiver to an educational institution, a researcher, a governmental agency, a newspaper, and others, when the benefit derived from releasing the information exceeds the waived fee. Requests should be directed to the Office of Management Services.

*Delegated Authority:* The Director, Office of Management Services, in concurrence with the Director, Office of Examination, and the General Counsel, is responsible for implementing this policy statement, developing operating procedures, and assessing requests for fee waivers. Any of these responsibilities may be re-delegated to appropriate staff in their respective offices.

*Reporting Requirements:* The Director, Office of Management Services, shall report annually to the Chief Executive Officer on the number of special requests for new reports containing nonexempt CRS information and fees received.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**FCS Building Association Management Operations Policies and Practices**

*FCA–PS–68*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Amends NV–95–40, FCA–PS–68–7–JUL–95; amended by NV–11–15 (08–JUL–11).

**Source of Authority:** Farm Credit Act of 1971, as amended (Act), and the FCS Building Association (FCSBA) Articles of Association and Bylaws.

**The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement**

The FCSBA was established to provide the facilities and related services for the FCA and its field offices. The FCSBA is owned by the banks of the Farm Credit System (banks) and is funded by assessments, rental income from commercial tenants, and other income. The original ownership interest of each bank was based on the bank's assets as a percentage of total Farm Credit System (FCS) assets on June 30, 1981. The FCSBA owns and operates the FCA headquarters in McLean, Virginia, and holds the leases and provides certain services and furnishings for FCA field offices. The FCA Board has sole discretionary authority under section 5.16 of the Act to approve the plans and decisions for such building and facilities. In order to carry out this authority and to preserve the FCA's arms-length relationship with the banks, the Articles of Association and Bylaws of the FCSBA grant the FCA Board the responsibility to oversee the affairs of the FCSBA.

The purpose of this policy statement is to outline general parameters and policies for various operational practices of the FCSBA that are supplementary to the FCSBA Bylaws.

**A. FCA Board Responsibilities**

*Board Responsibilities.* As outlined further in this policy statement, the FCA Board is responsible for items including, but not limited to, approval of all budgets and subsequent changes in object class limitations, signature authorities for financial expenditures, and long-term investment decisions. The FCA Board concurs in the development of performance standards, goals and pay scales for the FCSBA President as provided by the FCA Chairman and Chief Executive Officer (Chairman). Additionally, all contracts in excess of $150,000 per year, or those that cover the selection of outside auditors, property management services or the commission of special studies *with a cost in excess of $5,000* that were not approved during the annual budget process require *the approval of the FCA Board.*

*Chairman's Responsibilities.* The Chairman shall be responsible for

coordinating the FCA Board's involvement in, and responsibilities for, the operation of the FCSBA, including: (1) Developing performance standards and pay scales for the President of the FCSBA and appraising the President's performance with the concurrence of other FCA Board Members, (2) reviewing periodic financial and operating reports, (3) providing procedures as necessary concerning the FCA staff's relationship with the FCSBA, and (4) reviewing such other matters as the Chairman may deem advisable for the purpose of bringing such matters to the attention of the FCA Board. The Chairman may delegate these responsibilities to one or more FCA staff, as he or she deems advisable, except those responsibilities related to pay and performance.

**B. FCSBA President**

*General Signature Authority.* As required by Article V, Section 2 of the FCSBA Bylaws, in addition to member certificates, the FCA Board authorizes the FCSBA President to sign general correspondence and contracts deemed necessary for the administration of FCSBA activities. The FCSBA President must get Board approval before changing the signatory authority for checks and before changing any banks with which the FCSBA does business.

*Duties.* The FCSBA President reports to the FCA Board and is generally responsible within the context of governing policies for all activities necessary to: (1) Manage FCSBA support to FCA, (2) manage the assets of the FCSBA, and (3) understand and consider the interests of the banks. Specific responsibilities include budget preparation and execution; planning; financial reporting and control; preparation of quarterly cash flow reports; supervision of inventory and supporting schedules for all fixed assets (furniture, fixtures and equipment); maintenance of management objectives schedules; supervision of the telecommunications system; the purchase and contracting for all supplies and services; records management; necessary correspondence; public relations activities in consultation with the FCA Office of Congressional and Public Affairs; personnel supervision and evaluation; the leasing and management of all space in the Farm Credit Building; site selection and lease negotiation for all FCA Field Offices; investment management; preparation and administration of all policies and operating procedures; engineering oversight; construction management; and preparation of all monthly, quarterly and annual reports required by the FCA Board. The FCSBA President shall coordinate these activities with the FCA Liaison as appropriate or required.

*Standard Operating Procedures.* In addition to those duties outlined under Article V, Section 2, of the FCSBA Bylaws and this Policy Statement, the FCSBA President is authorized to issue Standard Operating Procedures (SOPs), as he or she deems appropriate, in an effort to carry out the mission of the FCSBA provided that each SOP is reviewed by the FCA Board in advance. The President shall maintain all SOPs in a manner that reflects current policies and practices. SOPs will be filed with the Secretary to the Board, the FCSBA and others as requested.

*Periodic Reports.* The FCSBA President shall submit such periodic reports and proposals to the FCA Board and Liaison as may be necessary to facilitate budgets, assessments, audits, finances, plans, investments, reserve policy and accounting procedures that support the needs of the FCA Board and the banks as owners of the FCSBA. The FCSBA President shall normally report to the FCA Board at least quarterly. At a minimum, the report shall include:

1. A cash statement of operations, an explanation of budget variances, and month-to-date cash reconciliation report. This report will include specific notations of any expected reallocations of funds requiring Board approval.
2. A status of all projects/building improvements that are planned, including current accounting of actual costs of each project.
3. A summary of the status of reserve accounts and investments including documentation as available demonstrating compliance with investment policies.
4. A comprehensive Management Objectives tracking report outlining the status of issues and projects resulting from a combination of one or more sources such as audit and examination recommendations, FCA Board directives, as well as management initiatives.
5. Other matters such as insurance, leasing and contract performance issues that may be timely for the particular reporting period.

*Annual Report.* The FCSBA President shall prepare an annual report on the operations of the FCSBA. The draft of the report shall be provided to the FCA Board for its review within approximately 30 days of receiving the final report from the independent auditors. After FCA Board review, the report shall be provided to the banks and may be provided to others who have an interest in FCSBA affairs. Although other reports to the banks may be warranted from time to time, the Annual Report shall serve as the primary report to the FCS. The report shall include:

1. A discussion of significant issues and accomplishments.
2. Audited financial statements and reportable conditions.
3. A discussion of the previous year's and current year's budget.
4. A discussion of basic and supplemental services provided to FCA by the FCSBA including an estimate of market and actual values of those services.
5. A discussion of non-budgeted expenditures, that have been reimbursed by the FCA.

**C. FCA Liaison**

*Duties.* The FCA Chief Executive Officer appoints the Liaison to the FCS Building Association. The FCA Liaison facilitates and coordinates the FCA's needs with the FCSBA in such areas as office renovations, internal moves, telecommunications services, field office support, and matters concerning building security and Emergency Preparedness. The FCA Liaison provides an internal control function through the countersigning of certain categories of checks as designated by the FCA Board. Additionally, the FCA Liaison reviews FCSBA proposals that come before the FCA Board, and provides counsel regarding issues on which the FCA Board must decide or provide direction. The FCA Liaison is also responsible for assuring that FCA operations, as appropriate, comply with FCSBA policies and practices as well as FCA guidance relating to the FCSBA. Finally, the FCA Liaison shall review monthly cash reconciliation reports as provided by the FCSBA President and report irregularities, as appropriate.

**D. Annual Audit and Management Controls**

*Annual Audit and Management Controls Review.* As provided by Article IV, Section 9, of the FCSBA Bylaws, the FCSBA shall produce audited financial statements on an annual basis. A review of material internal control procedures shall be included in the audit process on a periodic basis.

**E. Financial Management**

*Budget Philosophy.* It is FCA Board policy to ensure that every effort is made to minimize operating expenses without jeopardizing the banks' investment in the assets that are managed. Approved budgets are planned and implemented in consideration of a series of policy

objectives as outlined in this statement and always in an effort to balance income and expenses.

*Budget Development Time Frames.* FCSBA budgets are prepared on a calendar year basis. Each November 1, the FCSBA President shall provide the proposed budget for the next calendar year to the FCA Board for its review and comment. With FCA Board concurrence, the proposed budget may be made available to the banks for further comment.

*Operating Revenues.* The FCSBA receives annual operating revenues from (1) bank assessments, (2) office rental income from private commercial tenants, (3) other income from operating balances, and (4) reserve account transfers as necessary.

*Operating Expenses.* Operating expenses are budgeted using the appropriate object classifications as follows, which may be modified with FCA Board approval:

FCA Field Office Rent,
Taxes and Contract Services,
Maintenance and Repair,
Utilities,
Salaries and Benefits,
Professional and Consulting Fees,
Property Management Fees,
Other Expenses.

As a part of the draft budget proposal to the FCA Board on or before November 1st every year, the FCSBA President shall provide an individual expense breakdown for each item within the object class. This breakdown shall include the actual expense from the previous year, the estimated expense for the current year, and the projected expense for the proposed year. Unanticipated and emergency expenses during the course of the year as well as expenditures beyond amounts approved for object classes may be funded out of the operating reserve subject to FCA Board approval.

Capital expenditures funded by transfers from the component reserve account should be shown separately with a breakdown of individual expenditures.

*Operating Reserves.* In consideration of liquidity needs as well as unanticipated expenses, each approved budget shall include the sum equivalent to 15 percent of the annual operating expense as operating reserves.

*Component Reserve Account.* To reserve for capital replacement items and repairs to the McLean facility, the FCSBA shall maintain a component reserve account which is separate from operating funds and reserves. The funding for this account shall be initially based on the Capital Reserve Study of June 1, 2005, which is then to be updated every 10 years by an independent engineering assessment. The policy objective is to ensure adequate funding, on a net present value basis, to cover up to a 10-year capital repair and replacement program to be updated, as necessary, with each approved budget.

*Assessments.* To ensure the maintenance of minimum ''cash on hand,'' FCSBA assessments are based on bank assets as of June 30, and issued quarterly consistent with the FCSBA Bylaws. After taking interest, rental, and other revenue into consideration, budgeted annual assessments must be sufficient to fund the operations of the FCSBA, including the ability to hold operating reserves equal to 15 percent of expenses as well as component reserves consistent with FCSBA policy.

Adjustments to assessments can occur subject to FCA Board approval when total year end ''cash and cash equivalents'' exceed or are below operating and component reserve requirements. Adjustments are normally considered for third quarter assessments and are based upon the previous year's audited financial statements. Earnings, if any, are distributed through this process in lieu of direct payment.

*Investments.* The FCSBA invests its funds in an effort to achieve maximum yield consistent with liquidity needs and investment safety. For short-term accessibility, operating reserves and other operating ''cash on hand'' may be invested in short-term money market accounts, certificates of deposits of Federally insured institutions, and short-term instruments of the U.S. Government or commercial paper rated P–1 or A–1 by Moody's and Standard and Poor's, respectively. Operating reserves investment decisions are made by the FCSBA President consistent with this policy.

With the goal of achieving the best long-term returns while minimizing risk, component reserves are invested solely in instruments backed by the U.S. Government and agencies of the U.S. Government. The maturities and amounts of component reserve investments shall be generally consistent with the anticipated liquidity needs of the FCSBA capital replacement and repair program. Component reserve investment decisions require FCA Board approval.

*Budgeting for Reimbursable Expenses.* The FCA regularly reimburses the FCSBA for telecommunications and other expenditures on a cost recovery basis. Because there is no positive or negative financial impact on the FCSBA, these transactions are handled on a ''net'' basis and thus not included in the budget.

*Budget Execution.* The FCSBA President shall administer the annual budget as approved by the FCA Board. Expenditures during the course of the year that would exceed the object class budget require prior FCA Board approval. Exceptions to this policy are made in the event of emergency or the funding of accrued employee benefits. Expenditures in these cases will be brought to the FCA Board in the form of an Executive Summary for approval within 10 business days of occurrence. In considering its approval, the FCA Board has the option of either adjusting other object classes, utilizing the operating reserve, or taking other action, as it deems appropriate.

**F. Contract Management**

*General.* In accordance with Article IV of the FCSBA Bylaws, it is the policy of the FCA Board that all contracts issued on or on behalf of the FCSBA be:

1. Competitively bid with a minimum of three bids, when in excess of $15,000.
2. Obtained with a minimum of three price quotes, when less than $15,000, and more than $2,500.
3. Generally awarded to the lowest bidder meeting contract specifications except in those instances where the differences in cost are considered negligible relative to a particular benefit offered by a higher bid.
4. Reviewed and approved by the FCA Board when in excess of the amount of $150,000, or for the purpose of outside auditors, property managers, or special studies that were not approved during the budget process.
5. Retained in file a minimum of 3 years.
6. When possible, bid in conjunction with the budget year.

*Exceptions.* Notwithstanding the above requirements, the FCA Board has the authority to make exceptions, as it deems appropriate to the circumstances. Additionally, competitive bidding is not required if the circumstances warrant immediate resolution or are vendor specific to equipment, in which case the FCSBA President will provide the FCA Board with a detailed report of the surrounding circumstances in 10 business days.

*Contract Timeframes.* Recurring contracts are normally for annual terms; however, when deemed cost effective, the FCSBA may allow terms up to 3 years. Obtaining best and final offers from bidders is encouraged.

*Approval Authorization.* The FCSBA President is authorized to approve contracts consistent with these guidelines and the FCSBA SOP. The

FCSBA President may re-delegate up to $50,000 of contracting authority to the building property manager.

*Contract Performance.* The FCSBA President shall insure that adequate systems are in place to measure, administer, and report on the performance of FCSBA contracts.

**G. Asset Management**

*Personal Property.* The FCSBA President shall insure that adequate methodologies and systems are in place to ensure that FCSBA property is effectively accounted for on a periodic basis.

**H. The FCSBA as a System Institution**

*Examination.* The FCSBA is examined as provided by the Act. The scope of examination shall be generally consistent with the level of risk deemed associated with the operating practices of FCSBA management.

*Assessments for Examination.* The FCSBA will be charged annually for assessments consistent with FCA regulation found in 12 CFR 607.4, ''Assessment of other System entities.''

*Liquidation by System Request.* Should the Boards of the banks adopt, pursuant to Article IX of the FCSBA Articles of Association, a resolution to dissolve and liquidate the FCSBA, the dissolution and liquidation will be subject to, and conducted in accordance with, the Act and the regulations promulgated thereunder.

**I. FCSBA Services to the FCA**

*Basic Services.* The FCSBA provides space to the FCA headquarters in McLean, Virginia, and leases space on behalf of FCA for its field offices. Basic services provided to the FCA are similar to what is typical of rented office space and include, but are not limited to, such items as utilities, janitorial service, repairs for normal wear and tear, parking and appropriate landscaping as well as amenities which are available to all tenants and have the effect of maintaining property values and/or enhancing rental income.

*Supplemental Services.* In addition to providing basic services, the FCSBA will, on a case-by-case basis, provide certain supplemental support services related to FCA's housing needs under the following kinds of circumstances:

1. The FCSBA can provide the service on better terms than the FCA.
2. The service, if not provided by the FCSBA, could potentially adversely affect the aesthetic or other value of property, systems, building infrastructure, the health and safety of occupants, or the occupancy level of commercial tenants.
3. The capacity exists for the FCSBA to provide the service within the context of its employee expertise and/or its overall responsibilities to all tenants.
4. By providing the service, an advantage inures to the benefit of the FCS that would not otherwise occur.
5. An FCA Board determination that the service will be of particular benefit to the FCA, the FCS or the public.

As deemed necessary, the FCSBA President shall issue SOPs prescribing operational or other details of FCSBA services provided to the FCA.

*Non-Reimbursable and Reimbursable Services.* Whether or not the FCA will reimburse the FCSBA for a supplemental service will generally be determined as follows:

1. Reimbursement is not required for support provided by the FCSBA when resources are available within FCA Board approved budgets for the FCSBA and one or more of the criteria for supplemental services expenditures outlined above have been met.
2. Unless otherwise determined by an FCA Board action, supplemental support services requiring resources beyond that available within the FCSBA budget will require reimbursement.

