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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0381; Directorate Identifier 2010–NM–203–AD; Amendment 39–16799; AD 2011–18–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

> Several reports have been received on failures of the main landing gear (MLG) stabilizer extension springs. A landing gear audit has confirmed that the MLG may not lock in the down-lock position with the absence of both MLG stabilizer extension springs. The loss of the locking mechanism could result in the collapse of the main landing gear.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 18, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 18, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 19, 2011 (76 FR 21820). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Several reports have been received on failures of the main landing gear (MLG) stabilizer extension springs. A landing gear audit has confirmed that the MLG may not lock in the down-lock position with the absence of both MLG stabilizer extension springs. The loss of the locking mechanism could result in the collapse of the main landing gear.
>
> This [TCCA] directive is to mandate the incorporation of a new maintenance task for the MLG stabilizer extension springs.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request to Reference Latest Revision of the Maintenance Review Board Report

Merle Mattson requested that we revise paragraph (g) of the NPRM (76 FR 21820, April 19, 2011), to reference the latest permanent revision of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, rather than Bombardier Temporary Revision (TR) MRB–45, dated October 6, 2009, to Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, for Task 320100–213. The commenter suggested an option of adding a note allowing the removal of Bombardier TR MRB–45, dated October 6, 2009, when it is incorporated into Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, through a general revision. The commenter stated that the proposed NPRM would force operators to go back to the manufacturer for a copy of Bombardier TR MRB–45, dated October 6, 2009, because that TR was discarded at the incorporation of permanent Revision 7, dated June 2010, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7.

We agree with the request to add a note to allow the removal of Bombardier TR MRB–45, dated October 6, 2009, when the information in that TR is included in the general revision of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. We have added Note 1 to this AD to specify that the general revisions may be inserted into Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, provided the relevant information in the general revisions is identical to that in Bombardier TR MRB–45, dated October 6, 2009.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 65 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,525, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

3. 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 AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 21820, April 19, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–17 Bombardier, Inc.: Amendment 39–16799. Docket No. FAA–2011–0381; Directorate Identifier 2010–NM–203–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, -401, and -402 airplanes, certificated in any category, serial numbers 4001, 4003 and subsequent.

Subject

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

Reason

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

Several reports have been received on failures of the main landing gear (MLG) stabilizer extension springs. A landing gear audit has confirmed that the MLG may not lock in the down-lock position with the absence of both MLG stabilizer extension springs. The loss of the locking mechanism could result in the collapse of the main landing gear.

* * * * *

Compliance

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

Actions

(g) Within 30 days after the effective date of this AD, revise the maintenance program by incorporating Task 320100–213 as specified in Bombardier Temporary Revision (TR) MRB–45, dated October 6, 2009, to Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The initial compliance time for Task 320100–213 is within 600 flight hours after the effective date of this AD.

Note 1: The actions required by paragraph (g) of this AD may be done by inserting a copy of Bombardier TR MRB–45, dated October 6, 2009, into Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. When this TR has been included in the general revisions of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, the general revisions may be inserted in Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, provided the relevant information in the general revisions is identical to that in Bombardier TR MRB–45, dated October 6, 2009.

No Alternative Actions or Intervals

(h) After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or

lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI Transport Canada Civil Aviation (TCCA) Airworthiness Directive CF–2010–22, dated July 20, 2010; and Bombardier Temporary Revision MRB–45, dated October 6, 2009, to Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Temporary Revision MRB–45, dated October 6, 2009, to Section 1–32, Systems/Powerplant Maintenance Program, of Part 1 of the Maintenance Review Board Report of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the 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.

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

Issued in Renton, Washington, on August 23, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22278 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0917; Directorate Identifier 2011–NM–157–AD; Amendment 39–16806; AD 2011–19–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This 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:

In service experience has shown a number of events of pin to socket arcing at the Integrated Drive Generator (IDG) feeder cable pylon/nacelle interface connector. The fretting corrosion phenomenon was identified to be the root cause of the pin to socket arcing.

Investigation has identified a non-optimised electrical harness installation as a contributing factor to this phenomenon that could lead to electrical arcs with possible electrical flickering.

* * * * *

[S]ome operators reported cases of Display Unit (DU) flickering, despite the fact that the engines installed did not belong to the affected batch, and that these aeroplanes had been modified to incorporate one of * * * two terminating actions, * * *.

[S]ome intermittent electrical power supply interruptions may not be detectable by the electrical power monitoring system, thereby preventing an automatic disconnection of the failed generator.

* * * * *

The unsafe condition is transient loss of certain systems, which could result in the reduced ability of the flightcrew to cope with adverse flight conditions. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective September 28, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 28, 2011.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD as of August 13, 2004 (69 FR 45243, July 29, 2004).

We must receive comments on this AD by October 28, 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

On July 16, 2004, we issued AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), which corresponded to Direction Générale de l'Aviation Civile (DGAC) (the aviation authority for France) AD F–2004–074, dated May 26, 2004. That FAA AD required revising the airplane flight manual (AFM) to include a procedure intended to address an unsafe condition on Airbus Model A319–131, –132, and –133; A320–231, –232, and –233; and A321–131 and –231 series airplanes except those airplanes on which Airbus Modification 32943 has been incorporated in production. That FAA AD also required an inspection of the firewall connector for signs of arcing if

an integrated drive generator (IDG) was shut down in-flight automatically or using the AFM procedure, and corrective action as applicable. That FAA AD also included an optional terminating action to replace the IDG harnesses and connectors. The inspection and replacement actions were not required or provided in French AD F–2004–074.

Since we issued AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), some operators reported cases of display unit (DU) flickering, despite being modified in production, or in service using certain service information. Therefore, to address the unsafe condition associated with DU flickering, Airbus developed a new AFM procedure. We have determined that this new AFM procedure is necessary to address the identified unsafe condition. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0142, dated July 25, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

In service experience has shown a number of events of pin to socket arcing at the Integrated Drive Generator (IDG) feeder cable pylon/nacelle interface connector. The fretting corrosion phenomenon was identified to be the root cause of the pin to socket arcing.

Investigation has identified a non-optimised electrical harness installation as a contributing factor to this phenomenon that could lead to electrical arcs with possible electrical flickering.

These incidents may cause the following symptoms during flight:

—Intermittent flickering of display units, *e.g.* primary flight display, navigation display, electronic centralized aircraft monitoring (ECAM) and/or multipurpose control display unit (MCDU),

—Transient disconnection of several systems (auto pilot, yaw damper, auto throttle), triggering of aircraft system warnings and/or flags,

—Loss of IDG power supply on the affected engine, and/or

—Flickering of cabin lights.

The Aircraft Flight Manual (AFM) Temporary Revision (TR) 4.02.00/20 was issued as a procedure to be applied in such case. Consequently, EASA AD 2006–0280, which superseded the DGAC France AD F–2004–074 [which corresponds to FAA AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004)], required the amendment of the AFM to impose the limitations as detailed in AFM TR 4.02.00/20 for aeroplanes with certain engines (limited batch of engines, identified by serial number) installed.

After the introduction of this AFM TR, some operators reported cases of Display Unit (DU) flickering, despite the fact that the engines installed did not belong to the affected batch, and that these aeroplanes had been modified to incorporate one of the two terminating actions, Airbus Service Bulletin (SB) A320–71–1030 (Airbus modification (mod.) 34982) and SB A320–71–1034 (Airbus mod. 32943). The investigations of these occurrences revealed some intermittent electrical power supply interruptions. Analysis showed that these interruptions may fluctuate within the electrical protection limits and in some rare occasions, may affect some of the connected aeroplanes systems.

As a consequence, some intermittent electrical power supply interruptions may not be detectable by the electrical power monitoring system, thereby preventing an automatic disconnection of the failed generator.

To address this issue, Airbus has issued a new AFM procedure, applicable to all aeroplanes. This ''DISPLAY UNIT FAILURE'' procedure, which replaces the one contained in AFM TR 4.02.00/20, allows the flight crew to determine the affected generator, select it OFF and reset the rudder trim.

For the reasons described above, this AD, which supersedes EASA AD 2006–0280, requires amendment of the applicable AFM to ensure that the flight crew applies the appropriate operational procedure.

The unsafe condition is transient loss of certain systems, which could result in the reduced ability of the flightcrew to cope with adverse flight conditions. This AD also expands the applicability of AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), by including all Model A318, A319, A320, and A321 series airplanes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Temporary Revision TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/A319/A320/A321 Airplane Flight Manual. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the 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 required 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 AD.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the additional in-service events of DU flickering on Model A318, A319, A320, and A321 series airplanes that were not included in the applicability of FAA AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), or on which the terminating actions of paragraph (h) of that AD were done. Transient loss of certain systems could result in the reduced ability of the flightcrew to cope with adverse flight conditions. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0917; Directorate Identifier 2011–NM–157–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We

will also post a report summarizing each substantive verbal contact we receive about this AD.

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 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 this AD:

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

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

3. 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 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.

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 Amendment 39–13748 (69 FR 45243, July 29, 2004) and adding the following new AD:

2011–19–01 Airbus: Amendment 39–16806. Docket No. FAA–2011–0917; Directorate Identifier 2011–NM–157–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 28, 2011.

Affected ADs

(b) This AD supersedes AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004).

Applicability

(c) This AD applies to Airbus Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes; certificated in any category; all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Reason

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

In service experience has shown a number of events of pin to socket arcing at the Integrated Drive Generator (IDG) feeder cable pylon/nacelle interface connector. The fretting corrosion phenomenon was identified to be the root cause of the pin to socket arcing.

Investigation has identified a non-optimised electrical harness installation as a contributing factor to this phenomenon that could lead to electrical arcs with possible electrical flickering.

* * * * *

[S]ome operators reported cases of Display Unit (DU) flickering, despite the fact that the engines installed did not belong to the affected batch, and that these aeroplanes had been modified to incorporate one of * * * two terminating actions, * * *.

[S]ome intermittent electrical power supply interruptions may not be detectable by the electrical power monitoring system, thereby preventing an automatic disconnection of the failed generator.

* * * * *

The unsafe condition is transient loss of certain systems, which could result in the reduced ability of the flightcrew to cope with adverse flight conditions.

Compliance

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

Restatement of Requirements of AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), With Revised Method of Compliance:

Revision of Airplane Flight Manual (AFM)

(g) For Airbus Model A319–131, –132, and –133; A320–231, –232, and –233; and A321–131 and –231 series airplanes, except those airplanes on which Airbus Modification 32943 has been incorporated in production: Within 10 days after August 13, 2004 (effective date of AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004)), revise the Limitations section of the Airbus A318/319/320/321 AFM to include the information in Temporary Revision (TR) 4.02.00/20, dated May 3, 2004. This may be done by inserting a copy of this TR into the AFM. When this TR has been included in general revisions of the AFM, those general revisions may be inserted into this AFM, provided the relevant information in the general revisions is identical to that in this TR. Accomplishing the actions required by paragraph (j) of this AD terminates the requirements of this paragraph.

Post-IDG Shutdown Inspection

(h) For Airbus Model A319–131, –132, and –133; A320–231, –232, and –233; and A321–131 and –231 series airplanes, except those airplanes on which Airbus Modification 32943 has been incorporated in production: If an IDG is shut down by the flightcrew in accordance with the TR procedures specified in paragraph (g) of this AD, or if an IDG is shut down automatically before the effective date of this AD, do the actions specified in paragraph (h)(1) or (h)(2) of this AD. If an IDG is shut down automatically on or after the effective date of this AD, do the actions specified in paragraph (k) of this AD.

(1) Before further flight, inspect the firewall connector of the affected IDG to detect signs of arcing, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. If any sign of arcing is detected: Before further flight, either repair the connector or replace the connector with a new connector, in accordance with a method approved by the Manager, International Branch, ANM–116.

(2) Operate the airplane with the affected IDG inoperative in accordance with the provisions and compliance periods specified in the FAA-approved Master Minimum Equipment List or in accordance with a method approved by the Manager, International Branch, ANM–116. Before further use of the affected IDG, do the actions specified in paragraph (h)(1) of this AD. As of the effective date of this AD, operate the airplane in accordance with a method approved by the Manager, International Branch, ANM–116.

Note 1: Guidance on provisions and compliance periods for operating the airplane with an inoperative, affected IDG can be

found in the FAA-approved Master Minimum Equipment List.

Terminating Action for Paragraphs (g) and (h) of This AD if Done Before the Effective Date of This AD

(i) For Airbus Model A319–131, –132, and –133; A320–231, –232, and –233; and A321–131 and –231 series airplanes, except those airplanes on which Airbus Modification 32943 has been incorporated in production: Replacement of the IDG harnesses and connectors on both engines in accordance with Airbus Service Bulletin A320–71–1030, dated February 27, 2003, before the effective date of this AD terminates the requirements of paragraphs (g) and (h) of this AD.

Note 2: Airbus Service Bulletin A320–71–1030, dated February 27, 2003, refers to International Aero Engines Information Bulletin V2500–NAC–70–0736, dated January 28, 2003, as an additional source of guidance for the harness/connector replacement specified in paragraph (i) of this AD.

New Requirements of This AD:

Revision of AFM

(j) For all airplanes: Within 10 days after the effective date of this AD, revise the applicable section of the Airbus A318/319/320/321 AFM to include the information in Figure 1 of this AD or the information in Airbus TR TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM. This may be done by inserting a copy of this AD or Airbus TR TR112, Issue 1.1, dated November 29, 2010, in the AFM. Accomplishing the actions required by this paragraph terminates the requirements of paragraph (g) of this AD.

Note 3: When the information in Figure 1 of this AD or Airbus TR TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM, has been included in the applicable section of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM, provided the relevant information in the general revisions is identical to that in Figure 1 of this AD or Airbus TR TR112, Issue 1.1, dated November 29, 2010.

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DISPLAY UNIT FAILURE

■ **Affected DU blank or display distorted:**
Turn off affected DU as required.

- **If ECAM DUs affected:**
  Use ECAM/ND SEL
- **If EFIS DUs affected:**
  Use PFD/ND XFR.

■ **Diagonal line or "INVALID DATA" on affected DU:**
Attempt to recover affected DU by using associated DMC switching.

- **If unsuccessful:**
  Turn off then on affected DU.

■ **Inversion of EWD and SD displays:**
Turn off then on ECAM upper display.

■ **Affected DU(s) or MCDU flashes intermittently:**

■ **If Captain PFD or ND, both ECAM DUs or upper ECAM DU, or MCDU 1 is (are) affected:**
Turn off GEN 1.

■ **If DU(s) stop(s) flashing:**
Keep GEN 1 off for the rest of the flight.
Use the sideslip indication to verify if the rudder trim needs to be reset. If necessary, reset the rudder trim.
Note: Intermittent Electrical Power Supply Interruptions may cause offset in the rudder trim.
Select AP and/or autothrust as required.
APU may be started (*Refer to NORM-49 Auxiliary Power Unit (APU)*) and APU generator may be used (if available).

■ **If DU(s) do(es) not stop flashing:**
Restore GEN 1.

■ **If First Officer PFD or ND, lower ECAM DU, or MCDU 2 is (are) affected:**
Turn off GEN 2.

■ **If DU(s) stop(s) flashing:**
Keep GEN 2 off for the rest of the flight.
Use the sideslip indication to verify if the rudder trim needs to be reset. If necessary, reset the rudder trim.
Note: Intermittent Electrical Power Supply Interruptions may cause offset in the rudder trim.
Select AP and/or autothrust as required.
APU may be started (*Refer to NORM-49 Auxiliary Power Unit (APU)*) and APU generator may be used (if available).

■ **If DU(s) do(es) not stop flashing:**
Restore GEN 2.

Figure 1

BILLING CODE 4910–13–C

Post-IDG Shutdown Inspection

(k) For all airplanes: If an IDG is shut down by the flightcrew in accordance with the TR procedures specified in paragraph (j) of this AD, or if an IDG is shut down automatically on or after the effective date of this AD, do the actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Before further flight, inspect the firewall connector of the affected IDG to detect signs of arcing, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. If any sign of arcing is detected: Before further flight, either repair the connector or replace the connector with a new connector, in accordance with a method approved by the Manager, International Branch, ANM–116.

(2) Operate the airplane with the affected IDG inoperative in accordance with a method approved by the Manager, International Branch, ANM–116. Before further use of the affected IDG, do the actions specified in paragraph (k)(1) of this AD.

Note 4: Guidance on provisions and compliance periods for operating the airplane

with an inoperative, affected IDG can be found in the FAA-approved Master Minimum Equipment List.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: The MCAI does not require inspecting an IDG that has been shut down in accordance with Airbus TR TR112, Issue 1.1, dated November 29, 2010, or that has been shut down automatically. We have determined that investigative and corrective actions (including an inspection for signs of arcing, and repair or replacement of any discrepant IDG harness/connector with a new harness/connector) are necessary due to the severity of the problem to prevent the unsafe condition from recurring. The inspections and corrective actions must be done in accordance with a method approved by Manager, International Branch, ANM–116.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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 International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1405; fax (425) 227–1149 Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov*. 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. The AMOC approval letter must specifically reference this AD. AMOCs approved previously for AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), are acceptable for corresponding provisions of this AD.

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

Related Information

(m) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0142, dated July 25, 2011; Airbus TRs 4.02.00/20, dated May 3, 2004, and TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM; and Airbus Service Bulletin A320–71–1030, dated February 27, 2003; for related information.

Material Incorporated by Reference

(n) You must use Airbus Service Bulletin A320–71–1030, dated February 27, 2003; Airbus Temporary Revision 4.02.00/20, dated May 3, 2004, to the Airbus A318/319/320/321 Airplane Flight Manual (AFM); and Airbus Temporary Revision TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Temporary Revision TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus Service Bulletin A320–71–1030, dated February 27, 2003; and Temporary Revision 4.02.00/20, dated May 3, 2004, to the Airbus A318/319/320/321 AFM; on August 13, 2004 (69 FR 45243, July 29, 2004).

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(4) You may review copies of the 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.

(5) 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 NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 1, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–23131 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0474; Directorate Identifier 2010–NM–213–AD; Amendment 39–16802; AD 2011–18–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes, and Model A340–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

It was noticed in production that the distance between the wire harnesses 5376VB/2M and 5377VB/1M which are above the left-hand (LH) and right-hand (RH) door 4, and the air conditioning duct could be too small. This could result in collision between the flexible air conditioning hose and wire harnesses.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 18, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 18, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 23, 2011 (76 FR 29673). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It was noticed in production that the distance between the wire harnesses 5376VB/2M and 5377VB/1M which are above the left-hand (LH) and right-hand (RH) door 4, and the air conditioning duct could be too small. This could result in collision between the flexible air conditioning hose and wire harnesses.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this [EASA] AD requires the installation of a protective sleeve and an additional bracket to maintain the appropriate distance between wires.

Revision 1 of this [EASA] AD is issued to revise the applicability section of this AD in order to take into account all configurations of air conditioning duct and the associated solutions embodied in production.

For certain airplanes, required actions include modifying the support assembly of the air outlet. For other airplanes, required actions include exchanging certain attachment screws of the air outlet box assembly on each door. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Clarify Applicability

Delta Air Lines (Delta) asked that the applicability in the NPRM (76 FR 29673, May 23, 2011) be changed for clarification. Delta stated that its interpretation of paragraph (c)(3) of the applicability is that airplanes are exempt from the NPRM if Airbus Modification 201642 is embodied in production, or if Airbus Modification 57562 is embodied in production, or if both Airbus Modifications 57349 and 58924 are embodied in production. Delta noted that this interpretation does not align with the applicability in the EASA AD, which was issued to revise the applicability paragraph to take into account all configurations of the air conditioning duct and associated solutions embodied in production. Delta asked that paragraph (c) of the NPRM be changed to eliminate the possibility of incorrect interpretation, and included language for the clarification.

We agree for the reasons provided by the commenter. We have revised the format and punctuation of paragraph (c) of this AD for clarity.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD affects about 41 products of U.S. registry. We also estimate that it will take up to 11 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost up to $503 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the AD on U.S. operators to be up to $58,958, or up to $1,438 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

3. 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 AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 29673, May 23, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–20 Airbus: Amendment 39–16802. Docket No. FAA–2011–0474; Directorate Identifier 2010–NM–213–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes, all manufacturer serial numbers; certificated in any category; except those airplanes embodied in production with the modifications identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Modification 57349 and

(2) Modification 58924 or 201642 or 57562.

Subject

(d) Air Transport Association (ATA) of America Code 92.

Reason

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

It was noticed in production that the distance between the wire harnesses 5376VB/2M and 5377VB/1M which are above the left-hand (LH) and right-hand (RH) door 4, and the air conditioning duct could be too small. This could result in collision between the flexible air conditioning hose and wire harnesses.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

* * * * *

Compliance

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

Actions

(g) Within 24 months after the effective date of this AD: Modify the wire harness 5376VB/2M and 5377VB/1M attachments above the LH and RH door 4, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3077, Revision 01, dated March 29, 2010; or Airbus Mandatory Service Bulletin A340–92–4078, Revision 01, dated April 9, 2010; as applicable.

(h) For airplanes that have been modified before the effective date of this AD in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3077 or A340–92–4078, both dated June 17, 2008: Within 24 months after the effective date of this AD, perform the additional work identified in Airbus Mandatory Service Bulletin A330–92–3077, Revision 01, dated March 29, 2010, or A340–92–4078, Revision 01, dated April 9, 2010; as applicable (including modifying the support assembly of the air outlet, or exchanging certain attachment screws of the air outlet box assembly on each door, as applicable), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–92–3077, Revision 01, dated March 29, 2010; or Airbus Mandatory Service Bulletin A340–92–4078, Revision 01, dated April 9, 2010; as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* 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. The AMOC approval letter must specifically reference this AD.

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0103R1, dated April 28, 2011; Airbus Mandatory Service Bulletin A330–92–3077, Revision 01, dated March 29, 2010; and Airbus Mandatory Service Bulletin A340–92–4078, Revision 01, dated April 9, 2010; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A330–92–3077, Revision 01, dated March 29, 2010; or Airbus Mandatory Service Bulletin A340–92–4078, Revision 01, dated April 9, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the 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.

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22380 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0387; Directorate Identifier 2010–NM–222–AD; Amendment 39–16804; AD 2011–18–22]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, and –243 Airplanes, Model A330–300 Series Airplanes, Model A340–200 Series Airplanes, and Model A340–300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This 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:

Surface defects were visually detected on the rudder of * * * [an] in-service aeroplane during scheduled maintenance.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the surface defects were a result of de-bonding between the skin and honeycomb core.

* * * * *

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 18, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 18, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 3, 2011 (76 FR 24832). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane during scheduled maintenance.
>
> Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the surface defects were a result of de-bonding between the skin and honeycomb core.
>
> Such reworks were also performed on some rudders fitted on A330 and A340–200/–300 aeroplanes.
>
> An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.
>
> To address this unsafe condition, EASA issued AD 2010–0021, superseding EASA AD 2009–0156, to require inspections of specific areas and, depending on findings, the accomplishment of corrective actions for those rudders where production reworks have been identified.
>
> In addition, this [EASA] AD addresses the rudder population that has also been reworked in production but is not part of EASA AD 2010–0021 applicability.

Required actions include vacuum loss and elasticity laminate checker inspections for damage including de-bonding between the skin and honeycomb core of the rudder on certain areas of the rudder, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM (76 FR 24832, May 3, 2011).

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 55 products of U.S. registry. We also estimate that it will take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $28,050, or $510 per product.

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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 AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM May 3, 2011 (76 FR 24832), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2011–18–22 Airbus: Amendment 39–16804. Docket No. FAA–2011–0387; Directorate Identifier 2010–NM–222–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 18, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, if equipped with rudders having part numbers and serial numbers as identified in table 1, table 2, or table 3 of this AD.

TABLE 1—RUDDER PART NUMBER (P/N) AND AFFECTED RUDDER SERIAL NUMBER (S/N)

Rudder P/N	Affected rudder S/N
F554–70000–000–00	TS–2045
F554–70000–000–00	TS–2046
F554–71000–000–00–0000	TS–3013
F554–71000–000–00–0000	TS–3014
F554–71000–000–00–0000	TS–3020
F554–71000–000–00–0000	TS–3022
F554–71000–000–00–0000	TS–3023
F554–71000–000–00–0000	TS–3027
F554–71000–000–00–0000	TS–3031
F554–71000–000–00–0000	TS–3034
F554–71000–000–00–0000	TS–3036
F554–71000–000–00–0000	TS–3038
F554–71000–000–00–0000	TS–3041
F554–71000–000–00–0000	TS–3046
F554–71000–000–00–0000	TS–3054
F554–70005–000–00–0000	TS–3102
F554–71002–000–00–0002	TS–4018
F554–71002–000–00–0002	TS–4022
F554–71002–000–00–0002	TS–4031

TABLE 2—RUDDER P/N AND AFFECTED RUDDER S/N

Rudder P/N	Affected rudder S/N
A554–71500–024–00	TS–1014
A554–71500–030–00	TS–1042
F554–70000–000–00	TS–2004
F554–70000–000–00	TS–2005
F554–70000–000–00	TS–2008
F554–70000–000–00	TS–2009
F554–70000–000–00	TS–2010
F554–70000–000–00	TS–2022
F554–70000–000–00	TS–2023
F554–70000–000–00	TS–2028
F554–70000–000–00	TS–2029
F554–70000–000–00	TS–2030

TABLE 2—RUDDER P/N AND AFFECTED RUDDER S/N—Continued

Rudder P/N	Affected rudder S/N
F554–70000–000–00	TS–2032
F554–70000–000–00	TS–2033
F554–70000–000–00	TS–2034
F554–70000–000–00	TS–2041
F554–70000–000–00	TS–2044
F554–70000–000–00	TS–2048
F554–70000–000–00	TS–2049
F554–70000–000–00	TS–2050
F554–70000–000–00	TS–2057
F554–70000–000–00	TS–2067
F554–70000–002–00	TS–2068
F554–70000–002–00	TS–2071
F554–71000–000–00–0000	TS–3001
F554–71000–000–00–0000	TS–3010
F554–71000–000–00–0000	TS–3012
F554–71000–000–00–0000	TS–3017
F554–71000–000–00–0000	TS–3018
F554–71000–000–00–0000	TS–3019
F554–71000–000–00–0000	TS–3021
F554–71000–000–00–0000	TS–3024
F554–71000–000–00–0000	TS–3025
F554–71000–000–00–0000	TS–3026
F554–71000–000–00–0000	TS–3028
F554–71000–000–00–0000	TS–3029
F554–71000–000–00–0000	TS–3030
F554–71000–000–00–0000	TS–3032
F554–71000–000–00–0000	TS–3035
F554–71000–000–00–0000	TS–3037
F554–71000–000–00–0000	TS–3039
F554–71000–000–00–0000	TS–3040
F554–71000–000–00–0000	TS–3042
F554–71000–000–00–0000	TS–3047
F554–71000–000–00–0000	TS–3049
F554–71000–000–00–0000	TS–3055
F554–71000–000–00–0000	TS–3058
F554–71000–000–00–0000	TS–3062
F554–71000–000–00–0000	TS–3063
F554–71000–000–00–0000	TS–3065
F554–71000–000–00–0000	TS–3067
F554–71000–000–00–0000	TS–3069
F554–71000–000–00–0000	TS–3070
F554–71000–000–00–0000	TS–3077
F554–71000–000–00–0000	TS–3078
F554–71000–000–00–0000	TS–3080
F554–71000–000–00–0000	TS–3081
F554–71000–000–00–0000	TS–3086
F554–71000–000–00–0000	TS–3089
F554–71000–000–00–0000	TS–3092
F554–71000–000–00–0000	TS–3093
F554–71000–000–00–0000	TS–3095
F554–71000–000–00–0000	TS–3096
F554–70005–000–00–0000	TS–3098
F554–70005–000–00–0000	TS–3099
F554–70005–000–00–0000	TS–3101
F554–70005–000–00–0000	TS–3103
F554–70005–000–00–0000	TS–3104
F554–70005–000–00–0000	TS–3105
F554–70005–000–00–0000	TS–3108
F554–70005–000–00–0000	TS–3109
F554–70005–000–00–0000	TS–3110
F554–70005–000–00–0000	TS–3111
F554–70005–000–00–0000	TS–3112
F554–70005–000–00–0000	TS–3114
F554–70005–000–00–0000	TS–3116
F554–70005–000–00–0000	TS–3117
F554–70005–000–00–0000	TS–3120
F554–70005–000–00–0000	TS–3131
F554–70005–000–00–0000	TS–3132
F554–70005–000–00–0000	TS–3212
F554–70005–000–00–0002	TS–3323

TABLE 2—RUDDER P/N AND AFFECTED RUDDER S/N—Continued

Rudder P/N	Affected rudder S/N
F554–70005–000–00–0002	TS–3330
F554–71002–000–00–0002	TS–4009
F554–71002–000–00–0002	TS–4010
F554–71002–000–00–0002	TS–4012
F554–71002–000–00–0002	TS–4013
F554–71002–000–00–0002	TS–4014
F554–71002–000–00–0002	TS–4015
F554–71002–000–00–0002	TS–4016
F554–71002–000–00–0002	TS–4017
F554–71002–000–00–0002	TS–4020
F554–71002–000–00–0002	TS–4023
F554–71002–000–00–0002	TS–4025
F554–71002–000–00–0002	TS–4026
F554–71002–000–00–0002	TS–4027
F554–71002–000–00–0002	TS–4029
F554–71002–000–00–0002	TS–4030
F554–71002–000–00–0002	TS–4038
F554–71002–000–00–0002	TS–4047
F554–71002–000–00–0002	TS–4049
F554–71002–000–00–0002	TS–4066
F554–71002–000–00–0003	TS–4083

TABLE 3—RUDDER P/N AND AFFECTED RUDDER S/N

Rudder P/N	Affected rudder S/N
F554–71000–000–00–0000	TS–3060
F554–71000–000–00–0000	TS–3068
F554–70005–000–00–0000	TS–3128
F554–71002–000–00–0002	TS–4011

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Surface defects were visually detected on the rudder of * * * [an] in-service aeroplane during scheduled maintenance.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the surface defects were a result of de-bonding between the skin and honeycomb core.

* * * * *

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

Compliance

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

Inspections

(g) For rudders identified in table 1 and table 2 of this AD: Within the compliance

time in paragraph (g)(1) or (g)(2) of this AD as applicable, do a vacuum loss inspection on the rudder non-ventilated area (Area 1) for damage including de-bonding between the skin and honeycomb core of the rudder, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable.

(1) For rudders identified in table 1 of this AD: Within 1,800 flight hours after the effective date of this AD.

(2) For rudders identified in table 2 of this AD: Within 21 months after the effective date of this AD.

(h) For rudders identified in table 1 and table 2 of this AD: Within 21 months after the effective date of this AD, do an elasticity laminate checker inspection on the trailing edge area (Area 2) for damage including de-bonding between the skin and honeycomb core of the rudder, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Thereafter, repeat the inspection two more times at intervals not to exceed 4,500 flight cycles but not less than 4,000 flight cycles from the most recent inspection.

(i) For rudders identified in table 3 of this AD: Within 4,500 flight cycles but not less than 4,000 flight cycles from the date of the sampling inspection identified in table 4 of this AD, or within 30 days after the effective date of this AD, whichever occurs later, do an elasticity laminate checker inspection on the trailing edge area for damage including de-bonding between the skin and honeycomb core of the rudder, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Repeat the inspection once within 4,500 flight cycles after doing the inspection but not less than 4,000 flight cycles from the last inspection.

TABLE 4—RUDDER P/N AND AFFECTED RUDDER S/N AND SAMPLING INSPECTION DATE

Rudder P/N	Affected rudder S/N	Date of sampling inspection
F554–71000–000–00–0000	TS–3060	March 12, 2009.
F554–71000–000–00–0000	TS–3068	April 27, 2009.
F554–70005–000–00–0000	TS–3128	July 13, 2009.
F554–71002–000–00–0002	TS–4011	February 12, 2009.

Corrective Actions

(j) If damage is found during any inspection required by paragraph (g), (h), (i), or (k)(1) of this AD, before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Restoration

(k) If no damage is found during any inspection required by paragraph (g) of this AD, before further flight, restore the vacuum loss holes by doing a temporary restoration with self-adhesive disks or tapes, a temporary restoration with resin, or a permanent restoration with resin, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Do the applicable actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) For airplanes on which a temporary restoration with self-adhesive disks or tapes is done, within 900 flight hours after doing the restoration, do a detailed inspection for loose or missing self-adhesive disks or tapes and repeat the inspection thereafter at intervals not to exceed 900 flight hours until the permanent restoration is done, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. If any loose or missing self-adhesive disks or tapes are found during any inspection required by this AD, before further flight, close the holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Do the permanent restoration within 21 months after doing the temporary restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable.

(2) For airplanes on which a temporary restoration with resin is done: Within 21 months after doing the temporary restoration, do the permanent restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable.

Reporting Requirements

(l) Submit a report of the findings (positive and negative) of the first inspection required by paragraphs (g), (h), and (i) of this AD to Airbus, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(1) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Parts Installation

(m) As of the effective date of this AD, no person may install any affected rudder listed in table 1, table, 2, or table 3 of this AD, on any airplane, unless the rudder is inspected as specified in paragraphs (g), (h), and (i) of this AD, as applicable, and all applicable corrective actions specified in paragraph (j) of this AD and applicable restoration specified in paragraph (k) of this AD are done.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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 International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be e-mailed to: *9–ANM–116–AMOC–REQUESTS@faa.gov.* 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. The AMOC approval letter must specifically reference this AD.

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

(3) Reporting Requirements: A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information

collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(o) Refer to MCAI EASA Airworthiness Directive 2010–0127, dated June 23, 2010; Airbus Mandatory Service Bulletin A330–55–3042, dated April 22, 2010; and Airbus Mandatory Service Bulletin A340–55–4038, dated April 22, 2010; for related information.

Material Incorporated by Reference

(p) You must use Airbus Mandatory Service Bulletin A330–55–3042, dated April 22, 2010; or Airbus Mandatory Service Bulletin A340–55–4038, dated April 22, 2010; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(3) You may review copies of the 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.

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22635 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0151; Directorate Identifier 2009–NM–205–AD; Amendment 39–16781; AD 2011–17–17]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to the products listed above. This 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:

Two cases of main landing gear collapse had been reported. Main landing gear collapse may result in unsafe landing of the aircraft.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 18, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 18, 2011.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 8, 2011 (76 FR 12629), and proposed to supersede AD 2007–22–09, Amendment 39–15245 (72 FR 61288, October 30, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Two cases of main landing gear collapse had been reported. Main landing gear collapse may result in unsafe landing of the aircraft.

Revision 1 of this directive amended the time compliance in paragraph C.2 (3 months in addition to 500 hours air time), to add new paragraph C.3 to cater for retract actuator which has accumulated less than 4,000 landings or 2 years since new and to add new paragraphs B.2 and C.4 to require that the respective inspections be repetitively performed until terminating action becomes available.

Revision 2 of this directive amends the detailed visual inspection requirement in paragraph C.3 to include the main landing gear retract actuator, part number 46550–11, and to add new paragraph F to mandate the incorporation of main landing gear retract actuator part number, 46550–13 as the terminating action and to add new paragraph G for the maintenance requirement.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 12629, March 8, 2011) or on the determination of the cost to the public.