Reimbursements in excess of $10,000 that occur on an ongoing basis will require a written Memorandum of Understanding between the FCA and the FCSBA outlining the terms and conditions of the services provided and reimbursement. One time or minor recurring reimbursements may be handled by purchase orders. Reimbursable expenses shall be determined on an actual cost basis or a recognized methodology to achieve the goal of fully reimbursing the FCSBA on the transaction.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Disaster Relief Efforts by Farm Credit Institutions**

*FCA–PS–71*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Supersedes FCA Bookletter 368–OE, September 14, 1993. *See* 61 FR 37471, July 18, 1996; amended by NV–11–15 (08–JUL–11).

**Source of Authority:** Section 5.17 of the Farm Credit Act of 1971, as amended.

**The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement**

The FCA recognizes that in the aftermath of hurricanes, floods, droughts, or other natural or man-made disasters, specific sections of the country or segments of the agricultural community are declared to be disaster areas. Such disaster area declarations may be made by the President of the United States, the Governor of a State, or a specific Federal or State government agency. When a disaster area includes a rural community where a Farm Credit institution is located or does business, the institution can be affected in two ways: directly, such as by physical damage to the institution itself or incapacitation of employees; or indirectly, such as by damage suffered by individuals and businesses with loans from the institution. In the interest of providing the highest quality and most efficient service to agricultural borrowers, the FCA encourages Farm Credit institutions operating in disaster-affected areas to work within their communities to help alleviate pressures on borrowers under stress.

When conducted in a reasonable and prudent manner, the efforts of Farm Credit institutions to work in the public's interest with borrowers in the disaster areas will be considered consistent with safe and sound business practices. It is the FCA's belief that the institutions have considerable flexibility under the existing regulations to provide appropriate disaster relief. Such relief efforts may include, but would not necessarily be limited to, extending the terms of loan repayment or restructuring a borrower's debt obligations. In addition, a Farm Credit institution may consider easing some loan documentation or credit-extension terms for new loans to certain borrowers or requesting the FCA to grant relief from specific regulatory requirements. It is the FCA's belief that the principal objectives of any disaster assistance program developed by a Farm Credit institution and approved by its board should be to:

1. Provide necessary and timely relief to disaster-affected customers of the institution;
2. Minimize the adverse effects of the disaster on the profitability, financial condition, operating efficiency, and morale of customers, as well as on the institution;
3. Review applicable statutory and regulatory requirements and determine whether requesting the FCA to provide exceptions from regulatory requirements would be appropriate; and
4. Promote, through such consideration and actions, the Farm Credit System's mandate to provide American farmers and ranchers with sound, adequate, and constructive credit and closely related services.

The FCA further believes that proper risk controls and management oversight

should be exercised to ensure that such efforts serve the interests of the lending institution as well as those of the community. Any institution providing disaster relief should document such relief actions as well as any significant departures from otherwise applicable institution policies and procedures.

The aforementioned objectives and risk controls are conditions and characteristics on which the FCA will evaluate an institution's relief activities. These objectives and risk controls should be set forth in any request to the FCA for specific regulatory relief.

The FCA also recognizes that conditions related to a disaster may impair an institution's ability to comply in a timely way with regulatory reporting and publishing requirements. Farm Credit institutions should contact the Director of the Office of Examination when relief from specific regulatory or reporting requirements is needed.

Additionally, the Board of Governors of the Federal Reserve System (Federal Reserve Board) has, from time to time, granted relief from certain Regulation Z requirements to consumers located in declared disaster areas. It is likely that the Federal Reserve Board will continue to promulgate similar temporary exceptions in disaster-affected areas. When this occurs, the FCA will, as a matter of convenience, continue to notify the Farm Credit institutions affected by Regulation Z exceptions.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

## Financial Institution Rating System (FIRS)

*FCA–PS–72*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Amended by NV–11–15 (08–JUL–11).

**Source of Authority:** Sections 5.9 and 5.17 of the Farm Credit Act of 1971, as amended.

## The Farm Credit Administration Board Hereby Adopts the Following Policy Statement

### I. Policy

The Financial Institution Rating System (FIRS) shall be the rating system used by Farm Credit Administration (FCA or Agency) examiners for evaluating and categorizing the safety and soundness of Farm Credit System (System) institutions on an ongoing, uniform, and comprehensive basis.

The FIRS will provide valuable information to the Agency for assessing risk and allocating resources based on the safety and soundness of regulated institutions. Ratings assigned to regulated institutions will be adjusted periodically so that they accurately reflect the condition of institutions.

### II. Standards and Implementation

Based on the conclusions reached in the ongoing examination of an institution's financial, managerial, and operational condition, FCA examiners will assign ratings to each of the rating factor components and assign a composite rating that reflects the condition and overall safety and soundness of the System institution. These ratings shall be reported to the institution's Board of Directors and Chief Executive Officer.

Component and composite ratings are assigned on a 1 to 5 numerical scale. A 1-rating indicates the strongest performance and management practices and the least degree of supervisory and regulatory concern, while a 5-rating indicates an extremely high, immediate or near-term probability of failure and unsatisfactory management practices and, therefore, the highest degree of concern.

Although each institution has its own examination and supervisory issues and concerns, the FIRS is structured to evaluate all significant financial, asset quality, and management factors common to all System institutions. Examination criteria for each of the rating components are defined in the FCA Examination Manual, which is available to the public. The FCA Examination Manual also incorporates the evaluative criteria under which component and composite ratings are assigned.

*Composite Rating*

The FIRS provides a general framework for assimilating and evaluating all significant financial, managerial, and operational factors to assign a composite rating to each System institution. The composite rating is based on a qualitative and quantitative analysis of the factors comprising each of the following components, the interrelationships among components, and the overall level of concern for those risks that affect a System institution.

The composite rating does not assume a predetermined weight for each component nor does it represent an arithmetic average of assigned component ratings. The weight given to any individual component in determining composite ratings varies depending on the degree of concern associated with the component and the threat posed to the overall safety and soundness of the institution.

*Component Ratings*

Listed below is a brief description of the FIRS components and the more common evaluative criteria and factors considered under each component.

- *Capital*—A System institution is expected to maintain capital and capital management practices commensurate with the nature and extent of risks to the institution and the ability of management to identify, measure, monitor, and control these risks. The capital component is based on an evaluation of an institution's capacity to absorb losses and provide for future growth. An evaluation of capital relies on many factors such as regulatory capital requirements, trends, portfolio and institutional risk, growth, adequacy of risk funds, management capability, and other factors as appropriate.
- *Assets*—This component is based on an assessment of both the quality of the current portfolio and the quality of the associated risk management processes that substantially impact the quality of assets. An assessment of assets relies on many factors such as loan portfolio management, investment portfolio management, loan portfolio trends, risk identification processes, credit administration, allowance for loan losses, and other factors that affect the quality, performance, income producing capacity, and stability of assets.
- *Management*—The management component is based on an assessment of board and management performance against all factors considered necessary to operate the institution within accepted banking practices and in a safe and sound manner in accordance with applicable laws, regulations, and guidelines.
- *Earnings*—This component is based on an evaluation of the quantity, quality, and sustainability of the institution's earning performance. An evaluation of earnings considers factors such as the level of earnings, composition and quality of net income, stability of earnings performance, relationship to portfolio risk, quality of earnings management, and other factors as deemed appropriate.
- *Liquidity*—The liquidity component is based on an evaluation of an institution's capacity to promptly meet the demand for payment of its obligations, fund its loan portfolio, and readily meet the reasonable credit needs of the territory served. An evaluation of liquidity also considers continued access to funding, the existence of secondary sources of liquidity, and other factors as deemed appropriate.

• *Sensitivity*—This component reflects the degree to which changes in interest rates may affect earnings or the market value of an institution's equity. An evaluation of this component considers such factors as the size and complexity of the institution's financial activities, the level of interest rate risk exposure relative to capital and earnings, investment and derivatives activities, management's ability to identify, measure, monitor, project, and control interest rate risk, and other factors as deemed appropriate.

**III. Responsibility**

It is the responsibility of the Chief Examiner to ensure that the components used to support the composite ratings are reviewed periodically to make certain they reflect the material matters that impact the safety and soundness of institutions. In this respect, the Chief Examiner shall make recommendations to the FCA Board to add or delete components as necessary. Specific evaluative criteria and factors for determining component and composite ratings shall be established by the Chief Examiner and incorporated in the FCA Examination Manual or by other means as appropriate. The Chief Examiner is responsible for ensuring that ratings assigned to institutions are commensurate with and accurately reflect the risk in the institutions.

**IV. Reporting**

At least quarterly, the Chief Examiner will provide the FCA Board a report of the composite rating of all FCS institutions.

**V. Implementation**

System institutions examined after the date this policy is adopted by the FCA Board will be assigned composite and component ratings in accordance with this Policy Statement.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Borrower Privacy**

*FCA–PS–77*

*Effective Date:* 08–JUL–11.
*Effect on Previous Action:* Amended by NV–11–15 (08–Jul–11).

**Source of Authority:** Section 5.9 of the Farm Credit Act of 1971, as amended.

**The Farm Credit Administration (FCA) Board Hereby Adopts the Following Policy Statement**

The Farm Credit Administration Board believes that each Farm Credit System institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information. Since 1972, FCA regulations have required that borrower information be held in strict confidence by Farm Credit institutions, their directors, officers and employees. Our regulations at 12 CFR part 618, subpart G specifically restrict Farm Credit institution directors and employees from disclosing information not normally contained in published reports or press releases about the institution or its borrowers or members. These regulations also provide Farm Credit institutions clear guidelines for protecting their borrowers' nonpublic personal information. Particularly since Farm Credit institutions are owned and directed by the farmers, ranchers and cooperatives who borrow from them, the privacy and security of customer information is vital to the System's continued dependability and long-term success. Therefore, the FCA Board strongly encourages each System institution to regularly inform their customers of the institution's obligation to protect nonpublic personal information.

Additionally, rapid technological advances have made unauthorized and/or inadvertent disclosure of personal financial information more common and more difficult to protect against. Therefore, in addition to monitoring compliance with our regulations on disclosure, FCA will examine each System institution's internal controls on a regular basis to ensure that adequate safeguards are in place to protect the confidentiality of customer nonpublic personal information.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Secretary to the Board.*

**Official Names of Farm Credit System Institutions**

*FCA–PS–78*

*Effective Date:* 08–JUL–11.
*Effect on Previous Action:* Supercedes FCA–PS–63 [NV–96–22] 05/30/96; amended by NV–11–15 (08–JUL–11).

**Source of Authority:** Sections 1.3(b), 2.0(b)(8), 2.10(c), 3.0, 5.17(a)(2)(A), 7.0, 7.6(a), 7.8(a) of the Farm Credit Act of 1971, as amended; 12 CFR part 611.

**The Farm Credit Administration (FCA or Agency) Board Hereby Adopts the Following Policy Statement**

**Objective**

Our objective is to ensure that the public can identify a Farm Credit System (System) bank, association, or service corporation as belonging to the Farm Credit System and is not misled by the name the institution uses. We also believe that Farm Credit System institutions should have some flexibility in proposing official names for their institutions.

**Official Names**

The FCA Board will approve an official name for a Farm Credit System bank,[1] association, or service corporation that meets the following two requirements:

• The name includes *appropriate identification* of the institution as a System institution; and

• The name is not *misleading* or inappropriate.

*Appropriate identification* means the name contains either 1) the relevant statutory or regulatory designation, or its corresponding acronym, or 2) other appropriate identification as a System institution. Relevant statutory and regulatory designations, and their corresponding acronyms, are as follows:

• Agricultural Credit Bank or ACB.
• Bank for Cooperatives or BC.
• Farm Credit Bank or FCB.
• Agricultural Credit Association or ACA.
• Production Credit Association or PCA.
• Federal Land Credit Association or FLCA.
• Federal Land Bank Association or FLBA.

Other *appropriate identification* as a System institution includes the following:

• Farm Credit Services.
• Farm Credit.
• FCS.
• A member of the Farm Credit System.

*Misleading* names are those that a reasonable person might find confusing. For example, we would not issue a charter to an institution requesting a name that is the same as or similar to that of an existing institution because the public might find this confusing. Merely avoiding identical names is not enough; to minimize confusion, a proposed name must sufficiently distinguish an institution from other institutions. If the Agency had approved a charter for an institution using MyTown, ACA, as its official name, it would not issue a charter for an institution proposing ACA of MyTown or MyTown Farm Credit Services, ACA, as its official name. Nor would we issue

[1] Farm Credit System bank includes Farm Credit Banks, Banks for Cooperatives, and Agricultural Credit Banks.

a charter with the phrase ''farm credit association'' as part of the official name, because the inevitable use of the acronym ''FCA'' would be confused with the name of the Agency. Also, we would not approve a name for an institution that could cause the public to confuse that institution's authorities and services with those of a commercial bank, thrift institution, or credit union. For example, we would not issue a charter to a System institution requesting the term ''national bank'' in its official name because this could cause confusion regarding the services the institution may offer.

**Trade Names**

A System institution may use a trade name. The trade name must not be misleading. If an institution uses a trade name, it must use both the official and trade names in all written communications.

**Related Issues**

If an ACA and its subsidiaries operate under substantially different names, they must clearly identify the parent/subsidiary relationship in all written communications. For example, if MyTown, PCA, is a subsidiary of EveryTown, ACA, the PCA must identify itself as a subsidiary of the parent ACA in its written communications.

Please note that while the FCA cannot reserve names, the Patent and Trademark Office will register names under certain conditions. When applying for a name change or new charter, System institutions should submit a statement indicating whether they have applied for a trademark in that name.

This statement addresses only FCA's policy. Other laws, such as Federal or state trademark laws, may apply. Institutions should ensure that their official and trade names do not infringe the trademarks or service marks of other companies. Institutions may wish to consult legal counsel to determine whether their proposed names could be challenged or protected under state or Federal law.

Dated This 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Farm Credit Administration Board.*

**Consideration and Referral of Supervisory Strategies and Enforcement Actions**

*FCA–PS–79*

*Effective Date:* 08–JUL–11.

*Effect on Previous Action:* Rescinds and supersedes the previous PS–79; amended by NV–11–15 (08–JUL–11).

**Source of Authority:** Sections 5.19, 5.25–5.35 of the Farm Credit Act of 1971, as amended.

**The FCA Board Hereby Adopts the Following Policy Statement**

The Farm Credit Administration (FCA or Agency) Board provides for the regulation and examination of Farm Credit System (System or FCS) institutions, which includes the Federal Agricultural Mortgage Corporation (Farmer Mac), in accordance with the Farm Credit Act of 1971, as amended (the ''Act''). This policy addresses conditions that warrant referrals to the Agency's Regulatory Enforcement Committee (REC) to consider appropriate supervisory strategies and recommend to the FCA Board the use of the enforcement authorities conferred on the Agency under part C, Title V of the Act or other statutes. Enforcement actions include formal agreements, orders to cease and desist, temporary orders to cease and desist, civil money penalties, suspensions or removals of directors or officers, and conditions imposed in writing to address unsafe or unsound practices or violations of law, rule or regulation (Enforcement Document). Taking these actions, in an appropriate and timely manner, is critical to maintaining shareholder, investor, and public confidence in the financial strength and future viability of the System.

This policy provides only internal FCA guidance. It is not intended to create any rights, substantive or procedural, enforceable at law or in any administrative proceeding.

*Composition of the REC*

The Chairman of the FCA Board will designate the Chief Operating Officer and the office directors of the Office of Examination, Office of General Counsel, and Office of Regulatory Policy, or the directors of successor offices, as voting members of the REC. A representative from the Farm Credit System Insurance Corporation will be invited to participate in REC activities as a non-voting member. The Chairman of the FCA Board will also designate one of the voting REC members as Chairman of the REC.

Due to the statutory independence of the Office of Secondary Market Oversight (OSMO), there will be different REC membership when considering issues related to Farmer Mac.

*Referrals to the REC*

Recommended supervisory strategies or enforcement actions concerning an FCS institution or person will be referred to the REC when any of the conditions exist, as specified below, or when a specified condition does not exist, but consideration of an enforcement action or review by the REC is appropriate. The REC will review the proposed actions and draft enforcement documents and assess the recommendations for pursuing any such actions. The REC may revise the recommendations and will document its concurrence or nonconcurrence with the supervisory strategy or enforcement action.

*Conditions Warranting Referral to the REC*

Any one of the following conditions requires a referral to the REC for its consideration of supervisory strategies or enforcement actions.

1. A ''4'' or ''5'' composite FIRS rating is assigned to an FCS institution;

2. The institution or person is deemed unable or unwilling to address a material: (a) Unsafe or unsound condition or practice; or (b) violation or ongoing violation of law or regulation;

3. The institution or person is about to engage in a material unsafe or unsound practice or is about to commit a willful or material violation of law or regulation that exposes the institution to significant risk;

4. Conditions meet the statutory criteria for a suspension or removal;

5. Conditions meet the statutory criteria for assessing a civil money penalty and the factors to be considered in determining the amount of a civil money penalty justify the imposition of the penalty;

6. Conditions meet the statutory criteria to place an FCS institution in conservatorship or receivership;

7. An institution or person fails to comply with an Enforcement Document or is unwilling or unable to address a violation of a condition imposed in writing; or

8. Conditions justify termination or modification of an existing Enforcement Document.

As appropriate, referrals for the REC's consideration also may be made for conditions not specified above.

*Notification of the REC*

The REC will be notified when any institution is assigned a ''3'' composite FIRS rating and informed of the Agency's supervisory strategies.

*Consultation With the REC*

For institutions under a formal Enforcement Document, or assigned a composite FIRS rating of ''4'' or ''5'', requests for prior approvals, or other actions, will be referred to the REC for consultation.

*Referral to the FCA Board*

The REC will refer to the FCA Board for its consideration all recommendations concurred with by the REC for the placement of an Enforcement Document on a FCS institution or person. In the unlikely instance, when an institution receives a composite ''4'' or ''5'' FIRS rating and a formal Enforcement Document is not recommended to the FCA Board, the REC will promptly document and report the Agency's supervisory strategy to the FCA Board.

*Reporting to the FCA Board*

The REC Chairman will report at least quarterly to the FCA Board if matters are referred to or reviewed by the REC, but FCA Board action is not subsequently requested.

*Actions by the REC*

The REC will develop procedures to address the responsibilities outlined herein.

Due to OSMO's statutory independence, the Director of OSMO will develop procedures for actions affecting Farmer Mac.

Dated this 8th day of July 2011.

By Order of the Board.

Dale L. Aultman,
*Farm Credit Administration Board.*

Dated: August 25, 2011.

**Dale L. Aultman,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 2011–22203 Filed 8–31–11; 8:45 am]

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Part V

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[Docket No. FWS–R9–MB–2011–0014; 91200–1231–9BPP–L2]**

**RIN 1018–AX34**

# Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2011–12 season.

**DATES:** This rule is effective on September 1, 2011.

**ADDRESSES:** You may inspect comments received on the migratory bird hunting regulations during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA. You may obtain copies of referenced reports from the street address above, or from the Division of Migratory Bird Management's Web site at *http://www.fws.gov/migratorybirds/,* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

**SUPPLEMENTARY INFORMATION:**

## Regulations Schedule for 2011

On April 8, 2011, we published in the **Federal Register** (76 FR 19876) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and addressed the establishment of seasons, limits, and other regulations for hunting migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. Major steps in the 2011–12 regulatory cycle relating to open public meetings and **Federal Register** notifications were also identified in the April 8 proposed rule. Further, we explained that all sections of subsequent documents outlining hunting frameworks and guidelines were organized under numbered headings and that subsequent documents would refer only to numbered items requiring attention.

On June 22, 2011, we published in the **Federal Register** (76 FR 36508) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations. The June 22 supplement also provided information on the 2011–12 regulatory schedule and announced the Service Regulations Committee (SRC) and summer (July) Flyway Council meetings.

On June 22 and 23, 2011, we held open meetings with the Flyway Council Consultants where the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2011–12 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2011–12 regular waterfowl seasons.

On July 26, 2011, we published in the **Federal Register** (76 FR 44730) a third document specifically dealing with the proposed frameworks for early-season regulations. On August 30, 2011, we published in the **Federal Register** a final rule which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

On July 27–28, 2011, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2011–12 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2011–12 late-season migratory bird hunting regulations in an August 26, 2011 **Federal Register** (76 FR 53536).

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

## National Environmental Policy Act (NEPA) Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **ADDRESSES**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **ADDRESSES** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

## Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification

of [critical] habitat. * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

**Executive Order 12866**

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) 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.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season.

For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. At this time, we are proposing no changes to the season frameworks for the 2011–12 season, and as such, we will again consider these three alternatives. However, final frameworks for waterfowl will be dependent on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

**Regulatory Flexibility Act**

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008.

Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **ADDRESSES**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

**Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

**Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013).

A Federal 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.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

**Takings Implication Assessment**

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

**Energy Effects—Executive Order 13211**

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**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, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 8 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2011–12 migratory bird hunting season. The resulting proposals were contained in a separate August 8, 2011, proposed rule (76 FR 48694). By virtue of these actions, we have consulted with Tribes affected by this rule.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact assessment.

**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended (16 U.S.C. 703–711), these regulations will take effect less than 30 days after publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 26, 2011.

**Eileen Sobeck,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

## PART 20—[AMENDED]

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

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742 a–j, Public Law 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

**Note:** The following annual hunting regulations provided for by §§ 20.101 through 20.106 and 20.109 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.101 is revised to read as follows:

**§ 20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

**(a) Puerto Rico**

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *Doves and Pigeons* | | | |
| Zenaida, white-winged, and mourning doves [1] | Sept. 3–Oct. 31 | 20 | 20 |
| Scaly-naped pigeons | Sept. 3–Oct. 31 | 5 | 5 |
| Ducks | Nov. 12–Dec. 19 & | 6 | 12 |
| | Jan. 14–Jan. 30 | 6 | 12 |
| Common Moorhens | Nov. 12–Dec. 19 & | 6 | 12 |
| | Jan. 14–Jan. 30 | 6 | 12 |
| Common Snipe | Nov. 12–Dec. 19 & | 8 | 16 |

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| | Jan. 14–Jan. 30 | 8 | 16 |

[1] Not more than 10 Zenaida and 3 mourning doves in the aggregate.

*Restrictions:* In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, Caribbean coot, white-crowned pigeon, and plain pigeon.

*Closed Areas:* Closed areas are described in the July 26, 2011, **Federal Register** (76 FR 44730).

**(b) Virgin Islands**

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| Zenaida doves | Sept. 1–Sept. 30 | 10 | 10 |
| Ducks | CLOSED. | | |

*Restrictions:* In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

*Closed Areas:* Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds. All Offshore Cays under jurisdiction of the Virgin Islands Government are closed to the hunting of migratory game birds.

■ 3. Section 20.102 is revised to read as follows:

**§ 20.102 Seasons, limits, and shooting hours for Alaska.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 26, 2011, **Federal Register** (76 FR 44730).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

| Area seasons | Dates |
|---|---|
| North Zone | Sept. 1–Dec. 16. |
| Gulf Coast Zone | Sept. 1–Dec. 16. |
| Southeast Zone | Sept. 16–Dec. 31. |
| Pribilof & Aleutian Islands Zone. | Oct. 8–Jan. 22. |
| Kodiak Zone | Oct. 8–Jan. 22. |

DAILY BAG AND POSSESSION LIMITS

| Area | Ducks (1) | Dark geese (2)(3)(4) | Light geese (2) | Brant (2)(3) | Common snipe | Sandhill cranes (5) |
|---|---|---|---|---|---|---|
| North Zone | 10–30 | 4–8 | 4–8 | 2–4 | 8–16 | 3–6 |
| Gulf Coast Zone | 8–24 | 4–8 | 4–8 | 2–4 | 8–16 | 2–4 |
| Southeast Zone | 7–21 | 4–8 | 4–8 | 2–4 | 8–16 | 2–4 |
| Pribilof and Aleutian Islands Zone | 7–21 | 4–8 | 4–8 | 2–4 | 8–16 | 2–4 |
| Kodiak Zone | 7–21 | 4–8 | 4–8 | 2–4 | 8–16 | 2–4 |

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season, including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. In Unit 15C, Kachemak Bay east of a line from Point Pogibshi to Anchor Point, the special sea duck daily bag limit for residents and nonresidents is 2 per day, 4 in possession, for harlequin and long-tailed ducks, and 1 per day, 2 in possession, for eiders (king and common collectively). Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a maximum of 10 permits for the season and a daily bag and possession limit of 1. The season shall close if incidental harvest includes 5 dusky Canada geese. In Unit 6–C and on Hinchinbrook and Hawkins Islands in Unit 6–D, a special, permit-only Canada goose season may be offered. Hunters must have all harvested geese checked and classified to subspecies. The daily bag limit is 4 daily and 8 in possession. The Canada goose season will close in all of the permit areas if the total dusky goose harvest reaches 40.

(4) In Units 9, 10, 17, and 18, dark goose limits are 6 per day, 12 in possession.

(5) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

*Falconry:* The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

*Special Tundra Swan Season:* In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans.

Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

■ 4. Section 20.103 is revised to read as follows:

**§ 20.103 Seasons, limits, and shooting hours for doves and pigeons.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 26, 2011, **Federal Register** (76 FR 44730).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

**Doves**

**Note:** Unless noted, the seasons listed below are for mourning and white-winged doves in the aggregate.

| | | Season dates | Limits | |
|---|---|---|---|---|
| | | | Bag | Poss. |
| **EASTERN MANAGEMENT UNIT** | | | | |
| *Alabama* | | | | |
| North Zone | 12 noon to sunset | Sept. 3 only | 15 | 15 |
| | ½ hour before | Sept. 4–Oct. 2 & | 15 | 15 |
| | sunrise to sunset | Oct. 22–Nov. 5 & | 15 | 15 |
| | | Dec. 10–Jan. 3 | 15 | 15 |
| South Zone | 12 noon to sunset | Oct. 1 only | 15 | 15 |
| | ½ hour before | Oct. 2–Oct 30 & | 15 | 15 |
| | sunrise to sunset | Nov. 24–Nov. 27 & | 15 | 15 |
| | | Dec. 3–Jan. 7 | 15 | 15 |
| *Delaware* | | Sept. 1–Oct. 1 & | 15 | 30 |
| | | Oct. 15–Oct. 29 & | 15 | 30 |
| | | Dec. 22–Jan. 14 | 15 | 30 |
| *Florida* | 12 noon to sunset | Oct. 1–Oct. 24 | 15 | 30 |
| | ½ hour before | Nov. 12–Nov. 27 & | 15 | 30 |
| | sunrise to sunset | Dec. 10–Jan. 8 | 15 | 30 |
| *Georgia* | 12 noon to sunset | Sept. 3 only | 15 | 30 |
| | ½ hour before | Sept. 4–Sept. 18 | 15 | 30 |
| | sunrise to sunset | Oct. 8–Oct. 16 & | 15 | 30 |
| | | Nov. 24–Jan. 7 | 15 | 30 |
| *Illinois* (1) | | Sept. 1–Oct. 31 & | 15 | 30 |
| | | Nov. 5–Nov. 13 | 15 | 30 |
| *Indiana* | | Sept. 1–Oct. 16 & | 15 | 30 |
| | | Nov. 4–Nov. 27 | 15 | 30 |
| *Kentucky* | 11 am to sunset | Sept. 1 only | 15 | 30 |
| | ½ hour before | Sept. 2–Oct. 24 & | 15 | 30 |
| | sunrise to sunset | Nov. 24–Dec. 2 & | 15 | 30 |
| | | Dec. 31–Jan. 6 | 15 | 30 |
| *Louisiana* | | | | |
| North Zone | 12 noon to sunset | Sept. 3 only | 15 | 30 |
| | ½ hour before | Sept. 4–Sept. 18 & | 15 | 30 |
| | sunrise to sunset | Oct. 8–Nov. 6 & | 15 | 30 |
| | | Dec. 10–Jan. 2 | 15 | 30 |
| South Zone | 12 noon to sunset | Sept. 3 only | 15 | 30 |
| | ½ hour before | Sept. 4–Sept. 11 & | 15 | 30 |
| | sunrise to sunset | Oct. 15–Nov. 27 & | 15 | 30 |
| | | Dec. 17–Jan. 2 | 15 | 30 |
| *Maryland* | 12 noon to sunset | Sept. 1–Oct. 8 | 15 | 30 |
| | ½ hour before | Nov. 12–Nov. 25 & | 15 | 30 |
| | sunrise to sunset | Dec. 21–Jan. 7 | 15 | 30 |
| *Mississippi* | | | | |
| North Zone | | Sept. 3–Sept. 25 & | 15 | 30 |
| | | Oct. 8–Nov. 1 & | 15 | 30 |
| | | Dec. 25–Jan. 15 | 15 | 30 |
| South Zone | | Sept. 3–Sept. 11 & | 15 | 30 |
| | | Oct. 8–Nov. 2 & | 15 | 30 |
| | | Dec. 12–Jan. 15 | 15 | 30 |
| *North Carolina* | 12 noon to sunset | Sept. 3 | 15 | 30 |
| | ½ hour before | Sept. 4–Oct. 8 & | 15 | 30 |
| | sunrise to sunset | Nov. 21–Nov. 26 & | 15 | 30 |
| | | Dec. 17–Jan. 13 | 15 | 30 |
| *Ohio* | | Sept. 1–Oct. 23 & | 15 | 30 |
| | | Dec. 17–Jan. 2 | 15 | 30 |
| *Pennsylvania* | 12 noon to sunset | Sept. 1–Oct. 1 & | 15 | 30 |
| | ½ hour before | Oct. 29–Nov. 26 & | 15 | 30 |
| | sunrise to sunset | Dec. 26–Jan. 4 | 15 | 30 |
| *Rhode Island* | 12 noon to sunset | Sept. 17–Oct. 1 | 12 | 24 |

| | | Season dates | Limits | |
|---|---|---|---|---|
| | | | Bag | Poss. |
| | ½ hour before | Oct. 15–Nov. 12 & | 12 | 24 |
| | sunrise to sunset | Dec. 21–Jan. 5 | 12 | 24 |
| *South Carolina* | 12 noon to sunset | Sept. 3–Sept. 5 | 15 | 30 |
| | ½ hour before | Sept. 6–Oct. 8 & | 15 | 30 |
| | sunrise to sunset | Nov. 19–Nov. 26 & | 15 | 30 |
| | | Dec. 21–Jan. 15 | 15 | 30 |
| *Tennessee* | 12 noon to sunset | Sept. 1 only | 15 | 30 |
| | ½ hour before | Sept. 2–Sept. 26 & | 15 | 30 |
| | sunrise to sunset | Oct. 8–Oct. 23 & | 15 | 30 |
| | | Dec. 19–Jan. 15 | 15 | 30 |
| *Virginia* | 12 noon to sunset | Sept. 3–Sept. 9 | 15 | 30 |
| | ½ hour before | Sept. 10–Oct. 10 & | 15 | 30 |
| | sunrise to sunset | Oct. 25–Nov. 5 & | 15 | 30 |
| | | Dec. 26–Jan. 14 | 15 | 30 |
| *West Virginia* | 12 noon to sunset | Sept. 1 only | 15 | 30 |
| | ½ hour before | Sept. 2–Oct. 8 & | 15 | 30 |
| | sunrise to sunset | Oct. 24–Nov. 12 & | 15 | 30 |
| | | Dec. 26–Jan. 6 | 15 | 30 |
| *Wisconsin* | | Sept. 1–Nov. 9 | 15 | 30 |
| **CENTRAL MANAGEMENT UNIT** | | | | |
| *Arkansas* | | Sept. 3–Oct. 30 & | 15 | 30 |
| | | Dec. 26–Jan. 6 | 15 | 30 |
| *Colorado* | | Sept. 1–Nov. 9 | 15 | 30 |
| *Iowa* | | Sept. 1–Nov. 9 | 15 | 30 |
| *Kansas* | | Sept. 1–Oct. 31 & | 15 | 30 |
| | | Nov. 5–Nov. 13 | 15 | 30 |
| *Minnesota* | | Sept. 1–Oct. 30 | 15 | 30 |
| *Missouri* | | Sept. 1–Nov. 9 | 15 | 30 |
| *Montana* | | Sept. 1–Oct. 30 | 15 | 30 |
| *Nebraska* | | Sept. 1–Oct. 30 | 15 | 30 |
| *New Mexico* | | | | |
| North Zone | | Sept. 1–Nov. 9 | 15 | 30 |
| South Zone | | Sept. 1–Oct. 9 & | 15 | 30 |
| | | Dec. 1–Dec. 31 | 15 | 30 |
| *North Dakota* | | Sept. 1–Oct. 30 | 15 | 30 |
| *Oklahoma* | | Sept. 1–Oct. 31 & | 15 | 30 |
| | | Dec. 24–Jan. 1 | 15 | 30 |
| *South Dakota* | | Sept. 1–Nov. 9 | 15 | 30 |
| *Texas* (2) | | | | |
| North Zone | | Sept. 1–Oct. 23 & | 15 | 30 |
| | | Dec. 23–Jan. 8 | 15 | 30 |
| Central Zone | | Sept. 1–Oct. 23 & | 15 | 30 |
| | | Dec. 23–Jan. 8 | 15 | 30 |
| South Zone | Special Area | Sept. 23–Oct. 30 & | 15 | 30 |
| | | Dec. 23–Jan. 19 | 15 | 30 |
| | (Special Season) | Sept. 3–Sept. 4 & | 15 | 30 |
| | 12 noon to sunset | Sept. 10–Sept. 11 | 15 | 30 |
| Remainder of the South Zone | | Sept. 23–Oct. 30 & | 15 | 30 |
| | | Dec. 23–Jan. 23 | 15 | 30 |
| *Wyoming* | | Sept. 1–Nov. 9 | 15 | 30 |
| **WESTERN MANAGEMENT UNIT** | | | | |
| *Arizona* (3) | | Sept. 1–Sept. 15 & | 10 | 20 |
| | | Nov. 25–Jan. 8 | 10 | 20 |
| *California* | | Sept. 1–Sept. 15 & | 10 | 20 |
| | | Nov. 12–Dec. 26 | 10 | 20 |
| *Idaho* | | Sept. 1–Sept. 30 | 10 | 20 |
| *Nevada* | | Sept. 1–Sept. 30 | 10 | 20 |
| *Oregon* | | Sept. 1–Sept. 30 | 10 | 20 |
| *Utah* | | Sept. 1–Sept. 30 | 10 | 20 |
| *Washington* | | Sept. 1–Sept. 30 | 10 | 20 |
| **OTHER POPULATIONS** | | | | |
| *Hawaii* (4) | | Nov. 5–Nov. 27 & | 10 | 10 |
| | | Dec. 3–Dec. 25 & | 10 | 10 |
| | | Dec. 31–Jan. 16 | 10 | 10 |

(1) In *Illinois,* shooting hours are sunrise to sunset.