Change Made to This AD

We have removed paragraph (v)(3)(i)(D) of the NPRM (76 FR 12629, March 8, 2011) from this AD, and reidentified subsequent paragraphs accordingly.

Conclusion

We reviewed the available data, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

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

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA

policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

We estimate that this AD will affect about 55 products of U.S. registry.

The actions that are required by AD 2007–22–09, Amendment 39–15245 (72 FR 61288, October 30, 2007), and retained in this AD take about 5 work-hours per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $425 per product.

We estimate that it will take about 8 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $27,511 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,550,505, or $28,191 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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

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

3. 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 AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 12629, March 8, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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 Amendment 39–15245 (72 FR 61288, October 30, 2007) and adding the following new AD:

2011–17–17 Bombardier, Inc.: Amendment 39–16781. Docket No. FAA–2011–0151; Directorate Identifier 2009–NM–205–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 18, 2011.

Affected ADs

(b) This AD supersedes AD 2007–22–09, Amendment 39–15245 (72 FR 61288, October 30, 2007).

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, having serial numbers (S/Ns) 4001, 4003, 4004, 4006, and 4008 through 4208 inclusive.

Subject

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

Reason

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

Two cases of main landing gear collapse had been reported. Main landing gear collapse may result in unsafe landing of the aircraft.

* * * * *

Compliance

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

Restatement of Requirements of AD 2007–22–09, Amendment 39–15245 (72 FR 61288, October 30, 2007), With Updated Service Information, Limited Affected Airplanes, and Revised Compliance Times

General Visual Inspection of Main Landing Gear (MLG) System, and Corrective Actions

(g) For airplanes having S/Ns 003, 004, 006, and 008 through 182 inclusive (now referred to as S/Ns 4003, 4004, 4006, and 4008 through 4182 inclusive), before further flight, do a general visual inspection to detect discrepancies of the left- and right-hand MLG system and do all applicable corrective actions, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 2: Guidance on doing a general visual inspection to detect discrepancies of the left- and right-hand MLG system can be found in Tasks Z700–03E and Z700–04E of Part 1 (Maintenance Review Board Report) of the Bombardier DHC–8 Series 400 Maintenance Requirements Manual (PSM 1–84–7).

General Visual Inspection of the Jam Nut of the Retract Actuator of the MLG and Corrective Actions

(h) For all airplanes except for the airplane having serial number 4001: Before further flight, do a general visual inspection of the jam nut of the retract actuator of the left- and right-hand MLG to ensure the wire lock is in place and the nut is secured. If the wire lock is not in place or if the jam nut is not

secured, before further flight, adjust the retracted length of the rod end, torque the jam nut, install a wire lock, and lubricate the piston, as applicable, in accordance with Bombardier Repair Drawing (RD) 8/4–32–059, Issue 4, dated September 14, 2007; or Issue 7, dated June 26, 2008. As of the effective date of this AD, use only Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008. Doing the revision required by paragraph (r) of this AD terminates the inspection required by this paragraph.

Note 3: Bombardier RD 8/4–32–059, Issue 4, dated September 14, 2007, refers to Goodrich Service Concession Request SCR 086–07, Revision C, dated September 14, 2007 (specifically item 14); and Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008, refers to Goodrich Service Concession Request SCR 086–07, Revision F, dated June 13, 2008 (specifically item 14); as an additional source of service information for adjusting the retracted length of the rod end, torquing the jam nut, installing a wire lock, and lubricating the piston if necessary, as required by paragraph (h) of this AD.

Detailed Inspection of the Retract Actuator of the MLG, With Extended Compliance Time for Paragraph (j) of This AD

(i) For airplanes having S/Ns 003, 004, 006, and 008 through 182 inclusive (now referred to as S/Ns 4003, 4004, 4006, and 4008 through 4182 inclusive) on which the retract actuator of the MLG, part number (P/N) 46550–7 or 46550–9, has accumulated 8,000 or more total landings or has been in-service 4 or more years since new, as of November 14, 2007 (the effective date of AD 2007–22–09, Amendment 39–15245 (72 FR 61288, October 30, 2007)): Before further flight, do a detailed inspection of affected parts for any signs of corrosion or wear, and applicable related investigative and corrective actions, in accordance with Bombardier RD 8/4–32–059, Issue 4, dated September 14, 2007; or Issue 7, dated June 26, 2008. As of the effective date of this AD, use only Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008.

Note 4: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(j) For airplanes having S/Ns 003, 004, 006, and 008 through 182 inclusive (now referred to as S/Ns 4003, 4004, 4006, and 4008 through 4182 inclusive) with a retract actuator of the MLG, P/N 46550–7 or 46550–9, other than those identified in paragraph (i) of this AD: Do a detailed inspection of affected parts for any signs of corrosion or wear, and applicable related investigative and corrective actions, in accordance with Bombardier RD 8/4–32–059, Issue 4, dated September 14, 2007; or Issue 7, dated June 26, 2008; at the later of the times specified in paragraphs (j)(1) and (j)(2) of this AD. As of the effective date of this AD, use only Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008.

(1) Before the accumulation of 4,500 total landings or 27 months since new, whichever occurs first.

(2) Within 500 flight hours after November 14, 2007, or within 3 months after the effective date of this AD, whichever occurs first.

Note 5: Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008, refers to Goodrich Service Concession Request SCR 086–07, Revision F, dated June 13, 2008, as an additional source of service information for accomplishing the applicable related investigative and corrective actions required by paragraphs (i) and (j) of this AD.

Actions Done in Accordance With Previous Issues of Service Information

(k) Actions done before November 14, 2007, in accordance with repair drawings specified in Table 1 of this AD, are acceptable for compliance with the corresponding actions specified in paragraphs (h) through (j) of this AD.

TABLE 1—PREVIOUS REPAIR DRAWINGS

Document	Issue	Date
Bombardier Repair Drawing 8/4–32–059	1	September 12, 2007.
Bombardier Repair Drawing 8/4–32–059	2	September 13, 2007.
Bombardier Repair Drawing 8/4–32–059	3	September 13, 2007.

New Requirements of This AD

General Visual Inspection of the Jam Nut of the Retract Actuator of the MLG, and Corrective Actions

(l) For all airplanes: At the later of the times specified in paragraphs (l)(1) and (l)(2) of this AD, do a general visual inspection of the left- and right-hand MLG retract actuator jam nut to ensure that the wire lock is in place and that the nut is secure, in accordance with a method approved by the Manager, New York ACO, FAA; or TCCA (or its delegated agent). If the wire lock is not in place or the jam nut is not secured, before further flight, re-torque the jam nut and safety lockwire, in accordance with Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008. Repeat the inspection thereafter at intervals not to exceed 250 flight cycles or 30 days, whichever occurs first. Doing the revision required by paragraph (r) of this AD terminates the inspections required by this paragraph.

(1) Within 250 flight cycles or 30 days after accomplishing the inspection required by paragraph (h) of this AD, whichever occurs first.

(2) Within 7 days after the effective date of this AD.

Note 6: Guidance for doing a general visual inspection to detect discrepancies of the left- and right-hand MLG system can be found in Tasks Z700–03E and Z700–04E of Part 1 (Maintenance Review Board Report) of the Bombardier DHC–8 Series 400 Maintenance Requirements Manual (PSM 1–84–7).

Detailed Inspection of the Retract Actuator of the MLG, and Related Investigative and Corrective Actions

(m) For airplanes equipped with a MLG retract actuator having P/N 46550–7 or 46550–9: At the later of the times specified in paragraphs (m)(1) and (m)(2) of this AD, do a detailed inspection of affected parts for any signs of corrosion or wear, and do applicable related investigative and corrective actions, in accordance with Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles or 12 months, whichever occurs first.

(1) Within 2,000 flight cycles or within 12 months after accomplishing the inspection required by paragraph (i) or (j) of this AD, whichever occurs first.

(2) Within 30 days after the effective date of this AD.

(n) For airplanes having serial numbers 4001, 4003, 4004, 4006, and 4008 through 4182 inclusive equipped with a MLG retract actuator having P/N 46550–11: At the later of the times specified in paragraphs (n)(1) and (n)(2) of this AD, do a detailed inspection of affected parts for any signs of corrosion or wear, and applicable related investigative and corrective actions, in accordance with Bombardier RD 8/4–32–059, Issue 7, dated June 26, 2008. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at intervals not to exceed 2,000 flight cycles or 12 months, whichever occurs first.

(1) Before the accumulation of 4,500 total landings or 27 months since new, whichever occurs first.

(2) Within 500 flight hours or 3 months after the effective date of this AD, whichever occurs first.

(o) For airplanes having serial numbers 4001, 4003, 4004, 4006, and 4008 through 4182 inclusive equipped with a MLG retract actuator having P/N 46550–7, P/N 46550–9, or P/N 46550–11, and that have accumulated 7,500 total flight cycles or more as of the effective date of this AD, or that have more

than 48 months since new: Within 500 flight cycles or 3 months after the effective date of this AD, whichever occurs first, replace the affected retract actuator with a new design retract actuator having P/N 46550–13, in accordance with Bombardier Service Bulletin 84–32–55, Revision A, dated March 10, 2008 (Bombardier Modsum 4–901603). Doing the replacement specified in this paragraph terminates the requirements of paragraphs (i), (j), (m), and (n) of this AD.

(p) For airplanes having serial numbers 4001, 4003, 4004, 4006, and 4008 through 4182 inclusive equipped with MLG retract actuators having P/N 46550–7, P/N 46550–9, or P/N 46550–11, that have accumulated less than 7,500 total flight cycles as of the effective date of this AD and that have 48 months or less since new: Prior to the accumulation of 8,000 total flight cycles, or within 51 months since new, whichever occurs first, replace the affected retract actuator with a new design retract actuator having P/N 46550–13, in accordance with Bombardier Service Bulletin 84–32–55, Revision A, dated March 10, 2008 (Bombardier Modsum 4–901603). Doing the replacement specified in this paragraph terminates the requirements of paragraphs (i), (j), (m), and (n) of this AD.

(q) Replacing the affected retract actuator with a new design retract actuator having P/N 46550–15, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–32–60, Revision A, dated September 29, 2008 (Bombardier Modsum 4–901610), is also acceptable for compliance with the requirements of paragraphs (o) and (p) of this AD.

Revision of the Maintenance Program

(r) For all airplanes: Within 30 days after the effective date of this AD, revise the maintenance program by incorporating Task 320100–211 (repetitive detailed inspections of the retraction actuator rod end jam nut, gland nut, and actuator attachment pins for condition, the security of installation, and corrosion) and Task 320100–212 (repetitive restorations of the retraction actuator for complete overhaul), as specified in Bombardier Temporary Revision (TR) MRB–35, dated November 18, 2008, to the Bombardier Q400 Dash 8 Maintenance Requirements Manual (PSM 1–84–7). Doing this revision terminates the requirements of paragraphs (h) and (l) of this AD. The initial compliance times for doing Task 320100–211 and Task 320100–212 are specified in paragraphs (r)(1) and (r)(2) of this AD. After doing this revision, no alternative inspections, restorations, or intervals may be used, unless the inspections, restorations, or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (v)(1) of this AD.

(1) For Task 320100–211 in Bombardier TR MRB–35, dated November 18, 2008, to the Bombardier Q400 Dash 8 Maintenance Requirements Manual (PSM 1–84–7): The compliance time for the initial inspection is within 600 flight hours after the effective date of this AD.

(2) For Task 320100–212 in Bombardier TR MRB–35, dated November 18, 2008, to the Bombardier Q400 Dash 8 Maintenance Requirements Manual (PSM 1–84–7): The compliance time for the initial restoration is the later of the times of paragraphs (r)(2)(i) and (r)(2)(ii) of this AD.

(i) Prior to the accumulation of 25,000 total flight cycles, or within 12 years since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(ii) Within 500 flight cycles after the effective date of this AD.

Note 7: The actions required by paragraph (r) of this AD may be done by inserting copies of Bombardier TR MRB–35, dated November 18, 2008, into the Bombardier Q400 Dash 8 Maintenance Requirements Manual (PSM 1–84–7). When this TR has been included in general revisions of the PSM, the general revisions may be inserted in the PSM, provided the relevant information in the general revision is identical to that in Bombardier TR MRB–35, dated November 18, 2008.

Credit for Actions Accomplished in Accordance With Previous Service Information

(s) Doing a general visual inspection of the jam nut of the retract actuator of the left- and right-hand MLG; and doing a detailed inspection of affected parts for any signs of corrosion or wear, and applicable related investigative and corrective actions; is also acceptable for compliance with the corresponding requirements of paragraphs (h), (i), (j), (l), (m), and (n) of this AD, if done before the effective date of this AD in accordance with Bombardier Repair Drawing 8/4–32–059, Issue 5, dated September 20, 2007; or Bombardier Repair Drawing 8/4–32–059, Issue 6, dated January 31, 2008.

(t) Replacing the affected retract actuator with a new design retract actuator having P/N 46550–13 is also acceptable for compliance with the requirements of paragraphs (o) and (p) of this AD, if done before the effective date of this AD in accordance with Bombardier Service Bulletin 84–32–55, dated January 14, 2008 (Modsum 4–901603).

No Reporting

(u) While Canadian Airworthiness Directive CF–2007–20R2, dated February 6, 2009, has a reporting action, this AD does not require reporting.

FAA AD Differences

Note 8: This AD differs from the MCAI and/or service information as follows: Although the MCAI or service information tells you to submit information to the manufacturer, paragraph (u) of this AD specifies that such submittal is not required.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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 ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously in accordance with AD 2007–22–09, Amendment 39–15245 (72 FR 61288, October 30, 2007), are approved as AMOCs for the corresponding provisions of paragraph (i) and (j) of this AD.

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

(3) Special Flight Permits: 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 inspected (if the operator elects to do so), provided that the procedures and limitations in paragraphs (v)(3)(i) and (v)(3)(ii) of this AD are adhered to.

(i) Flight Crew Limitations and Procedures:

(A) Ferry flight with gear extended and pinned;

(B) Landing to be conducted at a minimum descent rate;

(C) Minimize braking on landing;

(D) Only essential crew on board; and

(E) Flight in known or forecast icing condition is prohibited.

(ii) Maintenance Procedures:

(A) Do the general visual inspection required by paragraph (h) of this AD;

(B) Do the general visual inspections of the stabilizer stay and the hinge points of the MLG for general condition and security, in accordance with Bombardier Q400 All Operator Message 236A, dated September 11, 2007;

(C) If no discrepancy is detected during the inspections required by paragraph (v)(3)(ii)(A) and (v)(3)(ii)(B) of this AD, before further flight, insert the ground lock pins and a wire lock of the MLG in place.

(D) Ensure the nose landing gear ground lock is engaged.

Related Information

(w) Refer to MCAI Canadian Airworthiness Directive CF–2007–20R2, dated February 6, 2009; Bombardier Service Bulletin 84–32–55, Revision A, dated March 10, 2008; Bombardier Service Bulletin 84–32–60, Revision A, dated September 29, 2008; Bombardier Repair Drawing 8/4–32–059, Issue 7, dated June 26, 2008; Bombardier TR MRB–35, dated November 18, 2008, to the Bombardier Q400 Dash 8 Maintenance Requirements Manual (PSM 1–84–7); and

Bombardier Q400 All Operator Message 236A, dated September 11, 2007; for related information.

Material Incorporated by Reference

(x) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise. If accomplished, you must use Bombardier Q400 All Operator Message 236A, dated September 11, 2007, to do the actions specified in paragraph (v)(3)(ii)(B) of this AD. The document number and date of the Bombardier Q400 all operator message are identified only on the first page of that document.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE FOR REQUIRED ACTIONS

Document	Revision/Issue	Date
Bombardier Service Bulletin 84–32–55	A	March 10, 2008.
Bombardier Service Bulletin 84–32–60	A	September 29, 2008.
Bombardier Repair Drawing 8/4–32–059	Issue 7	June 26, 2008.
Bombardier Temporary Revision MRB–35 to the Bombardier Q400 Dash 8 Maintenance Requirements Manual (PSM 1–84–7).		November 18, 2008.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* (The document number of Bombardier Repair Drawing 8/4–32–059 is identified as 8/4–32–0059 in the technical publications database on *http://www.bombardier.com.*)

(3) You may review copies of the 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.

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

Issued in Renton, Washington, on August 11, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–22468 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R4–SFUND–2011–0574: FRL–9463–8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of direct final rule.

SUMMARY: On July 15, 2011, EPA published a Notice of Intent to Delete and a direct final Notice of Deletion for the Hipps Road Landfill from the National Priorities List. The EPA is withdrawing the Final Notice of Deletion due to an administrative error in processing the direct-final rule. The online Federal Document Management System (FDMS) did not include required documents including the State of Florida's concurrence letter and the Final Closeout Report as required. The FDMS will be updated to include these documents and the direct final rule will be reissued in the **Federal Register**.

DATES: *Effective Date:* This withdrawal of the direct final action (76 FR 41719) is effective as of September 13, 2011.

ADDRESSES: *Information Repositories:* Comprehensive information on the Site, as well as the comments that we received during the comment period, are available in docket EPA–R4–SFUND–2011–0574, accessed through the *http://www.regulations.gov* Web site. Although listed in the docket index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

EPA Record Center, 61 Forsyth Street, SW., Atlanta, GA 30303. Hours: 8 a.m. to 4 p.m., Monday through Friday.

Jacksonville Public Library, 6886 103rd Street, Jacksonville, FL, 32210. Monday-Thursday: 10 a.m.–9 p.m., Friday & Saturday: 10 a.m.–6 p.m., Sunday: 1 p.m.–6 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404) 562–9120, *e-mail: miller.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 30, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

■ Accordingly, the amendment to Table 1 of Appendix B to Part 300 to remove the entry ''Hipps Road Landfill'', ''Duval County'' is withdrawn as of September 13, 2011.

[FR Doc. 2011–23519 Filed 9–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 160

[Docket No. USCG–2011–0076]

RIN 1625–AB60

Inflatable Personal Flotation Devices

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; notice of withdrawal.

SUMMARY: The Coast Guard is withdrawing its direct final rule published on March 30, 2011. The direct final rule notified the public of the Coast Guard's intent to harmonize structural and performance standards for inflatable recreational personal flotation devices (PFDs) with current voluntary industry consensus standards, and to slightly modify regulatory text in

anticipation of a future rulemaking addressing the population for which inflatable recreational PFDs are approved. The Coast Guard is withdrawing that rule because we received an adverse comment. That rule will not become effective as scheduled. Instead, the Coast Guard plans to consider these issues in a notice of proposed rulemaking.

DATES: The direct final rule published March 30, 2011, (76 FR 17561), is withdrawn effective September 13, 2011.

ADDRESSES: The docket for this rulemaking, USCG–2011–0076, is 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0076 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or e-mail Ms. Brandi Baldwin, Lifesaving and Fire Safety Division (CG–5214), U.S. Coast Guard, telephone 202–372–1394, e-mail *Brandi.A.Baldwin@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2011, we published a direct final rule entitled ''Inflatable Personal Flotation Devices'' in the **Federal Register** (76 FR 17561). That rule would have revised 46 CFR part 160, subpart 160.076 to update the editions of the Underwriters Laboratories (UL) Standards incorporated by reference and made necessary conforming changes resulting from incorporating the updated standards. The conforming changes included removing test methods, acceptance criteria, and other standards currently contained in subpart 160.076 that are made redundant by the newer editions of the UL Standards. That rule also made minor regulatory text revisions to subpart 160.076 which had a non-substantive effect.

We published the rule as a direct final rule under 33 CFR 1.05–55 because we considered this rule to be noncontroversial and did not expect any adverse comment regarding this rulemaking. In the direct final rule we notified the public of our intent to make the rule effective on September 26, 2011, unless an adverse comment or notice of intent to submit an adverse comment was received on or before May 31, 2011.

We received three submissions during this comment period, and have determined that one of those submissions contains an adverse comment, as explained below. As such the Coast Guard is withdrawing the direct final rule and is instead planning to consider these issues in a notice of proposed rulemaking.

Withdrawal

The Coast Guard received three submissions in response to the direct final rule: one supportive of the rulemaking generally, one which raised questions about a revision to one of the standards incorporated by reference, and one adverse comment related to the deletion of the words ''approved for use by adults only'' from the regulations.

One commenter expressed support for the rule, citing the removal of barriers to the development of innovative PFDs leading to an expected improvement in the quality and variety of inflatable lifejackets available to the public. The Coast Guard appreciates this support.

One commenter expressed disagreement with a specific revision made to UL Standard 1191, which increased the tolerance for the minimum gross weight of inflation gas cylinders from 10% to 15%. Following publication of the direct final rule, UL 1191 was revised to return this value to 10%.

Another commenter expressed concern about deleting the words ''approved for use by adults only''; the Coast Guard has determined this comment to be an adverse comment. In the direct final rule, we explained that a comment is considered adverse if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or why it would be ineffective or unacceptable without a change (76 FR 17563). This commenter explains that deleting the words ''approved for use by adults only'' would create a perception that inflatable PFDs for youth would be available on the date this rule goes into effect, would facilitate teens using existing inflatable PFDs, and would enable the marketing of existing inflatable PFDs to youth. The commenter also expressed concern that this rulemaking is premature in light of the work that still needs to be done to evaluate sizing requirements for infant or child PFDs. Because the Coast Guard considers these concerns to be adverse comments, the Coast Guard is withdrawing the direct final rule. The Coast Guard will seek comment on the commenter's concerns in the forthcoming notice of proposed rulemaking.

Dated: September 7, 2011.

J.G. Lantz,

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

[FR Doc. 2011–23271 Filed 9–12–11; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 02–6, GN Docket No. 09–51; FCC 11–125]

Schools and Libraries Universal Service Support Mechanism and a National Broadband Plan for Our Future

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adds the statutory language from the Protecting Children in the 21st Century Act regarding the education of students about appropriate online behavior to the existing Commission rules implementing the Children's Internet Protection Act (CIPA) for the schools and libraries universal service support mechanism (also known as the E-rate program). The Commission also makes minor non-substantive revisions to its rules to conform to existing statutory language from the CIPA statute where necessary. Finally, the Commission makes minor corrections to its Schools and Libraries Sixth Report and Order.

DATES: October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Cara Voth, Attorney Advisor, at 202–418–7400, Telecommunications Access Policy Division, Wireline Competition Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) in CC Docket No. 02–6, GN Docket No. 09–51, FCC 11–125, released on August 11, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. This order adds the statutory language from the Protecting Children in the 21st Century Act regarding the education of students about appropriate online behavior to the existing Commission rules implementing the Children's Internet Protection Act (CIPA) for the schools and libraries universal service support mechanism (also known as the E-rate program). The Commission's CIPA rules were also implemented at the direction of Congress, and school and library E-rate applicants that seek to receive discounts on Internet access or internal connections have been required to certify their compliance with CIPA since 2001. The Protecting Children in the 21st Century Act directs E-rate applicants to also certify that their CIPA-required Internet safety policies provide for the education of students regarding appropriate online behavior including interacting with other individuals on social networking Web sites and in chat rooms, and regarding cyberbullying awareness and response. We implement this statutory language verbatim. We also make minor non-substantive revisions to Commission rules to conform to existing statutory language from the CIPA statute where necessary. Finally, we make minor corrections to the Commission's *Schools and Libraries Sixth Report and Order,* 75 FR 75393, December 3, 2010.

II. Discussion

A. Protecting Children in the 21st Century Act Revisions

2. *Revision to section 54.520(c)(1)(i) of the Commission's rules.* We revise § 54.520(c)(1)(i) of the Commission's rules to include the new certification requirement added by the Protecting Children in the 21st Century Act. We revise § 54.520(c)(1)(i) of the Commission's rules to add a certification provision that a school's Internet safety policy must provide for the education of minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.

3. We note that the *Notice of Proposed Rulemaking* (*NPRM),* released November 5, 2009, included a proposed rule that the school's Internet safety policy ''must educate minors about appropriate online behavior.'' Tech Ed Services raised concerns that the language in the proposed rule could be interpreted to require that the actual Internet safety policy document itself educate minors about appropriate online behavior. In response, we have revised the rule to make clear that the Internet safety policy must provide for the education of minors about appropriate online behavior. The new rule states: ''This Internet safety policy must also include monitoring the online activities of minors and must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.'' We believe this makes clear that, although a school's Internet safety policy may include the development and use of educational materials, the policy itself does not have to include such materials.

4. As required by the Protecting Children in the 21st Century Act, a school, school board, school district, local education agency, or other Administrative Authority of a school receiving E-rate funding for Internet access and internal connections must certify on its FCC Form 486 or FCC Form 479, beginning with funding year 2012, that it has updated its Internet safety policy. The update must include provisions for educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms, and cyberbullying awareness and response. Although we encourage schools to update their Internet safety policies as soon as practicable, making this requirement effective for the 2012 funding year, which begins July 1, 2012, will give schools adequate time to amend their Internet safety policies and to implement procedures to comply with the new requirements after the completion of this rulemaking proceeding. Unless required by local or state rules, schools will not need to issue an additional public notice and hold a hearing in order to update their Internet safety policies in accordance with the new Protecting Children in the 21st Century Act requirements. We also note that although the FCC Forms 486 and 479 do not need to be amended because the existing language already incorporates a certification of compliance with all of the statutory requirements, the instructions to these forms will be revised to list each requirement individually, including the requirements we adopt today.

5. At this time, we decline to define or interpret the terms provided in the new statutory language, such as ''social networking'' or ''cyberbullying.'' In addition, we will not detail specific procedures or curriculum for schools to use in educating students about appropriate online behavior because these are determinations that are better be made by schools implementing this policy in the first instance. Furthermore, section 254(l), is an example of Congress's intent to have local authorities make decisions in this area. We believe that by not defining terms such as ''cyberbullying'' in this proceeding, we are acting in accordance with this intent. We note, however, that schools can find a number of resources available to them as they prepare their Internet safety policies to provide for the education of students about appropriate online behavior. Many of these resources are online, including, for example, the ideas and links for parents of children that use the Internet supported by OnGuardOnline.gov, the Web site the Federal Trade Commission jointly developed with the FCC, other federal government offices, and various technology industry organizations.

B. Other Proposed Rule Revisions

6. We also revise certain rules to conform more accurately to the existing statutory language, as proposed in the *NPRM.* We emphasize that these revisions do not impose additional obligations on E-rate participants, but merely mirror the existing statutory language and codify existing statutory requirements. Many of our modifications will simplify the application process by including in our rules important definitions that we previously required applicants to look up from other sources. Contrary to the suggestion of one commenter, E-rate participants will not need to undergo new training or re-file any forms as a result of our conforming our rules to the existing statutory language unless they have been non-compliant with these existing obligations. We note that one commenter objected to these rule revisions generally on the basis that the revisions are unnecessary and will cause confusion. We conclude, however, that these rule revisions will eliminate potential confusion by making the rules reflect the statutory language more accurately and clarifying all of the CIPA obligations.

7. Our first revisions clarify and add various defined terms relating to the CIPA obligations. First, we revise the rules so that the definitions of elementary and secondary schools are consistent throughout our rules and reflect the exact statutory wording of 20 U.S.C. 7801(18) and (38). According to this statute, an elementary school is ''a nonprofit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under State law.'' A secondary school is ''a

nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.'' At this time, Commission rule § 54.500, § 54.501, and § 54.504 all contain differently worded references to definitions of elementary and secondary schools. We first note that the existing definition of elementary school in § 54.500(c) of the Commission's rules tracks the statutory definition of an elementary school. We revise § 54.500(k) of the Commission's rules to make it consistent with the statute that a secondary school is ''a nonprofit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under State law, except that the term does not include any education beyond grade 12.'' We also revise Commission's rules § 54.501(a)(1), § 54.503(c)(2)(i), and § 54.504(a)(1)(i) to refer consistently and identically to § 54.500 definitions of elementary and secondary schools. We disagree with the ALA's concern that schools will be confused about their eligibility if we use the statutory definitions in our rules. We believe that it will be easier for entities to determine their eligibility because they will only have to look at the Commission's rules instead of having also to look at the statute.

8. Second, we revise § 54.520(a)(1) of the Commission's rules to add ''school board'' to the definition of entities that are subject to CIPA certifications. Although section 254(h) of the Act includes the term ''school board'' as an entity to which the CIPA certifications may apply, the existing rules do not include this term. We believe that this revision clarifies that school boards are authorized to make CIPA certifications. We note that although the statute does not include the term ''school district'' as an entity to which the CIPA certifications apply, existing rules do include the term ''school district.'' We will not delete the term ''school district,'' however, to prevent any confusion; we will continue to treat a school district as an entity that may be authorized to make CIPA certifications.

9. Third, we revise § 54.520(a)(4) of the Commission's rules to add the existing statutory definitions of the terms ''minor,'' ''obscene,'' ''child pornography,'' ''harmful to minors,'' ''sexual act,'' ''sexual contact,'' and ''technology protection measure,'' consistent with the statute. Section 54.520 of our rules does not currently include the definitions of these terms, but instead refers back to the CIPA statute. We find that including the statutory definitions of these terms in our rules will make it easier for E-rate program participants to understand their CIPA obligations. We disagree with ALA's concern that we should not include the definition of ''minor'' in our rules because the definition of ''minor'' varies among the states. The potential confusion caused by so many different definitions of ''minor'' among the states is precisely why we should clarify that term for purposes of E-rate funding. Regardless of a state's definition of a minor, for CIPA purposes, E-rate program participants must use the CIPA statutory definition of ''minor'' we now set forth in our rules.

10. Fourth, we revise our rules by adding the statutory provisions related to local authorities' rights and obligations regarding technology protection measures. We revise Commission's rules §§ 54.520(c)(1)(i) and 54.520(c)(2)(i)—consistent with sections 254(h)(5)(B)(ii), (h)(5)(C)(ii), (h)(6)(B)(ii), and (h)(6)(C)(ii) of the Act—to state that a school or library must enforce the operation of technology protection measures while the school or library computers with Internet access are being used. Although this is an existing obligation that was not codified in our rules previously, we find that codification of the obligation is desirable to clarify the CIPA responsibilities of E-rate participants.

11. We further revise Commission's rules § 54.520(c)(1)(i) and § 54.520(c)(2)(i) to reflect language in sections 254(h)(5)(D) and (h)(6)(D) of the Act that permits an administrator, supervisor, or other person authorized by the certifying authority to disable an entity's technology protection measure to allow for bona fide research or ''other lawful purpose by an adult.'' We note that in the 2001 *CIPA Order,* 66 FR 19394, April 16, 2001, although the Commission acknowledged this statutory provision, it declined to adopt any implementing rule provision, stating that:

> [w]e decline to promulgate rules mandating how entities should implement these provisions. Federally-imposed rules directing school and library staff when to disable technology protection measures would likely be overbroad and imprecise, potentially chilling speech, or otherwise confusing schools and libraries about the requirements of the statute. We leave such determinations to local communities, whom we believe to be most knowledgeable about the varying circumstances of schools or libraries within those communities.

The Commission stated at that time that its decision was supported by commenter concerns about the difficulty of school or library staff in determining whether an adult user was engaging in bona fide research or other lawful purposes and would impinge upon staff resources.

12. We decline to mandate specific methods for disabling technology protection measures, but rather codify in our rules the statutory language of sections 254(h)(5)(D) and (h)(6)(D). This should make clear that the statutory permission to disable technology measures exists without imposing undue burdens on schools or libraries regarding how this provision should be applied. We agree with the ALA and SECA that we should not define ''bona fide research'' because we believe that determination should be left to the affected schools and libraries. For similar reasons, we also decline to set forth how much disclosure must accompany requests for disabling and other matters related to disabling. We continue to believe that we should leave these determinations to local communities because they are the most knowledgeable about the varying circumstances of the schools or libraries within their communities.

13. As required by the statute, we also add a rule provision to require local determination of what matter is inappropriate for minors. The commenters overwhelmingly support this provision. Among other things, the statute states that a determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. Although this is mandated by the statute, it is not currently in the Commission's rules. We believe codifying this statutory provision will provide clarity on the authority of the local community to decide what is best for its schools and libraries.

14. In addition, we take this opportunity to address an issue raised by SECA. SECA expressed concern about a situation in which an audit administered by Universal Service Administrative Company (USAC) found that a school violated CIPA requirements because it allowed access to Facebook and MySpace. Although it is possible that certain individual Facebook or MySpace pages could potentially contain material harmful to minors, we do not find that these Web sites are *per se* ''harmful to minors'' or fall into one of the categories that schools and libraries must block. In addition, the statute states that local school and library authorities are the appropriate bodies to determine what

online content is inappropriate for minors accessing the Internet through their facilities. Indeed, the U.S. Department of Education recently found that social networking Web sites have the potential to support student learning, stating that students can ''participate in online social networks where people from all over the world share ideas, collaborate, and learn new things.'' Declaring such sites categorically harmful to minors would be inconsistent with the Protecting Children in the 21st Century Act's focus on ''educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms, and cyberbullying awareness and response.''

15. Our next rules pertain to record retention and the obligation to produce Internet safety policies. We add a rule provision requiring each Internet safety policy that is adopted pursuant to section 254(l) of the Act to be made available to the Commission upon request. Although this requirement is mandated by the statute, it is not currently in the Commission's rules. In adopting this rule, we do not intend to withhold E-rate funds pending a review of such policies. We also emphasize that the Commission is not mandating a wholesale collection of Internet safety policies. An entity would only need to produce its Internet safety policy *upon request* by the Commission. We do not anticipate that the Commission would request this information with any more frequency than it has before, and therefore do not see this rule provision as imposing any new burden.

16. We find that the maintenance of the Internet safety policy should be in accordance with the existing audit and recordkeeping requirements of Commission rule § 54.516(a) and existing certification number 10 on the FCC Form 486, which require schools and libraries to retain documents for at least five years after the last day of service delivered in a particular funding year. In applying this requirement to Internet safety policies, we conclude that a school or library should be required to retain its Internet safety policy documentation for a period of five years after the funding year in which the policy was relied upon to obtain E-rate funding. For example, if a school adopted an Internet safety policy in 2002 and used that same policy to make its certification in funding year 2009, the school must retain its Internet safety policy documentation for five years after the last day of service for funding year 2009.

17. We also add a rule provision requiring a local public notice and a hearing or meeting to address any Internet safety policies newly adopted pursuant to CIPA. Although this is mandated by the statute and was discussed in the *CIPA Order,* there is no provision addressing this issue in the existing rules. As discussed in the *NPRM,* this requirement only applies to an entity that has no previous Internet safety policy or did not provide public notice and a hearing or meeting when it adopted its Internet safety policy. Unless required by local or state rules, an additional public notice and a hearing or meeting is not necessary for amendments to Internet safety policies, including the changes to schools' Internet safety policies required by the Protecting Children in the 21st Century Act. We understand, however, that a school or library might have convened such a hearing or meeting before we adopted our record retention rules in August 2004, and may not have retained a record of the hearing or meeting. As such, we will not consider it a CIPA violation if the hearing or meeting was held prior to August 2004, and the entity cannot produce such records. However, prospectively, an entity must, at a minimum, keep at least some record of when the public notice and hearing or meeting took place (*e.g.,* a copy of the meeting agenda, or a newspaper article announcing the hearing or meeting). Finally, in response to the concerns of several commenters, we conclude that if an entity's existing Internet safety policy contains language sufficient to encompass the new requirements of the Protecting Children in the 21st Century Act, then no amendment to the policy is required.