(2) In *Texas,* the daily bag limit is either 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(3) In *Arizona,* during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-wing doves. During November 19 through January 2, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit.

(4) In *Hawaii,* the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

*(b) Band-tailed Pigeons.*

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *Arizona* | Sept. 9–Oct. 2 | 5 | 10 |
| *California* | | | |
| North Zone | Sept. 17–Sept. 25 | 2 | 4 |
| South Zone | Dec. 17–Dec. 25 | 2 | 4 |
| *Colorado* | Sept. 1–Sept. 30 | 5 | 10 |
| *New Mexico* (1) | | | |
| North Zone | Sept. 1–Sept. 20 | 5 | 10 |
| South Zone | Oct. 1–Oct. 20 | 5 | 10 |
| *Oregon* | Sept. 15–Sept. 23 | 2 | 4 |
| *Utah* (2) | Sept. 1–Sept. 30 | 5 | 10 |
| *Washington* | Sept. 15–Sept. 23 | 2 | 4 |

(1) In *New Mexico,* each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(2) In *Utah,* each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the State.

■ 5. Section 20.104 is revised to read as follows:

**§ 20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 26, 2011, **Federal Register** (76 FR 44730).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

**Note:** States with deferred seasons will select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

| | Sora and Virginia rails | Clapper and King rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| Daily bag limit | 25 (1) | 15 (2) | 3 | 8 |
| Possession limit | 25 (1) | 30 (2) | 6 | 16 |
| *ATLANTIC FLYWAY* | | | | |
| *Connecticut* (3) | Sept. 1–Sept.2 & Sept. 6–Nov. 12. | Sept. 1–Sept. 2 & Sept. 6–Nov. 12. | Oct. 27–Dec. 10 | Oct. 27–Dec. 10. |
| *Delaware* | Sept. 2–Nov. 10 | Sept. 2–Nov. 10 | Nov. 21–Dec. 10 & Dec. 14–Jan. 7. | Nov. 21–Dec.10 & Dec. 14–Jan. 7. |
| *Florida* | Sept. 1–Nov. 9 | Sept. 1–Nov. 9 | Dec. 18–Jan. 31 | Nov. 1–Feb. 15. |
| *Georgia* | Sept. 24–Oct. 31 & Nov. 8–Dec. 9. | Sept. 24–Oct. 31 & Nov. 8–Dec. 9. | Dec. 10–Jan. 23 | Nov. 14–Feb. 28. |
| *Maine* | Sept. 1–Nov. 9 | Closed | Oct. 1–Oct. 29 & Oct. 31–Nov. 15. | Sept. 1–Dec. 16. |
| *Maryland* (4) | Sept. 1–Nov. 9 | Sept. 1–Nov. 9 | Oct. 29–Nov. 25 & Jan. 12–Jan. 28. | Sept. 28–Nov. 25 & Dec. 12–Jan. 28. |
| *Massachusetts* (5) | Sept. 1–Nov. 9 | Closed | Deferred | Sept. 1–Dec. 16. |
| *New Hampshire* | Closed | Closed | Oct. 1–Nov. 14 | Sept. 15–Nov. 14. |
| *New Jersey* (6) | | | | |
| North Zone | Sept. 1–Nov. 9 | Sept. 1–Nov. 9 | Oct. 15–Nov. 19 | Sept. 16–Dec. 31. |
| South Zone | Sept. 1–Nov. 9 | Sept. 1–Nov. 9 | Nov. 12–Dec. 3 & Dec. 17–Dec. 30. | Sept. 16–Dec. 31. |
| *New York* (7) | Sept. 1–Nov. 9 | Closed | Oct. 1–Nov. 14 | Sept. 1–Nov. 9. |
| *North Carolina* | Sept. 1–Nov. 9 | Sept. 1–Nov. 9 | Dec. 15–Jan. 28 | Nov. 14–Feb. 28. |
| *Pennsylvania* (8) | Sept. 1–Nov. 9 | Closed | Oct. 15–Nov. 26 | Oct. 15–Nov. 26. |
| *Rhode Island* (9) | Sept. 3–Nov. 11 | Sept. 3–Nov. 11 | Nov. 1–Nov. 30 | Sept. 3–Nov. 11. |
| *South Carolina* | Sept. 26–Oct. 1 & Oct. 22–Dec. 24. | Sept. 26–Oct. 1 & Oct. 22–Dec. 24. | Nov. 19–Nov. 26 & Dec. 26–Jan. 31. | Nov. 14–Feb. 28. |
| *Vermont* | Closed | Closed | Oct. 1–Nov. 14 | Oct. 1–Nov. 14. |
| *Virginia* | Sept. 10–Oct. 1 & Oct. 3–Nov. 19. | Sept. 10–Oct. 1 & Oct. 3–Nov. 19. | Oct. 29–Nov. 12 & Dec. 16–Jan. 14. | Oct. 6–Oct. 10 & Oct. 22–Jan. 31. |

| | Sora and Virginia rails | Clapper and King rails | Woodcock | Common Snipe |
|---|---|---|---|---|
| *West Virginia* | Sept. 1–Nov. 5 | Closed | Oct. 15–Nov. 28 | Sept. 1–Dec. 10. |
| *MISSISSIPPI FLYWAY* | | | | |
| *Alabama* (10) | Nov. 25–Jan. 29 | Nov. 25–Jan. 29 | Dec. 18–Jan. 31 | Nov. 14–Feb. 28. |
| *Arkansas* | Sept. 10–Nov. 18 | Closed | Nov. 5–Dec. 19 | Nov. 1–Feb. 15. |
| *Illinois* (11) | Sept. 3–Nov. 11 | Closed | Oct. 15–Nov. 28 | Sept. 3–Dec. 18. |
| *Indiana* (12) | Sept. 1–Nov. 9 | Closed | Oct. 15–Nov. 28 | Sept. 1–Dec. 16. |
| *Iowa* (13) | Sept. 3–Nov. 11 | Closed | Oct. 1–Nov. 14 | Sept. 3–Nov. 30. |
| *Kentucky* | Sept. 1–Nov. 9 | Closed | Nov. 1–Dec. 15 | Sept. 21–Oct. 30 & Nov. 24–Jan. 29. |
| *Louisiana* (14) | Sept. 10–Sept. 25 | Sept. 10–Sept. 25 | Dec. 18–Jan. 31 | Deferred. |
| *Michigan* (15) | Sept. 15–Nov. 14 | Closed | Sept. 24–Nov. 7 | Sept. 15–Nov. 14. |
| *Minnesota* | Sept. 1–Nov. 7 | Closed | Sept. 24–Nov. 7 | Sept. 1–Nov. 7. |
| *Mississippi* | Sept. 25–Dec. 3 | Sept. 25–Dec. 3 | Dec. 9–Jan. 22 | Nov. 12–Feb. 26. |
| *Missouri* | Sept. 1–Nov. 9 | Closed | Oct. 15–Nov. 28 | Sept. 1–Dec. 16. |
| *Ohio* | Sept. 1–Nov. 9 | Closed | Oct. 8–Nov. 21 | Sept. 1–Nov. 27 & Dec. 17–Jan. 4. |
| *Tennessee* | Deferred | Closed | Oct. 29–Dec. 12 | Nov. 15–Feb. 29. |
| *Wisconsin* | Deferred | Closed | Sept. 24–Nov. 7 | Deferred. |
| *CENTRAL FLYWAY* | | | | |
| *Colorado* | Sept. 1–Nov. 9 | Closed | Closed | Sept. 1–Dec. 16. |
| *Kansas* | Sept. 1–Nov. 9 | Closed | Oct. 15–Nov. 28 | Sept. 1–Dec. 16. |
| *Montana* | Closed | Closed | Closed | Sept. 1–Dec. 16. |
| *Nebraska* (16) | Sept. 1–Nov. 9 | Closed | Sept. 24–Nov. 7 | Sept. 1–Dec. 16. |
| *New Mexico* (16) | Sept. 17–Nov. 25 | Closed | Closed | Oct. 15–Jan. 29. |
| *North Dakota* | Closed | Closed | Sept. 24–Nov. 7 | Sept. 17–Dec. 4. |
| *Oklahoma* | Sept. 1–Nov. 9 | Closed | Nov. 1–Dec. 15 | Oct. 1–Jan. 15. |
| *South Dakota* (17) | Closed | Closed | Closed | Sept. 1–Oct. 31. |
| *Texas* | Sept. 10–Sept. 25 & Nov. 5–Dec. 28. | Sept. 10–Sept. 25 & Nov. 5–Dec. 28. | Dec. 18–Jan. 31 | Nov. 5–Feb. 19. |
| *Wyoming* | Sept. 1–Nov. 9 | Closed | Closed | Sept. 1–Dec. 16. |
| *PACIFIC FLYWAY* | | | | |
| *Arizona* | Closed | Closed | Closed | Deferred. |
| *California* | Closed | Closed | Closed | Oct. 15–Jan. 29. |
| *Colorado* | Sept. 1–Nov. 9 | Closed | Closed | Sept. 1–Dec. 16. |
| *Idaho:* | | | | |
| Area 1 | Closed | Closed | Closed | Deferred. |
| Area 2 | Closed | Closed | Closed | Deferred. |
| *Montana* | Closed | Closed | Closed | Sept. 1–Dec. 16. |
| *Nevada* | Closed | Closed | Closed | Deferred. |
| *New Mexico* (16) | Sept. 17–Nov. 25 | Closed | Closed | Oct. 15–Jan. 29. |
| *Oregon* | Closed | Closed | Closed | Deferred. |
| *Utah* | Closed | Closed | Closed | Oct. 1–Jan. 14. |
| *Washington* | Closed | Closed | Closed | Deferred. |
| *Wyoming* | Sept. 1–Nov. 9 | Closed | Closed | Sept. 1–Dec. 16. |

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In *Connecticut, Delaware, Maryland,* and *New Jersey,* the limits for clapper and king rails are 10 daily and 20 in possession. See also footnote (6) below.
(3) In *Connecticut,* the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.
(4) In *Maryland,* no more than 1 king rail may be taken per day.
(5) In *Massachusetts,* the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.
(6) In *New Jersey,* the season for king rails is closed by State regulation.
(7) In *New York,* the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.
(8) In *Pennsylvania,* the daily bag and possession limits for rails are 3 and 6, respectively.
(9) In *Rhode Island,* the sora and Virginia rails limits are 3 daily and 6 in possession, singly or in the aggregate; the clapper and king rail limits are 1 daily and 2 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.
(10) In *Alabama,* the rail limits are 15 daily and 15 in possession, singly or in the aggregate.
(11) In *Illinois,* shooting hours are from sunrise to sunset.
(12) In *Indiana,* the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.
(13) In *Iowa,* the limits for sora and Virginia rails are 12 daily and 24 in possession.
(14) Additional days occurring after September 30 will be published with the late season selections.
(15) In *Michigan,* the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.
(16) In *Nebraska* and *New Mexico,* the rail limits are 10 daily and 20 in possession.
(17) In *South Dakota,* the snipe limits are 5 daily and 15 in possession.

■ 6. Section 20.105 is revised to read as follows:

**§ 20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species

designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 26, 2011, **Federal Register** (76 FR 44730).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

**Note:** States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

### (a) Common Moorhens and Purple Gallinules

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *ATLANTIC FLYWAY* | | | |
| *Delaware* | Sept. 2–Nov. 10 | 15 | 30 |
| *Florida* (1) | Sept. 1–Nov.9 | 15 | 30 |
| *Georgia* | Deferred | | |
| *New Jersey* | Sept. 1–Nov. 9 | 10 | 20 |
| *New York* | | | |
| Long Island | Closed | | |
| Remainder of State | Sept. 1–Nov. 9 | 8 | 16 |
| *North Carolina* | Sept. 1–Nov. 9 | 15 | 30 |
| *Pennsylvania* | Sept. 1–Nov. 9 | 3 | 6 |
| *South Carolina* | Sept. 26–Oct. 1 & | 15 | 30 |
| | Oct. 22–Dec. 24 | 15 | 30 |
| *Virginia* | Deferred | | |
| *West Virginia* | Deferred | | |
| *MISSISSIPPI FLYWAY* | | | |
| *Alabama* | Nov. 25–Jan. 29 | 15 | 15 |
| *Arkansas* | Sept. 1–Nov. 9 | 15 | 30 |
| *Kentucky* | Sept. 1–Nov. 9 | 15 | 30 |
| *Louisiana* (2) | Sept. 10–Sept. 25 | 15 | 30 |
| *Michigan* | Deferred | | |
| *Minnesota* | Deferred | | |
| *Mississippi* | Sept. 24–Dec. 2 | 15 | 30 |
| *Ohio* | Sept. 1–Nov. 9 | 15 | 30 |
| *Tennessee* | Deferred | | |
| *Wisconsin* | Deferred | | |
| *CENTRAL FLYWAY* | | | |
| *New Mexico* | | | |
| Zone 1 | Oct. 1–Dec. 9 | 1 | 2 |
| Zone 2 | Oct. 1–Dec. 9 | 1 | 2 |
| *Oklahoma* | Sept. 1–Nov. 9 | 15 | 30 |
| *Texas* | Sept. 10–Sept. 25 & | 15 | 30 |
| | Nov. 5–Dec. 28 | 15 | 30 |
| *PACIFIC FLYWAY* | | | |
| *All States* | Deferred | | |

(1) The season applies to common moorhens only.
(2) Additional days occurring after September 30 will be published with the late season selections.

### (b) Sea Ducks (Scoter, Eider, and Long-Tailed Ducks in Atlantic Flyway)

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and long-tailed ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *Connecticut* (1) | Sept. 20–Jan. 21 | 5 | 10 |
| *Delaware* | Sept. 27–Jan. 28 | 7 | 14 |
| *Georgia* | Deferred | | |
| *Maine* (2) | Oct. 1–Jan. 31 | 7 | 14 |
| *Maryland* | Deferred | | |
| *Massachusetts* | Deferred | | |
| *New Hampshire* (3) | Oct. 1–Jan. 15 | 7 | 14 |
| *New Jersey* | Sept. 22–Jan. 24 | 7 | 14 |
| *New York* | Oct. 15–Jan. 29 | 7 | 14 |
| *North Carolina* | Deferred | | |
| *Rhode Island* | Oct. 8–Jan. 22 | 5 | 10 |
| *South Carolina* | Deferred | | |

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *Virginia* | Deferred | | |

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in *Maine*, *Massachusetts*, *New Hampshire*, *Rhode Island*, *Connecticut*, *New York*, *Delaware*, *Virginia* and *Maryland* in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In *Connecticut,* the daily bag limit may include no more than 4 long-tailed ducks.

(2) In *Maine,* the daily bag limit for eiders is 4, and the possession limit is 8.

(3) In *New Hampshire,* the daily bag limit may include no more than 4 eiders or 4 long-tailed ducks.

## (c) Early (September) Duck Seasons.

**Note:** Unless otherwise specified, the seasons listed below are for teal only.

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *ATLANTIC FLYWAY* | | | |
| *Delaware* (1) | Sept. 10–Sept. 28 | 4 | 8 |
| *Florida* (2) | Sept. 24–Sept. 28 | 4 | 8 |
| *Georgia* | Sept. 10–Sept. 25 | 4 | 8 |
| *Maryland* (1)(3) | Sept. 16–Sept. 30 | 4 | 8 |
| *North Carolina* (1) | Sept. 10–Sept. 28 | 4 | 8 |
| *South Carolina* (3) | Sept. 15–Sept. 30 | 4 | 8 |
| *Virginia* (1) | Sept. 19–Sept. 30 | 4 | 8 |
| *MISSISSIPPI FLYWAY* | | | |
| *Alabama* | Sept. 10–Sept. 25 | 4 | 8 |
| *Arkansas* (3) | Sept. 10–Sept. 25 | 4 | 8 |
| *Illinois* (3) | Sept. 3–Sept. 18 | 4 | 8 |
| *Indiana* (3) | Sept. 3–Sept. 18 | 4 | 8 |
| *Iowa* (4) | | | |
| North Zone | Sept. 17–Sept. 21 | | |
| South Zone | Sept. 17–Sept. 21 | | |
| *Kentucky* (2) | Sept. 21–Sept. 25 | 4 | 8 |
| *Louisiana* | Sept. 10–Sept. 25 | 4 | 8 |
| *Mississippi* | Sept. 10–Sept. 25 | 4 | 8 |
| *Missouri* (3) | Sept. 10–Sept. 25 | 4 | 8 |
| *Ohio* (3) | Sept. 3–Sept. 18 | 4 | 8 |
| *Tennessee* (2) | Sept. 10–Sept. 14 | 4 | 8 |
| *CENTRAL FLYWAY* | | | |
| *Colorado* (1) | Sept. 10–Sept. 18 | 4 | 8 |
| *Kansas* | | | |
| Low Plains | Sept. 10–Sept. 25 | 4 | 8 |
| High Plains | Sept. 17–Sept. 25 | 4 | 8 |
| *Nebraska* (1) | | | |
| Low Plains | Sept. 3–Sept. 18 | 4 | 8 |
| High Plains | Sept. 10–Sept. 18 | 4 | 8 |
| *New Mexico* | Sept. 17–Sept. 25 | 4 | 8 |
| *Oklahoma* | Sept. 10–Sept. 25 | 4 | 8 |
| *Texas* | | | |
| High Plains | Sept. 10–Sept. 25 | 4 | 8 |
| Rest of State | Sept. 10–Sept. 25 | 4 | 8 |

(1) Area restrictions. See State regulations.

(2) In *Florida, Kentucky,* and *Tennessee,* the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(3) Shooting hours are from sunrise to sunset.

(4) In *Iowa,* the September season is part of the regular season, and limits will conform to those set for the regular season.

## (d) Special Early Canada Goose Seasons

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *ATLANTIC FLYWAY* | | | |
| *Connecticut* (1) | | | |

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| North Zone | Sept. 1–Sept. 2 & | 15 | 30 |
| | Sept. 6–Sept. 30 | 15 | 30 |
| South Zone | Sept. 15–Sept. 30 | 15 | 30 |
| *Delaware* | Sept. 1–Sept. 24 | 15 | 30 |
| *Florida* | Sept. 3–Sept. 28 | 5 | 10 |
| *Georgia* | Sept. 3–Sept. 25 | 5 | 10 |
| *Maine* | | | |
| Northern Zone | Sept. 1–Sept. 24 | 6 | 12 |
| Southern Zone | Sept. 1–Sept. 24 | 8 | 16 |
| *Maryland* (1)(2) | | | |
| Eastern Unit | Sept. 1–Sept. 15 | 8 | 16 |
| Western Unit | Sept. 1–Sept. 24 | 8 | 16 |
| *Massachusetts* | | | |
| Central Zone | Sept. 6–Sept. 24 | 7 | 14 |
| Coastal Zone | Sept. 6–Sept. 24 | 7 | 14 |
| Western Zone | Sept. 6–Sept. 24 | 7 | 14 |
| *New Hampshire* | Sept. 6–Sept. 25 | 5 | 10 |
| *New Jersey* (1)(2)(3) | Sept. 1–Sept. 30 | 15 | 30 |
| *New York* | | | |
| Lake Champlain Zone | Sept. 6–Sept. 25 | 5 | 10 |
| Northeastern Zone | Sept. 1–Sept. 25 | 8 | 16 |
| Western Zone | Sept. 1–Sept. 25 | 8 | 16 |
| Southeastern Zone | Sept. 1–Sept. 25 | 8 | 16 |
| Western Long Island Zone | Closed | | |
| Central Long Island Zone | Sept. 6–Sept. 30 | 8 | 16 |
| Eastern Long Island Zone | Sept. 6–Sept. 30 | 8 | 16 |
| *North Carolina* (4)(5) | Sept. 1–Sept. 30 | 15 | 30 |
| *Pennsylvania* (1) | | | |
| SJBP Zone (6) | Sept. 1–Sept. 24 | 3 | 6 |
| Rest of State (7) | Sept. 1–Sept. 24 | 8 | 16 |
| *Rhode Island* (1) | Sept. 1–Sept. 30 | 15 | 30 |
| *South Carolina* | | | |
| Early-Season Hunt Unit | Sept. 1–Sept. 30 | 15 | 30 |
| *Vermont* | | | |
| Lake Champlain Zone (8) | Sept. 6–Sept. 25 | 5 | 10 |
| Interior Vermont Zone | Sept. 6–Sept. 25 | 5 | 10 |
| Connecticut River Zone (9) | Sept. 6–Sept. 25 | 5 | 10 |
| *Virginia* (10) | Sept. 1–Sept. 24 | 10 | 20 |
| *West Virginia* | Sept. 1–Sept. 17 | 5 | 10 |
| *MISSISSIPPI FLYWAY* | | | |
| *Alabama* | Sept. 1–Sept. 15 | 5 | 10 |
| *Arkansas* | Sept. 1–Sept. 15 | 5 | 10 |
| *Illinois* | | | |
| North Zone | Sept. 1–Sept. 15 | 5 | 10 |
| Central Zone | Sept. 1–Sept. 15 | 5 | 10 |
| South Zone | Sept. 1–Sept. 15 | 2 | 4 |
| *Indiana* | Sept. 1–Sept. 15 | 5 | 10 |
| *Iowa* | | | |
| South Goose Zone: | | | |
| Des Moines Goose Zone | Sept. 3–Sept. 11 | 5 | 10 |
| Cedar Rapids/Iowa City Goose Zone | Sept. 3–Sept. 11 | 5 | 10 |
| Remainder of South Zone | Closed | | |
| North Goose Zone: | | | |
| Cedar Falls/Waterloo Zone | Sept. 3–Sept. 11 | 5 | 10 |
| Remainder of North Zone | Closed | | |
| *Kentucky* (11) | Sept. 1–Sept. 15 | 2 | 4 |
| *Michigan* | | | |
| Upper Peninsula | Sept. 1–Sept. 10 | 5 | 10 |
| Lower Peninsula: | | | |
| Huron, Saginaw, and Tuscola Counties | Sept. 1–Sept. 10 | 5 | 10 |
| Remainder | Sept. 1–Sept. 15 | 5 | 10 |
| *Minnesota* | Sept. 3–Sept. 22 | 5 | 10 |
| *Mississippi* (12) | Sept. 1–Sept. 15 | 5 | 10 |
| *Ohio* (11) | Sept. 1–Sept. 15 | 4 | 8 |
| *Tennessee* | Sept. 1–Sept. 15 | 5 | 10 |
| *Wisconsin* | Sept. 1–Sept. 15 | 5 | 10 |
| *CENTRAL FLYWAY* | | | |
| *North Dakota* | | | |
| Missouri River Zone | Sept. 1–Sept. 7 | 8 | 16 |
| Remainder of State | Sept. 1–Sept. 15 | 8 | 16 |
| *Oklahoma* | Sept. 10–Sept. 19 | 8 | 16 |

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *South Dakota* (11) | Sept. 3–Sept. 20 | 8 | 16 |
| *Texas* | | | |
| East Zone | Sept. 10–Sept. 25 | 5 | 10 |
| *PACIFIC FLYWAY* | | | |
| *Colorado* | Sept. 1–Sept. 9 | 4 | 8 |
| *Oregon* | | | |
| Northwest Zone | Sept. 10–Sept. 20 | 5 | 10 |
| Southwest Zone (13) | Sept. 10–Sept. 14 | 5 | 10 |
| East Zone (13) | Sept. 10–Sept. 14 | 5 | 10 |
| *Washington* | | | |
| Mgmt. Area 2B | Sept. 1–Sept. 15 | 5 | 10 |
| Mgmt. Areas 1 & 3 | Sept. 10–Sept. 15 | 5 | 10 |
| Mgmt. Area 4 & 5 | Closed | | |
| Mgmt. Area 2A | Sept. 10–Sept. 15 | 3 | 6 |
| *Wyoming* | Sept. 1–Sept. 8 | 2 | 4 |

(1) Shooting hours are one-half hour before sunrise to one-half hour after sunset.
(2) The use of shotguns capable of holding more than 3 shotshells is allowed.
(3) The use of electronic calls is allowed.
(4) In *North Carolina,* the use of unplugged guns and electronic calls is allowed in that area west of U.S. Highway 17 only.
(5) In *North Carolina,* shooting hours are one-half hour before sunrise to one-half hour after sunset in that area west of U.S. Highway 17 only.
(6) In *Pennsylvania,* in the area south of SR 198 from the Ohio state line to intersection of SR 18, SR 18 south to SR 618, SR 618 south to U.S. Route 6, U.S. Route 6 east to U.S. Route 322/SR 18, U.S. Route 322/SR 18 west to intersection of SR 3013, SR 3013 south to the Crawford/Mercer County line, not including the Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir, excluding the area east of SR 3011 (Hartstown Road), the daily bag limit is one goose. The season is closed on State Game Lands 214.
(7) In *Pennsylvania,* in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike I–76, the daily bag limit is 1 goose with a possession limit of 2 geese. On State Game Lands No. 46 (Middle Creek Wildlife Mgmt Area), the season is closed.
(8) In *Vermont,* in Addison County north of Route 125, the daily bag and possession limit is 2 and 4, respectively.
(9) In *Vermont,* the season in the Connecticut River Zone is the same as the New Hampshire Inland Zone season, set by New Hampshire.
(10) In *Virginia,* shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 17, and one-half hour before sunrise to sunset from September 19 to September 24 in the area east of I–95 where the September teal season is open. Shooting hours are one-half hour before sunrise to one-half hour after sunset from September 1 to September 24 in the area west of I–95.
(11) See State regulations for additional information and restrictions.
(12) In *Mississippi,* the season is closed on Roebuck Lake in Leflore County.
(13) In *Oregon,* the season is closed in the Southcoast Zone and the Klamath County Zone.

**(e) Regular Goose Seasons**

**Note:** Bag and possession limits will conform to those set for the regular season.

| | | Season dates |
|---|---|---|
| *MISSISSIPPI FLYWAY* | | |
| *Michigan* (1) | Canada: | |
| | North Zone | Sept. 17–Oct. 31. |
| | Middle Zone | Deferred. |
| | South Zone | Deferred |
| | White-fronted and Brant | Deferred. |
| | Light geese | Deferred. |
| *Wisconsin* | Horicon Zone | Sept. 16–Sept. 30. |
| | Exterior Zone | Sept. 16–Sept. 30. |

(1) In *Michigan,* season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) *Youth Waterfowl Hunting Days*

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

*Definitions*

*Youth Hunters:* Includes youths 15 years of age or younger.

*The Atlantic Flyway:* Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

*The Mississippi Flyway:* Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

*The Central Flyway:* Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota,

Texas, and Wyoming (east of the Continental Divide).

*The Pacific Flyway:* Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

**Note:** Bag and possession limits will conform to those set for the regular season unless there is a special season already open (*e.g.,* September Canada goose season), in which case, that season's daily bag limit will prevail.

| | | Season dates |
|---|---|---|
| *ATLANTIC FLYWAY* | | |
| *Connecticut* | | Deferred. |
| *Delaware* | Ducks, geese, brant, mergansers, and coots | Oct. 15 & Dec. 3. |
| *Florida* | | Deferred. |
| *Georgia* | Ducks, geese, mergansers, coots, moorhens, and gallinules | Nov. 12 & 13. |
| *Maine* | Ducks, geese, mergansers, and coots | |
| | North Zone | Sept. 17. |
| | South Zone | Sept. 24 & Nov. 5. |
| *Maryland* (1) | | Deferred. |
| *Massachusetts* | | Deferred. |
| *New Hampshire* | Ducks, geese, mergansers, and coots | Sept. 24 & 25. |
| *New Jersey* | | Deferred. |
| *New York* (2) | Ducks, mergansers, coots, brant, and Canada geese | |
| | Long Island Zone | Nov. 12 & 13. |
| | Lake Champlain Zone | Sept. 24 & 25. |
| | Northeastern Zone | Sept. 17 & 18. |
| | Southeastern Zone | Sept. 17 & 18. |
| | Western Zone | Oct. 8 & 9. |
| *North Carolina* | | Deferred. |
| *Pennsylvania* | Ducks, mergansers, Canada geese, coots, and moorhens | Sept. 17 & 24. |
| *Rhode Island* | Ducks, mergansers and coots | Oct. 22 & 23. |
| *South Carolina* | | Deferred. |
| *Vermont* | Ducks, geese, mergansers and coots | Sept. 24 & 25. |
| *Virginia* | | Deferred. |
| *West Virginia* (3) | Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 24 & Nov. 5. |
| *MISSISSIPPI FLYWAY* | | |
| *Alabama* | Ducks, mergansers, coots, geese, moorhens, and gallinules | Feb. 11 & 12. |
| *Arkansas* | | Deferred. |
| *Illinois* | | Deferred. |
| *Indiana* | | Deferred. |
| *Iowa* | | Deferred. |
| *Kentucky* | | Deferred. |
| *Louisiana* | | Deferred. |
| *Michigan* | Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 17 & 18. |
| *Minnesota* | Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 17. |
| *Mississippi* | | Deferred. |
| *Missouri* | | Deferred. |
| *Ohio* | | Deferred. |
| *Tennessee* | | Deferred. |
| *Wisconsin* | Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 17 & 18. |
| *CENTRAL FLYWAY* | | |
| *Colorado* | Ducks, dark geese, mergansers, and coots | |
| | Mountain/Foothills Zone | Sept. 24 & 25. |
| | Northeast Zone | Sept. 24 & 25. |
| | Southeast Zone | Oct. 22 & 23. |
| *Kansas* (4) | | Deferred. |
| *Montana* | Ducks, geese, mergansers, and coots | Sept. 24 & 25. |
| *Nebraska* (5) | Ducks, geese, mergansers, and coots | Oct. 1 & 2. |
| *New Mexico* | Ducks, mergansers, coots, and moorhens | |
| | North Zone | Oct. 1 & 2. |
| | South Zone | Oct. 15 & 16. |
| *North Dakota* | Ducks, geese, mergansers, and coots | Sept. 17 & 18. |
| *Oklahoma* | | Deferred. |
| *South Dakota* (6) | Ducks, Canada geese, mergansers, and coots | Sept. 17 & 18. |
| *Texas* | | Deferred. |
| *Wyoming* | Ducks, geese, mergansers, and coots | |
| | Zone 1 | Sept. 24 & 25. |
| | Zone 2 | Sept. 17 & 18. |
| *PACIFIC FLYWAY* | | |
| *Arizona* | | Deferred. |
| *California* | Ducks, geese, mergansers, coots, moorhens, gallinules, and brant | |
| | Northeastern Zone | Sept. 24 & 24. |
| | Remainder of State | Deferred. |

| | | Season dates |
|---|---|---|
| *Colorado* | Ducks, geese, mergansers, and coots | Oct. 15 & 16. |
| *Idaho* | Ducks, Canada geese, mergansers, coots, moorhens, and gallinules | Sept. 24 & 25. |
| *Montana* | Ducks, geese, mergansers, and coots | Sept. 24 & 25. |
| *Nevada* | | Deferred. |
| *New Mexico* | Ducks, mergansers, moorhens, and coots | Oct. 1 & 2. |
| *Oregon* (7) | Ducks, Canada geese, mergansers, coots, moorhens, and gallinules | Sept. 24 & 25. |
| *Utah* | Ducks, geese, mergansers, coots, moorhens, and gallinules | Sept. 17. |
| *Washington* | Ducks, Canada geese, mergansers, and coots | Sept. 24 & 25. |
| *Wyoming* | Ducks, dark geese, mergansers, and coots | Sept. 17 & 18. |

(1) In *Maryland,* the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.
(2) In *New York,* the daily bag limit for Canada geese is 2.
(3) In *West Virginia,* the accompanying adult must be at least 21 years of age.
(4) In *Kansas,* the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.
(5) In *Nebraska,* see State regulations for additional information on the daily bag limit.
(6) In *South Dakota,* the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.
(7) In *Oregon,* the goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

■ 7. Section 20.106 is revised to read as follows:

**§ 20.106 Seasons, limits, and shooting hours for sandhill cranes.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 26, 2011, **Federal Register** (76 FR 44730).