18. We next address SECA's request for clarification on compliance and penalties regarding CIPA requirements. SECA requests that the Commission instruct USAC that ''technical violations'' of the CIPA requirements do not warrant immediate recovery of funds and that affected applicants should be given the opportunity to cure any omissions. We agree that in certain circumstances, USAC should give applicants the opportunity to correct minor errors that could result in violations of the Commission's CIPA rules before instituting recovery of E-rate funds, but such errors must be immaterial to statutory CIPA certification compliance. For example, if a school has complied in practice with the CIPA certification it has made with regard to the use of its Internet access services by minors, but has inadvertently left out one of the details of its practice in its written Internet safety policy, we would consider that to be an immaterial error that could be cured.

19. We also revise Commission's rules §§ 54.520(c)(1)(iii)(B), (c)(2)(iii)(B), and (c)(3)(i)(B) to clarify that, in the first year of an entity's participation in the E-rate program only, the entity's Administrative Authority may certify on the FCC Form 486 or 479 that it will complete all CIPA requirements by the following funding year and still receive funding for the current funding year. The text of the existing rules contains an option for a grace period, by which an Administrative Authority may certify that it will come into compliance with the CIPA requirements by the next funding year, but does not specify that this certification option is only applicable to entities that are applying for E-rate discounts for the first time. We believe this clarification will help new applicants understand their CIPA obligations during their first year of E-rate funding. We note that ALA expresses concern that parties will be confused by this revision. We disagree. As ALA itself states, the FCC Form 486 instructions go into great detail about the circumstances under which an entity may certify that it will come into compliance with the CIPA requirements by the next funding year. We also note that USAC has extensive guidance on its Web site on compliance with the CIPA requirements, including when the grace period applies, and this guidance will continue to be available to parties.

20. Some E-rate recipients have sought guidance regarding the potential application of CIPA requirements to the use of portable devices owned by students and library patrons, such as laptops and cellular telephones, when those devices are used in a school or library to obtain Internet access that has been funded by E-rate. We recognize that this is an increasingly important issue, as portable Internet access devices proliferate in schools and libraries. We believe it may be helpful to clarify the appropriate policies in this area, and intend to seek public comment in a separate proceeding.

21. Finally, we take this opportunity to make minor corrections to the *Schools and Libraries Sixth Report and Order* released September 28, 2010. Among other things, the Commission included dark fiber on the Eligible Services List (ESL) and allowed eligible schools and libraries to receive support for the lease of fiber, whether lit or dark, as a priority one service from *any* entity. In the discussion of dark fiber, the seventh sentence in paragraph 9 currently reads: ''We emphasize that

selecting a telecommunications carrier as a service provider does not absolve schools and libraries of their obligation to adhere to the Children's Internet Protection Act (CIPA) requirements when they use that service to obtain Internet service or access to the Internet.'' We revise the last part of that sentence to read: '' * * * when they use USF funding to obtain discounted Internet access service.''

22. In addition, we also correct Commission's rule § 54.507(g)(1)(i) of the final rules to the *Schools and Libraries Sixth Report and Order* which currently reads: ''(i) Schools and Libraries Corporation shall first calculate the demand for telecommunications, telecommunications services, voice-mail, and Internet access for all discount categories as determined by the schools and libraries discount matrix in § 54.505(c) of the Commission's rules. These services shall receive first priority for the available funding.'' We revise this rule to change ''Schools and Libraries Corporation'' to ''Administrator'' and to reflect that voice mail, although eligible for E-rate discounts, does not need to be listed as an individual eligible service in our rules. We revise the rule to read: ''(i) The Administrator shall first calculate the demand for services listed under the telecommunications services, telecommunications, and Internet access categories on the eligible services list for all discount levels, as determined by the schools and libraries discount matrix in § 54.505(c) of the Commission's rules. These services shall receive first priority for the available funding.''

III. Procedural Matters

A. Final Regulatory Flexibility Analysis

23. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was prepared and incorporated in the *NPRM* in CC Docket 02–6. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. We did not receive any comments specifically directed toward the IRFA. This final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

B. Need for, and Objectives of, the Report and Order

24. This *Report and Order* revises the Commission's rules to add a new certification for elementary and secondary schools that have computers with Internet access and receive discounts under the E-rate program, pursuant to the mandate of the Protecting Children in the 21st Century Act. Such action is necessary to comply with the Protecting Children in the 21st Century Act. We also adopt revisions to related Commission rules to reflect existing statutory language more accurately. Finally, we make corrections and add a clarification related to the Commission's *Schools and Libraries Sixth Report and Order* (FCC 10–175).

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

25. No comments specifically addressed the IRFA.

D. Description and Estimate of the Number of Small Entities to Which Rules May Apply

26. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Nationwide, there are a total of approximately 29.6 million small businesses, according to the SBA. A ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, as of 2002, there were approximately 1.6 million small organizations. The term ''small governmental jurisdiction'' is defined generally as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States. We estimate that, of this total, 84,377 entities were ''small governmental jurisdictions.'' Thus, we estimate that most governmental jurisdictions are small.

27. Small entities potentially affected by the proposals herein include eligible schools and libraries and the eligible service providers offering them discounted services.

28. *Schools and Libraries.* As noted, ''small entity'' includes non-profit and small government entities. Under the schools and libraries universal service support mechanism, which provides support for elementary and secondary schools and libraries, an elementary school is generally ''a non-profit institutional day or residential school that provides elementary education, as determined under state law.'' A secondary school is generally defined as ''a non-profit institutional day or residential school that provides secondary education, as determined under state law,'' and not offering education beyond grade 12. For-profit schools and libraries, and schools and libraries with endowments in excess of $50,000,000, are not eligible to receive discounts under the program, nor are libraries whose budgets are not completely separate from any schools. Certain other statutory definitions apply as well. The SBA has defined for-profit, elementary and secondary schools and libraries having $6 million or less in annual receipts as small entities. In funding year 2007 approximately 105,500 schools and 10,950 libraries received funding under the schools and libraries universal service mechanism. Although we are unable to estimate with precision the number of these entities that would qualify as small entities under SBA's size standard, we estimate that fewer than 105,500 schools and 10,950 libraries might be affected annually by our action, under current operation of the program.

29. *Telecommunications Service Providers.* First, neither the Commission nor the SBA has developed a size standard for small incumbent local exchange services. The closest size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,311 incumbent carriers reported that they were engaged in the provision of local exchange services. Of these 1,311 carriers, an estimated 1,024 have 1,500 or fewer employees and 287 have more than 1,500 employees. Thus, under this category and associated small business size standard, we estimate that the majority of entities are small. We have included small incumbent local exchange carriers in this RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in

their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent carriers in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

30. Second, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the Commission's *2008 Trends Report,* 300 companies reported that they were engaged in the provision of interexchange services. Of these 300 IXCs, an estimated 268 have 1,500 or fewer employees and 32 have more than 1,500 employees. Consequently, the Commission estimates that most providers of interexchange services are small businesses.

31. Third, neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers (CAPs). The closest applicable definition under the SBA rules is for wired telecommunications carriers. This provides that a wired telecommunications carrier is a small entity if it employs no more than 1,500 employees. According to the *2008 Trends Report,* 1,005 CAPs and competitive local exchange carriers (competitive LECs) reported that they were engaged in the provision of competitive local exchange services. Of these 1,005 CAPs and competitive LECs, an estimated 918 have 1,500 or fewer employees and 87 have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive exchange services are small businesses.

32. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, we estimate that the majority of wireless firms are small.

33. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the *2008 Trends Report,* 434 carriers reported that they were engaged in wireless telephony. Of these, an estimated 222 have 1,500 or fewer employees and 212 have more than 1,500 employees. We have estimated that 222 of these are small under the SBA small business size standard.

34. *Common Carrier Paging.* As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of Wireless Telecommunications Carriers (except Satellite). Prior to that time, such firms were within the now-superseded category of ''Paging.'' Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior category and associated data. The data for 2002 show that there were 807 firms that operated for the entire year. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, we estimate that the majority of paging firms are small.

35. In addition, in the *Paging Second Report and Order,* released June 9, 1999, the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area (MEA) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (EA) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

36. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 281 carriers reported that they were engaged in the provision of ''paging and messaging'' services. Of these, an estimated 279 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

37. *Internet Service Providers.* The 2007 Economic Census places these firms, whose services might include voice over Internet protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. The most current Census Bureau data for all such firms, however, are the 2002 data for the previous census category called Internet Service Providers. That category had a small business size standard of $21 million or less in annual receipts, which was revised in late 2005 to $23 million. The 2002 data show that there were 2,529 such firms that operated for the entire year. Of those, 2,437 firms had annual receipts of under $10 million, and an additional 47 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of ISP firms are small entities.

38. *Vendors of Internal Connections: Telephone Apparatus Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises

establishments primarily engaged in manufacturing wire telephone and data communications equipment. These products may be standalone or board-level components of a larger system. Examples of products made by these establishments are central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, LAN modems, multi-user modems, and other data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for Telephone Apparatus Manufacturing, which is: All such firms having 1,000 or fewer employees. According to Census Bureau data for 2002, there were a total of 518 establishments in this category that operated for the entire year. Of this total, 511 had employment of under 1,000, and an additional seven had employment of 1,000 to 2,499. Thus, under this size standard, the majority of firms can be considered small.

39. *Vendors of Internal Connections: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' The SBA has developed a small business size standard for firms in this category, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

40. *Vendors of Internal Connections: Other Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing communications equipment (except telephone apparatus, and radio and television broadcast, and wireless communications equipment).'' The SBA has developed a small business size standard for Other Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 503 establishments in this category that operated for the entire year. Of this total, 493 had employment of under 500, and an additional 7 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

41. Schools and libraries that have computers with Internet access must certify that they have in place certain Internet safety policies and technology protection measures in order to be eligible for E-rate discounts for Internet access and internal connection services. Pursuant to the mandate in the Protecting Children in the 21st Century Act, the *Report and Order* revises § 54.520(c)(i) of the Commission's rules to add a provision that a school's Internet safety policy must include educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.

42. In addition, this *Report and Order* revises certain rules to more accurately reflect the provisions of the Act with regard to certifications made pursuant to the Children's Internet Protection Act (CIPA). Specifically, the rule revisions that may affect small entities require: (1) Schools and libraries to enforce the operation of technology protection measures during use of computers by minors and adults; (2) local determination of what matter is inappropriate for minors; (3) schools and libraries to make available to the Commission, upon request by the Commission, any Internet safety policy that is adopted pursuant to section 254(l) of the Act; and (4) schools and libraries to provide public notice and hearing to address any proposed Internet safety policy that is adopted pursuant to CIPA.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

43. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

44. With regard to the new certification requirements pursuant to the Protecting Children in the 21st Century Act, we do not believe that there will be significant economic impact on small entities. Currently, schools and libraries file the FCC Form 486 to certify their compliance with the requirements regarding Internet safety policies and technology protection measures. Because schools and libraries will continue to use the same FCC Form 486 to certify their compliance with these requirements, there will be no additional reporting requirements. We note that although the FCC Forms 486 and 479 do not need to be amended because the existing forms already incorporate a certification of compliance with all of the CIPA rules, the instructions to these forms will be amended to list each CIPA requirement individually, including the requirements we mandate today. The requirement to amend their Internet safety policies to include provisions on educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response, will require schools to update their already existing policies. Making this requirement effective beginning July 1, 2012, however, will give schools adequate time to amend their Internet safety policies and to implement procedures to comply with the new requirements after the effective date of these rules.

45. Several other rule revisions will have little economic impact on small entities because schools and libraries have already implemented these measures. We acknowledge that we are requiring schools and libraries to enforce the operation of technology protection measures during use of computers by minors and adults, to provide public notice and hearing to address any proposed Internet safety policy that is adopted pursuant to CIPA, and that schools and libraries make Internet safety policies available upon request by the Commission. However, as a practical matter, current E-rate beneficiaries have already implemented and have been operating under these requirements, even though these statutory requirements are not specifically stated in the text of the Commission's rules. For example,

schools and libraries would have been unable to make the proper CIPA certifications unless the technology protection measures have been enforced during computer use by minors and adults. In addition, the requirement to provide public notice and hearing was discussed extensively in the *CIPA Order* even though an implementing rule was not adopted.

46. With regard to the remaining rule provisions, we believe that these rule revisions will have no economic impact on small entities because they merely clarify existing definitions and existing requirements. For example, the revisions regarding the definitions of elementary and secondary schools did not change the definitions, but merely clarified that the same definitions were utilized throughout the rules, or codified existing statutory definitions. Finally, the permission granted to schools and libraries to disable technology protection measures to enable access for bona fide research or other lawful purpose is not a requirement but may impose a burden on small entities if they decide to disable technology measures. We note again, however, that current E-rate beneficiaries have already implemented and have been operating under these requirements, although these statutory requirements were not specifically stated in the text of the Commission's rules.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

47. None.

H. Report to Congress

48. The Commission will send a copy of this *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the SBREFA. In addition, the Commission will send a copy of the *Report and Order,* including the FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and the FRFA (or summaries thereof) will also be published in the **Federal Register**.

I. Paperwork Reduction Act Analysis

49. This document contains revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. Specifically, this document requires any school receiving E-rate funding to certify that its Internet safety policy provides for the education of minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness. We have assessed the effects of this new certification requirement and find that it will not significantly impact the burden on small business. Congress adopted this new certification requirement to promote online safety education in schools. We also codify the existing statutory requirement that schools and libraries make Internet safety policies available upon request by the Commission. We have assessed the effects of adding this requirement to our rules and find that it will not significantly impact the burden on small business because it was an already existing statutory requirement with which schools and libraries have had to comply. The Commission received preapproval from OMB for this information collection requirement on March 25, 2010 (See OMB Control No. 3060–0853), and the information collections was adopted as proposed. We also note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

J. Congressional Review Act

50. The Commission will include a copy of this report and order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

IV. Ordering Clauses

51. Accordingly, *It Is Ordered* that, pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, and § 1.411 of the Commission's rules, this report and order *Is Adopted.*

52. *It Is Further Ordered,* that pursuant to the authority contained in sections 1, 4(i), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, and §§ 54.500 through 54.501, 54.503 through 54.504, 54.507, and 54.520 of the Commission's rules, *Are Amended* as set forth below, effective thirty (30) days after the publication of this report and order in the **Federal Register.**

53. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the report and order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.500 by revising paragraphs (c) and (k) to read as follows:

§ 54.500 Terms and definitions.

* * * * *

(c) *Elementary school.* An ''elementary school'' means an elementary school as defined in 20 U.S.C. 7801(18), a non-profit institutional day or residential school, including a public elementary charter school, that provides elementary education, as determined under state law.

* * * * *

(k) *Secondary school.* A ''secondary school'' means a secondary school as defined in 20 U.S.C. 7801(38), a non-profit institutional day or residential school, including a public secondary charter school, that provides secondary education, as determined under state law except that the term does not include any education beyond grade 12.

* * * * *

■ 3. Amend § 54.501 by revising the section heading and revising paragraph (a)(1) to read as follows:

§ 54.501 Eligibility for services provided by telecommunications carriers.

(a) * * *

(1) Only schools meeting the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.500(c) or (k) of these rules, and not excluded under paragraphs (a)(2) or (a)(3) of this section shall be eligible for discounts on telecommunications and other supported services under this subpart.

* * * * *

■ 4. Amend § 54.503 by revising paragraph (c)(2)(i) to read as follows:

§ 54.503 Competitive bidding requirements.

* * * * *

(c) * * *

(2) * * *

(i) The schools meet the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.500(c) or (k) of these rules, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

* * * * *

■ 5. Amend § 54.504 by revising paragraph (a)(1)(i) to read as follows:

§ 54.504 Requests for services.

(a) * * *

(1) * * *

(i) The schools meet the statutory definition of ''elementary school'' or ''secondary school'' as defined in § 54.500(c) or (k) of these rules, do not operate as for-profit businesses, and do not have endowments exceeding $50 million.

* * * * *

■ 6. Amend § 54.507 by revising paragraph (g)(1)(i) to read as follows:

§ 54.507 Cap.

* * * * *

(g) * * *

(1) * * *

(i) The Administrator shall first calculate the demand for services listed under the telecommunications services, telecommunications, and Internet access categories on the eligible services list for all discount levels, as determined by the schools and libraries discount matrix in § 54.505(c). These services shall receive first priority for the available funding.

* * * * *

■ 7. Amend § 54.520 by revising paragraphs (a)(1), (a)(4), (c)(1)(i), (c)(1)(iii)(B), (c)(2)(i), (c)(2)(iii)(B), (c)(3)(i)(B), and by adding new paragraphs (c)(4), (c)(5), and (h) to read as follows:

§ 54.520 Children's Internet Protection Act certifications required from recipients of discounts under the federal universal service support mechanism for schools and libraries.

(a) * * *

(1) School. For the purposes of the certification requirements of this rule, school means school, school board, school district, local education agency or other authority responsible for administration of a school.

* * * * *

(4) Statutory definitions.

(i) The term ''minor'' means any individual who has not attained the age of 17 years.

(ii) The term ''obscene'' has the meaning given such term in 18 U.S.C. 1460.

(iii) The term ''child pornography'' has the meaning given such term in 18 U.S.C. 2256.

(iv) The term ''harmful to minors'' means any picture, image, graphic image file, or other visual depiction that—

(A) Taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

(B) Depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

(C) Taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

(v) The terms ''sexual act'' and ''sexual contact'' have the meanings given such terms in 18 U.S.C. 2246.

(vi) The term ''technology protection measure'' means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (c) of this section.

* * * * *

(c) * * *

(1) * * *

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The school must enforce the operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(1) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose. This Internet safety policy must also include monitoring the online activities of minors. Beginning July 1, 2012, schools' Internet safety policies must provide for educating minors about appropriate online behavior, including interacting with other individuals on social networking Web sites and in chat rooms and cyberbullying awareness and response.

* * * * *

(iii) * * *

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(2) * * *

(i) The Internet safety policy adopted and enforced pursuant to 47 U.S.C. 254(h) must include a technology protection measure that protects against Internet access by both adults and minors to visual depictions that are obscene, child pornography, or, with respect to use of the computers by minors, harmful to minors. The library must enforce the operation of the technology protection measure during use of its computers with Internet access, although an administrator, supervisor, or other person authorized by the certifying authority under paragraph (a)(2) of this section may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

* * * * *

(iii) * * *

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service represented in the Funding Request Number(s) on this Form 486, for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have) not completed all requirements of CIPA for this funding year.

* * * * *

(3) * * *

(i) * * *

(B) Pursuant to the Children's Internet Protection Act, as codified at 47 U.S.C. 254(h) and (l), the recipient(s) of service under my administrative authority and represented in the Funding Request Number(s) for which you have requested or received Funding Commitments, and for whom this is the first funding year in the federal universal service support mechanism for schools and libraries, is (are) undertaking such actions, including any necessary procurement procedures, to comply with the requirements of CIPA for the next funding year, but has (have)

not completed all requirements of CIPA for this funding year.

* * * * *

(4) Local determination of content. A determination regarding matter inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may establish criteria for making such determination; review the determination made by the certifying school, school board, school district, local educational agency, library, or other authority; or consider the criteria employed by the certifying school, school board, school district, local educational agency, library, or other authority in the administration of the schools and libraries universal service support mechanism.

(5) Availability for review. Each Internet safety policy adopted pursuant to 47 U.S.C. 254(l) shall be made available to the Commission, upon request from the Commission, by the school, school board, school district, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

* * * * *

(h) Public notice; hearing or meeting. A school or library shall provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

[FR Doc. 2011–23267 Filed 9–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 105, 106, 107, 130, 171, 172, 173, 174, 176, and 177

[Docket No. PHMSA–2011–0134 (HM–244D)]

RIN 2137–AE77

Hazardous Materials: Minor Editorial Corrections and Clarifications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the Hazardous Materials Regulations. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are non-substantive changes and do not impose new requirements.

DATES: *Effective date:* September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Rob Benedict, Standards and Rulemaking Division, 202–366–8553, PHMSA, East Building, PHH–10, 1200 New Jersey Avenue, SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

The Pipeline and Hazardous Materials Safety Administration (PHMSA) annually reviews the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) to identify typographical errors, outdated addresses or other contact information, and similar errors. In this final rule, we are correcting typographical errors, incorrect CFR references and citations, inconsistent use of terminology, misstatements of certain regulatory requirements, inadvertent omissions of information and outdated transition dates. Because these amendments do not impose new requirements, notice and public comment are unnecessary. By making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next published revision of the 49 CFR.

II. Section-by-Section Review

The following is a section-by-section summary of the minor editorial corrections and clarifications made in this final rule. PHMSA's Office of Hazardous Materials Safety (OHMS) recently underwent an internal reorganization of the divisions that constitute OHMS. As a result of this reorganization, there were several structural changes and re-designations. Therefore, in addition to the minor editorial corrections and clarifications made in this final rule, we are also revising all outdated references to divisions that underwent a change in name designation. Specifically, we are revising all outdated references to the ''Office of Hazardous Materials Standards'' and are replacing them with ''Standards and Rulemaking Division.'' We are revising all outdated references to the ''Office of Special Permits and Approvals'' and replacing them with ''Approvals and Permits Division.'' And we are revising all outdated references to the ''Office of Hazardous Materials Enforcement'' and replacing them with ''Field Operations.''

Part 105

Section 105.20

This section specifies conditions and procedures for requesting guidance and interpretations of the HMR. In this section, we are revising an outdated reference to the ''Office of Hazardous Materials Standards'' and are replacing it with ''Standards and Rulemaking Division.'' This change reflects the name change resulting from PHMSA's reorganization.

Section 105.25

This section specifies the requirement for PHMSA to make certain documents and information available to the public. In this section, we are revising an outdated reference to the ''Office of Special Permits and Approvals'' and replacing it with ''Approvals and Permits Division.'' This change reflects the name change resulting from PHMSA's reorganization.

Section 105.40

This section specifies requirements for designated agents for non-residents. In this section, we are revising an outdated reference to the ''Office of Special Permits and Approvals'' and replacing it with ''Approvals and Permits Division.'' This change reflects the name change resulting from PHMSA's reorganization.

Part 106

Section 106.95

This section specifies conditions and procedures to request a change to the regulations. In this section, we are revising an outdated reference to the ''Office of Hazardous Materials Standards'' and replacing it with ''Standards and Rulemaking Division.'' This change reflects the name change resulting from PHMSA's reorganization.

Part 107

Section 107.105

This section specifies conditions and procedures for an application for a special permit. The e-mail address for the Approvals and Permits Division in paragraph (a)(1)(iii) is no longer correct. Accordingly, we are revising this e-mail address. Also, we are adding ''other ranking official'' to the language in paragraph (a)(2). This language was inadvertently omitted from the final rule published on July 26, 2011 under Docket Number PHMSA–2009–0410 (HM–233B) (76 FR 44496) entitled ''Revisions of Special Permits Procedures; Response to Appeals;

Corrections.'' This language was discussed and accepted in the preamble of that final rule, but was inadvertently omitted in the regulatory text.

Section 107.107

This section specifies conditions and procedures for an application for party status to a special permit. The e-mail address for the Approvals and Permits Division in paragraph (b)(1)(iii) is no longer correct. Accordingly, we are revising this e-mail address.

Section 107.109

This section specifies conditions and procedures for an application for a renewal of a special permit. The e-mail address for the Approvals and Permits Division in paragraph (b)(1)(iii) is no longer correct. Accordingly, we are revising this e-mail address.

Section 107.127

This section specifies conditions for the availability of documents for public inspection. In paragraph (a), we are revising an outdated reference to the ''Office of Special Permits and Approvals'' and replacing it with ''Approvals and Permits Division.'' This change reflects the name change resulting from PHMSA's reorganization.

Section 107.305

This section specifies the general requirements for investigations and inspections. In paragraph (b)(4), we are revising an outdated reference to the ''Office of Hazardous Materials Enforcement'' and replacing it with ''Field Operations.'' This change reflects the name change resulting from PHMSA's reorganization.

Section 107.608

This section specifies the general registration requirements. As part of the registration process, persons meeting the applicability requirements of § 107.601 must submit a DOT Form F 5800.2 to the Grants and Registrations Branch of the Outreach, Training and Grants Division of PHMSA. Paragraph (d) of this section provides information on how to obtain copies of DOT form F 5800.2. The branch routing symbol, phone number and the Web address for the grants and registration branch in paragraph (d) are no longer correct. Accordingly, we are revising the routing symbol, phone number and the Web address.

Section 107.616

This section details the payment procedures for the registration program. Paragraph (a) of this section provides information on how to submit payments via mail or the internet. The mailing address and the Web address for the payments in paragraph (a) are no longer correct. Accordingly, we are revising the mailing and Web addresses.

Section 107.805

On December 9, 2005, PHMSA published a final rule under Docket Number PHMSA–2005–22208 (HM–240) [70 FR 73156] entitled, ''Incorporation of Statutorily Mandated Revisions to the Hazardous Materials Regulations.'' This final rule revised terminology, definitions, and requirements for consistency with the Hazardous Materials Safety and Security Reauthorization Act of 2005. As part of this final rule, paragraph (f) of § 107.805 was revised and a transitional provision stating ''after May 31, 2004, no person may requalify a DOT specification or special permit cylinder in accordance with § 180.209(g) of this chapter unless that person has been issued a RIN as provided in paragraph (d) of this section'' was added. In this final rule, we are removing the language ''after May 31, 2004'' since the transition date is no longer relevant.

Part 130

Section 130.31

On June 17, 1996, the Research and Special Programs (RSPA), the predecessor agency to PHMSA, issued a final rule under Docket Numbers HM–214 and PC–1, entitled ''Oil Spill Prevention and Response Plans.'' This final rule adopted requirements for packaging, communication, spill response planning and response plan implementation intended to prevent and contain spills of oil during transportation. As part of this final rule, a new section, § 130.31 was added to prescribe the requirements for oil spill response plans. This section contains transition dates which are no longer valid. In this final rule, we are removing the language ''After September 30, 1993'' from paragraph (a) and ''After February 19, 1993'' from paragraph (b) since the transition dates are no longer necessary.

Part 171

Part 171.7

Paragraph (a) of § 171.7 lists materials incorporated by reference into the HMR. In paragraph (a)(3), we are correcting the mailing address for the National Fire Protection Association.

Part 171.16

This section contains the requirements for detailed hazardous materials incident reports. In paragraph (b), we are revising the mailing address, routing number and administration name.

Part 171.22

This section prescribes the authorization and conditions for use of international standards and regulations. On May 3, 2007, PHMSA issued a final rule under Docket Number PHMSA–2005–23141 (HM–215F) [72 FR 25162], entitled ''Hazardous Materials: Revision and Reformatting of Requirements for the Authorization to Use International Transport Standards and Regulations.'' This final rule revised and consolidated the requirements applicable to the use of authorized international standards. Among the proposals adopted in this final rule was the requirement for an international shipper, directly or through the forwarding agent at the place of entry, to provide the initial U.S. carrier with the shipper's certification required by § 172.204 of the HMR, unless the shipment is otherwise excepted from the certification requirement. This section contains a transition date for this requirement which has since expired. In this final rule, we are removing the language ''After May 4, 2009'' from paragraph (f)(2) since the transition date is no longer necessary.

Section 171.23

This section prescribes requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations or the IAEA Regulations. In paragraph (a)(4)(ii), the word ''density'' is misspelled as ''ensity.'' In this rule, we are correcting this error.

Part 172

Section 172.101

This section contains the Hazardous Materials Table (HMT) and explanatory text for each of the columns in the table. In accordance with § 173.115(k)(6), when the contents of an aerosol are classified as Division 6.1, PG III or Class 8, PG II or III, the aerosol must be assigned a subsidiary hazard of Division 6.1 or Class 8, as appropriate. Currently, the entry in the HMT for aerosols with a subsidiary hazard of corrosive is specified with the proper shipping name ''Aerosols, *corrosive, Packing Group II or III, (each not exceeding 1 L capacity)* UN1950.'' This proper shipping name limits this entry to PG II and III in accordance with § 173.115(k)(6). To clarify that aerosols with a subsidiary hazard of poison may only be PG III, in this rule the entry in

the HMT for Aerosols, poison is revised to read Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity.)* We are also revising the proper shipping name for Aerosols, *poison, (each not exceeding 1 L capacity*) to include a reference to the PG III limitation specified in § 173.115(k)(6).

Some of the information for the entry ''Argon, *compressed* UN1006'' in the HMT, while correct, was reported under incorrect columns of the HMT. In this final rule, we are revising the entry ''Argon, *compressed* UN1006'' by correcting the information reported in columns 5, 6, 7, 8a, 8b, 8c, 9a, 9b, 10a and 10b.

The entire entry for ''*Helium, compressed* UN 1046'' is italicized in the HMT. This is incorrect. In this final rule, we are revising the entry ''*Helium, compressed* UN1046'' to read ''Helium, *compressed* UN1046.''

For the entry, ''Hydrogen iodide, anhydrous UN2197,'' some of the information in the HMT, while correct, was listed under the incorrect columns. In this final rule, we are revising the entry ''Hydrogen iodide, anhydrous UN2197'' by correcting the information reported in columns 5, 6, 7, 8a, 8b, 8c, 9a and 9b.

For the entry, ''Oxidizing solid, water-reactive, n.o.s. UN3121,'' some of the information in the HMT, while correct, was listed under the incorrect columns. In this final rule, we are revising the entry ''Oxidizing solid, water-reactive, n.o.s. UN3121'' by correcting the information reported in columns 5, 6, 7, 8a, 8b, 8c, 9a, 9b, 10a and 10b.

The entry for ''PCB, *see* Polychlorinated biphenyls'' inadvertently included an ''A'' and ''W'' in column 1 of the HMT. Polychlorinated biphenyls are intended to be regulated by all modes. In this final rule, we are revising the entry ''PCB, *see* Polychlorinated biphenyls'' by removing the information in the first column of the HMT for this entry.

On March 9, 1999, PHMSA published a final rule under Docket Number RSPA 98–4185 (HM–215C) [64 FR 10742], entitled ''Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions.'' In the HM–215C final rule, three entries were added for ''Pyrethroid pesticide, liquid toxic, 6.1, UN3352.'' These entries for Pyrethroid pesticide, liquid toxic, 6.1, UN3352 inadvertently referenced packagings designed for solids. In this final rule, we are correcting the authorized packaging references in columns 8B and 8C to reference packaging authorized for liquid hazardous materials to be consistent with the liquid state of this material.

On December 29, 2006, PHMSA published a final rule under Docket Number PHMSA–2006–25476 (HM–215I) [71 FR 78596], entitled ''Harmonization with the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions.'' The HM–215I final rule revised the HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions also harmonized the HMR with certain changes to the International Maritime Dangerous Goods (IMDG) Code, the International Civil Aviation Organization (ICAO) Technical Instructions, and the United Nations (UN) Recommendations. As part of the revisions in this final rule, new entries, ''Paint related material, flammable, corrosive (*including paint thinning or reducing compound*),'' UN3469, PG I, II, and III were added to the HMT. However, these entries were never published in subsequent versions of the HMR. Therefore, in this final rule, we are correcting the HMT by adding the entries for ''Paint related material, flammable, corrosive (*including paint thinning or reducing compound*)'' UN3469, PG I, II, and III.

Section 172.301

This section prescribes the general marking requirements for non-bulk packagings. Paragraph (f) of this section contains a requirement to mark NON–ODORIZED on cylinders containing Liquid Petroleum Gases. This requirement was added to the regulations in the November 4, 2004 final rule under Docket Number RSPA–03–15327 (HM–206B) [69 FR 64462] entitled ''Miscellaneous Changes to the Hazard Communication Requirements.'' As part of this requirement a transition date was included. In this final rule, we are removing the language ''After September 30, 2006,'' from paragraph (f) since the transition date is no longer relevant.

Section 172.323

This section prescribes the requirements for marking a bulk packaging containing a regulated medical waste. Paragraph (a) of this section requires a bulk packaging to be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i). This requirement was codified into the regulations in a final rule published in the **Federal Register** on August 14, 2002, under Docket Number RSPA–98–3971 (HM–226) [67 FR 53118], entitled ''Revision to Standards for Infectious Substances.'' A transition date was included as part of this requirement. In this final rule, we are removing the language ''after September 30, 2003,'' from paragraph (f) since the transition date is no longer relevant.

Section 172.400a

This section provides exceptions from the labeling requirements for certain hazardous materials. In the final rule, published May 3, 2007, under Docket Number PHMSA–2005–23141 (HM–215F) [72 FR 25162], entitled ''Revision and Reformatting of Requirements for the Authorization to Use International Transport Standards and Regulations,'' the exceptions for labeling were revised. As part of this revision, an incorrect section was inadvertently referenced for Poison by Inhalation (PIH) materials. Specifically, § 172.400a(d) incorrectly references § 171.23(b)(11) which addresses radioactive materials, instead of PIH materials. Therefore, in this final rule, we are revising paragraph (d) to replace the reference to ''§ 171.23(b)(11)'' with a reference to ''§ 171.23(b)(10).''

Section 172.402

This section prescribes requirements for general specifications for labels. In this final rule, we are removing language from paragraph (b) that is past its transition date. Specifically, the sentence ''A subsidiary label meeting the specifications of this section which were in effect on September 30, 2001, such as, a label without the hazard class or division number displayed in the lower corner of the label, may continue to be used as a subsidiary label in domestic transportation by rail or highway until October 1, 2005, provided the color tolerances are maintained and are in accordance with the display requirements in this subchapter.'' will be removed because this allowance is no longer permitted.

Section 172.432

This section prescribes requirements for INFECTIOUS SUBSTANCE label. As amended on July 20, 2011 in the final rule published under Docket Number PHMSA–2009–0151 (HM–218F) [76 FR 43510], entitled ''Miscellaneous Amendments'' the INFECTIOUS SUBSTANCE label specification was

revised and a provision to use previously authorized labels was included. In this final rule PHMSA is removing the wording ''September 30, 2011'' and adding the wording ''August 18, 2011'' in its place.

Section 172.446

This section prescribes requirements for the CLASS 9 label. As amended on July 20, 2011 in the final rule published under Docket Number PHMSA–2009–0151 (HM–218F) [76 FR 43510], entitled ''Miscellaneous Amendments'' the CLASS 9 label specification was updated and a provision to use previously authorized labels was included. In this final rule PHMSA is removing the wording ''September 30, 2011'' and adding the wording ''August 18, 2011'' in its place.

Section 172.512

This section prescribes requirements for placarding freight containers and aircraft unit load devices. In this final rule, we are re-designating the subparagraphs of paragraph (b) to clarify how freight containers and unit load devices are regulated differently by air transport and other modes. This clarification separates the requirements for freight containers and unit load devices with a capacity less than 18 m^3 (640 cubic feet) transported by aircraft and by all other modes into separate subparagraphs.

Section 172.519

This section prescribes requirements for general specifications for placards. In this final rule, we are removing language from paragraph (b)(4) that is past its transition date. Specifically, the sentence ''Stocks of non-permanently affixed subsidiary placards in compliance with the requirements in effect on September 30, 2001, may continue to be used in domestic transportation by rail or highway until October 1, 2005, or until current stocks are depleted, whichever occurs first.'' will be removed because this allowance is not longer permitted.