Federally authorized, State-issued permits are issued to individuals, and only the individual whose name and address appears on the permit at the time of issuance is authorized to take sandhill cranes at the level allowed by the permit, in accordance with provisions of both Federal and State regulations governing the hunting season. The permit must be carried by the permittee when exercising its provisions and must be presented to any law enforcement officer upon request. The permit is not transferable or assignable to another individual, and may not be sold, bartered, traded, or otherwise provided to another person. If the permit is altered or defaced in any way, the permit becomes invalid.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

**Note:** States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| *MISSISSIPPI FLYWAY* | | | |
| *Kentucky* | Deferred. | | |
| *Minnesota* (1) | | | |
| NW Goose Zone | Sept. 3–Oct. 9 | 2 | 4 |
| *CENTRAL FLYWAY* | | | |
| *Colorado* (1) | Oct. 1–Nov. 27 | 3 | 6 |
| *Kansas* (1)(2)(3) | Nov. 9–Jan. 5 | 3 | 6 |
| *Montana* | | | |
| Regular Season Area (1) | Sept. 24–Nov. 20 | 3 | 6 |
| Special Season Area (4) | Sept. 10–Sept. 25 | 2 per season | |
| *New Mexico* | | | |
| Regular Season Area (1) | Oct. 31–Jan. 31 | 3 | 6 |
| Middle Rio Grande Valley Area (4)(5) | Oct. 29–Oct. 30 & | 3 | 6 |
| | Nov. 12 & | 3 | 6 |
| | Nov. 19–Nov. 20 & | 3 | 6 |
| | Dec. 3–Dec. 4 & | 3 | 6 |
| | Jan. 14–Jan. 15 | 3 | 6 |
| Southwest Area (4) | Oct. 29–Nov. 6 & | 3 | 6 |
| | Jan. 7–Jan. 8 | 3 | 6 |
| Estancia Valley (4) | Oct. 29–Nov. 6 | 3 | 6 |
| *North Dakota* (1) | | | |
| Area 1 | Sept. 17–Nov. 13 | 3 | 6 |
| Area 2 | Sept. 17–Oct. 23 | 2 | 4 |
| *Oklahoma* (1) | Deferred | | |
| *South Dakota* (1) | Sept. 24–Nov. 20 | 3 | 6 |
| *Texas* (1) | Deferred. | | |
| *Wyoming* | | | |
| Regular Season (Area 7) (1) | Sept. 17–Nov. 13 | 3 | 6 |

| | Season dates | Limits | |
|---|---|---|---|
| | | Bag | Possession |
| Riverton-Boysen Unit (Area 4) (4) | Sept. 17–Oct. 9 | 1 per season | |
| Big Horn, Hot Springs, Park, and Washakie Counties (Area 6) (4). | Sept. 17–Oct. 2 | 1 per season | |
| *PACIFIC FLYWAY* | | | |
| *Arizona* (4) | | | |
| Special Season Area | Nov. 11–Nov. 13 & | 3 per season | |
| | Nov. 18–Nov. 20 & | 3 per season | |
| | Nov. 22–Nov. 24 & | 3 per season | |
| | Nov. 26–Nov. 28 & | 3 per season | |
| | Nov. 30–Dec. 2 & | 3 per season | |
| | Dec. 9–Dec. 11 | 3 per season | |
| Lower CO River Hunt Area | Closed. | | |
| *Idaho* (4) | | | |
| Area 1 | Sept. 1–Sept. 30 | 3 | 9 per season |
| Areas 2–5 | Sept. 1–Sept. 15 | 3 | 9 per season |
| *Montana* | | | |
| Special Season Area (4) | Sept. 10–Sept. 25 | 2 per season | |
| *Utah* (4) | | | |
| Rich County | Sept. 3–Sept. 11 | 1 per season | |
| Cache County | Sept. 3–Sept. 11 | 1 per season | |
| Eastern Box Elder County | Sept. 3–Sept. 11 | 1 per season | |
| Uintah County | Sept. 24–Oct. 2 | 1 per season | |
| *Wyoming* (4) | | | |
| Bear River Area (Area 1) | Sept. 1–Sept. 8 | 1 per season | |
| Salt River Area (Area 2) | Sept. 1–Sept. 8 | 1 per season | |
| Eden-Farson Area (Area 3) | Sept. 1–Sept. 8 | 1 per season | |
| Uinta County (Area 5) | Sept. 1–Sept. 8 | 1 per season | |

(1) Each person participating in the regular sandhill crane seasons must have a valid sandhill crane hunting permit and/or a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

(2) In *Kansas,* shooting hours are from one-half hour after sunrise until 2 p.m through November 30, and from sunrise until 2 p.m. December 1 through the close of the season.

(3) In *Kansas,* each person desiring to hunt sandhill cranes in Kansas is required to pass an annual, on-line sandhill crane identification examination.

(4) Hunting is by State permit only. See State regulations for further information.

(5) In *New Mexico,* in the Middle Rio Grande Valley Area, the season is only open for youth hunters on November 12. See State regulations for further details.

■ 8. Section 20.109 is revised to read as follows:

**§ 20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.**

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 26, 2011, **Federal Register** (76 FR 44730). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in an August 26, 2011, **Federal Register** and will be published again in a late-September 2011, **Federal Register**.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit—3 migratory birds, singly or in the aggregate.

Possession limit—6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons—unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

| | | Extended falconry dates |
|---|---|---|
| *ATLANTIC FLYWAY* | | |
| *Delaware* | Doves | Oct. 3–Oct. 14 & Jan. 16–Feb. 9. |
| | Rails | Nov. 11–Dec. 17. |
| | Woodcock and snipe | Oct. 1–Oct. 7 & Jan. 16–Mar. 10. |
| *Florida* | Doves | Oct. 25–Nov. 11 & Nov. 28–Dec. 9 & Jan. 9–Jan. 15. |
| | Rails | Nov. 10–Dec. 16. |
| | Woodcock | Nov. 24–Dec. 17 & Feb. 1–Mar. 9. |
| | Common moorhens | Nov. 10–Dec. 14. |
| *Georgia* | Moorhens, gallinules, and sea ducks | Nov. 28–Dec. 9 & Jan. 30–Feb. 10. |
| *Maryland* | Doves | Oct. 9–Oct. 31 & Jan. 8–Jan. 18 |
| | Rails | Nov. 11–Dec. 14. |
| | Woodcock | Oct. 1–Oct. 28 & Feb. 9–Mar. 10. |
| *North Carolina* | Doves | Oct. 15–Nov. 19. |
| | Rails, moorhens, and gallinules | Nov. 19–Dec. 24. |
| | Woodcock | Nov. 7–Dec. 10 & Jan. 30–Feb. 25. |
| *Pennsylvania* | Doves | Oct. 3–Oct. 28 &Nov. 28–Dec. 8. |
| | Rails | Nov. 10–Dec. 16. |
| | Woodcock and snipe | Sept. 1–Oct. 14 & Nov. 28–Dec. 16. |
| | Moorhens and gallinules | Nov. 10–Dec. 16. |
| *Virginia* | Doves | Oct. 11–Oct. 24 & Dec. 20–Dec. 25 & Jan. 15–Jan. 31. |
| | Woodcock | Oct. 17–Oct. 28 & Nov. 13–Dec. 15 & Jan. 15–Jan. 31. |
| | Rails | Oct. 2 & Nov. 20–Dec. 25. |
| *MISSISSIPPI FLYWAY* | | |
| *Illinois* | Doves | Nov. 1–Nov. 4 & Nov. 14–Dec. 16. |
| | Rails | Sept. 1–Sept. 2 & Nov. 12–Dec. 16. |
| | Woodcock | Sept. 1–Oct. 14 & Nov. 29–Dec. 16. |
| *Indiana* | Doves | Oct. 17–Nov. 3 & Jan. 1–Jan. 19. |
| | Woodcock | Sept. 20–Oct. 14 & Nov. 29–Jan. 4. |
| | Ducks, mergansers, and coots (1). | |
| North Zone | | Sept. 27–Sept. 30. |
| *Louisiana* | Doves | Sept. 19–Oct. 4. |
| | Woodcock | Oct. 27–Dec. 16 & Feb. 1–Feb. 11. |
| *Minnesota* | Woodcock | Sept. 1–Sept. 23 & Nov. 8–Dec. 16. |
| | Rails and snipe | Nov. 8–Dec. 16. |
| *Missouri* | Doves | Nov. 10–Dec. 16. |
| | Ducks, mergansers, and coots | Sept. 10–Sept. 25. |
| *Ohio* | Ducks, coots, and geese | Sept. 1–Sept. 18. |
| *Tennessee* | Mourning doves | Sept. 27–Oct. 7 & Oct. 24–Nov. 18. |
| | Ducks (1) | Sept. 15–Oct. 20. |
| *Wisconsin* | Rails, snipe, moorhens, and gallinules (1) | Sept. 1–Sept. 23. |
| | Woodcock | Sept. 1–Sept. 23. |
| | Ducks, mergansers, and coots | Sept. 17–Sept. 18. |
| *CENTRAL FLYWAY* | | |
| *Montana* (2) | Ducks, mergansers, and coots (1) | Sept. 21–Sept. 30. |
| *Nebraska* | Ducks, mergansers, and coots. | |
| High Plains | | Sept. 10–Sept. 18 & Oct. 1–Oct. 2. |
| Low Plains | | Sept. 1–Sept. 30. |
| *New Mexico* | Doves. | |
| North Zone | | Nov. 10–Nov. 12 & Nov. 28–Dec. 31. |
| South Zone | | Oct. 10–Nov. 12 & Nov. 28–Nov. 30. |
| | Band-tailed pigeons. | |
| North Zone | | Sept. 21–Dec. 16. |
| South Zone | | Oct. 21–Jan. 15. |
| | Ducks and coots | Sept. 17–Sept. 25. |
| | Sandhill cranes | Oct. 17–Oct. 30. |
| Regular Season Area | | Oct. 17–Oct. 30. |
| Estancia Valley Area | | Nov. 7–Dec. 27. |
| | Common moorhens | Dec. 10–Jan. 15. |
| | Sora and Virginia rails | Nov. 26–Jan. 1. |

| | | Extended falconry dates |
|---|---|---|
| *North Dakota* | Ducks, mergansers, and coots | Sept. 5–Sept. 9 & Sept. 12–Sept. 16. |
| | Snipe | Sept. 5–Sept. 9 & Sept. 12–Sept. 16. |
| *South Dakota* | Ducks, mergansers, and coots (1). | |
| High Plains | | Sept. 3–Sept. 10. |
| Low Plains | | |
| | North Zone | Sept. 3–Sept. 16 & Sept. 19–Sept. 23. |
| | Middle Zone | Sept. 3–Sept. 16 & Sept. 19–Sept. 23. |
| | South Zone | Sept. 3–Sept. 16 & Sept. 19–Sept. 29. |
| *Texas* | Doves | Nov. 16–Dec. 22. |
| | Rails, gallinules, and woodcock | Jan. 30–Feb. 13. |
| *Wyoming* | Rails | Nov. 10–Dec. 16. |
| | Ducks, mergansers, and coots (1). | |
| Zone 1 | | Sept. 24–Sept. 25 & Oct. 17–Oct. 24. |
| Zone 2 | | Sept. 17–Sept. 18 & Nov. 28–Dec. 5. |
| *PACIFIC FLYWAY* | | |
| *Arizona* | Doves | Sept. 16–Nov. 1. |
| *New Mexico* | Doves. | |
| North Zone | | Nov. 10–Nov. 12 & Nov. 28–Dec. 31. |
| South Zone | | Oct. 10–Nov. 12 & Nov. 28–Nov. 30. |
| | Band-tailed pigeons. | |
| North Zone | | Sept. 21–Dec. 16. |
| South Zone | | Oct. 21–Jan. 15. |
| *Oregon* | Doves | Oct. 1–Dec. 16. |
| | Band-tailed pigeons (3) | Sept. 1–Sept. 14 & Sept. 24–Dec. 16. |
| *Utah* | Doves and band-tailed pigeons | Oct. 1–Dec. 16. |
| *Washington* | Doves | Oct. 1–Dec. 16. |
| *Wyoming* | Rails | Nov. 10–Dec. 16. |
| | Ducks, mergansers, and coots (1) | Sept. 17–Sept. 18. |

(1) Additional days occurring after September 30 will be published with the late-season selections.
(2) In *Montana,* the bag limit is 2 and the possession limit is 6.
(3) In *Oregon,* no more than 1 pigeon daily in bag or possession.

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Part VI

## Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2011–12 Early Season; Final Rule

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 20**

**[Docket No. FWS–R9–MB–2011–0014; 91200–1231–9BPP–L2]**

**RIN 1018–AX34**

# Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2011–12 Early Season

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes special early-season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This rule responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of tribal authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest, at levels compatible with populations and habitat conditions.

**DATES:** This rule takes effect on September 1, 2011.

**ADDRESSES:** You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, VA or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240; (703) 358–1714.

**SUPPLEMENTARY INFORMATION:** The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 8, 2011, **Federal Register** (76 FR 48694), we proposed special migratory bird hunting regulations for the 2011–12 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

In the April 8, 2011, **Federal Register** (76 FR 19876), we requested that tribes desiring special hunting regulations in the 2011–12 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. On August 8, 2011, we published a proposed rule (75 FR 47682) that included special migratory bird hunting regulations for 30 Indian tribes, based on the input we received in response to the April 8, 2011, proposed rule. All the regulations contained in this final rule were either submitted by the tribes or approved by the tribes and follow our proposals in the August 8 proposed rule.

Although the August 8 proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Therefore, it includes information for only 21 tribes. The letter designations for the paragraphs pertaining to each tribe in this rule are discontinuous because they follow the letter designations for the 30 tribes discussed in the August 8 proposed rule, which set forth paragraphs (a) through (dd). Late-season hunting will be addressed in late September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged doves. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

## Population Status and Harvest

The following paragraphs provide preliminary information on the status of waterfowl and information on the status and harvest of migratory shore and upland game birds excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **FOR FURTHER INFORMATION CONTACT** or from our Web site at *http://www.fws.gov/migratorybirds/NewsPublications Reports.html.*

### *Waterfowl Breeding and Habitat Survey*

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft, helicopters, and ground crews and encompass principal breeding areas of North America, covering an area over 2.0 million square miles. The traditional survey area comprises Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Overall, habitat conditions during the 2011 Waterfowl Breeding Population and Habitat Survey were characterized by average to above-average moisture and a normal winter and spring across the traditional and eastern survey areas. The exception was the west-central portion of the traditional survey area

that received below-average moisture. The total pond estimate (Prairie Canada and United States combined) was 8.1 ± 0.2 million. This was 22 percent above the 2010 estimate and 62 percent above the long-term average (1974–2010) of 5.0 ± 0.03 million ponds. The 2011 estimate of ponds in Prairie Canada was 4.9 ± 0.2 million. This was 31 percent above last year's estimate (3.7 ± 0.2 million) and 43 percent above the long-term average (1961–2010; 3.4 ± 0.03 million). The 2011 pond estimate for the north-central United States was 3.2 ± 0.1 million, which was similar to last year's estimate (2.9 ± 0.1 million) and 102 percent above the long-term average (1974–2010; 1.6 ± 0.02 million). Additional details of the 2011 Survey were provided in the July 26 **Federal Register** and are available from our Web site at *http://www.fws.gov/migratorybirds/NewsPublicationsReports.html.*

Breeding Population Status

In the traditional survey area, which includes strata 1–18, 20–50, and 75–77, the total duck population estimate was 45.6 ± 0.8 [SE] million birds. This estimate represents an 11 percent increase over last year's estimate of 40.9 ± 0.7 million birds and was 35 percent above the long-term average (1955–2010). Estimated mallard (*Anas platyrhynchos*) abundance was 9.2 ± 0.3 million birds, which was 9 percent above the 2010 estimate of 8.4 ± 0.3 million birds and 22 percent above the long-term average. Estimated abundance of gadwall (*A. strepera;* 3.3 ± 0.2 million) was similar to the 2010 estimate and 80 percent above the long-term average. Estimated abundance of American wigeon (*A. americana;* 2.1 ± 0.1 million) was 14 percent below the 2010 estimate and 20 percent below the long-term average. The estimated abundance of green-winged teal (*A. crecca*) was 2.9 ± 0.2 million, which was 17 percent below the 2010 estimate and 47 percent above their long-term average. The estimate of blue-winged teal abundance (*A. discors*) was 8.9 ± 0.4 million, which was 41 percent above the 2010 estimate and 91 percent above their long-term average. The estimate for northern pintails (*A. acuta;* 4.4 ± 0.3 million) was 26 percent above the 2010 estimate, and similar to the long-term average. The northern shoveler estimate (*A. clypeata*) was 4.6 ± 0.2 million, which was 14 percent above the 2010 estimate and 98 percent above the long-term average. Redhead abundance (*Aythya americana;* 1.4 ± 0.1 million) was 27 percent above the 2010 estimate and 106 percent above the long-term average. The canvasback estimate (*A. valisineria;* 0.7 ± 0.05 million) was similar to the 2010 estimate and 21 percent above the long-term average. Estimated abundance of scaup (*A. affinis* and *A. marila* combined; 4.3 ± 0.3 million) was similar to that of 2010 and 15 percent below the long-term average of 5.1 ± 0.05 million.

The eastern survey area was restratified in 2005 and is now composed of strata 51–72. Estimated abundance of mallards in the eastern survey area was 0.4 ± 0.1 million, which was similar to the 2010 estimate and the long-term average (1990–2010). Abundance estimates of green-winged teal, ring-necked duck (*A. collaris*), goldeneyes (common [*Bucephala clangula*] and Barrow's [*B. islandica*]), and mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]) were all similar to their 2010 estimates and long-term averages. The American black duck (*Anas rubripes*) estimate was 0.55 ± 0.04 million, which was similar to the 2010 estimate and 13 percent below the long-term average of 0.63 million.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area (revised in 2008 to exclude Alaska mallards), Michigan, Minnesota, and Wisconsin, and was estimated to be 11.9 ± 1.1 million birds. This was similar to the 2010 estimate of 10.3 ± 0.9 million in 2010.

*Status of Geese and Swans*

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). Production of arctic-nesting geese depends heavily upon the timing of snow and ice melt, and on spring and early summer temperatures. In 2011, snowmelt timing was average to slightly below average throughout most of the important goose breeding areas, and most of North America will see average, or slightly below-average, fall flights of geese this year. Conditions in the central Arctic, especially near Queen Maud Gulf, improved relative to last year's very late spring, so improved production of snow and Ross's geese and mid-continent white-fronted geese is expected. Gosling production of Canada goose populations that migrate to the Atlantic and Mississippi Flyways should generally be good in 2011, with the possible exceptions of the Eastern Prairie and Mississippi Valley populations. Conditions throughout Alaska and northwestern Canada were very good. As a result, Pacific Flyway white-fronted geese, brant, and most Canada geese experienced average to above-average production. Indices of wetland abundance in the Canadian and U.S. prairies in 2011 were generally excellent, and were particularly improved relative to 2010 in Canada. This likely improved nesting and brood rearing success of temperate-nesting Canada geese this year. However, flooding along many river systems may have destroyed some nests. Well-above or near-average wetland abundance in the United States and Canadian prairie regions and mild spring temperatures in many other temperate regions will likely improve production of Canada geese that nest at southern latitudes. Primary abundance indices decreased (< − 10 percent) for 7 goose populations and increased (>10 percent) for 10 goose populations from 2010 to 2011. Indices of 12 other populations remained similar among years. Primary abundance indices decreased for western tundra swans and remained unchanged for eastern tundra swans. The following populations displayed significant ($P < 0.05$) positive trends during the most recent 10-year period: Mississippi Flyway Giant, Short Grass Prairie, and Hi-line Canada geese; Western Arctic Wrangel Island and Western Central Flyway light geese; Pacific white-fronted geese and Pacific brant. Only the Atlantic Flyway Resident goose population showed a significant negative 10-year trend.

*Waterfowl Harvest and Hunter Activity*

National surveys of migratory bird hunters were conducted during the 2009 and 2010 hunting seasons. About 1.1 million waterfowl hunters harvested 13,139,800 (±4 percent) ducks and 3,327,000 (±5 percent) geese in 2009, and about 1.1 million waterfowl hunters harvested 14,796,700 (±4 percent) ducks and 3,169,900 (±5 percent) geese in 2010. Mallard, green-winged teal, gadwall, blue-winged/cinnamon teal, and wood duck (Aix sponsa) were the 5 most-harvested duck species in the United States, and Canada goose was the predominant species in the goose harvest. Coot hunters (about 31,100 in 2009 and 50,500 in 2010) harvested 219,000 (±34 percent) coots in 2009 and 302,600 (±50 percent) in 2010.

**Comments and Issues Concerning Tribal Proposals**

For the 2011–12 migratory bird hunting season, we proposed regulations for 30 tribes and/or Indian groups that followed the 1985

guidelines. Only 25 tribes were considered appropriate for final rulemaking because we did not receive proposals from 5 of the tribes for whom we had proposed regulations. Some of the tribal proposals had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 21 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 8, 2011, closed on August 18, 2011. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 18, but not received prior to final action by us, in the September late-season final rule. At this time, we have received one comment.

*Great Lakes Indian Fish and Wildlife Commission's (GLIFWC) Proposal*

We received one comment on the August 8 proposed rule from the State of Wisconsin. The State of Wisconsin, Department of Natural Resources (WIDNR) noted the long history of working cooperatively with GLIFWC and individual tribes in the conservation of Wisconsin's waterfowl and wetland resources. However, WIDNR believed the most significant problem with the GLIFWC proposal was the request to allow tribal members to hunt with the use of electronic calls for ducks and geese within the ceded territory. WIDNR believes that, since the ceded territory covers ⅓ of the State of Wisconsin and significant areas of public hunting grounds and waters, the use of electronic calls by tribal hunters would put any nontribal hunters in violation of the law when hunting in these areas. Thus, GLIFWC's proposal would, in effect, close public lands to hunting, increase conflicts among the hunting public creating a safety concern and an unmanageable law enforcement environment. WIDNR also opposed the extension of shooting hours to 60 minutes past sunset and removing species restrictions from the daily bag limit because of safety and resource concerns.

*Service Response:* As we stated in the August 8 proposed rule, the GLIFWC proposed regulations: Allow the use of electronic calls in the 1837 and 1842 Treaty Areas; extend shooting hours by 45 minutes to 1 hour after sunset in the 1837 and 1842 Treaty Areas and by 15 minutes to 30 minutes after sunset in the 1836 Treaty Area; increase the daily bag limits for ducks in the 1837 and 1842 Treaty Areas from 30 to 40 ducks; eliminates all species restrictions within the bag limit for ducks in the 1837 and 1842 Treaty Areas; eliminate possession limits in the 1837 and 1842 Treaty Areas; and allow the use of unattended decoys in Michigan. While we acknowledge that tribal harvest and participation has declined in recent years, we do not believe that the proposal is the best plan for increasing tribal participation or for the conservation of migratory birds. In addition, as we have previously stated, we are willing to meet with the GLIFWC to explore possible ways to increase tribal participation in migratory bird hunting opportunities. We appreciated the opportunity we had to meet with the Tribes this year and in 2008 to discuss the mutual concerns we have for the migratory bird resource and future hunting opportunities.

Removal of the electronic call prohibition would be inconsistent with our conservation concerns and we do not support allowing the use of electronic calls in the 1837 and 1842 Treaty Areas. Given available evidence on the effectiveness of electronic calls, we believe the potential for overharvest in localized areas could contribute to long-term population declines. It is possible that hunter participation could increase beyond GLIFWC's estimates (50 percent) and could result in additional conservation impacts, particularly on locally breeding populations. Tribal waterfowl hunting covered by this proposal would occur on ceded lands that are not in the ownership of the Tribes. Difficulties of different sets of hunting regulations for different areas and groups of hunters would lead to confusion and frustration on the part of the public, hunters, wildlife-management agencies, and law enforcement. The allowance of electronic calls for tribal hunting on ceded lands would make those lands and other adjacent areas off-limits to waterfowl hunting anytime tribal hunters were hunting with electronic calls (due to the influence of electronic calls on birds). As proposed, we believe there are too many inherent problems with approving the use of these calls, much like baiting. We do not believe the use of electronic calls in the ceded areas is in the best interest of the resource. However, we remind GLIFWC that electronic calls are permitted for the take of resident Canada geese during Canada-goose-only September seasons when all other waterfowl and crane seasons are closed. In the case of GLIFWC's proposed seasons, electronic calls could be used from September 1–14 for resident Canada geese (GLIFWC's duck season begins September 15). This regulatory change was implemented in 2006 in order to significantly increase the harvest of resident Canada geese due to widespread population overabundance, depredation issues, and public health and safety issues.

We also cannot support increasing the shooting hours by 45 minutes in the 1837 and 1842 Treaty Areas (to 60 minutes after sunset). Significantly extending the shooting hours by 45 minutes only heightens our previously identified concerns regarding species identification, species conservation of locally breeding populations, retrieval of downed birds, hunter safety, and law enforcement impacts. It is widely considered dark 45 minutes after sunset, and we see no viable remedies to allay our concerns. Shooting this late would also significantly increase the potential take of non-game birds. However, in deference to tribal traditions and in the interest of cooperation, we will approve shooting 30 minutes after sunset (an extension of 15 minutes from the current 15 minutes after sunset). This would be consistent with other Tribes in the general area (Fond du Lac, Leech Lake, Oneida, Sault Ste Marie, and White Earth). While we acknowledge that we approved the use of 45 minutes after sunset at Mole Lake in 2004, this use was approved only on reservation lands, not ceded lands.

We also do not favor increasing daily bag limits for ducks to the extent GLIFWC has proposed until we have additional information on which we could assess potential impacts. We note that in 2007, in an effort to obtain the necessary information, we implemented a pilot expansion of the daily bag limit to 30 birds per day in the 1837 and 1842 Treaty Areas. We supported this with the understanding that we would need to closely monitor tribal harvest through either GLIFWC's own increased harvest surveys or GLIFWC's assisting the Service to survey tribal hunters. We again reiterate our request for GLIFWC to continue their current harvest survey based on our mutual implementation of a pilot bag limit increase for ducks in the 1837 and 1842 Treaty Areas in 2007, particularly for species such as mallards which were subsequently significantly increased in 2008 (from 10 to 30 per day). We believe the pilot bag limits implemented then, and changed in 2008, should warrant at least several years of data evaluation using GLIFWC's current harvest survey. To date, we have not been presented with adequate data on which to base an informed decision.

GLIFWC already has significantly greater daily bag limits than any other tribe in the region. At this point, we have seen no demonstrated need, nor data, to conclude that the current daily

bag limit of 30 ducks is a hindrance to tribal harvest. The daily bag limit was increased to 30 (from 20) only two seasons ago. Again, we acknowledge that we approved a daily bag limit of 50 birds at Mole Lake in 2004, however, this was approved only on reservation lands, not ceded lands. Until we have evidence of such need, we do not support increasing the daily bag limit to the extent GLIFWC has proposed.

We also do not agree with GLIFWC's proposal to remove all species restrictions. However, we are willing to increase the following species restrictions within the overall daily bag limit of 30 ducks in all 3 of the Treaty Areas to 9 black ducks, 9 pintails, and 9 canvasbacks (from 5 each, respectively). These species restrictions would be consistent with other Tribes (specifically, Fond du Lac) hunting on ceded lands in the general area. We believe that species restrictions for these species are still warranted given their population status. Further, we have already removed restrictions for mallards, scaup, and wood ducks.

Regarding GLIFWC's proposal for possession limits, while we believe the proposal to eliminate all possession limits in the 1837 and 1842 Treaty Areas could have potential resource conservation impacts and would prefer not to implement wide-scale changes in the current possession limit regulations at this time, we are willing to remove the possession limits for tribal harvest in the 1837 and 1842 ceded areas. We make this change with some trepidation and with the understanding that it could have law enforcement impacts. However, in the interest of our long-term relationship with GLIWFC, and the high importance GLIWFC has placed on this issue, we would agree with this important change. Further, removal of this restriction would be consistent with other Tribes (specifically, Fond du Lac) hunting on ceded lands in the general area.

Lastly, while we believe that there may be safety concerns with elimination of unattended decoys in the Ceded Territories, we take no position on the relative need or lack of need for such a restriction. Additionally, we believe the use of unattended decoys to ''reserve'' hunting areas in public waters (i.e., those lands in the ceded territories outside of lands directly controlled by the Tribes) could lead to confusion and frustration on the part of the public, hunters, wildlife-management agencies, and law enforcement officials due to the inherent difficulties of different sets of hunting regulations for different areas and groups of hunters. In Michigan, State law requires that unattended decoys may not be left out overnight. We also believe the allowance of unattended decoys for tribal hunting on ceded lands would likely lead to increased acrimony and debate regarding issues of fairness from nontribal hunters. Other than regulations on National Wildlife Refuges and other Federal lands, there are no Federal restrictions requiring the removal of unattended decoys. We believe this is not a Migratory Bird Treaty Act issue and refrain from taking a position.

**National Environmental Policy Act (NEPA) Consideration**

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14),'' filed with the Environmental Protection Agency on June 9, 1988. We published a notice of availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement (SEIS) for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We released the draft SEIS on July 9, 2010 (75 FR 39577). The draft SEIS is available either by writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing our Web site at *http://www.fws.gov/migratorybirds.*

**Endangered Species Act Consideration**

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, ''The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act'' (and) shall ''insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.'' Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to jeopardize the continued existence of any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

**Executive Order 12866**

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. OMB bases its determination of regulatory significance upon the following four criteria:

(a) 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.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

An economic analysis was prepared for the 2008–09 season. This analysis was based on data from the 2006 National Hunting and Fishing Survey, the most recent year for which data are available (see discussion in Regulatory Flexibility Act section below). This analysis estimated consumer surplus for three alternatives for duck hunting (estimates for other species are not quantified due to lack of data). The alternatives are (1) Issue restrictive regulations allowing fewer days than those issued during the 2007–08 season, (2) Issue moderate regulations allowing more days than those in alternative 1, and (3) Issue liberal regulations identical to the regulations in the 2007–08 season. For the 2008–09 season, we chose alternative 3, with an estimated consumer surplus across all flyways of $205–$270 million. We also chose alternative 3 for the 2009–10 and the 2010–11 seasons. At this time, we are

proposing no changes to the season frameworks for the 2011–12 season, and as such, we will again consider these three alternatives. However, final frameworks for waterfowl will depend on population status information available later this year. For these reasons, we have not conducted a new economic analysis, but the 2008–09 analysis is part of the record for this rule and is available at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

**Regulatory Flexibility Act**

The annual migratory bird hunting regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008. Copies of the Analysis are available upon request from the Division of Migratory Bird Management (see **ADDRESSES**) or from our Web site at *http://www.fws.gov/migratorybirds/NewReportsPublications/SpecialTopics/SpecialTopics.html#HuntingRegs* or at *http://www.regulations.gov* at Docket No. FWS–R9–MB–2011–0014.

**Small Business Regulatory Enforcement Fairness Act**

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule would have an annual effect on the economy of $100 million or more. However, because this rule would establish hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

**Paperwork Reduction Act**

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 4/30/2014). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 4/30/2013). A Federal 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.

**Unfunded Mandates Reform Act**

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking would not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

**Civil Justice Reform—Executive Order 12988**

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

**Takings Implication Assessment**

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule would not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules would allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

**Energy Effects—Executive Order 13211**

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

**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, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in the April 8 **Federal Register**, we solicited proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2011–12 migratory bird hunting season. The resulting proposals were contained in a separate August 8, 2011, proposed rule (76 FR 48694). By virtue of these actions, we have consulted with Tribes affected by this rule.