A final rule published May 3, 2007 under Docket Number PHMSA–2005–23141 (HM–215F) [72 FR 25162], entitled ''Revision and Reformatting of Requirements for the Authorization to Use International Transport Standards and Regulations,'' included an incorrect reference in § 172.519(f). In this rule, we are correcting § 172.519(f) to provide the correct reference for Poison by Inhalation (PIH) materials. With regard to PIH materials, this section incorrectly references § 171.23(b)(11) which pertains to radioactive materials instead of PIH materials. Therefore, in this final rule we are revising paragraph (f) to replace the reference to ''§ 171.23(b)(11)'' with a reference to ''§ 171.23(b)(10).''

Section 172.704

This section prescribes the training requirements for hazardous materials employees. Paragraph (a)(4) of this section details the requirements for the security awareness training component of the training requirements. This requirement was codified into the regulations on March 25, 2003, in a final rule published in the **Federal Register** under Docket Number RSPA–2002–12064 (HM–232) [68 FR 14510], entitled ''Security Requirements for Offerors and Transporters of Hazardous Materials.'' As part of this requirement, a transition date of ''No later than the date of the first scheduled recurrent training after March 25, 2003, and in no case later than March 24, 2006'' was included. In this final rule, we are removing the transition language from paragraph (a)(4) since the transition dates are no longer relevant.

Section 172.800

This section prescribes the requirements for development and implementation of plans to address security risks related to the transportation of hazardous materials in commerce. In this final rule, we are removing the second occurrence of the word ''as'' in paragraph (b)(15) to clarify that this requirement specifically refers to the 16 radioactive materials that the NRC identified as RAM–QC.

Section 172.820

This section specifies additional security planning requirements for transportation by rail. Paragraph (b) of § 172.820 details the requirements for compiling commodity data for rail carriers transporting certain shipments of explosive, toxic by inhalation, and radioactive materials. As part of the implementation plan for this requirement, a transitional provision was included addressing how to compile commodity data. This transitional provision has expired. Therefore, in this rulemaking, we are removing the transitional language from paragraph (b).

Paragraph (f) of this section details the requirements for completing the route analysis for rail carriers transporting certain shipments of explosive, toxic by inhalation, and radioactive materials. As part of the implementation plan for this requirement, a series of transition dates were included regarding the completion of the route analysis. These transition dates have expired. Therefore, in this rulemaking, we are removing the transitional language from paragraph (f).

Part 173

Section 173.8

This section provides exceptions for non-specification packagings used in intrastate transportation. Paragraph (d)(6) of § 173.8, includes a transition date to require that tanks authorized under § 173.8 would have to meet the Part 180 requirements (except for § 180.405(g)) in the same manner as required for DOT MC 306 cargo tank motor vehicles after of July 1, 2000. In this final rule, we are removing this transition date because it has expired.

Section 173.12

This section provides exceptions for shipments of waste materials, and contains two separate paragraphs with the designation ''(f).'' The second appearance of paragraph (f), entitled ''Household waste'' is a verbatim duplicate of paragraph (g), and, thus, unnecessary. Therefore, in this rulemaking, we are removing the second paragraph (f) entitled ''Household waste'' and the associated text.

Section 173.22a

This section prescribes the requirements for use of packagings authorized under special permits. The Web address where copies of special permits may be obtained in paragraph (b) is no longer correct. Accordingly, we are revising this Web address in this final rule.

Section 173.24b

This section prescribes the additional general requirements for bulk packagings. In paragraph (e) of this section, the phrase ''Stacking of IBCs and Large Packagings'' is the title of paragraph (e) and should be italicized. In this final rule we are correcting this error by italicizing the title.

Section 173.52

This section details the classification codes and compatibility groups for explosives. Paragraph (b) of this section provides two tables that detail the classification and compatibility scheme for explosive materials. Table 2 shows the number of classification codes that are possible within each explosive division. In the first column of the last row, ''1.6'' was inadvertently added, leading to some confusion with the Table. For clarification, in this rule, ''1.6'' will be replaced by the word ''Total'' in the first column of the last row to ensure reader ease of use.

Section 173.57

This section prescribes the acceptance criteria for new explosives. In paragraph (c)(1) of this section we are correcting a grammatical error by adding the correct punctuation.

Section 173.58

This section prescribes the assignment of class and division for new explosives. In paragraph (b) of this section, the phrase ''Division 1.5 explosive'' is the title of paragraph (b) and should be italicized. In this final rule, we will correct this error by italicizing the title.

Section 173.62

This section prescribes the specific packaging requirements for explosives. In packaging instruction 130, we inadvertently removed the authorization for the use of the following packagings—aluminum boxes (4B) and natural wood, sift-proof walls boxes (4C2). In this final rule, we are revising the packaging instruction 130 found in the Table of Packing Methods in paragraph (c)(5) to reinstate aluminum boxes (4B) and natural wood, sift-proof walls boxes (4C2) as authorized packagings.

In addition, in packaging instruction 132(a) the word ''contian'' is spelled incorrectly. In this final rule we are correcting the spelling.

Section 173.115

This section prescribes the definition for Class 2 materials. Paragraph (a)(2) describes the flammable range of compressed gases and states that the flammability of aerosols is determined by tests specified in § 173.115(k). This reference is incorrect. The correct reference should be § 173.115 (l). Therefore, in paragraph (a)(2), the reference to ''§ 173.115(k)'' is corrected to read ''§ 173.115(l).''

In addition, paragraph (l)(3) states ''Aerosols not meeting the provisions of paragraphs (a) or (b) of this section must be classed in accordance with the appropriate tests of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter).'' The requirements for classification of aerosols are found in paragraph (l)(1) and (l)(2); thus, the references to paragraphs (a) and (b) are no longer accurate. Therefore, in paragraph (l)(3), the reference to paragraphs ''(a) or (b)'' are corrected to read ''(l)(1) or (l)(2).''

Section 173.120

This section prescribes the definition for Class 3 materials. In paragraph (d), the current requirements inadvertently reference incorrect parts of the subchapter. Therefore, in this final rule, we are revising the wording ''requirements of parts 170–189 of this subchapter.'' to correctly read ''requirements of parts 171–185 of this subchapter.''

Section 173.168

This section prescribes requirements for chemical oxygen generators including their packaging requirements. In this rulemaking, we are removing an outdated transition date specific to the implementation of the requirements for outer packaging of chemical oxygen generators to meet flame penetration and thermal resistance requirements when transported aboard an aircraft. Specifically, we are revising paragraph (d)(2) by removing the language ''After September 30, 2009'' since the transitional provision is no longer relevant and all chemical oxygen generators must meet flame penetration and thermal resistance requirements when transported aboard an aircraft.

Section 173.301

This section prescribes general requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical vessels. Paragraph (f) prescribes the requirements for pressure relief devices. In this final rule, we are revising paragraph (f)(2) by removing the outdated transitional language ''After December 31, 2003'' since this transitional provision is no longer relevant.

In addition, in this section the last paragraph is inadvertently designated at paragraph (o). In this final rule, we are correcting paragraph (o) to read paragraph (l). The title and text of the paragraph remains unchanged.

Section 173.301a

This section prescribes additional general requirements for shipment of specification cylinders. Paragraph (d) describes the pressure requirements for filling of cylinders at 55° C (131° F). In this final rule, we are revising paragraph (d)(3) by removing the outdated transitional language ''after December 31, 2003'' since this transitional provision is no longer relevant.

Section 173.302

This section prescribes the requirements for the filling of cylinders with non-liquefied compressed gas. Compressed oxygen and oxidizing gas transported by aircraft are required to be placed in outer packagings that meet flame penetration and thermal resistance requirements when transported aboard an aircraft. In this rulemaking, we are removing all references to outdated transitional dates specific to the implementation of the requirements for the outer packaging containing a chemical oxygen generator. Specifically, we are revising paragraphs (f)(3)(ii) and (f)(4) by removing the language ''After September 30, 2009'' since the transitional provision is no longer relevant.

Section 173.304

This section prescribes the requirements for the filling of cylinders with liquefied compressed gas. As described above, oxidizing gas transported by aircraft are required to be placed in outer packagings that meet flame penetration and thermal resistance requirements when transported aboard an aircraft. In this rulemaking, we are removing all references to outdated transition dates specific to the implementation of the requirements for the outer packaging containing a oxidizing gas transported by aircraft. Specifically, we are revising paragraphs (f)(3)(ii) and (f)(4) by removing the language ''After September 30, 2009'' since the transitional provision is no longer relevant.

Section 173.306

Section 173.306 prescribes the requirements for the shipment of limited quantities of compressed gases. Specifically, paragraph (a)(3) details the requirements for metal aerosol containers. As part of these requirements, each container must be subjected to a test performed in a hot water bath. The intention of this requirement is that the containers are placed in the hot water bath after they are filled with a nonpoisonous (other than a Division 6.1 Packing Group III material) liquid, paste or powder. PHMSA recognizes that as currently written, the requirement does not clearly state when the hot water bath must be conducted. Therefore, in this rulemaking, we are clarifying this requirement to specify that the hot water bath must be conducted after each container is filled.

Part 174

Section 174.104

This section prescribes the general requirements for car selection, preparation, inspection, and certification of rail cars containing Division 1.1 or 1.2 (explosive) materials. We are revising paragraph (f) to remove note 3, a reference to a transitional

provision, which expired on July 1, 1977 and is no longer needed.

Part 176

Section 176.77

This section prescribes requirements for the stowage of barges containing hazardous materials on board barge-carrying vessels. In this rulemaking, we are removing the word ''storage'' in paragraph (c), and replacing it with ''stowage'' to maintain consistency with the other paragraphs in this section.

Section 176.137

This section prescribes the portable magazine requirements for explosives shipped by vessel. In this rulemaking, we are correcting a typographical error in paragraph (b). Specifically, the text ''27 CFR part 55 subpart K'' will be corrected to read ''27 CFR part 555 subpart K.''

Part 177

Section 177.834

This section prescribes the general requirements loading and unloading of motor vehicles. We are revising paragraph (o)(3) to remove a reference to a transitional provision which expired on October 1, 2004 and is no longer relevant. In addition, we are removing paragraph (o)(4) because it also references to a transitional provision which expired on October 1, 2004 and is also no longer necessary.

Section 177.835

This section prescribes the requirements for shipment of Class 1 materials by ground. In paragraph (g)(3), the wording ''Department.'' is removed and the wording ''Associate Administrator.'' is added to provide more consistency throughout the HMR. In paragraph (g)(3)(ii), the wording ''Institute of Makers of Explosives' Safety Library Publication No. 22'' is removed and the wording ''IME Standard 22'' is added in its place to be consistent with other references to the same standard in the HMR.

Section 177.840

This section prescribes the general requirements for transporting Class 2 materials via highway. We are revising paragraph (a)(1) to remove a reference to a transitional provision which expired on December 31, 2003 and is no longer relevant. In addition, we are removing language in paragraph (u) because it references to a transitional provision which expired on July 1, 2001 and is also no longer needed.

Section 177.848

This section prescribes the segregation requirements of hazardous materials. In paragraph (g)(3)(vi) we are replacing the wording ''Vehicle'' with the wording ''Transport vehicle.'' This change codifies into the regulations numerous long standing letters of interpretation regarding the terminology used in paragraph (g)(3)(vi).

III. Regulatory Analyses and Notices

A. Statutory Authority

This final rule is published under authority of 49 U.S.C. 5103(b), which authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. The purpose of this final rule is to remove unnecessary cross references to the hazardous materials table, incorrect mailing addresses, grammatical and typographical errors, and, in response to requests for clarification, improve the clarity of certain provisions in the Hazardous Materials Regulations.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule does not impose new or revised requirements for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) Has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government; or (2) imposes substantial direct compliance costs on state and local governments. PHMSA is not aware of any state, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

This final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses, or other organizations.

F. Executive Order 13563 Improving Regulation and Regulatory Review

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. In addition, Executive Order 13563 specifically requires agencies to: (1) Involve the public in the regulatory process; (2) promote simplification and harmonization through interagency coordination; (3) identify and consider regulatory approaches that reduce burden and maintain flexibility; (4) ensure the objectivity of any scientific or technological information used to support regulatory action; consider how to best promote retrospective analysis to modify, streamline, expand, or repeal existing rules that are outmoded, ineffective, insufficient, or excessively burdensome.

A complete review of the existing HMR led to the identification of various minor errors in the HMR. The errors identified have no effect on the intent or meaning of the regulations. The correction of these errors will clarify current text while maintaining the intent of the regulations affected. This final rule is designed to address those errors by making non-substantive changes to the HMR such as editorial changes, spelling corrections, removal of transitional requirements that are no

longer applicable and formatting modifications. This final rule corrects these errors but does not require the application of Executive Order 13563. The final rule does however clarify the regulatory text thus improving the regulations.

G. Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $141.3 million or more to either state, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

H. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

I. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

J. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 106

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 130

Oil pollution, Packaging and containers, Reporting and recordkeeping requirements, Transportation.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 174

Hazardous materials transportation, Radioactive materials, Rail carriers, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Loading and Unloading, Segregation and Separation.

In consideration of the foregoing, 49 CFR Chapter I is amended as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 105.20 [Amended]

■ 2. In § 105.20, in paragraph (a)(4), the wording ''Office of Hazardous Materials Standards'' is removed and the wording ''Standards and Rulemaking Division'' is added in its place.

§ 105.25 [Amended]

■ 3. In § 105.25, in paragraph (b)(2)(iv), the wording ''Office of Hazardous Materials Special Permits and Approvals'' is removed and the wording ''Approvals and Permits Division'' is added in its place.

§ 105.40 [Amended]

■ 4. In § 105.40, in paragraph (d), the wording ''Office of Hazardous Materials Special Permits and Approvals'' is removed and the wording ''Approvals and Permits Division'' is added in its place.

PART 106—RULEMAKING PROCEDURES

■ 5. The authority citation for part 106 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 106.95 [Amended]

■ 6. In § 106.95, in paragraph (a), the wording ''Office of Hazardous Materials Standards'' is removed and the wording ''Standards and Rulemaking Division'' is added in its place.

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 7. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note), Pub. L. 104–134 section 31001.

■ 8. In § 107.105, in paragraph (a)(1)(iii), the wording ''*Specialpermits@dot.gov*'' is removed and the wording ''*specialpermits@dot.gov*'' is added in its place, and paragraph (a)(2) is revised to read as follows.

§ 107.105 Application for Special Permit

(a) * * *

(2) The application must state the name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of the applicant. If the applicant is not an individual, the application must state the company name, mailing address, physical address(es) of all known locations where the special permit would be used, e-mail address (if available), and telephone number of an individual designated as the point of contact for the applicant for all purposes related to the application, the name of the company Chief Executive Officer (CEO) or president, or ranking officer; and the Dun and Bradstreet Data Universal Numbering System (D–U–N–S) identifier.

* * * * *

§ 107.107 [Amended]

■ 9. In § 107.107, in paragraph (b)(1)(iii), the wording ''*Specialpermits@dot.gov*'' is removed and the wording ''*specialpermits@dot.gov*'' is added in its place.

§ 107.109 [Amended]

■ 10. In § 107.109, in paragraph (a)(1)(iii), the wording ''*Specialpermits@dot.gov*'' is removed and the wording ''*specialpermits@dot.gov*'' is added in its place.

§ 107.127 [Amended]

■ 11. In § 107.127, in paragraph (a), the wording ''Office of Hazardous Materials

Special Permits and Approvals'' is removed and the wording ''Approvals and Permits Division'' is added in its place.

§ 107.305 [Amended]

■ 12. In § 107.305, in paragraph (b)(4), the wording ''Office of Hazardous Materials Enforcement'' is removed and the wording ''Field Operations'' is added in its place.

■ 13. In § 107.608, paragraph (d) is revised to read as follows.

§ 107.608 General registration requirements.

* * * * *

(d) Copies of DOT Form F 5800.2 and instructions for its completion may be obtained from the Outreach, Training and Grants Division, PHH–50, U.S. Department of Transportation, Washington, DC 20590–0001, by calling 202–366–4109, or via the Internet at *http://phmsa.dot.gov/hazmat/registration.*

* * * * *

■ 14. In § 107.616, paragraph (a) is revised to read as follows.

§ 107.616 General registration requirements.

(a) Each person subject to the requirements of this subpart must mail the registration statement and payment in full to the U.S. Department of Transportation, Hazardous Materials Registration, P.O. Box 530273, Atlanta, GA 30353–0273, or submit the statement and payment electronically through the Department's e-Commerce Internet site. Access to this service is provided at *http://phmsa.dot.gov/hazmat/registration.* A registrant required to file an amended registration statement under § 107.608(c) must mail it to the same address or submit it through the same Internet site.

* * * * *

■ 15. In § 107.805, in paragraph (f), the last sentence is revised to read as follows.

§ 107.805 Approval of cylinder and pressure receptacle requalifiers.

* * * * *

(f) * * * No person may requalify a DOT specification/special permit cylinder in accordance with § 180.209(g) of this chapter unless that person has been issued a RIN as provided in paragraph (d) of this section.

* * * * *

PART 130—OIL SPILL PREVENTION AND RESPONSE PLANS

■ 16. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C 1321; 49 CFR 1.53.

§ 130.31 [Amended]

■ 17. In § 130.31, paragraphs (a) introductory text and (b) introductory text are revised to read as follows.

§ 130.31 Response plans.

(a) No person may transport oil subject to this part unless that person has a current basic written plan that:

* * * * *

(b) No person may transport an oil subject to this part in a quantity greater than 1,000 barrels (42,000 gallons) unless that person has a current comprehensive written plan that:

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 18. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

■ 19. In § 171.7, in the table, in paragraph (a)(3), in the first column, the entry for ''National Fire Protection Association'' is revised to read as follows:.

§ 171.7 Reference material.

(a) * * *

(3) * * *

Source and name of material	49 CFR reference
* * * * * *	*
National Fire Protection Association, 1 Batterymarch Park, Quincy, MA, 02169–7471 1–617–770–3000, *http://www.nfpa.org:*	
* * * * * *	*

* * * * *

■ 20. In § 171.16, paragraph (b)(1) is revised to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

* * * * *

(b) * * *

(1) Submit a written Hazardous Materials Incident Report to the Information Systems Manager, PHH–60, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, East Building, 1200 New Jersey Ave., SE., Washington, DC 20590–0001, or an electronic Hazardous Material Incident Report to the Information System Manager, PHH–60, Pipeline and Hazardous Materials Safety Administration, Department of Transportation, Washington, DC 20590–0001 at *http://hazmat.dot.gov*;

* * * * *

■ 21. In § 171.22, paragraph (f)(2) is revised to read as follows:

§ 171.22 Authorization and conditions for the use of international standards and regulations.

* * * * *

(f) * * *

(2) The shipper, directly or through the forwarding agent at the place of entry, must provide the initial U.S. carrier with the shipper's certification required by § 172.204 of this subchapter, unless the shipment is otherwise excepted from the certification requirement. Except for shipments for which the certification requirement does not apply, a carrier may not accept a hazardous material for transportation unless provided a shipper's certification.

* * * * *

■ 22. In § 171.23, paragraph (a)(4)(ii) is revised to read as follows:

§ 171.23 Requirements for specific materials and packagings transported under the ICAO Technical Instructions, IMDG Code, Transport Canada TDG Regulations, or the IAEA Regulations.

* * * * *

(a) * * *

(4) * * *

(ii) In addition to other requirements of this subchapter, the maximum filling density, service pressure, and pressure relief drive for each cylinder conform to the requirements of this part for the gas involved; and

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS

■ 23. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701, 49 CFR 1.53.

■ 24. In § 172.101, in the Hazardous Materials Table, the following entries under ''[REVISE]'' are revised and the entry under ''[ADD]'' is added to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label Codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[REVISE]												
	*		*		*	*	*		*	*			
	Aerosols, *poison, Packing Group III (each not exceeding 1 L capacity).*	2.2	UN1950		2.2, 6.1		306	None	None	Forbidden	Forbidden	A	48, 87, 126
	*		*		*	*	*		*	*			
	Argon, *compressed*	2.2	UN1006		2.2		306, 307	302	314, 315	75 kg	150 kg	A	
	*		*		*	*	*		*	*			
	Helium, *compressed*	2.2	UN1046		2.2		306	302	302, 314	75 kg	150 kg	A	85
	*		*		*	*	*		*	*			
	Hydrogen iodide, anhydrous.	2.3	UN2197		2.3, 8	3, B14, N86, N89.	None	304	314, 315	Forbidden	Forbidden	D	40
	*		*		*	*	*		*	*			
G	Oxidizing solid, water reactive, n.o.s..	5.1	UN3121		5.1, 4.3	62	None	214	214	Forbidden	Forbidden		
	*		*		*	*	*		*	*			
	PCB, *see Polychlorinated biphenyls.*												
	*		*		*	*	*		*	*			
	Pyrethroid pesticide, liquid toxic.	6.1	UN3352	I	6.1	T14, TP2, TP13, TP27.	None	201	243	1 L	30 L	B	40
	*		*		*	*	*		*	*			
				II	6.1	IB2, T11, TP2, TP27.	153	202	243	5L	60L	B	40
				III	6.1	IB3, T7, TP2, TP28.	153	203	241	60L	220L	A	40
	*		*		*	*	*		*	*			
	[ADD]:												
	*		*		*	*	*		*	*			
	Paint related material, flammable, corrosive *(including paint thinning or reducing compound).*	3	UN3469	I	3, 8	T11, TP2, TP27	None	201	243	0.5 L	2.5 L	E	40
	*		*		*	*	*		*	*			

■ 25. In § 172.301, paragraph (f) is revised to read as follows:

§ 172.301 General marking requirements for non-bulk packagings.

* * * * *

(f) *NON-ODORIZED marking on cylinders containing LPG.* No person may offer for transportation or transport a specification cylinder, except a Specification 2P or 2Q container or a Specification 39 cylinder, that contains an unodorized Liquefied petroleum gas (LPG) unless it is legibly marked NON-ODORIZED or NOT ODORIZED in letters not less than 6.3 mm (0.25 inches) in height near the marked proper shipping name required by paragraph (a) of this section.

■ 26. In § 172.323, paragraph (a) introductory text is revised to read as follows:

§ 172.323 Infectious substances.

(a) In addition to other requirements of this subpart, a bulk packaging containing a regulated medical waste, as defined in § 173.134(a)(5) of this subchapter, must be marked with a BIOHAZARD marking conforming to 29 CFR 1910.1030(g)(1)(i)—

* * * * *

■ 27. In § 172.400a, paragraph (d) is revised to read as follows:

§ 172.400a Exceptions from labeling.

* * * * *

(d) A package containing a material poisonous by inhalation (see § 171.8 of this subchapter) in a closed transport vehicle or freight container may be excepted from the POISON INHALATION HAZARD or POISON GAS label or placard, under the conditions set forth in § 171.23(b)(10) of this subchapter.

■ 28. In § 172.402, paragraph (b) is revised to read as follows:

§ 172.402 Additional labeling requirements.

* * * * *

(b) *Display of hazard class on labels.* The appropriate hazard class or division number must be displayed in the lower corner of a primary hazard label and a subsidiary hazard label.

* * * * *

§ 172.432 [Amended]

■ 29. In § 172.432, in paragraph (c) the wording ''September 30, 2011'' is removed and the wording ''August 18, 2011'' is added in its place.

§ 172.446 [Amended]

■ 30. In § 172.446, in paragraph (c) the wording ''September 30, 2011'' is removed and the wording ''August 18, 2011'' is added in its place.

■ 31. In § 172.512, paragraph (b) is revised to read as follows:

§ 172.512 Freight containers and aircraft unit load devices.

* * * * *

(b) *Capacity less than 18 m 3 (640 cubic feet).* (1) Each person who offers for transportation by air, and each person who loads and transports by air, a hazardous material in a freight container or aircraft unit load device having a capacity of less than 18 m^3 (640 cubic feet) shall affix one placard of the type specified by paragraph (a) of this section unless the freight container or aircraft unit load device:

(i) Is labeled in accordance with subpart E of this part, including § 172.406(e);

(ii) Contains radioactive materials requiring the Radioactive Yellow III label and is placarded with one Radioactive placard and is labeled in accordance with subpart E of this part, including § 172.406(e); or,

(iii) Is identified as containing a hazardous material in the manner provided in part 7, chapter 2, section 2.7, of the ICAO Technical Instructions.

(2) When hazardous materials are offered for transportation, not involving air transportation, in a freight container having a capacity of less than 640 cubic feet the freight container need not be placarded. However, if not placarded, it must be labeled in accordance with subpart E of this part.

* * * * *

■ 32. In § 172.519, paragraph (b)(4) and the last sentence in paragraph (f) are revised to read as follows:

§ 172.519 General specifications for placards.

* * * * *

(b) * * *

(4) For a placard corresponding to the primary or subsidiary hazard class of a material, the hazard class or division number must be displayed in the lower corner of the placard. However, a permanently affixed subsidiary placard meeting the specifications of this section which were in effect on October 1, 2001, (such as, a placard without the hazard class or division number displayed in the lower corner of the placard) and which was installed prior to September 30, 2001, may continue to be used as a subsidiary placard in domestic transportation by rail or highway, provided the color tolerances are maintained and are in accordance with the display requirements in this subchapter.

* * * * *

(f) * * * However, a bulk packaging, transport vehicle, or freight container containing a material poisonous by inhalation (see § 171.8 of this subchapter) must be placarded in accordance with this subpart (see § 171.23(b)(10) of this subchapter).

* * * * *

■ 33. In § 172.704, paragraph (a)(4) is revised to read as follows:

§ 172.704 Training requirements.

(a) * * *

(4) *Security awareness training.* Each hazmat employee must receive training that provides an awareness of security risks associated with hazardous materials transportation and methods designed to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats. New hazmat employees must receive the security awareness training required by this paragraph within 90 days after employment.

* * * * *

■ 34. In § 172.800, paragraph (b)(15) is revised to read as follows:

§ 172.800 Purpose and applicability.

* * * * *

(b) * * *

(15) International Atomic Energy Agency (IAEA) Code of Conduct Category 1 and 2 materials including Highway Route Controlled quantities as defined in 49 CFR 173.403 or known radionuclides in forms listed as RAM–QC by the Nuclear Regulatory Commission;

* * * * *

■ 35. In § 172.820, paragraphs (b) introductory text and (f) are revised to read as follows:

§ 172.820 Additional planning requirements for transportation by rail.

* * * * *

(b) Not later than 90 days after the end of each calendar year, a rail carrier must compile commodity data for the previous calendar year for the materials listed in paragraph (a) of this section. The following stipulations apply to data collected:

* * * * *

(f) *Completion of route analysis.* (1) The rail transportation route analysis, alternative route analysis, and route selection process required under paragraphs (c), (d), and (e) of this section must be completed no later than the end of the calendar year following the year to which the analyses apply.

(2) The initial analysis and route selection determinations required under paragraphs (c), (d), and (e) of this

section must include a comprehensive review of the entire system. Subsequent analyses and route selection determinations required under paragraphs (c), (d), and (e) of this section must include a comprehensive, system-wide review of all operational changes, infrastructure modifications, traffic adjustments, changes in the nature of high-consequence targets located along, or in proximity to, the route, and any other changes affecting the safety or security of the movements of the materials specified in paragraph (a) of this section that were implemented during the calendar year.

(3) A rail carrier need not perform a rail transportation route analysis, alternative route analysis, or route selection process for any hazardous material other than the materials specified in paragraph (a) of this section.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 36. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

■ 37. In § 173.8, paragraph (d)(6) is revised to read as follows:

§ 173.8 Exceptions for non-specification packagings used in intrastate transportation.

* * * * *

(d) * * *

(6) For a tank authorized under paragraph (b) or (c) of this section, conform to all requirements in part 180 (except for § 180.405(g)) of this subchapter in the same manner as required for a DOT specification MC 306 cargo tank motor vehicle.

§ 173.12 [Amended]

■ 38. In § 173.12, the second paragraph (f) immediately following paragraph (g) is removed.

§ 173.22a [Amended]

■ 39. In § 173.22a, in paragraph (b), the Web site address ''*http://hazmat.dot.gov/specialpermits_index.htm*'' is removed and the Web site address ''*http://www.phmsa.dot.gov/hazmat/regs/sp-a*'' is added in its place.

■ 40. In 173.24b, the heading of paragraph (e) is revised to read as follows:

§ 173.24b Additional general requirements for bulk packagings.

* * * * *

(e) *Stacking of IBCs and Large Packagings.* * * *

* * * * *

■ 41. In § 173.52, in paragraph (b), table 2 is revised to read as follows:

§ 173.52 Classification codes and compatibility groups of explosives.

* * * * *

(b) * * *

TABLE 2—SCHEME OF CLASSIFICATION OF EXPLOSIVES, COMBINATION OF HAZARD DIVISION WITH COMPATIBILITY GROUP

Hazard division	Compatibility group													
	A	B	C	D	E	F	G	H	J	K	L	N	S	A–S
1.1	1.1A	1.1B	1.1C	1.1D	1.1E	1.1F	1.1G		1.1J		1.1L			9
1.2		1.2B	1.2C	1.2D	1.2E	1.2F	1.2G	1.2H	1.2J	1.2K	1.2L			10
1.3			1.3C			1.3F	1.3G	1.3H	1.3J	1.3K	1.3L			7
1.4		1.4B	1.4C	1.4D	1.4E	1.4F	1.4G						1.4S	7
1.5				1.5D										1
1.6												1.6N		1
Total	1	3	4	4	3	4	4	2	3	2	3	1	1	35

■ 42. In § 173.57, paragraph (c)(1) is revised to read as follows:

§ 173.57 Acceptance criteria for new explosives.

* * * * *

(c) * * *

(1) It does not have, when uniformly mixed with the absorbent material, a satisfactory antacid in a quantity sufficient to have the acid neutralizing power of an amount of magnesium carbonate equal to one percent of the nitroglycerin or other liquid explosive ingredient;

* * * * *

■ 43. In § 173.58, the heading of paragraph (b) is revised to read as follows:

§ 173.58 Assignment of class and division for new explosives.

* * * * *

(b) *Division 1.5 explosive.* * * *

* * * * *

■ 44. In § 173.62, in paragraph (c)(5), in the Table of Packing Methods, Packing Instructions 130 and 132(a) are revised to read as follows:

§ 173.62 Specific packaging requirements for explosives.

* * * * *

(c) * * *

(5) * * *

TABLE OF PACKING METHODS

Packaging instruction	Inner packagings	Intermediate packagings	Outer packaging
* * * * * * *			
130	Not necessary	Not necessary	Boxes.

TABLE OF PACKING METHODS—Continued

Packaging instruction	Inner packagings	Intermediate packagings	Outer packaging
Particular Packaging Requirements: The following applies to UN 0006, 0009, 0010, 0015, 0016, 0018, 0019, 0034, 0035, 0038, 0039, 0048, 0056, 0137, 0138, 0168, 0169, 0171, 0181, 0182, 0183, 0186, 0221, 0238, 0243, 0244, 0245, 0246, 0254, 0280, 0281, 0286, 0287, 0297, 0299, 0300, 0301, 0303, 0321, 0328, 0329, 0344, 0345, 0346, 0347, 0362, 0363, 0370, 0412, 0424, 0425, 0434, 0435, 0436, 0437, 0438, 0451, 0459 and 0488. Large and robust explosives articles, normally intended for military use, without their means of initiation or with their means of initiation containing at least two effective protective features, may be carried unpackaged. When such articles have propelling charges or are self-propelled, their ignition systems must be protected against stimuli encountered during normal conditions of transport. A negative result in Test Series 4 on an unpackaged article indicates that the article can be considered for transport unpackaged. Such unpackaged articles may be fixed to cradles or contained in crates or other suitable handling devices.			Steel (4A). Aluminum (4B). Wood natural, ordinary (4C1). Wood natural, sift-proof walls (4C2). Plywood (4D). Reconstituted wood (4F). Fiberboard (4G). Plastics, expanded (4H1). Plastics, solid (4H2). Drums. Steel, removable head (1A2). Aluminum, removable head (1B2). Plywood (1D). Fiber (1G). Plastics, removable head (1H2). Large Packagings. Steel (50A). Aluminum (50B). Metal other than steel or aluminum (50N). Rigid plastics (50H). Natural wood (50C). Plywood (50D). Reconstituted wood (50F). Rigid fiberboard (50G).
* * *	*	*	* *
132(a) For articles consisting of closed metal, plastic or fiberboard casings that contain detonating explosives, or consisting of plastics-bonded detonating explosives.	Not necessary	Not necessary	Boxes. steel (4A). aluminum (4B). wood, natural; ordinary (4C1). wood, natural, sift proof walls (4C2). plywood (4D). reconstituted wood (4F). fiberboard (4G). plastics, solid (4H2).
* * *	*	*	* *

■ 45. In § 173.115, paragraphs (a)(2) and (l)(3) are revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

(a) * * *

(2) Has a flammable range at 101.3 kPa (14.7 psia) with air of at least 12 percent regardless of the lower limit. Except for aerosols, the limits specified in paragraphs (a)(1) and (a)(2) of this section shall be determined at 101.3 kPa (14.7 psia) of pressure and a temperature of 20 °C (68 °F) in accordance with the ASTM E681–85, Standard Test Method for Concentration Limits of Flammability of Chemicals or other equivalent method approved by the Associate Administrator. The flammability of aerosols is determined by the tests specified in paragraph (l) of this section.

* * * * *

(l) * * *

(3) Aerosols not meeting the provisions of paragraphs (l)(1) or (1)(2) of this section must be classed in accordance with the appropriate tests of the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter). An aerosol which was tested in accordance with the requirements of this subchapter in effect on December 31, 2005, is not required to be retested.

* * * * *

§ 173.120 [Amended]

■ 46. In § 173.120, in paragraph (d) the wording ''requirements of parts 170–189 of this subchapter.'' is removed and the wording ''requirements of parts 171 through 185 of this subchapter.'' is added in its place.

■ 47. In § 173.168, paragraph (d)(2) introductory text is revised to read as follows:

§ 173.168 Chemical oxygen generators.

* * * * *

(d) * * *

(2) With its contents, is capable of meeting the following additional requirements when transported by cargo-only aircraft:

* * * * *

■ 48. In § 173.301, paragraph (f)(2) is revised to read as follows and paragraph (o) is re-designated as paragraph (l):

§ 173.301 General requirements for shipment of compressed gases and other hazardous materials in cylinders, UN pressure receptacles and spherical pressure vessels.

* * * * *

(f) * * *

(2) A pressure relief device, when installed, must be in communication with the vapor space of a cylinder

containing a Division 2.1 (flammable gas) material.

* * * * *

■ 49. In § 173.301a, paragraph (d)(3) is revised to read as follows:

§ 173.301a Additional general requirements for shipment of specification cylinders.

* * * * *

(d) * * *

(3) The pressure at 55 °C (131 °F) of Hazard Zone A and Hazard Zone B materials may not exceed the service pressure of the cylinder. Sufficient outage must be provided so that the cylinder will not be liquid full at 55 °C (131 °F).

* * * * *

■ 50. In § 173.302, paragraphs (f)(3)(ii) and (f)(4) are revised to read as follows:

§ 173.302 Filling of cylinders with nonliquefied (permanent) compressed gases.

* * * * *

(f) * * *

(3) * * *

(ii) Is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in Appendix E to part 178 of this subchapter; and

* * * * *

(4) The cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

* * * * *

■ 51. In § 173.304, paragraphs (f)(3)(ii) and (f)(4) are revised to read as follows:

§ 173.304 Filling of cylinders with liquefied compressed gases.

* * * * *

(f) * * *

(3) * * *

(ii) Is capable of passing, as demonstrated by design testing, the Flame Penetration Resistance Test in Appendix E to part 178 of this subchapter; and

* * * * *

(4) The cylinder and the outer packaging must be capable of passing, as demonstrated by design testing, the Thermal Resistance Test specified in Appendix D to part 178 of this subchapter.

* * * * *

■ 52. In § 173.306, paragraph (a)(3)(v) is revised to read as follows:

§ 173.306 Limited quantities of compressed gases.

(a) * * *

(3) * * *

(v) Each container, after it is filled, must be subjected to a test performed in a hot water bath; the temperature of the bath and the duration of the test must be such that the internal pressure reaches that which would be reached at 55 °C (131 °F) (50 °C (122 °F) if the liquid phase does not exceed 95% of the capacity of the container at 50 °C (122 °F)). If the contents are sensitive to heat, the temperature of the bath must be set at between 20 °C (68 °F) and 30 °C (86 °F) but, in addition, one container in 2,000 must be tested at the higher temperature. No leakage or permanent deformation of a container may occur.

* * * * *

PART 174—CARRIAGE BY RAIL

■ 53. The authority citation for part 174 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 54. In § 174.104, paragraph (f) is revised to read as follows.

§ 174.104 Division 1.1 or 1.2 (explosive) materials; car selection, preparation, inspection, and certification.

* * * * *

(f) Each car certificate for use in connection with the inspection of rail cars for the carriage of Division 1.1 or 1.2 (explosive) materials shall be printed on strong tag board measuring 18 by 18 cm (7.1 by 7.1 inches) or 15 by 20 cm (5.9 by 7.9 inches). It must be duly executed in triplicate by the carrier, and by the shipper if he loads the shipments. The original must be filed by the carrier at the forwarding station in a separate file and the other two must be attached to the car, one to each outer side on a fixed placard board or as otherwise provided.

_____ Railroad

CAR CERTIFICATE

No. 1 _____ Station _____ 19____.

I hereby certify that I have this day personally examined Car Number _____ and that the car is in condition for service and complies with the FRA Freight Car Safety Standards (49 CFR part 215) and with the requirements for freight cars used to transport explosives prescribed by the DOT Hazardous Materials Regulation (49 CFR part 174).

Qualified Person Designated Under 49 CFR 215.11

No. 2 _____ Station _____ 19 ____.

I have this day personally examined the above car and hereby certify that the explosives in or on this car, or in or on vehicles or in containers have been loaded and braced; that placards have been applied, according to the regulations prescribed by the Department of Transportation; and that the doors of cars so equipped fit or have been stripped so that sparks cannot enter.

Shipper or his authorized agent

Qualified Person Designated Under 49 CFR 215.11

No. 3 _____ Station _____ 19 ____.

I hereby certify that I have this day personally supervised the loading of the vehicles or containers on and their securement to the above car.

Shipper or railway employee inspecting loading and securement

Note 1: A shipper must decline to use a car not in proper condition.

Note 2: All certificates, where applicable, must be signed.

PART 176—CARRIAGE BY VESSEL

■ 55. The authority citation for part 176 is revised to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

■ 56. In § 176.77, paragraph (c) is revised to read as follows:

§ 176.77 Stowage of barges containing hazardous materials on board barge-carrying vessels.

* * * * *

(c) A barge which contains hazardous materials for which both ''on deck'' and ''below deck'' stowage is authorized may be stowed above or below the weather deck.

■ 57. In § 176.137, paragraph (b) is revised to read as follows:

§ 176.137 Portable magazine.

* * * * *

(b) A portable magazine which meets the requirements for a type 2 or type 3 magazine under 27 CFR part 555 subpart K may be used for the stowage of Class 1 (explosive) materials on board vessels.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 58. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR part 1.53.

■ 59. In § 177.834, paragraph (o)(3) is revised and paragraph (o)(4) is removed to read as follows:

§ 177.834 General requirements.

* * * * *

(o) * * *

(3) An IM or UN portable tank equipped with a bottom outlet as authorized in Column (7) of the § 172.101 Table of this subchapter by assignment of a T Code in the appropriate proper shipping name entry, and that contains a liquid hazardous material of Class 3, PG I or II, or PG III with a flash point of less than 100 °F (38 °C); Division 5.1, PG I or II; or Division 6.1, PG I or II, must conform to the outlet requirements in § 178.275(d)(3) of this subchapter.

§ 177.835 [Amended]

■ 60. In § 177.835, revise paragraphs (g)(3) introductory text and (g)(3)(ii) to read as follows:

§ 177.835 Class 1 materials

* * * * *

(g) * * *

(3) It is packed and loaded in accordance with a method approved by the Associate Administrator. One approved method requires that—

* * * * *

(ii) That both the detonators and the container or compartment meet the requirements of the IME Standard 22 (IBR, see § 171.7 of this subchapter).

* * * * *

■ 61. In § 177.840, paragraphs (a)(1) and (u) are revised to read as follows:

§ 177.840 Class 2 (gases) materials.

(a) * * *

(1) *Cylinders.* Cylinders containing Class 2 gases must be securely restrained in an upright or horizontal position, loaded in racks, or packed in boxes or crates to prevent the cylinders from being shifted, overturned or ejected from the motor vehicle under normal transportation conditions. A pressure relief device, when installed, must be in communication with the vapor space of a cylinder containing a Division 2.1 (flammable gas) material.

* * * * *

(u) *Unloading of chlorine cargo tank motor vehicles.* Unloading of chlorine from a cargo tank motor vehicle must be performed in compliance with Section 3 of the Chlorine Institute Pamphlet 57, ''Emergency Shut-off Systems for Bulk Transfer of Chlorine'' (IBR, see § 171.7 of this subchapter).

§ 177.848 [Amended]

■ 62. In § 177.848 in paragraph (g)(3)(vi) the wording ''vehicle'' is removed and the wording ''transport vehicle'' is added in its place.

Issued in Washington, DC, on September 6, 2011 under authority delegated in 49 CFR part 1.

Timothy P. Butters,

Deputy Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2011–23167 Filed 9–12–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2010–0271]

RIN–2126–AB30

Parts and Accessories Necessary for Safe Operation; Saddle-Mount Braking Requirements

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends the Federal Motor Carrier Safety Regulations (FMCSRs) to eliminate the requirement for operational brakes on the last saddle-mounted truck or tractor in a triple saddle-mount combination, except when a full mount is present. This is in response to a petition for rulemaking from the Automobile Carriers Conference (ACC) of the American Trucking Associations (ATA), which stated that this requirement degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking.

DATES: The final rule is effective October 13, 2011.

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, or to read comments received, go to *http://www.regulations.gov* at any time and insert FMCSA–2010–1271 in the ''Keyword'' box, and then click ''Search.'' You may also view the docket online by visiting the Docket Management Facility in Room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Brian J. Routhier, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 202–366–1225, or *brian.routhier@dot.gov,* 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 9 a.m. to 5 p.m. e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Privacy Act
II. Abbreviations
III. Legal Basis for the Rulemaking
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VII. Regulatory Analyses

I. Privacy Act

Anyone is able to search the electronic form for 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 the U.S. Department of Transportation's (DOT) Privacy Act system of records notice for DOT Federal Docket Management System (FDMS) in the **Federal Register** published on January 17, 2008 (73 FR 3316) at *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

II. Abbreviations

ABS antilock braking systems.
ACC Automobile Carriers Conference.
ATA American Trucking Associations.
ATC ATC Transportation LLC.
CMV commercial motor vehicle.
DOT U.S. Department of Transportation.
FMCSRs Federal Motor Carrier Safety Regulations.
NATA National Automobile Transporters Association.
NPRM notice of proposed rulemaking.
RAI Link-Radlinski, Inc.

III. Legal Basis for the Rulemaking

This final rule is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984.

The Motor Carrier Act of 1935 provides that ''The Secretary of Transportation may prescribe requirements for—(1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' [49 U.S.C. 31502(b)].

The braking amendments in this rule deal directly with the ''safety of operation and equipment of * * * a motor carrier'' [49 U.S.C. 31502(b)(1)] and ''standards of equipment of * * * a motor private carrier'' [49 U.S.C. 31502(b)(2)]. The proposal, adoption, and enforcement of such rules were authorized by the Motor Carrier Act of

1935. This rule rests squarely on that authority.

The Motor Carrier Safety Act of 1984 (the 1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to ''prescribe regulations on commercial motor vehicle (CMV) safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles.'' Although this authority is very broad, the Act also includes specific requirements: ''At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely * * * ; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' [49 U.S.C. 31136(a)].

This rule is based on the authority of the 1984 Act, specifically the mandate to ensure that CMVs are maintained, equipped, loaded, and operated safely (49 U.S.C. 31136(a)(1)). By allowing the disconnection of brakes on the rearmost axle of vehicles towed in saddle-mount combinations, the rule will enhance the controllability of such combinations under hard braking and thus improve their operational safety. Section 31136(a)(2) requires FMCSA regulations to ensure that the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely. This provision is concerned primarily with potentially unreasonable demands placed on drivers by their employers (for example, schedules that encourage or require speeding); but to the extent subsection (a)(2) may refer to unsafe vehicles, the rule will make triple saddle-mount combinations safer for drivers to operate. Section 31136(a)(3) requires that the FMCSRs ensure that the physical condition of drivers is adequate to enable them to operate their vehicles safely. This rule does not deal with the physical condition of drivers. Finally, § 31136(a)(4) requires the Agency's regulations to ensure that CMV operations do not have a deleterious effect on the physical condition of drivers. This requirement is related to subsection (a)(3) and is not directly addressed by this rule, although safer vehicles are obviously better for CMV drivers and all others who use the public highways.

Before prescribing any regulations, FMCSA must also consider their ''costs and benefits'' [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in the Regulatory Analyses section of this proposal.

IV. Background

ACC, which is part of ATA, represents motor carriers that transport motor vehicles ranging from automobiles to Class 8 trucks. Its members transport more than 96 percent of all trucks moved by the saddle-mount method. In January of 2007, ACC submitted a petition for rulemaking, contending that the use of operational brakes on the final truck or tractor in a triple saddle-mount combination degrades the braking performance of these combinations because the lightly loaded axle of the last vehicle tends to lock up under heavy braking, potentially increasing stopping distance.

Stopping distances are specified in the vehicle brake performance table at § 393.52(d) of title 49, Code of Federal Regulations, which requires many combination vehicles, including triple saddle-mounts, to be able to stop within 40 feet or less from an initial speed of 20 mph. The FMCSRs do not specify minimum stopping distances from higher speeds. They do, however, specify performance requirements for the emergency brakes, which deploy after the service braking system has failed. Under the emergency braking requirements in § 393.52(d), triple saddle-mounts must be able to stop within 90 feet or less from a speed of 20 mph. Further, § 393.71(a)(3) requires operational brakes on any wheel of a triple saddle-mount combination that is in contact with the highway.

Testing

Based on the results of braking tests performed on various triple saddle-mount combinations, as described below, ACC requested that FMCSA make two regulatory changes: (1) Amend § 393.71(a)(3) to eliminate the requirement for operational brakes on the last saddle-mounted truck in a triple saddle-mount combination; and (2) amend § 393.71(c)(4) to extend to triple saddle-mounts the existing requirement that a double saddle-mount with any vehicle full-mounted on it have effective brakes acting on those wheels in contact with the roadway.

In 1996 and 2002, ACC, then known as the National Automobile Transporters Association (NATA), sponsored brake performance tests conducted by Radlinski & Associates, Inc. (RAI) [1] in East Liberty, Ohio. In support of its petition, ACC submitted these test results, as well as the results of supporting tests sponsored by ATC Leasing Company (ATC) [2] in 2003. RAI tested a total of 24 triple saddle-mount combinations in the two tests conducted for NATA and two additional combinations in the ATC test. Braking tests were conducted on various saddle-mount combinations, with and without antilock braking systems (ABS) on the lead unit. An overview of the tests and corresponding results from RAI were presented in the NPRM, and a copy of each test report is available in the docket referenced at the beginning of this document.

Analysis of Test Results in the NPRM

As discussed in the proposed rule, FMCSA agrees that these test results demonstrated that triple saddle-mount driveaway combinations (1) Are able to meet the performance requirements of § 393.52(d) at various combinations of vehicle weight and length with the brakes disconnected on the rearmost towed units (fourth truck), and (2) at higher speeds, perform better when there are no brakes on the rearmost towed unit. In addition, ACC's request to amend the braking requirements for triple saddle-mount combinations is based on the same considerations FMCSA cited in a final rule that permits motor carriers to disconnect the service brakes on unladen converter dollies manufactured on or after March 1, 1998 [3] (70 FR 48008, Aug. 15, 2005). The axle weight of an unladen dolly is so low that the wheels lock up under hard braking. The last unit in a saddle-mount combination has higher axle weights than a converter dolly, but behaves in much the same way—*i.e.,* the axle in contact with the road locks up under heavy braking, reducing controllability and increasing the stopping distance of the vehicle.

V. Discussion of Public Comments

FMCSA received comments on the NPRM from ACC, ATC, ATA, and RAI. All of the commenters support the

[1] Radlinksi & Associates is now known as Link-Radlinksi, Inc.

[2] ATC Leasing Company is now known as ATC Transportation LLC.

[3] FMCSA noted that with the National Highway Transportation Safety Administration's (NHTSA) March 10, 1995, final rule on ABS (60 FR 13216), the long-term need for this exception for unladen converter dollies will diminish. An ABS-equipped converter dolly will not have the stability and control problems observed with unladen converter dollies not equipped with ABS. Therefore, converter dollies manufactured on or after March 1, 1998, the effective date of the NHTSA requirement for ABS on converter dollies, are not covered by the exception.

proposed elimination of the requirement for operational brakes on the last truck or tractor in a triple saddle-mount combination, except when a full mount is present. They are equally unanimous, however, in noting that the proposed amendment of § 393.42(b)(2)(ii) would undermine the stated intent of the NPRM. Section 393.42(b)(2)(ii) currently exempts combinations utilizing one or two saddle-mounts from the requirement to have operational brakes on all wheels—but the proposed amendment of this provision would have effectively removed this exemption.

Exemption

RAI noted that the proposed amendment of Section 393.42(b)(2)(ii) would have effectively removed the exemption described above. ATC observed that the practical effect of the NPRM would be ''to impose a significant regulatory requirement on the driveaway industry by imposing additional braking requirements on single and double saddle-mount combinations.* * *'' ATC, ACC, and RAI point out that this regulatory change would defeat the NPRM's objective of improving the braking performance of saddle-mount combinations. ACC, ATA, and RAI recommended that § 393.42(b)(2)(ii) be removed. ATC proposed instead that § 393.42(b)(2) be revised using language that excepts the final towed vehicle in a triple saddle-mount combination from the requirement to have operative brakes on all wheels, while at the same time linking saddle-mounts implicitly to driveaway-towaway operations.

FMCSA Response

FMCSA agrees with the commenters that the proposed amendment to § 393.42(b)(2)(ii) would have introduced a new and unintended regulatory burden for single and double saddle-mount combinations. Under § 393.42(b)(2), motor vehicles being towed in single or double saddle-mount combinations ''are not required to have operative brakes provided the combination of vehicles meets the requirements of § 393.52.'' By removing this exemption, the proposed rule would have increased the cost of operating single and double saddle-mounts while diminishing their safety.

ACC, ATC, and ATA are correct that the braking performance studies on triple saddle-mount combinations discussed in the NPRM would apply equally to single and double saddle-mount configurations. Under this final rule, the FMCSRs continue to exempt single and double saddle-mount combinations from the requirement to have brakes on all wheels provided the combination meets the requirements of § 393.52, except when a full mount is present. FMCSA made changes to the regulatory text to address these concerns.

Comments on the Summary in the NPRM

ATC takes issue with a statement in the ''Summary'' section of the NPRM that the FMCSRs currently require operational brakes on any wheel of a saddle-mounted vehicle that is in contact with the roadway; that statement is inconsistent with § 393.42(b)(2).

FMCSA Response

ATC is correct in contesting the NPRM's statement that the FMCSRs currently require operational brakes on any wheel of a saddle-mounted vehicle in contact with the roadway. As discussed previously, § 393.42 currently exempts saddle-mounted vehicles, except triple saddle-mounts, from this requirement provided the combination of vehicles meets the requirements of 49 CFR 393.52. For those cases in which the combination cannot meet the performance requirements under § 393.52, brakes would be required.

Full Mounts

ATC, ACC, and ATA agree with the proposed amendments to § 393.71. RAI, however, advocates further amendment of § 393.71(c)(4) to require that not only double and triple saddle-mount combinations, but also single saddle-mounts, have operational brakes on the towed vehicle(s) when a full mount is present.

FMCSA Response

FMCSA agrees with RAI's suggestion to broaden the applicability of § 393.71(c)(4) to include all saddle-mount configurations—single, double, *and* triple. The Agency amends this section accordingly.

VI. Discussion of the Final Rule

This final rule amends § 393.42(a) and (b) and § 393.71(a)(3) and (c)(4) of the FMCSRs to exempt the fourth truck in a triple saddle-mount combination of vehicles from the requirement to have operative brakes on all wheels (provided the vehicles meet the requirements of § 393.52), except when a full mount is present. The basic exemption is provided in amended § 393.71(a)(3), with additional amendments under § 393.42(b)(2) and § 393.71(c)(4).

Section 393.42

In order to reduce confusion, the current exclusion language in paragraph (b)(2)(i) has been moved to paragraph (a). Additionally, new language has been added to paragraph (a) that requires brakes on all wheels of a fullmount, regardless of the number of vehicles in the configuration.

This rule retains the broad exception at § 393.42(b)(2), but now clarifies that it also applies to the last truck of triple saddle-mount combinations. Additionally, paragraph (b)(2) now contains a cross-reference to the amended regulation for triple saddle-mounts in § 393.71(a)(3).

Section 393.71

The final rule amends § 393.71(a)(3) to eliminate the requirement for operational brakes on the last saddle-mounted truck in a triple saddle-mount combination. In addition, as requested by RAI, the final rule also includes an amendment at § 393.71(c)(4) that removes the qualifier ''double.'' The requirement thus applies not only to double saddle-mounts, but also to any saddle-mount combination. In addition, the Agency makes an editorial change to improve readability.

VII. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This final 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 (76 FR 3821, Jan. 21, 2011), and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Agency does not believe implementing this rule will create new costs or cause an adverse economic impact on the industry or the public. Therefore, a full regulatory evaluation is unnecessary.

FMCSA anticipates that this rule could result in several benefits, chief among them the increased safety performance of triple saddle-mount combination CMVs. By improving the braking performance of these CMVs, the rule could reduce the number of crashes in which they are involved. This improved braking ability will increase the mechanical integrity of these CMVs, providing a safety benefit.

Tests conducted by RAI in 1996, 2002, and 2003 support the argument that disconnecting the rearmost axle brakes of triple saddle-mount

combination CMVs improves their braking performance. FMCSA does not have quantifiable data, however, that would allow for an estimation of the number of CMV crashes this change in practice will prevent, and therefore cannot quantify this benefit.

This rule will also reduce regulatory burden on motor carriers by eliminating the requirement to connect the rearmost axle brakes on triple saddle-mount CMVs. As with any elimination of an existing regulation, reducing regulatory burden on motor carriers has the potential to lower associated compliance costs. These cost savings are likely to be modest, however, because the rule simply amends a practice that is not particularly laborious or time-consuming.

In addition, FMCSA does not expect that this rule will impose costs on affected motor carriers because the elimination of the current requirement will not require motor carriers to purchase new equipment, parts, or accessories or to modify or alter existing equipment or vehicles.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to determine whether rules could have a significant economic impact on a substantial number of small entities. The Agency's economic assessment demonstrates that this final rule will yield minor benefits while imposing no new costs. Consequently, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this rulemaking does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

A rulemaking 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. FMCSA analyzed this action in accordance with Executive Order 13132. The rule will not have a substantial direct effect on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. The Agency determined that no new information collection requirements are associated with this final rule.

National Environmental Policy Act

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published in the **Federal Register** on March 1, 2004 (69 FR 9680), that this action has the potential to produce a very small benefit to the environment if any reduction in crashes is realized. Therefore, this rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The Categorical Exclusion under paragraph 6(bb) relates to regulations concerning vehicle operation safety standards that would apply to how these vehicles are operated. The Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES.**

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, subchapter B, chapter III, as follows:

PART 393 [AMENDED]

■ 1. The authority citation for part 393 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; Sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 2. Amend § 393.42 by revising paragraphs (a) and (b)(2) to read as follows:

§ 393.42 Brakes required on all wheels.

(a) Every commercial motor vehicle shall be equipped with brakes acting on all wheels. This requirement also applies to certain motor vehicles being towed in a driveaway-towaway operation, as follows:

(1) Any motor vehicle towed by means of a tow-bar when another motor vehicle is full-mounted on the towed vehicle; and

(2) Any saddlemount configuration with a fullmount.

(b) * * *

(2) Motor vehicles being towed in a driveaway-towaway operation (including the last truck of triple saddle-mount combinations (see § 393.71(a)(3)) are not required to have operative

brakes provided the combination of vehicles meets the requirements of § 393.52.

* * * * *

■ 3. Amend § 393.71 by revising paragraphs (a)(3) and (c)(4) to read as follows:

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

(a) * * *

(3) When motor vehicles are towed by means of triple saddle-mounts, all but the final towed vehicle must have brakes acting on all wheels in contact with the roadway.

* * * * *

(c) * * *

(4) If a motor vehicle towed by means of a saddle-mount has any vehicle full-mounted on it, the saddle-mounted vehicle must at all times while so loaded have effective brakes acting on all wheels in contact with the roadway.

* * * * *

Issued on: September 8, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–23344 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 101013504–0610–02]

RIN 0648–XA529

Atlantic Surfclam and Ocean Quahog Fisheries; 2012 Fishing Quotas for Atlantic Surfclams and Ocean Quahogs; and Suspension of Minimum Atlantic Surfclam Size Limit

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

ACTION: Temporary rule.

SUMMARY: NMFS suspends the minimum size limit for Atlantic surfclams for the 2012 fishing year. NMFS also announces that the quotas for the Atlantic surfclam and ocean quahog fisheries for 2012 will remain status quo. Regulations governing these fisheries require NMFS to notify the public in the **Federal Register** of the allowable harvest levels for Atlantic surfclams and ocean quahogs from the Exclusive Economic Zone if the previous year's quota specifications remain unchanged.

DATES: Effective January 1, 2012, through December 31, 2012.

ADDRESSES: Written inquiries may be sent to: Regional Administrator, National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Jason Berthiaume, Fishery Management Specialist, (978) 281–9177; fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Section 648.72(c) of the regulations implementing the fishery management plan (FMP) for the Atlantic surfclam and ocean quahog fisheries authorizes the Administrator, Northeast Region, NMFS (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surfclams. This action may be taken unless discard, catch, and biological sampling data indicate that 30 percent or more of the Atlantic surfclam resource is smaller than 4.75 inches (120 mm) and the overall reduced size is not attributable to harvest from beds where growth of the individual clams has been reduced because of density-dependent factors.

At its June 2011 meeting, the Mid-Atlantic Fishery Management Council (Council) voted to recommend that the Regional Administrator suspend the minimum size limit for Atlantic surfclams for the 2012 fishing year. Commercial surfclam data for 2011 were analyzed to determine the percentage of surfclams that were smaller than the minimum size requirement. The analysis indicated that 4.3 percent of the overall commercial landings were composed of surfclams that were less than 4.75 inches (120 mm). Based on these data, the Regional Administrator concurs with the Council's recommendation and suspends the minimum size limit for Atlantic surfclams from January 1 through December 31, 2012.

The FMP for the Atlantic surfclam and ocean quahog fisheries requires that NMFS issue notification in the **Federal Register** of the upcoming year's quota, even in cases where the quota remains unchanged from the previous year. At its June 2011 meeting, the Council also voted that no action be taken to change the quota specifications for Atlantic surfclams and ocean quahogs for the 2012 fishing year (January 1 through December 31, 2013), and recommended maintaining the 2011 quota levels of 3.4 million bu (181 million L) for Atlantic surfclams, 5.333 million bu (284 million L) for ocean quahogs, and 100,000 Maine bu (3.524 million L) for Maine ocean quahogs, as announced in the **Federal Register** on December 27, 2010 (75 FR 81142).

Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: September 7, 2011.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–23373 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 100923469–1543–05]

RIN 0648–BA27

Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Framework Adjustment (FW) 45; Adjustments for Fishing Year (FY) 2011

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

ACTION: Interim final rule; request for comments.

SUMMARY: NMFS adjusts the differential days-at-sea (DAS) rate for common pool vessels for FY 2011 due to overages of FY 2010 catch levels. This measure will help prevent FY 2011 catch levels from being exceeded. NMFS also announces the amount of unused FY 2010 annual catch entitlement (ACE) carryover available to each sector in FY 2011, and adjusts the final number of vessels fishing in a sector in FY 2011.

DATES: Effective September 8, 2011 through April 30, 2012. Written comments must be received on or before September 28, 2011.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2010–0198, by any one of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2010–0198 in the keyword search. Locate the document you wish to comment on

from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail:* Submit written comments to Patricia A. Kurkul, Regional Administrator, 55 Great Republic Drive, Gloucester, MA 01930.

• *Fax:* (978) 281–9135; Attn: Sarah Heil.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Sarah Heil, Fishery Policy Analyst, (978) 281–9257.

SUPPLEMENTARY INFORMATION:

FY 2011 Differential DAS Counting for Common Pool Vessels

Based on preliminary FY 2010 common pool catch information available in February 2011, NMFS previously estimated that common pool catch of witch flounder would exceed the common pool sub-annual catch limit (sub-ACL) by 32 percent. Based on this information, the final rule for FW 45 (76 FR 23042, April 25, 2011) implemented a differential DAS rate of 1.3 on May 1, 2011, in the Offshore Gulf of Maine (GOM), the Inshore Georges Bank (GB), and the Offshore GB Differential DAS areas for common pool vessels. These areas are where witch flounder are predominately caught. The differential DAS rate applies to all Category A DAS used by common pool vessels, and is applied to the time spent in the applicable DAS counting area where a vessel fishes. Updated end-of-year 2010 catch estimates show that the common pool sub-ACL for witch flounder was only exceeded by 20 percent, and the total ACL for northern windowpane flounder was exceeded by 27 percent. Therefore, this rule reduces the differential DAS rate to 1.2 in the Offshore GOM and the Inshore GB Differential DAS areas due to the overage of witch flounder. This lower rate will be applied retroactively to all applicable trips taken since the start of FY 2011 on May 1, 2011. The differential DAS rate for the Offshore GB Differential DAS area will remain at 1.3 due to the overage of northern windowpane flounder. Northern windowpane flounder are predominately caught in this area. These accountability measures (AMs) are meant to prevent overages of FY 2011 catch levels. Further adjustments to the common pool differential DAS rate are likely based on final 2010 catch estimates for components of the groundfish fishery that have not yet been fully evaluated, such as the recreational fishery, exempted fisheries, non-groundfish vessels (e.g., scallop vessels), and state-only permitted vessels.

FY 2011 Final Sector Rosters

A final rule was published on June 15, 2011 (76 FR 34903), announcing the FY 2011 sector and common pool sub-ACLs based on final sector rosters as of May 1, 2011. On the same day, a permit issued to a vessel that had previously elected to fish in a sector in FY 2011 was permanently cancelled and was removed from the FY 2011 roster for the particular sector. This rule announces the final number of permits (as tracked by moratorium right identifiers (MRIs)) participating in each sector during FY 2011 (see Table 1). Calculation of potential sector contributions (PSCs) for FY 2012 for each limited access permit will include the re-distribution of any PSC associated with this cancelled permit. This rule does not change the FY 2011 sector or common pool catch limits.

TABLE 1—FINAL SECTOR MEMBERSHIP FOR FY 2011

Sector name*	Moratorium right identifier count
FGS	96
MPBS	8
NCCS	29
NEFS 2	83
NEFS 3	93
NEFS 4	41
NEFS 5	32
NEFS 6	21
NEFS 7	20
NEFS 8	20
NEFS 9	60
NEFS 10	51
NEFS 11	46
NEFS 12	11
NEFS 13	35
PCCGS	39
SHS 1	108
SHS 3	16
TSS	19
All Sectors Combined	828

*Georges Bank Cod Fixed Gear Sector (FGS), Maine Permit Bank Sector (MPBS), Northeast Coastal Communities Sector (NCCS), Northeast Fishery Sectors (NEFS), Port Clyde Community Groundfish Sector (PCCGS), Sustainable Harvest Sector (SHS), and Tri-State Sector (TSS).

FY 2010 Sector ACE Carryover

The regulations allow each sector to carry over up to 10 percent of its initial allocation for all but one groundfish stock into the following fishing year. Unused ACE for GB yellowtail flounder cannot be carried over because catch levels for this stock are set each year by the U.S./Canada Resource Sharing Understanding. The amount of unused FY 2010 ACE was calculated as the difference of a sector's final FY 2010 ACE for each stock, including all ACE trades, and the sector's FY 2010 catch. FY 2010 ACE carryover information for all sectors combined is presented in Table 2. FY 2010 ACE carryover amounts for each sector are presented in Table 3 and Table 4.

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Table 2. Summary of FY 2010 ACE Carryover for All Sectors Combined (lb and mt)

Stock	FY 2010 Total ACE		FY 2010 Catch		FY 2010 ACE Carryover Cap		FY 2010 ACE Carryover	
	lb	mt	lb	mt	lb	mt	lb	mt
GB Cod	7,280,541	3,302	6,053,375	2,745.8	728,054	330	699,321	317.2
GOM Cod	9,540,389	4,327	7,974,284	3,617.1	954,039	433	949,413	430.6
GB Haddock	88,593,877	40,186	18,183,697	8,248.0	8,859,388	4,019	8,859,388	4,018.6
GOM Haddock	1,761,206	799	816,869	370.5	176,121	80	173,501	78.7
SNE/MA Yellowtail*	517,372	235	336,125	152.5	51,737	23	51,603	23.4
CC/GOM Yellowtail Flounder*	1,608,084	729	1,234,074	559.8	160,808	73	155,812	70.7
Plaice	6,058,149	2,748	3,315,063	1,503.7	605,815	275	605,815	274.8
Witch Flounder	1,824,125	827	1,533,027	695.4	182,413	83	177,788	80.6
GB Winter Flounder	4,018,496	1,823	3,047,725	1,382.4	401,850	182	401,850	182.3
GOM Winter Flounder	293,736	133	177,934	80.7	29,374	13	27,953	12.7
Redfish	14,894,618	6,756	4,725,257	2,143.3	1,489,462	676	1,489,462	675.6
White Hake	5,522,677	2,505	4,884,630	2,215.6	552,268	251	544,996	247.2
Pollock	35,666,741	16,178	12,014,768	5,449.8	3,566,674	1,618	3,566,674	1,617.8

*Southern New England (SNE)/Mid-Atlantic (MA), Cape Cod (CC)

Table 3. FY 2010 ACE Carryover Available to Each Sector in FY 2011 by Stock (lb)

Sector Name*	GB Cod	GOM Cod	GB Haddock	GOM Haddock	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	209,599	19,084	571,007	2,338	126	3,130	3,467	1,416	109	778	43,627	26,702	284,318
NCCS	910	4,171	10,780	410	360	687	858	391	281	93	6,696	4,157	16,184
NEFS 2	40,246	191,736	1,036,450	32,157	1,146	32,756	51,713	24,757	6,907	6,809	249,448	34,514	448,499
NEFS 3	7,179	160,084	14,304	19,686	43	14,188	26,945	5,566	75	3,465	21,938	28,504	268,569
NEFS 4	35,620	86,791	483,429	11,430	1,834	12,329	57,885	17,405	2,900	1,748	97,417	44,624	205,928
NEFS 5	21,216	2,308	473,561	1,220	18,123	2,717	12,980	4,730	10,415	235	6,165	2,021	14,893
NEFS 6	14,157	17,001	238,478	5,382	3,314	3,529	21,298	7,828	3,435	1,139	78,504	20,577	116,702
NEFS 7	29,304	6,122	468,442	1,319	2,834	8,318	25,213	4,864	69,492	1,116	7,420	4,316	27,381
NEFS 8	55,653	490	589,310	364	4,074	7,486	15,281	4,073	84,235	1,166	6,584	2,878	23,371
NEFS 9	85,101	16,770	919,926	7,546	4,880	16,485	47,321	14,308	137,395	895	87,264	22,926	139,284
NEFS 10	7,063	51,304	23,050	4,976	131	20,090	10,879	5,485	24	5,681	8,644	5,203	52,585
NEFS 11	2,995	137,516	3,298	5,842	9	3,793	11,722	3,487	14	739	28,310	27,164	337,985
NEFS 12	61	12,695	14	238	1	831	2,279	517	0	113	1,013	195	1,917
NEFS 13	56,906	7,002	1,253,929	1,063	7,197	5,337	21,401	8,470	44,114	486	68,225	9,932	80,351
PCCGS	788	47,354	4,275	4,161	343	1,673	39,854	8,325	28	747	38,536	25,831	155,758
SHS	126,112	180,176	2,638,689	75,003	6,359	18,663	249,455	63,719	34,516	2,497	739,479	284,748	1,390,871
TSS	6,410	8,810	130,445	365	830	3,800	7,264	2,447	7,909	247	192	700	2,078

Table 4. FY 2010 ACE Carryover Available to Each Sector in FY 2011 by Stock (mt)

Sector Name	GB Cod	GOM Cod	GB Haddock	GOM Haddock	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	Redfish	White Hake	Pollock
FGS	95.1	8.7	259.0	1.1	0.1	1.4	1.6	0.6	0.0	0.4	19.8	12.1	129.0
NCCS	0.4	1.9	4.9	0.2	0.2	0.3	0.4	0.2	0.1	0.0	3.0	1.9	7.3
NEFS 2	18.3	87.0	470.1	14.6	0.5	14.9	23.5	11.2	3.1	3.1	113.1	15.7	203.4
NEFS 3	3.3	72.6	6.5	8.9	0.0	6.4	12.2	2.5	0.0	1.6	10.0	12.9	121.8
NEFS 4	16.2	39.4	219.3	5.2	0.8	5.6	26.3	7.9	1.3	0.8	44.2	20.2	93.4
NEFS 5	9.6	1.0	214.8	0.6	8.2	1.2	5.9	2.1	4.7	0.1	2.8	0.9	6.8
NEFS 6	6.4	7.7	108.2	2.4	1.5	1.6	9.7	3.6	1.6	0.5	35.6	9.3	52.9
NEFS 7	13.3	2.8	212.5	0.6	1.3	3.8	11.4	2.2	31.5	0.5	3.4	2.0	12.4
NEFS 8	25.2	0.2	267.3	0.2	1.8	3.4	6.9	1.8	38.2	0.5	3.0	1.3	10.6
NEFS 9	38.6	7.6	417.3	3.4	2.2	7.5	21.5	6.5	62.3	0.4	39.6	10.4	63.2
NEFS 10	3.2	23.3	10.5	2.3	0.1	9.1	4.9	2.5	0.0	2.6	3.9	2.4	23.9
NEFS 11	1.4	62.4	1.5	2.6	0.0	1.7	5.3	1.6	0.0	0.3	12.8	12.3	153.3
NEFS 12	0.0	5.8	0.0	0.1	0.0	0.4	1.0	0.2	0.0	0.1	0.5	0.1	0.9
NEFS 13	25.8	3.2	568.8	0.5	3.3	2.4	9.7	3.8	20.0	0.2	30.9	4.5	36.4
PCCGS	0.4	21.5	1.9	1.9	0.2	0.8	18.1	3.8	0.0	0.3	17.5	11.7	70.7
SHS	57.2	81.7	1196.9	34.0	2.9	8.5	113.2	28.9	15.7	1.1	335.4	129.2	630.9
TSS	2.9	4.0	59.2	0.2	0.4	1.7	3.3	1.1	3.6	0.1	0.1	0.3	0.9

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this final rule is consistent with the NE Multispecies Fishery Management Plan, other provisions of the Magnuson-Stevens Act, and other applicable law.