**Federalism Effects**

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant

federalism effects and do not have sufficient federalism implications to warrant the preparation of a federalism summary impact assessment.

**Regulations Promulgation**

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States and Tribes would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these seasons will, therefore, take effect immediately upon publication.

**List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

## PART 20—[AMENDED]

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

**Authority:** Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

### § 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

Unless specifically provided for below, all of the regulations contained in 50 CFR part 20 apply to the seasons listed herein.

*(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters).*

Doves

Season Dates: Open September 1, through 15, 2011; then open November 12, through December 26, 2011.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits after the first day of the season.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona. The early season will be open from one-half hour before sunrise until noon. For the late season, shooting hours are from one-half hour before sunrise to sunset.

*(b) Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana (Tribal Hunters).*

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 2, 2011, through March 9, 2012.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

*(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only).*

Ducks

1854 and 1837 Ceded Territories:

Season Dates: Begin September 17 and end November 27, 2011.

Daily Bag Limit: 18 ducks, including no more than 12 mallards (only 3 of which may be hens), 9 black ducks, 9 scaup, 9 wood ducks, 9 redheads, 9 pintails, and 9 canvasbacks.

Reservation:

Season Dates: Begin September 3 and end November 27, 2011.

Daily Bag Limit: 12 ducks, including no more than 9 mallards (only 2 of which may be hens), 9 black ducks, 9 scaup, 9 redheads, 9 pintails, 9 wood ducks, and 9 canvasbacks.

Mergansers

1854 and 1837 Ceded Territories:

Season Dates: Begin September 17 and end November 27, 2011.

Daily Bag Limit: 15 mergansers, including no more than 6 hooded mergansers.

Reservation:

Season Dates: Begin September 3 and end November 27, 2011.

Daily Bag Limit: 10 mergansers, including no more than 4 hooded mergansers.

Canada Geese: All Areas

Season Dates: Begin September 1 and end November 27, 2011.

Daily Bag Limit: 20 geese.

Coots and Common Moorhens (Common Gallinules)

1854 and 1837 Ceded Territories:

Season Dates: Begin September 17 and end November 27, 2011.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Reservation:

Season Dates: Begin September 3 and end November 27, 2011.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sandhill Cranes: 1854 Ceded Territory only:

Season Dates: Begin September 1 and end November 27, 2011.

Daily Bag Limit: One sandhill crane. A crane carcass tag is required prior to hunting.

Sora and Virginia Rails: All Areas

Season Dates: Begin September 1 and end November 27, 2011.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe: All Areas

Season Dates: Begin September 1 and end November 27, 2011.

Daily Bag Limit: Eight common snipe.

Woodcock: All Areas

Season Dates: Begin September 1 and end November 27, 2011.

Daily Bag Limit: Three woodcock.

Mourning Dove: All Areas

Season Dates: Begin September 1 and end October 30, 2011.

Daily Bag Limit: 30 mourning dove.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. These regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

*(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only).*

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 18, 2011, through January 18, 2012.

Daily Bag Limit: 20 ducks, which may include no more than 5 pintail, 3 canvasback, 5 black ducks, 1 hooded merganser, 5 wood ducks, 3 redheads, and 9 mallards (only 4 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, through November 30, 2011; and open January 1, 2012, through February 8, 2012.

Daily Bag Limit: 10 geese.

Other Geese (white-fronted geese and brant)

Season Dates: Open September 20, through November 30, 2011.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2011.

Daily Bag Limit: 10 rails, 10 snipe, and 5 woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2011.

Daily Bag Limit: 10 mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

*(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

The 2011–12 waterfowl hunting season regulations apply to all treaty areas (except where noted):

Ducks

Season Dates: Begin September 15 and end December 31, 2011.

Daily Bag Limit: 1837 and 1842 Ceded Territories:

30 ducks, including no more than 9 black ducks, 9 pintails, and 9 canvasbacks.

1836 Ceded Territory:

30 ducks, including no more than 5 black ducks, 5 pintails, and 5 canvasbacks.

Mergansers

Season Dates: Begin September 15 and end December 31, 2011.

Daily Bag Limit: 10 mergansers.

Geese

Season Dates: Begin September 1 and end December 31, 2011. In addition, any portion of the ceded territory that is open to State-licensed hunters for goose hunting after December 1 will also be open concurrently for tribal members.

Daily Bag Limit: 20 geese in aggregate.

Other Migratory Birds

Coots and Common Moorhens (Common Gallinules):

Season Dates: Begin September 15 and end December 31, 2011.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 15 and end December 31, 2011.

Daily Bag Limits: 20 Sora and Virginia rails, singly or in the aggregate.

Common Snipe

Season Dates: Begin September 15 and end December 31, 2011.

Daily Bag Limit: 16 common snipe.

Woodcock

Season Dates: Begin September 6 and end December 1, 2011.

Daily Bag Limit: 10 woodcock.

Mourning Dove: 1837 and 1842 Ceded Territories.

Season Dates: Begin September 1 and end November 9, 2011.

Daily Bag Limit: 15.

General Conditions

1. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by Federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota,* and *United States* v. *Michigan* cases. Chapter 10 in each of these model codes regulates ceded territory migratory bird hunting. All versions of Chapter 10 parallel Federal requirements as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the Federal migratory bird regulations contained in 50 CFR part 20.

3. Particular regulations of note include:

i. Nontoxic shot is required for all off-reservation waterfowl hunting by tribal members.

ii. Tribal members in each zone shall comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

iii. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will

not count as part of any off-reservation bag or possession limit.

iv. The baiting restrictions included in section 10.05(2)(h) of the model ceded territory conservation code will be amended to include language which parallels that in place for non-tribal members as published at 64 FR 29799, June 3, 1999.

v. The shell limit restrictions included in section 10.05(2)(b) of the model ceded territory conservation code will be removed.

vi. Hunting hours shall be from one-half hour before sunrise to one-half hour after sunset.

vii. The use of electronic calls is allowed for Canada geese only during September 1–14. Other geese may not be taken during this time.

*(f) [Reserved.]*

*(g) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters).*

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 2, through 16, 2011, for the early-season, and open October 1, 2011, through January 31, 2012, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant (when the State's season is open) and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2011, through January 31, 2012.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 2 pintail, 1 canvasback, 3 scaup, and 2 redheads. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2011, through January 31, 2012.

Daily Bag Limit: 6 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

*(h) [Reserved.]*

*(i) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 17, through December 31, 2011.

Daily Bag Limits: 10 ducks, including no more than 5 pintail, 5 canvasback, and 5 black ducks.

Geese

Season Dates: Open September 1, through December 31, 2011.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

*(j) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 15, 2011, through January 20, 2012.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, 2011, through February 8, 2012.

Daily Bag and Possession Limits: Five Canada geese, and possession limit is twice the daily bag limit.

White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2011.

Daily Bag and Possession Limits: Five birds, and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2011.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

1. All tribal members are required to obtain a valid tribal resource card and 2011–12 hunting license.

2. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

3. Particular regulations of note include:

i. Nontoxic shot will be required for all waterfowl hunting by tribal members.

ii. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

iii. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

4. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

*(k) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only).*

Ducks

Season Dates: Open September 15, 2011, through January 31, 2012.

Daily Bag Limits: 20 ducks, including no more than 5 hen mallards, 5 black ducks, 5 redheads, 5 wood ducks, 5 pintail, 5 hooded merganser, 5 scaup, and 5 canvasback.

Coots and Gallinules

Season Dates: Open September 15, through December 31, 2011.

Daily Bag Limit: 20.

Canada Geese

Season Dates: Open September 1, 2011, through February 8, 2012.

Daily Bag Limit: 20.

Sora and Virginia Rails

Season Dates: Open September 1, through December 31, 2011.

Daily Bag Limit: 20.

Snipe

Season Dates: Open September 15, through December 31, 2011.

Daily Bag Limit: 16.

Mourning Doves

Season Dates: Open September 1, through November 14, 2011.

Daily Bag Limit: 15.

Woodcock

Season Dates: Open September 5, through December 1, 2011.

Daily Bag Limit: 10.

General: Possession limits are twice the daily bag limits.

*(l)* [*Reserved.]*

*(m) Lower Elwha Klallam Tribe, Port Angeles, Washington (Tribal Members Only).*

Ducks

Season Dates: Open September 17, 2011, through January 2, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 17, 2011, through January 2, 2012.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The seasons on Aleutian Canada geese and Brant are closed. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 17, 2011, through January 2, 2012.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 17, 2011, through January 2, 2012.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 17, 2011, through January 2, 2012.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 17, 2011, through January 2, 2012.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Lower Elwha Klallam Tribe pursuant to tribal law. Hunters must observe all basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(n) Makah Indian Tribe, Neah Bay, Washington (Tribal Members).*

Band-Tailed Pigeons

Season Dates: Open September 17, through October 30, 2011.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 24, 2011, through January 29, 2012.

Daily Bag Limit: Seven ducks including no more than five mallards (only two of which can be a hen), one redhead, one pintail, three scaup, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 24, 2011, through January 29, 2012.

Daily Bag Limit: Four including no more than one brant. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 apply. The following restrictions also apply:

(1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area.

(2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl.

(3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation.

(4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited.

(5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited.

(6) The use of dogs is permitted to hunt waterfowl.

(7) Shooting hours for all species of waterfowl are one-half hour before sunrise to one-half hour after sunset.

(8) Open hunting areas are: GMUs 601 (Hoko), a portion of the 602 (Dickey) encompassing the area north of a line between Norwegian Memorial and east to Highway 101, and 603 (Pysht).

*(o) Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nontribal Hunters).*

Band-Tailed Pigeons

Season Dates: Open September 1, through 30, 2011.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through 30, 2011.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

*(p) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only).*

Ducks (Including Mergansers)

Season Dates: Open September 18, through November 18, 2011, and open November 28, through December 4, 2011.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through November 18, 2011; and open November 28, 2011, through January 1, 2012.

Daily Bag and Possession Limits: 5 and 10 Canada geese, respectively, from September 1, through September 18, 2011; and 3 and 6 Canada geese, respectively, the remainder of the season. Hunters will be issued five tribal tags during the early season and three tribal tags during the late season for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 300 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 3, through November 6, 2011.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 6, 2011.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal member shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: tribal

members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

*(q) Point No Point Treaty Council, Kingston, Washington (Tribal Members Only).*

Jamestown S'Klallam Tribe

Ducks

Season Dates: Open September 15, 2011, through February 1, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scoters, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 15, 2011, through March 10, 2012.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The seasons on Aleutian and cackling Canada geese are closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 13, 2011, through January 31, 2012.

Daily Bag and Possession Limits: Two and four, respectively.

Coots

Season Dates: Open September 15, 2011, through February 1, 2012.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 15, 2011, through January 14, 2012.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, 2011, through March 10, 2012.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 15, 2011, through March 10, 2012.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

Port Gamble S'Klallam Tribe

Ducks

Season Dates: Open September 1, 2011, through February 1, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, four scoters, and two redheads. Possession limit is twice the daily bag limit. Bag and possession limits for harlequin ducks is one per season.

Geese

Season Dates: Open September 15, 2011, through March 10, 2012.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The seasons on Aleutian and cackling Canada geese are closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 13, 2011, through January 31, 2012.

Daily Bag and Possession Limits: 2 and 4, respectively.

Coots

Season Dates: Open September 1, 2011, through February 1, 2012.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 1, 2011, through January 31, 2012.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 1, 2011, through March 10, 2012.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 1, 2011, through March 10, 2012.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General: Tribal members must possess a tribal hunting permit from the Point No Point Tribal Council pursuant to tribal law. Hunting hours are from one-half hour before sunrise to sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(r) Sault Ste. Marie Tribe of Chippewa Indians, Sault Ste. Marie, Michigan (Tribal Members Only).*

Mourning Doves

Season Dates: Open September 1, through November 14, 2011.

Daily Bag Limit: 10 doves.

Ducks

Season Dates: Open September 15, through December 31, 2011.

Daily Bag Limits: 20, including no more than 5 canvasback, 5 black duck, and 5 wood duck.

Mergansers

Season Dates: Open September 15, through December 31, 2011.

Daily Bag Limit: 10, only 5 of which may be hens.

Geese

Season Dates: Open September 1, through December 31, 2011.

Daily Bag Limit: 20 in the aggregate.

Coots and Gallinule

Season Dates: Open September 1, through December 31, 2011.

Daily Bag Limit: 20 in the aggregate.

Woodcock

Season Dates: Open September 2, through December 1, 2011.

Daily Bag Limits: 10.

Common Snipe

Season Dates: Open September 15, through December 31, 2011.

Daily Bag Limits: 16.

Sora and Virginia Rails

Season Dates: Open September 1, through December 31, 2011.

Daily Bag Limits: 20 in the aggregate.

General: Possession limits are twice the daily bag limits except for rails, of which the possession limit equals the daily bag limit (20). Tribal members must possess a tribal hunting permit from the Sault Ste. Marie Tribe pursuant to tribal law. Shooting hours are one-half hour before sunrise until one-half hour after sunset. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

(s) *[Reserved.]*

*(t) Skokomish Tribe, Shelton, Washington (Tribal Members Only).*

Ducks and Mergansers

Season Dates: Open September 16, 2011, through February 28, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin per season, and two redheads. Possession limit is twice the daily bag limit (except for harlequin).

Geese

Season Dates: Open September 16, 2011, through February 28, 2012.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2011, through February 15, 2012.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 16, 2011, through February 28, 2012.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, 2011, through February 28, 2012.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, 2011, through February 28, 2012.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, 2011, through February 28, 2012.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(u) Spokane Tribe of Indians, Spokane Indian Reservation, Wellpinit, Washington (Tribal Members Only).*

Ducks

Season Dates: Open September 2, 2011, through January 31, 2012.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, two pintail, one canvasback, three scaup, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 2, 2011, through January 31, 2012.

Daily Bag and Possession Limits: Four dark geese and six light geese. Possession limit is twice the daily bag limit.

General Conditions: All tribal hunters must have a valid Tribal ID card on his or her person while hunting. Shooting hours are one-half hour before sunrise to sunset, and steel shot is required for all migratory bird hunting. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(v) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)*

Ducks

Season Dates: Open September 1, 2011, through January 15, 2012.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2011, through January 15, 2012.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2011.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2011, through January 15, 2012.

Daily Bag and Possession Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2011, through January 15, 2012.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, through December 31, 2011.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington. Hunters must observe all other basic Federal migratory bird hunting regulations in 50 CFR part 20.

*(w) [Reserved.]*

*(x) [Reserved.]*

*(y) [Reserved.]*

*(z) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only).*

Mourning Dove

Season Dates: Open September 1, through December 31, 2011.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

*(aa) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only).*

Canada Geese

Season Dates: Open September 7 through 24, 2011, and open October 31, 2011, through February 25, 2012.

Daily Bag Limits: Eight Canada geese during the first period and eight during the second.

Snow Geese

Season Dates: Open September 7 through 24, 2011.

Daily Bag Limits: 15 snow geese.

Sora and Virginia Rails

Season Dates: Open September 1 through November 9, 2011.

Daily Bag Limits: 5 sora and 10 Virginia Rails.

Snipe

Season Dates: Open September 1 through December 16, 2011.

Daily Bag Limits: Eight snipe.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

*(bb) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only).*

Ducks

Season Dates: Open September 17, through December 11, 2011.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 female mallards, 1 pintail, and 1 canvasback.

Mergansers

Season Dates: Open September 17, through December 18, 2011.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1 through 25, 2011, and open September 26, through December 18, 2011.

Daily Bag Limit: Eight geese through September 25 and five thereafter.

Coots

Season Dates: Open September 1, through November 30, 2011.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 1, through November 30, 2011.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 1, through November 30, 2011.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 1, through November 30, 2011.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. All other basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

*(cc) [Reserved.]*

*(dd) [Reserved.]*

Dated: August 29, 2011.

**Rachel Jacobson,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2011–22497 Filed 8–31–11; 8:45 am]

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## CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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**H.R. 2553/P.L. 112–27**
Airport and Airway Extension Act of 2011, Part IV (Aug. 5, 2011; 125 Stat. 270)

**H.R. 2715/P.L. 112–28**
To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes. (Aug. 12, 2011; 125 Stat. 273)

**Last List September 5, 2011**

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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