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA finds good cause under 5 U.S.C. 553(b)(B) and (d)(3) to waive prior notice and the delayed effectiveness for this action because notice and a delayed effectiveness would be unnecessary, impracticable, and contrary to the public interest. Both the FW 45 final rule and the FY 2011 adjustment rule based on final sector rosters indicated that future adjustments may be made based on updated FY 2010 catch estimates and final sector rosters; these catch estimates and final rosters only recently became available, and this rule implements the anticipated adjustments. Prior opportunity for public comment is unnecessary and impracticable because the public was provided the opportunity to comment on the possibility of the anticipated adjustments, including the basis for such adjustments. However, NMFS is requesting public comment on this action because the actual adjustments in this rule were not specifically stated.

NMFS also finds good cause pursuant to 5 U.S.C. 553(d)(3) to waive the delay in effectiveness of this action as contrary to the public interest. Any delay in making these adjustments would cause Category A DAS common pool vessels to operate under a more restrictive differential DAS rate than required in certain areas. Fishermen participating in the common pool fishery make business decisions based on the number of DAS available to them. A delay in this action would prolong the time period that the fishery would be operating under an incorrect differential DAS rate, which may prevent a vessel from gaining the maximum benefit from available fishing opportunities during the summer months, which generally have better weather conditions. NMFS is making this adjustment now because FY 2010 catch information supporting the change only recently became available.

A delay in the announcement of the FY 2010 ACE carryover is also contrary to the public interest because a delay could disrupt sector operations and prevent sectors from planning for the fishing year based on the amount of ACE available to them in FY 2011. FY 2010 ACE carryover may increase the fishing opportunities available to each sector in FY 2011, especially if a sector has a small allocation for particular stocks. A delay in this action could result in foregone fishing opportunities during the summer months, when weather conditions are generally better. Because ACE may be traded between sectors, a delay in this action could also affect the ACE available to the market for trading, to the economic detriment of the fishery.

Because prior notice and an opportunity for comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are inapplicable.

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

Dated: September 7, 2011.

Samuel D. Rauch III,

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

[FR Doc. 2011–23369 Filed 9–8–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 101102552–1319–02]

RIN 0648–BA35

Fisheries Off West Coast States; Highly Migratory Species Fisheries; Annual Catch Limits and Accountability Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule under authority of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) to implement Amendment 2 to the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species (HMS FMP). NMFS approved Amendment 2 on June 12, 2011. The final rule implements regulatory components specified under Amendment 2 by changing the suite of management unit species and modifying the process for revising numerical estimates of maximum sustainable yield and optimal yield, and specify status determination criteria so that overfishing and overfished determinations can be made for all management unit species. The final rule is necessary to ensure that the HMS FMP is consistent with the objectives of National Standard 1 in the MSA. National Standard 1 mandates that ''Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the U.S. fishing industry.''

DATES: This final rule is effective October 13, 2011.

FOR FURTHER INFORMATION CONTACT: Craig Heberer, Sustainable Fisheries Division, NMFS, 760–431–9440, ext. 303.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is also accessible at (*http://swr.nmfs.noaa.gov/*). An electronic copy of the current HMS FMP and accompanying appendices, including Amendments 1 and 2, are available on the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/hms/hmsfmp.html.*

The HMS FMP was developed by the Pacific Fishery Management Council (Council) in response to the need to coordinate state, Federal, and international management of HMS stocks. The management unit in the FMP consists of several highly migratory species (tunas, billfish, and sharks) that occur within the West Coast (California, Oregon, and Washington) Exclusive Economic Zone (EEZ) and to a limited extent on adjacent high seas waters. The National Marine Fisheries Service (NMFS), on behalf of the U.S. Secretary of Commerce, partially approved the HMS FMP on February 4, 2004. NMFS implements the Council's recommended management measures through the Federal regulatory process.

In June 2010, the Council took final action to recommend adoption of Amendment 2 to the HMS FMP, which addresses statutory requirements of the MSA National Standard Guidelines in regard to the establishment of annual catch limits (ACLs) and accountability measures (AMs). The Council transmitted Amendment 2 to NMFS on March 14, 2011. NMFS approved Amendment 2 on June 12, 2011. This final rule implements Amendment 2. In Amendment 2, the Council recommended and NMFS concurred that all 11 MUS will fall under the international exemption for setting ACLs and AMs as described at 50 CFR

660.310(h)(2)(ii) in the revised MSA National Standard 1 (NS1) Guidelines.

The final rule: (1) Reduces the number of HMS FMP Management Unit Species (MUS) listed in 50 CFR part 660 from 13 to 11; and (2) modifies the process for revising and seeking NMFS approval for numerical estimates of maximum sustainable yield (MSY) and optimal yield (OY) and specifies status determination criteria (SDC) so that overfishing and overfished determinations can be made for all MUS stocks.

In regard to classification of stocks in the FMP, Amendment 2 and this final rule reclassifies bigeye thresher shark (*Alopias superciliosus*) and pelagic thresher shark (*A. pelagicus*) as EC species, thereby reducing the current suite of MUS from 13 to 11. Bigeye and pelagic thresher sharks were originally included in the HMS FMP as MUS due to concern over their low resiliency to exploitation; their reclassification as EC species is based in part on the minor levels of west coast commercial and recreational catch that have been reported for these species since the FMP was implemented. However, given the presence of these species off the West Coast, particularly during El Nino warming periods, these species will continue to be monitored under the HMS FMP as an EC species. One of the essential purposes behind identifying EC species is to monitor these species over time, periodically evaluate their status, and assess whether any management is needed under the HMS FMP, in which case an EC species could be reclassified as MUS, which means they would be treated as ''in the fishery.'' Amendment 2 establishes eight EC species in the HMS FMP: the two thresher shark species (bigeye and pelagic), pelagic sting ray (*Dasyetis violacea*), wahoo (*Acathocybium solandri*), common mola (*Mola mola*), escolar (*Lepidocybium flavobrunneum*), lancetfishes (Alepisauridae), and louvar (*Luvarus imperialis*).

In regard to the process for revising numerical estimates of management reference points, the methods for determining MSY (or proxies), OY, and SDC are currently described in the HMS FMP. Existing numerical estimates of these quantities (shown in FMP Table 4–3) are retained. However, upon receipt of any new information based on the best available science, the Council may adjust the numerical estimates of MSY, OY, and SDC periodically under the Council's management measure process. The process would involve the Council's HMSMT identifying the numerical estimates within the draft HMS Stock Assessment and Fishery Evaluation (SAFE) document that is submitted in June with the Council's SSC HMS subcommittee and then making a recommendation on their suitability. The Council would then decide whether to adopt updated numerical estimates of MSY and OY, which would be submitted as recommendations for NMFS to review as part of the management measure review process. This provides the Secretary with an opportunity to review revised MSY and OY estimates. In this process, the Council takes final action in November and NMFS subsequently engages in rulemaking to implement the specifications of any management measures proposed by the Council. The revised estimates of MSY, OY, and SDC would also be published in the annual HMS SAFE document. However, if a regional fisheries management organization formally adopts reference points for the purpose of regional management for any of the HMS FMP managed species, these would generally take precedence. The Council would engage in a review process similar to that described above before adopting them as appropriate for domestic management purposes under the HMS FMP.

A single public comment was received on the proposed rule to implement Amendment 2 pointing out an error in the use of the common name for bluefin tuna. NMFS made this change in the final rule.

Classification

The Administrator of the Southwest Region, NMFS, determined that the HMS FMP Amendment 2 is necessary for the conservation and management of the U.S. West Coast Fisheries for Highly Migratory Species and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 7, 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 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.702, revise the definition of ''Highly Migratory Species (HMS)'' to read as follows:

§ 660.702 Definitions.

* * * * *

Highly Migratory Species (HMS) means species managed by the FMP, specifically:

Billfish/Swordfish:
- striped marlin (*Tetrapturus audax*)
- swordfish (*Xiphias gladius*)

Sharks:
- common thresher shark (*Alopias vulpinus*)
- shortfin mako or bonito shark (*Isurus oxyrinchus*)
- blue shark (*Prionace glauca*)

Tunas:
- north Pacific albacore (*Thunnus alalunga*)
- yellowfin tuna (*Thunnus albacares*)
- bigeye tuna (*Thunnus obesus*)
- skipjack tuna (*Katsuwonus pelamis*)
- Pacific bluefin tuna (*Thunnus orientalis*)

Other:
- dorado or dolphinfish (*Coryphaena hippurus*)

* * * * *

■ 3. In § 660.709, revise paragraph (a) to read as follows:

§ 660.709 Annual specifications.

(a) *Procedure.* (1) In June of each year, the HMSMT will deliver a preliminary SAFE report to the Council for all HMS with any necessary recommendations for harvest guidelines, quotas or other management measures to protect HMS, including updated MSY and OY estimates based on the best available science. The Council's HMS Science and Statistical Committee will review the estimates and make a recommendation on their suitability for management. The Council will review these recommendations and decide whether to adopt updated numerical

estimates of MSY and OY, which are then submitted as recommendations for NMFS to review as part of the management measures review process.

(2) In September of each year, the HMSMT will deliver a final SAFE report to the Council. The Council will adopt any necessary harvest guidelines, quotas or other management measures including updated MSY and OY estimates if any for public review.

(3) In November each year, the Council will take final action on any necessary harvest guidelines, quotas, or other management measures including updated MSY and OY estimates if any and make its recommendations to NMFS.

(4) Based on recommendations of the Council, the Regional Administrator will approve or disapprove any harvest guideline, quota, or other management measure including updated MSY and OY estimates after reviewing such recommendations to determine compliance with the FMP, the Magnuson Act, and other applicable law. The Regional Administrator will implement through rulemaking any approved harvest guideline, quota, or other management measure adopted under this section.

* * * * *

[FR Doc. 2011–23387 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 76, No. 177

Tuesday, September 13, 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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AA04

Standards of Ethical Conduct for Employees of the Executive Branch; Proposed Amendments Limiting Gifts From Registered Lobbyists and Lobbying Organizations

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule; amendments.

SUMMARY: The Office of Government Ethics is proposing amendments to the regulation governing standards of ethical conduct for executive branch employees of the Federal Government, to impose limits on the use of gift exceptions by all employees to accept gifts from registered lobbyists and lobbying organizations, and to implement the lobbyist gift ban for appointees required to sign the Ethics Pledge prescribed by Executive Order 13490.

DATES: Written comments are invited and must be received before November 14, 2011.

ADDRESSES: You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209–AA04, by any of the following methods:

- E–Mail: *usoge@oge.gov*. Include the reference ''Proposed Amendments to Part 2635'' in the subject line of the message.
- Fax: (202) 482–9237.
- Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Richard M. Thomas, Associate General Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA04, for this proposed rulemaking.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; telephone: 202–482–9300; TYY: 800–877–8339; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

A. Existing OGE Gift Prohibitions

The Standards of Conduct for Employees of the Executive Branch were initially promulgated by the Office of Government Ethics in 1992 and are codified at 5 CFR part 2635. *See* 57 FR 35005–35067 (August 7, 1992). Subpart B of part 2635 sets out the restrictions on the solicitation and acceptance of gifts from outside sources by employees of the Executive Branch.

Under subpart B, all executive branch employees are subject to two general prohibitions: employees shall not, directly or indirectly, solicit or accept a gift either (1) from a prohibited source, or (2) given because of the employee's official position. 5 CFR 2635.202(a). A prohibited source is broadly defined to include any person seeking official action from the employee's agency, doing or seeking to do business with the employee's agency, conducting activities regulated by the employee's agency, or having interests that may be substantially affected by the employee's official duties; additionally, prohibited source includes any organization a majority of whose members are prohibited sources. 5 CFR 2635.203(d). Beyond gifts from prohibited sources, the rule also proscribes gifts given because of the employee's official position, which means any gift that would not have been solicited, offered, or given had the employee not held the status, authority or duties of his or her Federal position. 5 CFR 2635.203(e). While the prohibition on gifts from prohibited sources largely derives from statute, 5 U.S.C. 7353(a), OGE, itself, imposed the regulatory prohibition on gifts given because of official position as a further check against appearances that an employee might use his or her official position for private gain. *See* 56 FR 33777, 33780 (July 23, 1991)(preamble to proposed part 2635).

Subpart B also contains several exceptions, which are found in 5 CFR 2635.204. These exceptions cover a range of situations—such as gifts from family members and friends, de minimis gifts, and gifts of free attendance at widely attended gatherings—and each exception has its own criteria and limitations. Additionally, there are several general limitations on the use of the gift exceptions, which are found at 5 CFR 2635.202(c). These limitations, for example, preclude employees from relying on the gift exceptions to solicit or coerce the offering of a gift or to accept a gift in violation of any statute.

B. Executive Order 13490

Against this backdrop of existing regulations, President Obama imposed an additional gift prohibition on full-time, non-career (i.e., political) appointees appointed on or after January 20, 2009. Executive Order 13490 requires these full-time political appointees to sign an ''Ethics Pledge.'' Exec. Order 13490, section 1, 74 FR 4673, 3 CFR, 2009 Comp., p. 193, January 21, 2009. The first paragraph of the Pledge is the ''Lobbyist Gift Ban,'' which states: ''I will not accept gifts from registered lobbyists or lobbying organizations for the duration of my service as an appointee.'' *Id.,* 13490, section 1, par. 1. The Pledge ban applies to gifts from lobbyists and organizations that are currently registered under the Lobbying Disclosure Act (LDA), 2 U.S.C. 1603, as well as any person currently identified as a lobbyist for an organization in a registration statement or quarterly disclosure report filed under the LDA. Exec. Order 13490, section 2(e). The Secretary of the Senate and the Clerk of the House of Representatives maintain searchable, online databases of registrants and lobbyists under the LDA, from which appointees and ethics counselors may determine whether a particular person is a permissible source for a gift under the Pledge ban.[1]

The Office of Government Ethics issued initial interpretive guidance to implement the lobbyist gift ban in a Memorandum to Designated Agency Ethics Officials on February 11, 2009. OGE, DO–09–007, *http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09007.html.* OGE's guidance makes clear that the lobbyist gift ban for political appointees ''is *in addition to* the OGE prohibitions on gifts from 'prohibited sources' and gifts 'given because of the employee's official position.' '' *Id.* (emphasis added). Thus, for example, the ban applies to gifts

[1] *See http://soprweb.senate.gov/index.cfm?event=selectfields; http://disclosures.house.gov/ld/ldsearch.aspx.*

from registered lobbyists and lobbying organizations even if they do not lobby the appointee's own agency or they confine their lobbying solely to the Legislative Branch. *Id.* Moreover, the lobbyist gift ban in the Pledge is subject to a more limited set of exceptions than those otherwise applicable under the OGE gift regulations. *Id.* The Pledge intentionally broadened existing gift restrictions, in connection with registered lobbyists and organizations, because of concerns that gifts sometimes may appear to be given in connection with efforts by professional lobbyists to obtain access to the political leadership in the Executive Branch. The stricter requirements were in large part a response to various scandals involving the use of gifts by lobbyists such as Jack Abramoff, and in this regard the Pledge followed similar efforts by Congress to respond to some of the same concerns. *E.g.,* 153 Cong. Rec. H 6 (January 4, 2007)(adoption of lobbyist gift ban for House of Representatives); Honest Leadership and Open Government Act of 2007 (HLOGA), Public Law 110–81, sections 203, 305, 541, 542, 544 (various provisions pertaining to lobbyist gifts and contributions).

The OGE guidance also emphasized that the Pledge ban is not limited to gifts from lobbyists and lobbying firms that provide lobbying services to others. DO–07–007, at p. 2. Under the plain meaning of the Executive Order, the phrase ''registered lobbyist or lobbying organization'' includes any ''organization filing a registration'' under the LDA, not just lobbying firms. Exec. Order 13490, section 2(e). The ban also includes, therefore, organizations that register because they employ ''at least one in-house lobbyist'' to lobby on their own behalf, such as a corporation that employs its own governmental affairs officer who meets the LDA definition of lobbyist (2 U.S.C. 1602(10)). *Id.* Nevertheless, the OGE guidance carved out two categories of organizations from this definition, even though they may employ their own lobbyists: nonprofit organizations exempt from taxation under 26 U.S.C. 501(c)(3), and media organizations. *Id.* at 5–6. In consultation with the White House Counsel's Office, OGE determined that these categories of organizations did not implicate the purposes of the Pledge ban, although the guidance did provide that an appointee ''still may not accept a gift if the organization employee who extends the offer is a registered lobbyist him- or herself.'' *Id.* at 5.

In addition to the Pledge requirements for full-time political appointees, the Executive Order directed OGE ''to adopt such rules or procedures as are necessary or appropriate * * * to apply the lobbyist gift ban set forth in paragraph 1 of the pledge to all executive branch employees.'' Exec. Order 13490, sec. 4(c)(3)(ii). OGE is to undertake this task ''in consultation with the Attorney General and the Counsel to the President or their designees.'' *Id.* It was intended that OGE would take the opportunity to learn from its initial experience in implementing the lobbyist gift ban for political appointees and then evaluate how best to extend the limitations to the ranks of career employees, for whom different considerations may be relevant. This proposed rule is the result of that evaluation, and OGE's conclusions about the most appropriate way to extend the lobbyist gift limitation beyond just the political leadership are summarized below, under ''General Approach.''

Finally, the Executive Order charged OGE with adopting rules and procedures ''to authorize limited exceptions to the lobbyist gift ban for circumstances that do not implicate the purposes of the ban.'' *Id. at,* section 4(c)(3)(iii). As discussed below, this proposed rule specifies a limited set of exceptions applicable to full-time political appointees, as well as an expanded but still limited set of exceptions applicable to all other employees. Like the initial OGE guidance Memorandum, the proposed rule also excludes certain types of organizations from the category of lobbying organizations from which gifts are banned, with some modifications and additions to the exclusions as originally described in the Memorandum. OGE intends that these exclusions from the proposed definition of ''registered lobbyist or lobbying organization'' would be applicable to all employees, including full-time political appointees subject to the Pledge.

II. Proposed Amendments to the Standards

A. General Approach

After considering the myriad issues that have arisen under the lobbyist gift ban for full-time political appointees, as well as the varied circumstances of the millions of employees to whom Subpart B applies, the Office of Government Ethics has decided that the best approach for extending the lobbyist gift ban beyond the core political personnel is to add a lobbyist limitation to the existing limitations in section 2635.202(c) on the use of the gift exceptions in the OGE regulations. In this way, the lobbyist limitation would build on concepts, prohibitions and exceptions with which employees and agency ethics officials already are familiar, rather than adding a new stand-alone prohibition. This approach would extend the real benefits that OGE already has perceived as a result of the gift ban for political appointees, without introducing unnecessary complexity or restrictions that have little relation to the real ethics concerns affecting the great mass of career and other employees outside the full-time political leadership of the executive branch.

With the implementation of the current Pledge restriction for political appointees, OGE believes that the most important salutary effect has been the elimination of sometimes questionable ''widely-attended gatherings,'' ''social invitations,'' and other gifts that might have been permissible under applicable gift exceptions in section 2635.204 had the gifts not been extended by registered lobbyists or lobbying organizations. While all of the exceptions in section 2635.204 have their appropriate uses, OGE has indeed become concerned that some of the exceptions may have been used on occasion to permit gifts, such as attendance at certain events, where the nexus to the purpose of the exception is attenuated at best. *See, e.g.,* OGE DAEOgram DO–07–047, *http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2007/do07047.html.* (widely attended gatherings under section 2635.204(g)(2)). When such gifts are offered by persons who are paid to influence government action, the concerns obviously are magnified. However, in the period since the Pledge ban was imposed on political appointees, OGE has noted a decrease in pressure to extend some of these exceptions, because the Pledge simply makes the exceptions unavailable for gifts from lobbyists and lobbying organizations.

The proposed rule, therefore, targets this issue directly. Proposed section 2635.202(c)(6) would operate as a straightforward limitation on the use of certain gift exceptions. Unlike the Pledge ban, the proposed rule does not add a third general prohibition applicable to all employees (i.e., in addition to the general prohibitions on gifts from prohibited sources and gifts because of official position). Rather, the proposed rule would limit the ability of employees to rely on certain gift exceptions when a prohibited source—or a person giving a gift because of the employee's official position—also happens to be a registered lobbyist or lobbying organization. With respect to the large and diverse class of career and

other employees who are not required to sign the Pledge, OGE has determined that there is no demonstrated need for a new general prohibition against accepting gifts from lobbyists, as long as those lobbyists are not prohibited sources for an employee and do not even extend gifts because of the employee's official position. As described above, the terms ''prohibited source'' and ''because of the employee's official position'' are already defined quite broadly. Those restrictions cover so much of the real potential for ethical harm that it would be difficult to explain to career employees why they also should be subject to discipline for failing to determine whether a gift that does not fall within those broad prohibitions is extended by a registered lobbyist. By contrast, where a gift is extended by a prohibited source or because of the employee's official position, OGE believes that it is reasonable to ask employees (and their ethics counselors) to determine whether a particular donor is a registered lobbyist or lobbying organization before the employee may rely on certain exceptions to the OGE gift prohibitions.

At the same time, under proposed section 2635.202(d), full-time political appointees who must sign the Pledge would remain subject to the lobbyist gift ban as a separate prohibition. This result is compelled by Executive Order 13490, and it means that these appointees will remain barred from accepting gifts from registered lobbyists and lobbying organizations even when the lobbyist or organization is not a prohibited source and has not offered the gift because of an appointee's official position. Apart from the plain meaning of the Executive Order, the stricter treatment of the political leadership in the executive branch is justified by experience. Most, if not all, of the executive branch officials who were implicated in the scandals involving Jack Abramoff and his associates were political appointees. Indeed, in the case of career employees, it seems unlikely that lobbyists would expend significant time and resources to cultivate access through the use of gifts if the lobbyists (and the clients they represent) were not prohibited sources. However, one could envision strategic efforts to cultivate access to the political leadership generally, even if the lobbyists do not currently qualify as a prohibited source for a particular political appointee. OGE does not discount the symbolic value of the Pledge prohibition for the political class within the Executive Branch, and this broader prophylactic restriction remains an appropriate response to public concerns about the use of gifts as a means of access by professional lobbyists.

B. Proposed Section 2635.202(c)(6)

1. Exceptions Unavailable for Lobbyist Gifts

Proposed section 2635.202(c)(6) would preclude employees from using several of the gift exceptions in section 2635.204 to accept a gift from a registered lobbyist or lobbying organization. Like the Pledge ban for full-time political appointees, the proposed rule would not permit any employee to use the following exceptions in connection with gifts from registered lobbyists or lobbying organizations: Section 2635.204(a), the $20 de minimis exception; section 2635.204(g)(2), the widely attended gathering exception (WAG); section 2635.204(h), the social invitation exception; and section 2635.204(i), the exception for meals, refreshments and entertainment from private entities in a foreign area. The de minimis and WAG provisions, in particular, are among the most widely used exceptions in the OGE gift regulations, so the change effected by the proposed new limitation is not inconsiderable. Nevertheless, as explained below, OGE believes that the proposed lobbyist limitation is appropriate for those popular exceptions, as well as the social invitation and foreign areas exceptions.

De Minimis Exception in Section 2635.204(a)

Section 2635.204(a) permits employees to accept gifts, other than cash or investments, having a market value of $20 per source on a single occasion. This de minimis exception also allows employees to accept gifts in the aggregate valued up to $50 per source in any calendar year.

OGE has determined that it is appropriate to follow the House and the Senate, as well as the President's Ethics Pledge, in sending a consistent message that there is no de minimis for lobbyist gifts. Both the House and Senate amended their de minimis gift rules, in response to the Abramoff scandals and related concerns, to preclude gifts from registered lobbyists. *See House Ethics Manual* at 29–30 (2008); Rule XXXV of the Standing Rules of the Senate, par. 1(a)(2)(B); HLOGA, sec. 541. While the OGE de minimis exception is set at only $20, as compared to $50 for the House and Senate, it is nonetheless clear that both Houses of Congress intended to preclude lunches and other items from lobbyists even if the gifts were valued well below the de minimis threshold. *See, e.g.,* Senate Select Committee on Ethics, ''New Ethics Rules: Gifts and Events'' (September 25, 2007) (''Senators and staff can no longer accept gifts of any value from registered lobbyists''). Moreover, although OGE believes that the rules and circumstances of the Executive Branch ethics program often are unavoidably different from those of Congress, OGE also is respectful of the ''Sense of the Congress,'' expressed in section 701 of HLOGA, that similar restrictions should apply. OGE's experience in implementing the Pledge ban for political appointees in the Executive Branch has not indicated any significant problems with eliminating the de minimis exception for lobbyist gifts, and OGE believes it is time to follow suit for the rest of the Executive Branch.

Of course, OGE cannot deny the convenience of the $20 de minimis rule as currently applied. It provides a bright line test, and employees generally can accept a gift within this limit without even having to determine whether the donor is a prohibited source or is extending the offer because of the employee's official position—let alone without having to determine whether the source is registered under the Lobbying Disclosure Act. Nevertheless, where the donor is a prohibited source or is offering a gift because of the employee's position, OGE believes it is not too much to ask of employees and their ethics counselors to determine whether the source also is a registered lobbyist or lobbying organization. In fact, one could say that heightened sensitivity in the use of any of the gift exceptions, including the de minimis provision, would be a positive result. As OGE states in the introduction to the gift exceptions: ''Even though acceptance of a gift may be permitted by one of the exceptions contained in paragraphs (a) through (l) of this section, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position.'' 5 CFR 2635.204. Requiring employees to stop and consider whether a potential donor is engaged in professional lobbying activities will further encourage this kind of prudential attitude.

Exception for Widely Attended Gatherings in Section 2635.204(g)(2)

The exception at section 2635.204(g)(2) permits employees to accept offers of free attendance at certain widely attended gatherings (WAG), where an agency designee has determined that attendance is in the interest of the agency. This exception

has been used to permit attendance of a very wide range of events, from substantive activities (such as conferences and seminars) that provide a significant training opportunity, to purely social functions (such as fundraisers and gala celebrations) that provide an opportunity for government employees and others to interact in a more relaxed social setting.

As already noted above, OGE has perceived some instances over the years in which the WAG exception was used to permit attendance at events, particularly social events, where the nexus to the government's interest was attenuated. In fact, OGE issued a memorandum to agency ethics officials in December 2007 that was partly a call for agencies to focus on the real purposes of the exception. DO–07–047. The WAG exception raises particular concerns when free attendance is provided by a lobbyist. That is for the simple reason that the ''gift'' involved is something that the employee will enjoy in the very company of the lobbyist. If one views the problem of lobbyist gifts as the mere potential for some quid pro quo, then probably an invitation to a gala ball will not directly influence an official to take action benefiting the giver. But it is increasingly recognized that the more realistic problem is not the brazen quid pro quo, but rather the cultivation of familiarity and access that a lobbyist may use in the future to obtain a more sympathetic hearing for clients. As one scholar has observed, ''the public's concern is not just that * * * officials will engage in blatant [selling of their services] to lobbyists but, more subtly, that they will become partial to the causes of lobbyists' clients because they spend a lot of time in lobbyists' company.'' Anita S. Krishnakumar, *Towards a Madisonian, Interest-Group-Based, Approach to Lobbying Regulation,* 58 Ala. L. Rev. 513, 524–25 (2007). The WAG exception, at least when used in connection with social events, can provide the opportunity for a lobbyist not only to discuss any pending issues with the employee but also to foster a social bond that may be of greater use in the long run. Therefore, proposed section 2635.202(c)(6) would preclude the use of the WAG exception where the gift is offered by a registered lobbyist or lobbying organization.

Having said this, OGE also knows that widely attended gatherings still can serve important government purposes. For example, OGE does not believe that employees, including political appointees subject to the Pledge, should be precluded categorically from accepting offers of free attendance at substantive events that would provide a legitimate educational or professional development benefit that furthers the interests of an agency. Therefore, under the definition of registered lobbyist or lobbying organization at proposed section 2635.203(h)(4), discussed below, OGE is proposing to exclude nonprofit professional associations, scientific organizations and learned societies, at least with respect to the educational and professional development activities of those entities. This will preserve a ''substantive core'' of the WAG exception, regardless of whether the donor is registered under the LDA.

A final word is in order concerning the first paragraph of section 2635.204(g), which permits free attendance at events where an employee is speaking or presenting information on behalf of the government. As explained in OGE's initial Memorandum concerning the Pledge ban, the restriction on the use of section 2635.204(g)(2) does not extend to section 2635.204(g)(1):

> ''Appointees still may accept offers of free attendance on the day of an event when they are speaking or presenting information in an official capacity, as described in 5 C.F.R. § 2635.204(g)(1), notwithstanding the lobbyist gift ban. This is not a gift exception, but simply an application of the definition of 'gift' in section 2635.203(b): 'The employee's participation in the event on that day is viewed as a customary and necessary part of his performance of the assignment and does not involve a gift to him or to the agency.' 5 CFR 2635.204(g)(1).''

DO–09–007, at 4 n.3. Likewise, proposed section 2635.202(c)(6) would not affect the ability of employees to accept offers of free attendance in connection with official speaking engagements, as provided in section 2635.204(g)(1). The same would be true with respect to agency support personnel ''whose presence at the event is deemed essential under agency procedures to the speaker's participation at the event.'' OGE DAEOgram DO–10–003, *http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2010/do10003.html.*

Exception for Social Invitations in Section 2635.204(h)

Section 2635.204(h) permits employees to accept offers of free attendance at social events attended by several persons, provided that the invitation is not from a prohibited source and no attendance fee is charged to anyone. This exception has been used, for instance, to permit employees to attend such events as movie screenings and Washington cocktail parties, as illustrated by the official examples following the regulatory text. *See* 5 CFR 2635.204(h)(Examples 1 & 2).

For reasons similar to those discussed above in connection with the WAG exception, OGE has determined that the social invitation exception should be unavailable to employees for lobbyist gifts. It is no secret that social events of this type sometimes are used as ''lobbying tools.'' Jim Puzzanghera, ''Courtship starts with free film screenings,'' *Los Angeles Times,* December 31, 2007, *http://articles.latimes.com/2007/dec/31/business/fi-mpaa31* (lobbyist describes cultivation of relationships through social events as ''soft lobbying''). It is true that section 2635.204(h) already has an important limitation in that it may not be used to accept gifts from a prohibited source. Nevertheless, even though a lobbyist might not have any matters currently pending before a particular employee's agency, the lobbyist could use social events as a way to build general good will with a class of employees in case access is needed for a future issue or client. It is important to remember that the lobbyist limitation in proposed section 2635.202(c)(6) will not even come into play unless the gift is otherwise prohibited under the OGE Standards. So the only time the limitation would preclude an employee from using the social invitation exception would be when a lobbyist has at least extended the invitation *because* of the employee's official position, even if the lobbyist is not technically a prohibited source at that time. The potential for harm, while perhaps latent, is nonetheless real.

Exception for Meals, Refreshments and Entertainment From Private Entities in a Foreign Area in Section 2635.204(i)

Section 2635.204(i) permits employees to accept food, refreshments or entertainment in the course of official attendance at certain meetings or events in foreign areas. The meeting or event must involve non-U.S. citizens, or representatives of foreign governments or other foreign entities, but the source of the gift itself may not be a foreign government as defined in 5 U.S.C. 7342(a)(2). The market value of the gift also may not exceed the per diem rate specified for the foreign area by the Department of State. This exception was included in the OGE Standards at the request of several agencies with overseas operations who were concerned that, without such an exception, ''employees will be required to decline the customary invitations of hospitality that frequently accompany the transaction of business in many

foreign countries and that the foreign nationals and entities involved may be offended.'' 57 FR 35021.

Proposed section 2635.202(c)(6) would bar employees from relying on this foreign areas exception if the gift is offered by a registered lobbyist or lobbying organization. OGE does not doubt the utility or reasonableness of this exception. However, OGE believes that the exception should not be a vehicle for registered lobbyists and lobbying organizations to entertain government employees with hospitality, which could raise some of the same concerns as those discussed above in connection with WAGs and social invitations. It is not clear how many registered lobbyists or lobbying organizations even would be geographically positioned to extend such offers in foreign areas. However, OGE notes that some foreign private entities do register under the LDA and may do so in order to avoid the more onerous registration requirements of the Foreign Agents Registration Act. *See* 22 U.S.C. 613(h); S. Rep. 105–147, at 4 (1997). Where the private entity engages in lobbying activity for which it is registered under the LDA, OGE has determined that there is sufficient reason to preclude an employee from accepting food and entertainment in the company of that entity.

2. Exceptions Available for Lobbyist Gifts

Exceptions Already Permitted Under Pledge: Section 2635.204(b), (c), (e)(1), (e)(2), (j), (k) and (l)

Even for full-time political appointees, the Pledge gift ban recognizes that certain gift exceptions are reasonable even though the donor is a registered lobbyist or lobbying organization. *See* Executive Order 13490, sec. 2(c)(3) (exceptions to Pledge gift ban). The Pledge permits full-time political appointees to accept the following: Gifts based on a personal relationship, under section 2635.204(b); discounts and similar benefits, under section 2635.204(c); gifts resulting from a spouse's business or employment, under section 2635.204(e)(1); customary gifts provided by prospective employers, under section 2635.204(e)(3); gifts to President or Vice President, under section 2635.204(j); gifts authorized by an OGE-approved supplemental regulation, under section 2635.204(k); and gifts accepted under specific statutory authority, under section 2635.204(l). As explained in OGE's February 11, 2009 memorandum: ''Because the lobbyist gift ban is very broad, these common sense exceptions are necessary to avoid potentially absurd results. Thus, an appointee may accept a birthday present from his or her spouse who is a registered lobbyist or sign up for a training course sponsored by a registered lobbying organization that provides a discount for Federal Government employees.'' DO–09–007, at 3. The proposed rule extends these exceptions likewise to career employees and others not subject to the Pledge.

Additional Exceptions Permitted by Proposed Section 2635.202(c)(6)

Additionally, OGE has determined that there is good reason to permit employees—other than the full-time political appointees subject to the Pledge—to use three other exceptions that are not applicable to the Pledge restriction. The additional exceptions are: Section 2635.204(d), for awards and honorary degrees; section 2635.204(e)(2), for gifts resulting from an employee's outside business or employment; and section 2635.204(f), for certain benefits in connection with permissible political activities.

Exception for Awards and Honorary Degrees in Section 2635.204(d)

Section 2635.204(d) sets forth specific criteria under which employees may accept ''bona fide awards'' for meritorious public service or achievement. The award must not be extended by a person with interests that may be substantially affected by the employee's duties or by an association of such persons. Furthermore, awards of cash or awards valued in excess of $200 require a written determination by an agency ethics official that the award is ''made as part of an established program of recognition'' under which (1) awards have been made on a regular basis in the past or are funded to ensure their continuation in the future and (2) the selection of recipients is made pursuant to written standards. 5 CFR 2635.204(d)(1). Although probably used less frequently, section 2635.204(d) also sets forth criteria under which an employee may accept an honorary degree from an institution of higher education, based on a written determination by an agency ethics official that the timing of the degree will raise not raise questions concerning the employee's impartiality in any matter affecting the institution. 5 CFR 2635.204(d)(2).

OGE has determined that the limitation of proposed section 2635.202(c)(6) should not preclude employees from relying on section 2635.204(d). For one thing, section 2635.204(d) follows a longstanding interpretation that bona fide awards for meritorious public service and achievement fall outside the prohibition of salary supplementation in 18 U.S.C. 209, ''primarily because the grantors are typically detached from and disinterested in the performance of the public official's duties.'' 8 Op. O.L.C. 143, 144 (1984); *see* 57 FR 35018. Consequently, the exception itself already includes both substantive and procedural safeguards that OGE believes are adequate to prevent real or perceived abuses when employees outside the political leadership are granted awards, even where the granting organization is registered under the LDA. Permitting employees to rely on this exception also would further one of the specific goals recently articulated by the Office of Science and Technology Policy concerning the promotion of professional development of government scientists and engineers. *See* John P. Holdren, Director of the Office of Science and Technology Policy, Memorandum for the Heads of Executive Departments and Agencies, December 17, 2010 (OSTP Memorandum). Among other things, the OSTP Memorandum states that agencies should establish policies that ''[a]llow Government scientists and engineers to receive honors and awards for their research and discoveries with the goal of minimizing, to the extent practicable, disparities in the potential for private-sector and public-sector scientists and engineers to accrue the professional benefits of such honors and awards.'' *Id.* at 4.

With respect to honorary degrees, under section 2635.204(d)(2), even the Pledge currently permits acceptance in most cases. That is because OGE, in consultation with the White House Counsel's Office, has excluded 501(c)(3) organizations from the category of registered lobbying organizations from which appointees may not accept gifts under the Pledge. DO–09–007, at 5. A large percentage of institutions of higher education, as defined in 20 U.S.C. 1001, are such 501(c)(3) organizations. Moreover, those institutions of higher education that OGE has encountered that are *not* 501(c)(3) organizations have been state and local universities and colleges. As to the latter, OGE already has advised informally that such public institutions are so similar to the educational institutions that have 501(c)(3) status that the Pledge ban likewise should be inapplicable to them. For the same reasons, OGE also is proposing to define ''registered lobbyist or lobbying organization'' to exclude all institutions of higher education (see discussion of proposed section

2635.203(h)(2) below). In view of this proposed definition, arguably it is redundant to exclude honorary degrees from the limitation in proposed section 2635.202(c)(6). Nevertheless, for purposes of simplicity, OGE proposes to include a general reference to section 2635.204(d) in its entirety in section 2635.202(c)(6), thus clarifying that employees may accept both awards and honorary degrees notwithstanding the lobbyist gift limitation.

Exception for Gifts Resulting From an Employee's Outside Business or Employment Activities in Section 2635.204(e)(2)

Section 2635.204(e)(2) is one of three separate, but related exceptions in paragraph (e) of 2635.204, all of which pertain to gifts offered because of some non-federal business or employment. Paragraphs (e)(1) and (e)(3), which respectively cover gifts resulting from a spouse's business or employment and customary gifts given in connection with an employee's discussions with a prospective employer, are already applicable to the Pledge gift ban. Paragraph (e)(2), however, is not applicable to the Pledge ban, in large part because this exception covers benefits resulting from an employee's own current outside employment or business, and there was a general assumption that the political leadership in the Executive Branch would have little need of such an exception while they focused their time and effort on the business of the Administration. Indeed, for many Pledge signers, there are significant ethical limitations and restrictions on their ability to engage in outside employment and business activities. *See* 5 U.S.C. app. 501–505; 5 CFR part 2636; Exec. Order 12674, section 102, 54 FR 15159, 3 CFR, 1989 Comp., p. 215.

However, OGE has determined that section 2635.204(e)(2) does serve a significant purpose for career employees and others who are not subject to the Pledge. Many employees have non-Federal employment and business activities that are consistent with the ethics rules and in fact may have been approved by agency ethics officials. The vast majority of Executive Branch employees are not subject to the limitations on outside business and employment activity cited above, and their outside activities fulfill many personal and professional goals that are perfectly legitimate. For example, most part-time members of Federal commissions and boards have their regular employment with non-Federal entities; even though it is generally expected that such employees will not be registered lobbyists themselves, no doubt many of them work for entities that are registered under the LDA. *See* 75 FR 67397–67399 (November 2, 2010) (proposed Office of Management and Budget guidance does not ''restrict the appointment of individuals who are themselves not Federal registered lobbyists but are employed by organizations that engage in lobbying activities''). Another example would be full-time career employees who have approved outside activities with entities that are registered under the LDA, such as physicians who have been authorized to engage in the outside practice of medicine with hospital organizations that also happen to employ lobbyists. *See* 5 CFR 5501.106(c)(3)(A) (employees of Food and Drug Administration may engage in outside medical practice with regulated entities under certain circumstances). The exception for benefits resulting from outside business or employment is useful and appropriate for these employees, particularly given the important proviso in section 2635.204(e)(2) that such benefits may not be offered or even ''enhanced'' because of employees' official status. *See* 5 CFR 2635.204(e)(2) (Example 1).

Exception for Gifts in Connection With Permissible Political Activities in Section 2635.204(f)

Section 2635.204(f) applies to employees who are permitted by the Hatch Act Reform Amendments of 1993, 5 U.S.C. 7323, to take an active part in political management or political campaigns. The exception allows such employees to accept meals, travel and other benefits when provided in connection with their outside political activities, if the gift is from a political organization as described in 26 U.S.C. 527(e). Section 2635.204(f) was promulgated by OGE so that the gift restrictions would not ''hamper the political activities'' of employees, where those activities are themselves authorized by Congress (originally by the Hatch Act and later more extensively by the Hatch Act Reform Amendments). 56 FR at 33782; *see also* 61 FR 50689, 50690 (September 27, 1996).

OGE believes that this exception should remain available to employees—other than those appointees subject to the Pledge—out of consideration for the rights of employees to participate in political activities. It is not clear to OGE how likely it is that a political organization, under 26 U.S.C. 527(e), would also be a registered lobbying organization, but OGE thinks it best to send a clear message to employees that nothing in the lobbyist gift limitation is intended to interfere with their existing rights to participate in political activities.

C. Proposed Section 2635.202(d)

As discussed above, the proposed rule leaves the lobbyist gift ban of Executive Order 13490 in place as a separate restriction for appointees required to sign the Pledge, in addition to the general restrictions in the OGE regulations on gifts from prohibited sources and gifts given because of official position. Proposed section 2635.202(d) would accomplish this by reiterating the Pledge ban and emphasizing that it is in addition to the prohibitions set forth in section 2635.202(a). The proposed provision allows only those exceptions permitted expressly by section 2(c)(3) of the Executive Order: Gifts based on a personal relationship, under section 2635.204(b); discounts and similar benefits, under section 2635.204(c); gifts resulting from a spouse's business or employment, under section 2635.204(e)(1); customary gifts provided by prospective employers, under section 2635.204(e)(3); gifts to the President or Vice President, under section 2635.204(j); gifts authorized by an OGE-approved supplemental regulation, under section 2635.204(k); and gifts accepted under specific statutory authority, under section 2635.204(l). Note, however, that the definition of ''registered lobbyist or lobbying organization,'' in proposed section 2635.203(h), would apply to the Pledge restriction at proposed section 2635.202(d); that proposed definition, as discussed below, would exclude certain organizations from the Pledge ban.

D. Proposed Section 2635.203(h)

Proposed section 2635.203(h) defines the phrase ''registered lobbyist or lobbying organization.'' This definition would apply both to the limitation on the use of the gift exceptions, in proposed section 2635.202(c)(6), and the additional prohibition for full-time political appointees (the Pledge ban), in proposed section 2635.202(d).

The proposed definition mainly follows the definition in section 2(e) of Executive Order 13490. The definition includes any lobbyist or organization that is currently registered under the Lobbying Disclosure Act (LDA) or identified as a lobbyist in a registration. As discussed above, the definition in the Executive Order covers not only lobbying firms that provide services to others but also organizations that employ in-house lobbyists to lobby on behalf of the organization itself. The

proposed rule would retain this scope of coverage. Also following the Executive Order, the proposed definition does not extend to persons or organizations that simply retain ''outside'' lobbyists or lobbying firms: Organizations that are merely ''clients'' but not actually employers of lobbyists do not have to file registrations under the LDA, even though they may be listed as clients in registrations filed by the lobbyists or firms they retain. *See* DO–09–007, at 2–3.

Like the current OGE guidance applicable to the Pledge ban, the proposed definition emphasizes, in the Note following section 2635.203(h), that employees may determine whether the source of a gift is a lobbyist or a lobbying organization by relying on the searchable, online databases of lobbyists and registrants maintained by the Secretary of the Senate and the Clerk of the House, pursuant to the Lobbying Disclosure Act (LDA), 2 U.S.C. 1605(a).[2] The proposed Note also includes guidance about how to determine whether a given registrant or lobbyist currently is registered or listed; the guidance with respect to the de-listing or cessation of the lobbying activity of a particular lobbyist is derived from the proposed guidance issued by the Office of Management and Budget concerning ''Appointment of Lobbyists to Federal Boards and Commissions.'' OMB, Proposed Guidance, A1, 75 FR 67397–67399 (November 2, 2010). Additionally, the Note provides that, ''[w]ith respect to organizations that have subsidiaries, parents or affiliates that are separate legal entities, employees need only determine the registration status of the entity that offered the gift.'' Since the Pledge ban went into effect, OGE has fielded numerous questions about how to treat gifts from an organization that is not registered but that has a parent, subsidiary or affiliate that is registered. In answering these questions, OGE generally has relied on the guidance provided by the Secretary of the Senate and the Clerk of the House with respect to the registration requirements for such entities:

> ''Assuming a parent entity or national association and its subsidiary or subordinate are separate legal entities, the parent makes a determination whether it meets the registration threshold based upon its own activities, and does not include subordinate units' lobbying activities in its assessment. Each subordinate must make its own assessment as to whether any of its own employees meet the definition of a lobbyist, and then determine if it meets the registration threshold with respect to lobbying expenses.''

Secretary of the Senate & Clerk of the House of Representatives, *Lobbying Disclosure Act Guidance* (June 15, 2010), section 5 *http://lobbyingdisclosure.house.gov/amended_lda_guide.html.* With the understanding that parents, subsidiaries and affiliates file their own registrations without regard to each other's activities (albeit with certain accommodations for a single filing in limited circumstances, *id.*), OGE believes that the clearest and most practical approach is to search the LDA database only for the legal entity that offered the gift.

The proposed definition of registered lobbyist or lobbying organization provides four exclusions. These exclusions pertain to organizations that may be registered under the LDA, but which do not pose the concerns at which the Executive Order was directed. Two of these exclusions—for 501(c)(3) organizations and media organizations—are already found in the current OGE guidance concerning the Pledge ban. *See* DO–09–007, at 5–6. A third exclusion—for institutions of higher education—largely follows from OGE's existing guidance on 501(c)(3) organizations and in fact has been the subject of informal advice from OGE to agency ethics officials. The fourth exclusion—for nonprofit professional associations, scientific organizations and learned societies engaging in educational or professional development activities—would be new, although the purposes of this exclusion are related to those for 501(c)(3) organizations and institutions of higher education. These four exclusions are discussed in more detail below.

It is important to remember that the mere fact that an entity is excluded from the definition of registered lobbyist or lobbying organization does not necessarily mean that a gift from such an organization may be accepted. Rather, it means only that a gift from such an organization would not trigger the lobbyist limitation at proposed section 2635.202(c)(6) or the separate gift prohibition for Pledge signers at proposed section 2635.202(d). Where the gift happens to be given by a prohibited source, or given because of the employee's official position, the employee still must rely on an applicable exception in section 2635.204 to accept the gift. However, in some cases, this will mean that an employee could rely on an exception that otherwise would be unavailable, either under section 2635.202(c)(6) or section 2635.202(d), if the source were not excluded from the definition of registered lobbyist or lobbying organization. For example, any employee (including Pledge signers) could use the $20 de minimis exception to accept a $10 lunch from a prohibited source that is a 501(c)(3) organization, even though that organization may be registered under the LDA. However, if that same organization offered to pay for a $45 dinner, and no other gift exception in section 2635.204 applied, the gift would violate the bar on gifts from a prohibited source.

Exclusion of 501(c)(3) Organizations in Proposed Section 2635.203(h)(1)

OGE's original guidance concerning the Pledge gift ban excluded ''charitable and other not-for-profit organizations that are exempt from taxation under 26 U.S.C. 501(c)(3)'' for several reasons: They are limited by law as to the lobbying in which they may engage; their exempt purposes often involve activities of particular interest and value to agencies (e.g., educational, charitable, scientific); and similar considerations are reflected in the Government Employees Training Act (5 U.S.C. 4111). DO–09–007, at 5. In OGE's experience, the exclusion for 501(c)(3) organizations generally has worked well for the full-time political appointees subject to the Pledge, and it makes sense to extend it now to the provisions covering all employees, at proposed section 2635.203(h)(1).

The proposed rule would make one adjustment to the current OGE guidance concerning gifts from registered 501(c)(3) organizations. OGE's guidance Memorandum states that, notwithstanding the exclusion of 501(c)(3) organizations, ''appointees still may not accept a gift if the organization employee who extends the offer is a registered lobbyist him- or herself.'' *Id.* Based on experience in implementing the Pledge ban for political appointees, OGE has decided not to carry this limitation forward into proposed section 2635.203(h)(1). For one thing, this limitation has proven difficult to apply in practice. For example, in determining whether an invitation to an event has actually been ''extended'' by an individual who is the organization's lobbyist, should one focus on who officially signed the invitation letter, who e-mailed a PDF copy of the signed letter, or who called the employee to say that a written invitation is coming? Moreover, the proviso has not proved to be a meaningful limitation anyway, because the same invitation can be re-sent through a different messenger who is not listed as a lobbyist for the organization. OGE believes that the

[2] *See http://soprweb.senate.gov/index.cfm?event=selectfields; http://disclosures.house.gov/ld/ldsearch.aspx.*

clearest and most straightforward approach is to exclude 501(c)(3) organizations entirely from the definition, without regard to which organization official conveys the offer.

Exclusion of Institutions of Higher Education in Proposed Section 2635.203(h)(2)

One of the primary reasons that OGE, in consultation with the White House Counsel's Office, originally excluded 501(c)(3) organizations from the Pledge gift ban was a desire to avoid creating barriers to interaction between employees and educational institutions. However, after issuing the initial guidance Memorandum on the Pledge gift ban, it came to OGE's attention that some state and local universities and colleges have not obtained separate 501(c)(3) status, usually for reasons pertaining to state law. Because it made little sense to discriminate between those state institutions that have obtained 501(c)(3) status and those that have not, OGE has advised agencies informally that the latter are not covered by the Pledge ban. Proposed section 2635.203(h)(2) would codify this guidance. For this purpose, the proposed rule incorporates the definition of ''institution of higher education'' in 20 U.S.C. 1001, which includes both ''public and nonprofit'' institutions. Therefore, under proposed section 2635.203(h)(2), private for-profit institutions of higher education are not included as part of the exclusion from the definition of ''registered lobbyist or lobbying organization'' and are covered by the Pledge ban.

Exclusion of Media Organizations in Proposed Section 2635.203(h)(3)

OGE's initial guidance Memorandum concerning the Pledge gift ban indicated that it was not the intent of the Executive Order to bar gifts from media organizations. Relying on some of the concerns underlying the LDA, as well as past Executive Branch concerns about facilitating interactions between government officials and members of the press, OGE explained the exclusion as follows: ''The LDA itself reflects solicitude for the unique constitutional role of the press in gathering and disseminating information. *See* 2 U.S.C. 1602(8)(B)(ii). Likewise, the lobbyist gift ban is not intended to erect unnecessary barriers to interaction between appointees and journalists. This is consistent with concerns about the application of the OGE gift prohibitions to certain press dinners shortly after the Standards of Conduct became effective. *See* Memorandum from the Counsel to the President to All Agency Heads, December 21, 1993 (suspending enforcement of gift rule with respect to press dinners, pending revision of rule). ''Therefore, an appointee may accept a gift from an employee of a media organization, as long as the gift is permissible under the OGE gift rules, including any applicable exceptions.'' DO–09–007, at 5–6.

For the same reasons, OGE now proposes to carry forward the media organization exclusion in the definition at proposed section 2635.203(h)(3). The proposed rule defines media organization by reference to the definition in the LDA, 2 U.S.C. 1602(11). OGE sees this as a broad definition, covering print, broadcast, electronic and other kinds of mass communications organizations.

OGE has added one limitation, however, that was not included in the original guidance Memorandum. The proposed rule excludes a media organization only with respect to gifts that are made in connection with the organization's information gathering or dissemination activities. This limitation brings the exclusion closer to the purposes of the Pledge and the LDA, as the latter expressly excludes media contacts from the definition of ''lobbying contact'' only when those contacts are made for the purpose of ''gathering and disseminating news and information to the public,'' 2 U.S.C. 1602(8)(B)(ii). This limitation will address one question that has arisen under the current OGE guidance, which is whether gifts from media organizations are always permitted even if wholly unrelated to the news activities of the organization. OGE believes there is no reason to exclude media organization gifts that are extended under other circumstances, such as a lunch invitation from an executive of a media conglomerate to an official of the Department of Justice for the purpose of discussing a proposed corporate acquisition. By contrast, for example, OGE does intend that the exclusion would permit employees to accept invitations from media organizations to attend the typical ''press dinners'' at which journalists and government officials interact with each other, as such interactions foster relationships that further the news gathering functions of the organizations.

Proposed section 2635.203(h)(3) would make one additional modification to the current OGE guidance on the Pledge ban. As with the exclusion for 501(c)(3) organizations, the initial OGE guidance Memorandum imposed a limit on gifts from media organizations: ''appointees may not accept a gift if the organization employee who extends the offer is actually a registered lobbyist.'' DO–09–007, at 6. For the same reasons discussed above with respect to the exclusion for 501(c)(3) organizations, OGE has not carried this limitation forward in the proposed rule.

Exclusion for Nonprofit Professional Associations, Scientific Organizations and Learned Societies Engaging in Educational or Professional Development Activities in Proposed Section 2635.203(h)(4)

As explained above, under ''Exceptions Unavailable for Lobbyist Gifts,'' proposed section 2635.202(c)(6) would preclude employees from relying on the widely attended gathering (WAG) exception, 5 CFR 2635.204(g)(2), to accept a gift from a registered lobbyist or lobbying organization. However, as also described above, OGE has determined that certain widely attended events provide legitimate educational and professional development opportunities that may further agency interests, even if the offer of free attendance is extended by an organization that is registered under the LDA. Therefore, proposed section 2635.203(h)(4) would exclude nonprofit professional associations, scientific organizations and learned societies from the definition of registered lobbyist or lobbying organization, with respect to gifts made in connection with the entity's educational or professional development activities. Effectively, this would mean that an employee still could rely on the WAG exception (or other applicable exceptions) to accept free attendance at a training or professional development event hosted by one of these entities, without regard to the LDA registration status of the organization. Nevertheless, because of the concerns expressed above about gifts of free attendance from lobbyists, the exclusion will not apply to these organizations in connection with invitations to purely social events (gala balls, fundraisers, parties, etc.).[3]

[3] Where an employee is authorized to accept an offer of free attendance from a nonprofit professional association, scientific organization or learned society, pursuant to 5 CFR 2635.204(g)(2) and proposed section 2635.203(h)(4), the employee would be permitted to accept ''food, entertainment, instruction and materials *furnished to all attendees as an integral part of the event.*'' 5 CFR 2635.204(g)(4) (emphasis added). This means, for example, that employees could attend a reception that is integral to an educational or professional development event, but could not accept ''entertainment collateral to the event'' or ''meals taken other than in a group setting with all other attendees.'' *Id.; see generally* DO–07–047 (discussing the WAG exception, including what it

Continued

The proposed exclusion is intended to further the goal, recently articulated by the Office of Science and Technology Policy, of setting ''policies that promote and facilitate * * * the professional development of Government scientists and engineers,'' OSTP Memorandum at 3. However, OGE would not limit this exclusion to scientific organizations but would extend it to any professional or learned societies that promote the development or education of members of a profession or discipline. Many of the entities that sponsor educational and professional development activities of interest to Federal employees and their agencies would be 501(c)(3) organizations and, therefore, excluded already under proposed section 2635.203(h)(1). Nevertheless, many professional organizations are exempt from taxation under provisions other than 26 U.S.C. 501(c)(3), so OGE believes the limited exclusion in proposed section 2635.203(h)(4) is necessary and appropriate. Although the exclusion is intended to cover a wide range of organizations devoted to various professions and disciplines, OGE does not intend that proposed section 2635.203(h)(4) would cover trade associations, such as associations of manufacturers of particular products. Trade associations may sponsor educational activities for their members and even the public, but the primary concern of such associations generally is not the education and development of members of a profession or discipline, which is the focus of the proposed exclusion.[4]

E. Proposed Section 2635.203(i)

Proposed section 2635.203(i) would define the phrase ''full-time, non-career appointee,'' which is a term describing the types of political appointees subject to the Pledge under Executive Order 13490. The proposed definition largely follows the definition of ''appointee'' in section 2(b) of the Executive Order and is consistent with guidance already issued by OGE concerning which officials are required to sign the Pledge. *See* DO–09–010, *http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09010.html;* DO–09–020, *http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2009/do09020.html.* The definition is included in the proposed rule because proposed section 2635.202(d) reiterates the Pledge restriction.

III. Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments on this proposed amendatory rulemaking, to be received by November 14, 2011. The comments will be carefully considered and any appropriate changes will be made before a final rule is adopted and published in the **Federal Register** by OGE.

Regulatory Flexibility Act

As Acting Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this proposed rule because it does not contain an information collection requirement that requires the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed amendatory rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that law.

Executive Order 12866 and Executive Order 13563

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Executive Order 12988

As Acting Director of the Office of Government Ethics, I have reviewed this proposed amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: September 7, 2011.

Don W. Fox,

Acting Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is proposing to amend part 2635 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, as follows:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

1. The authority citation for part 2635 is revised to read as follows:

Authority: 5 U.S.C. 7301, 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; E.O. 13490, 74 FR 4673, 3 CFR, 2009 Comp., p. 193.

Subpart B—Gifts From Outside Sources

2. Section 2635.202 is amended by adding, new paragraph (c)(6) and a new paragraph (d), as follows:

§ 2635.202 General standards.

* * * * *

(c) *Limitations on use of exceptions.* * * *

* * * * *

(6) Accept a gift from a registered lobbyist or lobbying organization, unless

means for entertainment to be integral as opposed to collateral).

[4] *Compare Encyclopedia Britannica* (2008) (''trade association'' is ''voluntary association of business firms organized on a geographic or industrial basis to promote and develop commercial and industrial opportunities within its sphere of operation, to voice publicly the views of members on matters of common interest, or in some cases to exercise some measure of control over prices, output, and channels of distribution''); *Collins English Dictionary* (2009) (''professional association'' is ''body of persons engaged in the same profession, formed usually to control entry into the profession, maintain standards, and represent the profession in discussions with other bodies'').

pursuant to paragraphs (b), (c), (d), (e), (f), (j), (k) and (l) of § 2635.204.

(d) *Other prohibition applicable to full-time, non-career appointees.* In addition to the general prohibitions set forth in paragraph (a) of this section pertaining to gifts from a prohibited source and gifts given because of an employee's official position, a full-time, non-career appointee who is required to sign the Ethics Pledge prescribed by section 1 of Executive Order 13490 shall not accept a gift from a registered lobbyist or lobbying organization, except pursuant to paragraphs (b), (c), (e)(1), (e)(3), (j), (k), or (l) of § 2635.204.

3. Section 2635.203 is amended by adding new paragraphs (h) and (i), as follows:

§ 2635.203 Definitions.

* * * * *

(h) *Registered lobbyist or lobbying organization* means a person (including an organization) currently registered pursuant to 2 U.S.C. 1603 (Lobbying Disclosure Act) or listed as a lobbyist in such registration, as found in the databases maintained by the Secretary of the Senate and the Clerk of the House of Representatives, but it does not include:

(1) An organization exempt from taxation pursuant to 26 U.S.C. 501(c)(3);

(2) An institution of higher education as defined in 20 U.S.C. 1001;

(3) A media organization as defined in 2 U.S.C. 1602(11), with respect to any gift made in connection with the information gathering or dissemination activities of the organization; or

(4) A nonprofit professional association, scientific organization or learned society, with respect to any gift made in connection with the entity's educational or professional development activities.

Note to paragraph (h): The Secretary of the Senate and the Clerk of the House of Representatives maintain searchable, online databases of registrants and lobbyists, pursuant to 2 U.S.C. 1605(a). Employees may rely on the information contained in those databases to determine whether any gift source currently is registered or listed as a lobbyist. For these purposes, a registrant will not be considered to be currently registered if the person has filed a termination of registration. Similarly, a lobbyist will not be considered to be currently listed if the individual has been de-listed by his or her employer as an active lobbyist reflecting the actual cessation of the individual's lobbying activities, or if the individual has not appeared on a quarterly lobbying report for three consecutive quarters as a result of the individual's actual cessation of lobbying activities. With respect to organizations that have subsidiaries, parents or affiliates that are separate legal entities, employees need only determine the registration status of the entity that offered the gift.

(i) *Full-time, non-career appointee* includes every full-time, non-career Presidential or Vice-Presidential appointee, non-career appointee in the Senior Executive Service (or other SES-type system), and appointee to a position that has been excepted from the competitive service by reason of being of a confidential or policymaking character (Schedule C and other positions excepted under comparable criteria). It does not include a career appointee in the Senior Foreign Service or similar system, nor does it include any person appointed solely as a uniformed service commissioned officer.

[FR Doc. 2011–23311 Filed 9–12–11; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2011–BT–TP–0007]

RIN 1904–AC44

Energy Conservation Program for Consumer Products: Test Procedures for Residential Furnaces and Boilers (Standby Mode and Off Mode)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: In an earlier final rule, the U.S. Department of Energy (DOE) prescribed amendments to its test procedures for residential furnaces and boilers to include provisions for measuring the standby mode and off mode energy consumption of those products, as required by the Energy Independence and Security Act of 2007. These test procedure amendments are primarily based on provisions incorporated by reference from the International Electrotechnical Commission (IEC) Standard 62301 (First Edition), ''Household electrical appliances—Measurement of standby power.'' This document proposes to further update the DOE test procedure through incorporation by reference of the latest edition of the industry standard, specifically IEC Standard 62301 (Second Edition). The new version of this IEC standard includes a number of methodological changes designed to increase accuracy while reducing testing burden. DOE's review suggests that this document represents an improvement over the prior version, so DOE has decided to exercise its discretion to consider the revised IEC standard. DOE is also announcing a public meeting to discuss and receive comments on the issues presented in this rulemaking.

DATES: *Meeting:* DOE will hold a public meeting on October 3, 2011, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar information, participant instructions, and information about the capabilities available to webinar participants.

Comments: DOE will accept comments, data, and information regarding the notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than November 28, 2011. For details, see section V, ''Public Participation,'' of this NOPR.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at the phone number above to initiate the necessary procedures.

Any comments submitted must identify the NOPR on Test Procedures for Furnaces and Boilers, and provide the docket number EERE–2011–BT–TP–0007 and/or regulatory information number (RIN) 1904–AC44. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: FurnaceBoiler-IEC-2011-TP@ee.doe.govmailto:* Include docket number EERE–2011–BT–TP–0007 and RIN 1904–AC44 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please

submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimilies will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation,'' of this document.

Docket: The docket is available for review at *http://www.regulations.gov*, including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=10;po=0;D=EERE-2011-BT-TP-0007.* The *http://www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for further information on how to submit comments through *http://www.regulations.gov*.

For further information on how to submit a public comment, review other public comments and the docket, or participate in the public meeting, please contact Ms. Brenda Edwards at (202) 586–2945 or by *e-mail: Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–7892. *E-mail: Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. *Telephone:* (202) 586–9507. *E-mail: Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–2945. *E-mail: Brenda.Edwards@ee.doe.gov.*

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I. Background and Authority

Title III, part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including residential furnaces and boilers (referenced below as one of the ''covered products''). [2] (42 U.S.C. 6292(a)(5) and 6295(f))

Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for representing the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s)) Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. Specifically, EPCA provides that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that: (1) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the

[1] For editorial reasons, upon codification in the U.S. Code, part B was redesignated part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

covered product; or (2) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

Under the statutory provisions adopted by EISA 2007, any such amendment must consider the most current versions of IEC Standard 62301, *Household electrical appliances—Measurement of standby power,* and IEC Standard 62087, *Methods of measurement for the power consumption of audio, video, and related equipment.*[3] *Id.* At the time of enactment of EISA 2007, the most current versions of these standards were IEC Standard 62301 (First Edition 2005–06) and IEC Standard 62087 (Second Edition 2008–09).

DOE's current test procedure for residential furnaces and boilers is found at 10 CFR part 430, subpart B, appendix N, *Uniform Test Method for Measuring the Energy Consumption of Furnaces and Boilers.* This procedure establishes a means for determining annual energy efficiency and annual energy consumption of these products. On October 20, 2010, DOE prescribed its final rule (hereafter called the October 2010 final rule) amending the test procedures for residential furnaces and boilers to account for the standby mode and off mode energy consumption of these products, as required by EISA 2007. 75 FR 64621 (Oct. 20, 2010). For a more detailed procedural history of the test procedure rulemaking to address standby mode and off mode energy consumption of residential furnaces and boilers, please consult the October 2010 final rule. *Id.* at 64622.

II. Summary of the Proposed Rule

As discussed above, EISA 2007 amended EPCA to require that DOE test procedures for covered products include provisions for measuring standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) In establishing test procedures to address standby mode and off mode energy consumption, EISA 2007 requires consideration of the most current version of IEC Standard 62301 to support the added measurement provisions. *Id.* In the October 2010 final rule, DOE amended its test procedures to prescribe the use of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Publication 62301 First Edition 2005–06, which was the most current version of this standard at the time of its incorporation into the DOE regulations. This final rule fulfilled DOE's obligation under EISA 2007.

However, since that time, DOE has continued to address the requirements of EISA 2007 as it relates to standby mode and off mode for other products. For example, DOE is considering similar test procedure amendments for other heating products (water heaters, direct heating equipment, and pool heaters), and during that rulemaking, commenters identified improvements to IEC Standard 62301 that were under development and nearly finalized. These commenters, which are largely the same as those that would comment on the proposals for furnaces and boilers, supported the draft revisions to IEC Standard 62301. The second edition of the standard has now been finalized. In the abstract of its January 27, 2011 publication, the IEC reports that the second edition would provide practical improvement and possible reduction in testing burden. DOE has reviewed IEC Standard (Second Edition) and agrees that the second edition does provide for improvement in terms of measurement accuracy and, in addition, provides for possible reduced testing burden by allowing for direct meter reading techniques where appropriate. DOE believes these improvements would be applicable to a variety of heating products, including furnaces and boilers, as well as the other heating products discussed above. Accordingly, after careful review, DOE has decided to exercise its discretion to consider adoption of the revised version of the industry standard into the DOE test procedure for residential furnaces and boilers. (42 U.S.C. 6293(b)(2)) Thus, in today's NOPR, DOE is proposing to incorporate into DOE's test procedure regulations the second edition of the IEC 62301 standard in its entirety, and call out the appropriate provisions of that standard in DOE's test procedure regulations for residential furnaces and boilers.

III. Discussion

A. Use of IEC Standard 62301 (Second Edition), ''Household Electrical Appliances—Measurement of Standby Power''

As noted above, EPCA, as amended by EISA 2007, requires that DOE test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. (42 U.S.C. 6295(gg)(2)(A)) The October 2010 final rule referenced the IEC Standard 62301 (First Edition) to obtain the standby mode and off mode measured wattage for residential furnaces and boilers. The amended test procedure uses this measured wattage in calculations to accomplish the incorporation of standby mode and off mode energy consumption into the test procedures. Testimony at the public hearing and subsequent written comments suggested that IEC Standard 62301 (First Edition) may be unnecessarily burdensome to conduct for furnaces and boilers. Specifically, the Air-Conditioning, Heating and Refrigeration Institute (AHRI) recommended that to avoid unnecessary burden, the existing test procedure provisions should be used whenever there is a possible conflict with the IEC Standard 62301. A comment from the Government of China pointed out the same possible conflicts but only asked for clarification. (AHRI, No. 3 at p. 1, and, China, No. 09 at p. 1)

DOE considered the comments received in response to the NOPR and provided clarification in the October 2010 final rule so as to avoid unnecessary burden. Specifically, because there was a possible conflict with the voltage and ambient temperature provisions of the existing procedures, the October 2010 final rule clarified where the IEC provisions apply and where the existing test procedure provisions apply. With this clarification in place, DOE concluded that IEC Standard 62301 (First Edition) is appropriate for obtaining standby mode and off mode wattage measurements for residential furnaces and boilers.

As noted above, since the time of the October 2010 final rule, the IEC Standard 62301 technical committee has revised its standard. Specifically, a second edition of IEC Standard 62301 has been issued by IEC with a final publication date of January 27, 2011. This standard can be purchased at: *http://www.iec.ch/index.htm.* The IEC reports that the second edition provides technical improvement from the previous edition as follows:

- Greater detail in set-up procedures and introduction of stability requirements for all measurement methods to ensure that results are as representative as possible;
- Refinement of measurement uncertainty requirements for power measuring instruments, especially for

[3] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's proposal.

more difficult loads with high crest factor and/or low power factor; and

• Updated guidance on product configuration, instrumentation, and calculation of measurement uncertainty.

DOE has conducted a review of IEC Standard 62301 (Second Edition), which is the most current version of this IEC standard. In its investigation, DOE determined that some improvement to the current DOE test procedure is possible with the incorporation of the second edition of the IEC standard as it applies to residential furnaces and boilers. Specifically, IEC Standard 62301 (Second Edition) revises the standard's power measurement accuracy provisions, based on technical submissions that showed the inability to achieve the accuracy levels required by the first edition for certain operating regimes through the use of typical instrumentation. A more comprehensive specification of required accuracy is provided in IEC Standard 62301 (Second Edition) that depends upon the characteristics of the power being measured. DOE believes that this most recent revision to the IEC standard provides improved and realistic accuracy provisions for a range of electricity consumption patterns, thereby making the updated test method appropriate for the variety of electricity-consuming devices that form part of residential furnaces and boilers. The new specification can be met by typical, commercially-available test equipment, whereas requirements in the first version may have necessitated specialized instrumentation that is not readily available. The uncertainty depends upon a value termed the Maximum Current Ratio (MCR), which is the ratio of the Crest Factor to the Power Factor of the signal. For signals with MCR's less than 10, the allowed instrument uncertainty would be 2 percent at the 95th-percentile confidence interval for measured power values greater than 1.0 watt (W). For measured power values less than 1.0 W, the maximum permitted absolute uncertainty should be less than or equal to 0.02 W at the 95th-percentile confidence interval. Both of these limitations on the level of uncertainty are sufficient to assess the standby energy consumption of residential furnaces and boilers.

The other important change in IEC Standard 62301 (Second Edition) that relates to the measurement of standby mode and off mode power consumption in residential furnaces and boilers involves the specification of the stability criteria required to measure that power. IEC Standard 62301 (Second Edition) contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. In IEC Standard 62301 (First Edition), the stability of the system is determined by measuring the power consumption over a 5-minute period. If the variation over that period is less than 5 percent, the signal is considered to be stable. There are potential operational modes, however, that could show variation over longer time frames. For example, an electronic component could go into a sleep mode after a 10-minute period. This change in power consumption would not be captured in the 5-minute stability test. IEC Standard 62301 (Second Edition) acknowledges the existence of these different types of modes by creating stability tests for these variable power modes. For constant power modes, the test method specified in the second edition of IEC Standard 62301 matches that specified in the first edition. For cyclical power consumption, the second edition of IEC Standard 62301 adds measurement provisions for situations in which the variation in the signal might not be constant over a 5-minute period. The power measurements would take at least 60 minutes; a test period of this duration is required to accurately capture standby mode and off mode energy consumption for equipment with varying power consumption and is an improvement introduced by IEC Standard 62301 (Second Edition) compared to IEC Standard 62301 (First Edition). These techniques will result in more complete and accurate measures of standby mode and off mode energy consumption over a variety of operational modes. The manufacturer is given a choice of measurement procedures, including less burdensome methods such as direct meter reading methods if certain clearly-described stability conditions are met. DOE believes that, if adopted, the changes incorporated in IEC Standard 62301 (Second Edition) would allow for use of less burdensome methods when appropriate and would ensure accurate measures of standby energy consumption over a range of operating conditions that may be present in residential furnaces and boilers.

Accordingly, for the reasons discussed above, DOE is proposing to incorporate IEC Standard 62301 (Second Edition) in its entirety into the overall list of incorporated references in 10 CFR 430.3 and to call out the appropriate provisions of that standard in DOE's test procedure regulations for residential furnaces and boilers. To this end, this notice proposes to add a new reference in 10 CFR 430.3 to IEC Standard 62301(Second Edition) along side the existing reference to IEC Standard 62301 (First Edition). (Although DOE has tentatively determined that the provisions of IEC Standard 62301 (Second Edition) should be made applicable to residential furnaces and boilers, the Department is currently maintaining the existing reference to IEC Standard 62301 (First Edition), because other products continue to reference that standard.)

In addition, DOE is proposing a number of editorial changes in appendix N which are necessary to allow for the correct referencing for residential furnaces and boilers. For example, the definition section of the appendix needs to define the IEC Standard 62301 as the second edition instead of the first edition. Also, there are some section numbering differences in the second edition which impact the text of the measurement provisions of DOE's residential furnace and boiler test procedures. Finally, as an editorial improvement, DOE is unifying the standby mode and off mode nomenclature used in its various test procedures. Specifically, DOE's uniform nomenclature would use the expressions $P_{W,SB}$ and $P_{W,OFF}$ in all test procedures. All of these proposed changes are reflected in the regulatory text which can be found at the end of this NOPR.

B. Rounding Guidance

IEC Standard 62301 (Second Edition) includes specific guidance on the allowed rounding for the various wattage measurements. For clarification purposes, DOE is proposing the IEC rounding guidance in this proposal. Specifically, it is proposed that the following sentence be added to the measurement sections 8.6.1 and 8.6.2: ''The recorded standby power ($P_{W,SB}$) (or $P_{W,OFF}$ where appropriate) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'' DOE requests comment as to the adequacy and appropriateness of this additional clarification.

C. Sampling Plans for Standby Mode and Off Mode

Currently, sampling plans for residential furnaces and boilers are located in 10 CFR 429.18. These provisions of the test procedure specify the number of units of each basic model that a manufacturer must test to calculate the certified ratings for compliance and representation purposes. The sampling procedures

provide that " * * * a sample of sufficient size shall be randomly selected and tested to ensure [compliance]." *Id.* For residential furnaces, a minimum of two units must be tested to certify a basic model as compliant. This minimum is implicit in the requirement to calculate a mean—an average—which requires at least two values, and is consistent with the general rule articulated under 10 CFR 429.11(b). Under no circumstances is a sample size of one (1) Authorized. Manufacturers may need to test more than two samples depending on the variability of their sample. Consequently, DOE is proposing to apply the existing DOE sampling plans used by residential furnace and boiler manufacturers to determine the certified ratings for annual fuel utilization efficiency to the standby mode and off mode ratings. DOE seeks comment on the application of the existing DOE sampling plans to the new metrics $P_{W,SB}$ and $P_{W,OFF}$.

D. Effective Date and Compliance Date

The effective date for these amendments would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, representations may be made using the new metrics $P_{W,SB}$ and $P_{W,OFF}$ and any other measure of energy consumption which depends on $P_{W,SB}$ and $P_{W,OFF}$, which were adopted pursuant to these amendments. The compliance date for any representations relating to standby mode and off mode is 180 days from date of publication of the test procedure final rule in the **Federal Register**; on or after that date, any such representations must be based upon results generated under these test procedures and sampling plans.

However, DOE is clarifying here that use of these proposed test procedure amendments related to standby mode and off mode energy consumption of residential furnaces and boilers would not be required for purposes of energy conservation standards compliance, until the compliance date in the recently issued residential furnaces direct final rule (DFR), which adopted energy conservation standards for standby mode and off mode of residential furnaces. 76 FR 37408 (June 27, 2011). However, DOE makes this statement with two caveats: (1) The DFR only addresses standards for furnaces and not boilers, so standby mode and off mode standards for boilers would only be addressed and apply on the compliance date for the next energy conservation standards rulemaking; and (2) the above-referenced compliance date presumes that the DFR will be finalized at the end of the statutorily-required 110-day comment period.

E. Compliance With Other EPCA Requirements

EPCA requires that any test procedures prescribed or amended must be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and it must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

Today's proposed amendments to the DOE test procedure for residential furnaces and boilers would incorporate the most current version of IEC Standard 62301 in lieu of the previous version. DOE believes these new provisions would continue to produce valid test results, while reducing testing burden. Accordingly, this proposal would meet the requirements of 42 U.S.C. 6293(b)(3).

In addition, DOE has determined that these amendments would not alter the measured efficiency used for determining compliance with the current energy conservation standards and with future standards for standby mode and off mode for furnaces. (42 U.S.C. 6293(e)(1)) Accordingly, no modifications to the currently applicable energy conservation standards are required. (42 U.S.C. 6293(e)(2)) This is because the currently applicable energy conservation standard is based on the Annual Fuel Utilization Efficiency metric which does not include or depend on the proposed measures of energy consumption regarding standby mode and off mode. In addition, consistent with its mandate pursuant to EISA 2007, DOE is further clarifying here that use of these proposed test procedure amendments related to standby mode and off mode energy consumption, if adopted, would not be required for purposes of energy conservation standards compliance, *until the compliance date of the next standards final rule that addresses standby mode and off mode.* Relating to this emphasized phrase, DOE recently published a Direct Final Rule (DFR) which covered furnaces (but not boilers), and it establishes amended energy efficiency standards for furnaces, as well as standby mode and off mode energy conservation standards. 76 FR 37408 (June 27, 2011). Lastly, DOE does not believe the proposed amendments, which propose to adopt a revised version of the IEC test procedure, would significantly alter the energy consumption as measured by the existing DOE test procedure provisions related to standby mode and off mode for residential furnaces and boilers, because the test procedure provisions of IEC Standard 62301 (Second Edition) are limited to providing additional accuracy for the measurements and clarification on the test method. Consequently, DOE does not believe that potential adoption of amendments pertaining to these clarifications and additions would alter any estimates of energy consumption under either DOE's current standards or the recently promulgated standards in the June 27, 2011 direct final rule.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is not a "significant regulatory action" under section 3(f) of Executive Order 12866, "Regulatory Planning and Review." 58 FR 51735 (Oct. 4, 1993). Accordingly, this regulatory action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis for any rule that, by law, must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, "Proper Consideration of Small Entities in Agency Rulemaking," 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov.*

Today's proposed rule would adopt test procedure provisions to measure standby mode and off mode energy consumption of residential furnaces and boilers, generally through the incorporation by reference of IEC Standard 62301 (Second Edition). DOE reviewed today's proposed rule under

the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. For the reasons explained below, DOE certifies that the proposed rule would not have a significant impact on a substantial number of small entities.

As noted above, the test procedure incorporates by reference provisions from IEC Standard 62301 for the measurement of standby mode and off mode energy consumption. IEC Standard 62301 is widely accepted and used internationally to measure electric power in standby mode and off mode.

Based on its analysis of IEC Standard 62301 (Second Edition), DOE has tentatively determined that the only possible additional burden represented by the adoption of IEC Standard 62301 (Second Edition) is associated with the testing time. For measurements of power consumption that are determined to be stable, test time would not change. Test time would increase under IEC Standard 62301 (Second Edition), as compared to IEC Standard 62301 (First Edition), should the stability test indicate that the power is being used in a variable manner. For these cases, the revised procedure would increase the time of measurement from the current 15 minutes to up to 60 minutes. No additional setup time would be required for these tests. This possible increase in test time does not necessarily require active labor, because no additional set up is required, and the additional time essentially amounts to a waiting period to determine stability. Nonetheless, assuming the 45 minutes additional test time does incur additional labor cost, the worst-case estimate of an additional $30 per test unit is a small incremental change compared to the overall financial investment needed to undertake the business enterprise of testing consumer products. For these reasons, DOE does not believe that the proposed standby mode and off mode test procedure provisions would add significant costs and that it would not require any significant investment in test facilities or new equipment.

The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121, which relies on size standards and codes established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification 333415, which applies to Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing (including residential furnaces and boilers), is 750 employees.[4] DOE reviewed the Air-Conditioning, Heating, and Refrigeration Institute's Directory of Certified Product Performance for Residential Furnaces and Boilers (June 7, 2010),[5] the ENERGY STAR Product Databases for Gas and Oil Furnaces (Jan. 4, 2010),[6] the California Energy Commission's Appliance Database for Residential Furnaces and Boilers,[7] and the Consortium for Energy Efficiency's Qualifying Furnace and Boiler List (2010).[8] From this review, DOE found that there are approximately 14 small businesses in the furnace and boiler industry. Even though there are a significant number of small businesses within the furnace and boiler industry, DOE has concluded that the test procedure amendments contained in this proposed rule would not represent a substantial burden to any manufacturer, including small manufacturers, as explained above.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE tentatively certifies that this rule would have no significant economic impact on a substantial number of small entities. DOE seeks comments regarding whether the proposed amendments in today's rule would have a significant economic impact on any small entities.

C. Review Under the Paperwork Reduction Act of 1995

Today's proposed rule would impose no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*)

D. Review Under the National Environmental Policy Act

In this rule, DOE is proposing to further amend the test procedure for residential furnaces and boilers to address measurement of the standby mode and off mode energy consumption of these products. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (Pub. L. 91–190, codified at 42 U.S.C. 4321 *et seq.*), and DOE's implementing regulations at 10 CFR part 1021. Specifically, this proposed rule, which would adopt an industry standard for measurement of standby mode and off mode energy consumption, amends an existing rule without changing its environmental effect, and, therefore, is covered by Categorical Exclusion A5 found in 10 CFR part 1021, subpart D, appendix A. Today's proposed rule, if adopted, would not affect the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts.[9] Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States, and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE has examined this proposed rule and has tentatively determined that it 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

[4] U.S. Small Business Administration, Table of Small Business Size Standards (Nov. 5, 2010) (Available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf*).

[5] The Air-Conditioning, Heating and Refrigeration Institute, Directory of Certified Product Performance (June 7, 2010) (Available at: *http://www.ahridirectory.org/ahridirectory/pages/home.aspx*).

[6] The U.S. Environmental Protection Agency and the U.S. Department of Commerce, ENERGY STAR Furnaces—Product Databases for Gas and Oil Furnaces (Jan. 4, 2010) (Available at: *http://www.energystar.gov/index.cfm?c=furnaces.pr_furnaces*).

[7] The California Energy Commission, Appliance Database for Residential Furnaces and Boilers (2010) (Available at: *http://www.appliances.energy.ca.gov/QuickSearch.aspx*).

[8] Consortium of Energy Efficiency, Qualifying Furnace and Boiler List (2010) (Available at: *http://www.cee1.org/gas/gs-ht/gs-ht-main.php3*).

[9] Categorical Exclusion A5 provides: ''Rulemaking interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended.''

responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For regulatory actions likely to result in a rule that may cause expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)) Section 204 of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate.'' UMRA also requires an agency plan for giving notice and opportunity for timely input to small governments that may be potentially affected before establishing any requirement that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov.*) Today's proposed rule, which would modify the current test procedures for residential furnaces and boilers, contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's proposed rule to amend DOE test procedures would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (Pub. L. 106–554, codified at 44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed rule is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, DOE has determined that this rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101 *et seq.*), DOE must

comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 provides that where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Federal Trade Commission (FTC) concerning the impact of commercial or industry standards on competition.

Certain of the amendments and revisions in this proposed rule would incorporate testing methods contained in the following commercial standard, the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power'' (Second Edition 2011). DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.,* that it was developed in a manner that fully provides for public participation, comment, and review). DOE will consult with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in this standard before prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this NOPR. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945. As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov.* Persons who wish to speak should include with their request a computer diskette or CD–ROM in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least one week before the public meeting. DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Program. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. A court reporter will be present to record the proceedings and prepare a transcript.

The public meeting will be conducted in an informal, conference style. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. DOE will present summaries of comments received before the public meeting, allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on each specific topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others.

Participants should be prepared to answer DOE's and other participants' questions. DOE representatives may also ask participants about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of these procedures that may be needed for the proper conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the transcript will be posted on the DOE Web site and will also be available for purchase from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule before or after the public meeting, but no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

Pursuant 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: one copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will make its own determination as to the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is

generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

E. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Appropriateness of measurement instrument uncertainty requirements of IEC Standard 62301 (Second Edition).* DOE invites comment on the appropriateness of the measurement instrument uncertainty requirements specified in Section 4.4 of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power consumption for residential furnaces and boilers.

2. *Adequacy of the measurement approach described in IEC Standard 62301 (Second Edition).* DOE invites comments on the adequacy of the measurement provisions described in Section 5 of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power consumption for residential furnaces and boilers.

3. *Adequacy of clarification statements.* DOE invites comments on the adequacy of incorporating into DOE regulations the following specific provisions from IEC Standard 62301 (Second Edition): Section 4.4 and section 5 of IEC 62301 with the clarification statements in Section 8 of the DOE test procedures.

4. *Adequacy of rounding guidance.* DOE invites comment on the incorporation of the IEC Standard 62301 (Second Edition) rounding guidance into the DOE test procedures' proposed measurements of $P_{W,SB}$ and $P_{W,OFF}$.

5. *Adequacy of existing sampling plans.* DOE invites comment on the application of the existing DOE sampling plans to standby mode and off mode measures of energy consumption, in particular by the newly proposed metrics $P_{W,SB}$ and $P_{W,OFF}$.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 30, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of Chapter II, Subchapter D of Title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.3 is amended by:

a. Removing, in paragraph (l)(1), the words ''Appendix N'';

b. Adding a new paragraph (1)(2) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(l) * * *

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(2) International Electrotechnical Commission (IEC) Standard 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power* (second edition, February 2011), IBR approved for Appendix G, N, O, and P to Subpart B.

* * * * *

Appendix N [Amended]

3. Appendix N to subpart B of part 430 is amended:

a. In the second sentence of the introductory note by removing ''April 18, 2011'' and adding in its place ''(*date 180 days after publication of the test procedure final rule*)'':

b. In section 2.4., by removing the phrase ''(First Edition 2005–06)'' and adding in its place ''(Second Edition 2011)'';

c. In section 8.6.1, by removing after the first sentence the parenthetical expression ''(P_{SB})'' and adding in its place the parenthetical expression ''($P_{W,SB}$)'' and by removing in the third sentence, the phrase ''4.5 Power measurement accuracy'' and adding in its place, the phrase ''4.4 Power measurement instruments'' and by adding a sentence at the end of the section which reads: ''The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'';

d. In section 8.6.2., by removing after the first sentence the parenthetical expression ''(P_{OFF})'' and adding in its place the parenthetical expression ''($P_{W,OFF}$)'', by removing in the third sentence, the phrase ''4.5 Power measurement accuracy'' and adding in its place the phrase ''4.4 Power measurement instruments'', and by removing in the last sentence the equation ''$P_{OFF} = P_{SB}$'' and adding in its place the equation ''$P_{W,OFF} = P_{W,SB}$'', and by adding a sentence at the end of the section which reads: ''The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'';

e. In section 9.0., by removing the expression ''P_{OFF}'' and adding in its place ''$P_{W.OFF}$'', and by removing the expression ''P_{SB}'' and adding in its place ''$P_{W.SB}$'', and ;

f. In section 10.9., by replacing in both the equation and defined values the expressions ''P_{SB}'' and ''P_{OFF}'' with ''$P_{W,SB}$'' and $P_{W,OFF}$'' respectively.

[FR Doc. 2011–23286 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0013]

RIN 1904–AB95

Energy Conservation Program for Consumer Products: Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (Standby Mode and Off Mode)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: On August 30, 2010, the U.S. Department of Energy (DOE) published a notice of proposed rulemaking (NOPR) in which DOE proposed to amend, where appropriate, its test procedures for residential water heaters, direct heating equipment, and pool heaters to include provisions for measuring standby mode and off mode energy

consumption, as required by the Energy Independence and Security Act of 2007 (EISA 2007). (DOE notes that the test procedure and metric for residential water heaters currently address and incorporate standby mode and off mode energy consumption, so DOE has tentatively concluded that no related amendments are required for those products.). These proposed test procedure amendments are primarily based on provisions of the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power,'' that DOE would incorporate by reference into its regulations. The NOPR relied upon IEC Standard 62301 (First Edition 2005–06), which was the most current version at the time. However, the IEC recently adopted a new version of its standard which includes a number of methodological changes designed to increase accuracy while reducing testing burden. DOE's review suggests that this document represents an improvement over the prior version. Accordingly, today's supplemental notice of proposed rulemaking (SNOPR) proposes to incorporate the latest edition of that standard—IEC Standard 62301 (Second Edition 2011).

DATES: DOE will accept comments, data, and information regarding this SNOPR no later than October 13, 2011. For details, see section V, ''Public Participation,'' of this SNOPR.

ADDRESSES: Any comments submitted must identify the SNOPR on Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters, and provide the docket number EERE–2009–BT–TP–0013 and/or regulatory information number (RIN) 1904–AB95. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: EISA–Heat-Equip-2010–TP–0013@ee.doe.gov* Include docket number EERE–2009–BT–TP–0013 or RIN 1904–AB95 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies. Otherwise, please submit one signed paper original.

No telefacsimilies (faxes) will be accepted. For detailed instructions on submitting comments and additional information on the rulemaking process, see section V, ''Public Participation,'' of this document.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=10;po=0;D=EERE-2009-BT-TP-0013.* The *www.regulations.gov* web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for further information on how to submit comments through *www.regulations.gov.*

For further information on how to submit a comment or review other public comments and the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC, 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

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I. Background and Authority

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) sets forth a variety of provisions designed to improve energy efficiency and established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, including residential water heaters, direct heating equipment, and pool heaters (all of which are referenced below as ''covered products'').[2] (42 U.S.C. 6292(a)(4), (9), and (11); 42 U.S.C. 6295(e))

Under the Act, this program consists essentially of three parts: (1) Testing; (2) labeling; and (3) establishing Federal energy conservation standards. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with applicable energy conservation standards adopted pursuant to EPCA and for representing the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures in any enforcement action to determine whether covered products comply with these energy conservation standards. (42 U.S.C. 6295(s)) Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures for DOE's adoption and amendment of such test procedures. Specifically, EPCA provides that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[2] All references to EPCA in this rulemaking refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

* * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary [of Energy], and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3)) In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine ''to what extent, if any, the proposed test procedure would alter the measured energy efficiency * * * of any covered product as determined under the existing test procedure.'' (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that: (1) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (2) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

Under the statutory provisions adopted by EISA 2007, any such amendment must consider the most current versions of IEC Standard 62301, *Household electrical appliances—Measurement of standby power,* and IEC Standard 62087, *Methods of measurement for the power consumption of audio, video, and related equipment.*[3] *Id.* At the time of the enactment of EISA 2007, the most current versions of these standards were IEC Standard 62301 (First Edition 2005–06) and IEC Standard 62087 (Second Edition 2008–09).

DOE's current test procedures for residential water heaters, direct heating equipment, and pool heaters are found at 10 CFR part 430, subpart B in Appendix E (water heaters), Appendices G and O (direct heating equipment), and Appendix P (pool heaters). These procedures establish a means for determining measures of energy consumption, including, where appropriate, energy efficiency. On August 30, 2010, DOE published its NOPR (hereafter referred to as the August 2010 NOPR) to consider amendments to the test procedures for residential water heaters, direct heating equipment, and pool heaters to account for the standby mode and off mode energy consumption of these products, as required by EISA 2007. 75 FR 52892 (Aug. 30, 2010). For a more detailed procedural history of the test procedure rulemaking to address standby mode and off mode energy consumption of residential water heaters, direct heating equipment, and pool heaters, please consult the August 2010 NOPR. *Id.* at 52893–95. This SNOPR builds upon and further modifies DOE's proposal, as presented in the August 2010 NOPR.

II. Summary of the Supplemental Proposed Rule

As discussed above, EISA 2007 amended EPCA to require that DOE test procedures for covered products include provisions for measuring standby mode and off mode energy consumption. (42 U.S.C. 6295(gg)(2)(A)) EISA 2007 requires consideration of the most current version of IEC Standard 62301 to support the added measurement provisions. *Id.* In the August 2010 NOPR, DOE proposed to amend its test procedures to prescribe the use of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Publication 62301 First Edition 2005–06,'' which was the most current version of this standard at the time DOE proposed its incorporation into the DOE regulations. Since that time, a second edition of the standard has been developed and finalized. In the abstract of the January 27, 2011 final publication, the IEC reports that the second edition would provide practical improvement and possible reduction in testing burden, and, as discussed in further detail below, commenters on the August 2010 NOPR expressed similar views. DOE has reviewed IEC Standard 62301 (Second Edition) and agrees that the second edition does provide for improvement in terms of measurement accuracy and possible reduced testing burden. Accordingly, in today's NOPR, DOE is proposing to incorporate into DOE's test procedure regulations the second edition of the IEC 62301 standard in its entirety, and to call out the appropriate provisions of that standard in DOE's test procedure regulations for residential direct heating equipment and pool heaters. (Because DOE continues to believe that the current test procedure for residential water heaters fully addresses standby mode and off mode energy consumption, this SNOPR proposes no amendments to the test procedure for these products.)

III. Discussion

A. Use of IEC Standard 62301 (Second Edition), ''Household Electrical Appliances—Measurement of Standby Power''

As noted above, EPCA, as amended by EISA 2007, requires that DOE test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. (42 U.S.C. 6295(gg)(2)(A)) The August 2010 NOPR would reference IEC Standard 62301 (First Edition) to obtain the standby mode and off mode measured wattage for residential direct heating equipment and pool heaters. The amended test procedures would use these measured wattages in calculations to accomplish the incorporation of standby mode and off mode energy consumption into the test procedures. DOE reviewed IEC Standard 62301 (First Edition) and tentatively concluded in its August 2010 NOPR (75 FR 52892 (August 30, 2010)) that it was generally applicable to residential direct heating equipment and pool heaters, although some clarification was needed. Specifically, because there is a possible conflict with voltage and ambient temperature provisions of the existing procedures, the August 2010 NOPR clarified where the IEC provisions apply and where the existing test procedure provisions apply. With this clarification in place, the August 2010 NOPR proposed to

[3] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods of measuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's proposal.

reference IEC Standard 62301 (First Edition) for obtaining the standby mode and off mode wattage measurements for residential direct heating equipment and pool heaters.

In written comments on the August 2010 NOPR, the Air-Conditioning, Heating, and Refrigeration Institute (AHRI) and the Association of Home Appliance Manufacturers (AHAM) asked that DOE consider referencing a revised version of the industry standard—IEC Standard 62301 (Second Edition). Both commenters cited technical improvements in the latter version that they expect would enhance repeatability and reproducibility of test results. (AHRI, No. 13 at p. 1, AHAM, No. 15 at p. 2) AHAM additionally commented that the Final Draft International Standard (FDIS) version of IEC Standard 62301 would be preferable to the Committee Draft for Vote (CDV) version of the standard. (AHAM, No. 15 at p. 2) The CDV of IEC Standard 62301 was released on August 28, 2009. On this matter, DOE notes that because IEC has now formally adopted IEC Standard 62301 (Second Edition), DOE is no longer considering earlier draft versions. In any event, the adopted version is consistent with the preference suggested by AHAM.

As noted above, since the time of the August 2010 NOPR, the IEC Standard 62301 technical committee has revised its standard. Specifically, a second edition of IEC Standard 62301 has been issued by IEC with a final publication date of January 27, 2011. This standard can be purchased at: *http://www.iec.ch/index.htm*. The IEC reports in its abstract to the January 27, 2011 final publication that the second edition provides technical improvement from the previous edition as follows:

- Greater detail in set-up procedures and introduction of stability requirements for all measurement methods to ensure that results are as representative as possible;
- Refinement of measurement uncertainty requirements for power measuring instruments, especially for more difficult loads with high crest factor and/or low power factor;
- Updated guidance on product configuration, instrumentation, and calculation of measurement uncertainty.

DOE has conducted a review of the second edition of IEC Standard 62301, which is consistent with the requirement in EISA 2007 for DOE to consider the most current version of that standard. (42 U.S.C. 6295(gg)(2)(A)) As a result of its investigation, DOE agrees with the commenters mentioned above (AHRI, No. 13 at p. 1, AHAM, No. 15 at p.2), that some improvement is possible with the incorporation of the second edition as it applies to the products that are the subject of this rulemaking. Specifically, IEC Standard 62301 (Second Edition) revises the standard's power measurement accuracy provisions, based on technical submissions that showed the inability to achieve the accuracy levels required by the first edition for certain operating regimes with the use of typical instrumentation. A more comprehensive specification of required accuracy is provided in IEC Standard 62301 (Second Edition) that depends upon the characteristics of the power being measured. The other major change in IEC Standard 62301 (Second Edition) that relates to the measurement of standby power consumption in covered products involves the specification of the stability criteria required to measure that power. IEC Standard 62301 (Second Edition) contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. The manufacturer is given a choice of measurement procedures, including less burdensome methods such as direct meter reading methods. The less burdensome methods are allowed if certain clearly described conditions are met. DOE believes that the changes incorporated in IEC Standard 62301 (Second Edition) would allow for use of less burdensome methods when appropriate and would ensure accurate measures of standby energy consumption over a range of operating conditions that may be present in residential heating products.

Accordingly, for the reasons discussed above, DOE is proposing to incorporate IEC Standard 62301 (Second Edition) into DOE's test procedure regulations for residential direct heating equipment and pool heaters. To this end, this supplemental notice is proposing to add a new reference in 10 CFR 430.3 for IEC Standard 62301 (Second Edition) alongside the existing reference to IEC Standard 62301 (First Edition). (Although DOE has tentatively determined that the provisions of IEC Standard 62301 (Second Edition) should be made applicable to residential direct heating equipment and pool heaters, the Department is currently maintaining the existing reference to IEC Standard 62301 (First Edition), because other products continue to reference that standard.) In addition, DOE is proposing a number of editorial changes in the various appendices (G, O, P) which are necessary for residential direct heating equipment and pool heaters to allow for the correct referencing. For example, the definition sections of the individual appendices need to define IEC Standard 62301 as the second edition instead of the first edition. Also, there are some section numbering differences in the second edition which impact the text of the measurement provisions of DOE's various test procedures. Finally, as an editorial improvement, DOE is unifying the standby mode and off mode nomenclature used in the various test procedures. Specifically, the uniform nomenclature would use the expressions: $P_{W,SB}$ and $P_{W,OFF}$ in all test procedures. All of these proposed changes are reflected in the regulatory text which can be found at the end of this SNOPR.

B. Rounding Guidance

IEC Standard 62301 (Second Edition) includes specific guidance on rounding for the various wattage measurements. For clarification purposes, DOE is proposing to include the IEC rounding guidance in this supplemental proposal. Specifically, it is proposed that the following sentence be added to the measurement provisions of the proposed regulatory text where appropriate: ''The recorded standby power ($P_{W,SB}$) (or off mode power $P_{W,OFF}$, where appropriate) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'' DOE requests comments as to the adequacy and appropriateness of this additional clarification.

C. Sampling Plans for Standby Mode and Off Mode

Currently, sampling plans for the products that are the subject of this proposal are located in 10 CFR 429.17 for water heaters, 10 CFR 429.22 for direct heating equipment, and 10 CFR 429.24 for pool heaters. These provisions specify the number of units of each basic model that a manufacturer must test to calculate the certified ratings for compliance and representation purposes. The sampling procedures provide that '' * * * a sample of sufficient size shall be randomly selected and tested to ensure [compliance].'' *Id.* For these products, a minimum of two units must be tested in order for a manufacturer to calculate the certified rating for each basic model, make representations about the basic model's energy consumption or efficiency, and certify compliance to the Department. This minimum is implicit in the requirement to calculate a mean—an average—which requires at least two values, and is consistent with the

general rule articulated under 10 CFR 429.11(b). Under no circumstances is a sample size of one (1) authorized. Manufacturers may need to test more than two samples depending on the variability of their sample.

Consequently, DOE is proposing here that the existing DOE sampling plans for residential water heaters, direct heating equipment, and pool heaters be applied to the measurement of standby mode and off mode energy consumption. Specifically, the proposed wattage measurements (*i.e.,* $P_{W,SB}$ and $P_{W,OFF}$), as well as any other measure of energy consumption based on these values, would be subject to those sampling plan provisions contained in 10 CFR 429.22 for direct heating equipment and 10 CFR 429.24 for pool heaters. (Note: No added measures of energy consumption are proposed for residential water heaters.) Clarifying further, the wattage measurements would be subject to the sampling provisions applicable to measures of energy consumption.[4] DOE invites comment on the application of the existing DOE sampling plans to standby mode and off mode measures of energy consumption, in particular the newly proposed metrics $P_{W,SB}$ and $P_{W,OFF}$.

D. Effective Date and Compliance Date

The effective date for these amendments would be 30 days after publication of the test procedure final rule in the **Federal Register**. At that time, representations may be made using the new metrics $P_{W,SB}$ and $P_{W,OFF}$ and any other measure of energy consumption which depends on $P_{W,SB}$ and $P_{W,OFF,}$ which were adopted pursuant to these amendments. The compliance date for any representations relating to standby mode and off mode is 180 days from date of publication of the test procedure final rule in the **Federal Register**; on or after that date, any such representations must be based upon results generated under these test procedures and sampling plans.

However, DOE would clarify that use of these proposed test procedure amendments related to standby mode and off mode energy consumption would not be required for purposes of energy conservation standards compliance, until the compliance date of the next standards final rule that addresses standby mode and off mode.

E. Compliance With Other EPCA Requirements

EPCA requires that ''[a]ny test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use * * * or estimated annual operating cost of a covered product during a representative average use cycle or period of use * * * and shall not be unduly burdensome to conduct.'' (42 U.S.C. 6293(b)(3))

Today's supplemental proposed amendments to the DOE test procedures for direct heating equipment and pool heaters would incorporate the most current version of IEC Standard 62301 in lieu of the previous version. DOE believes these new provisions would produce valid results, while reducing testing burden. Accordingly, this proposal would meet the requirements of 42 U.S.C. 6293(b)(3).

In addition, DOE has determined that these amendments would not alter the measured efficiency used by the current energy conservation standard for these products. (42 U.S.C. 6293(e)(1)) Consistent with its mandate pursuant to EISA 2007, DOE is clarifying in this SNOPR that use of these proposed test procedure amendments related to standby mode and off mode energy consumption would not be required for purposes of energy conservation standards compliance, until the compliance date of the next standards final rule that addresses standby mode and off mode. That standards rulemaking will factor in these new test procedure amendments when setting an appropriate standard level. Accordingly, no modifications to the applicable energy conservation standards are required at this time. (42 U.S.C. 6293(e)(2))

IV. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the August 30, 2010 NOPR remain unchanged for this SNOPR. These determinations are set forth in the August 30, 2010 NOPR. 75 FR 52892, 52901–03. If anything, the additional changes proposed in this SNOPR (*e.g.,* different options for stability criteria) would be expected to further reduce testing burden beyond what is specified in the August 30, 2010 NOPR.

V. Public Participation

DOE will accept comments, data, and information regarding the SNOPR no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's e-mail address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Stakeholders should avoid the use of special characters or any form of encryption, and wherever possible comments should include the electronic signature of the author. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed paper original. No telefacsimiles (faxes) will be accepted.

Pursuant 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: One copy of the document that includes all of the information believed to be confidential, and one copy of the document with that information deleted. DOE will determine the confidential status of the information and treat it accordingly.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include the following: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information was previously made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person that would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

VI. Issues on Which DOE Seeks Comment

Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in receiving comments and views of interested parties on the following issues:

1. *Appropriateness of measurement instrument uncertainty requirements of IEC Standard 62301 (Second Edition).* DOE invites comment on the appropriateness of the measurement instrument uncertainty requirements specified in Section 4.4 of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power

[4] In general, DOE presents sampling calculations for both energy consumption and energy efficiency standards throughout 10 CFR part 429. Consumers prefer lower values for measures of energy consumption (*i.e.,* thereby ensuring that the appliance in question uses less energy, which would translate into lower energy bills). Conversely, consumers generally prefer higher values for measures of energy efficiency (*i.e.,* thereby ensuring that the appliance in question performs its operation using less energy over a given period of time, which again would translate into lower energy bills).

consumption for direct heating equipment and pool heaters.

2. *Adequacy of the measurement approach described in IEC Standard 62301 (Second Edition).* DOE invites comments on the adequacy of the measurement provisions described in Section 5 of IEC Standard 62301 (Second Edition) to measure standby mode and off mode power consumption for direct heating equipment and pool heaters.

3. *Adequacy of clarification statements.* DOE invites comments on the adequacy of incorporating into DOE regulations the following specific provisions from IEC Standard 62301 (Second Edition): Section 4.4 and Section 5 of IEC 62301, along with the clarification statements in the DOE test procedures

4. *Adequacy of rounding guidance.* DOE invites comment on the incorporation of the IEC Standard 62301 (Second Edition) rounding guidance into the DOE test procedures' proposed measurements of $P_{W,SB}$ and $P_{W,OFF}$.

5. *Adequacy of existing sampling plans.* DOE invites comment on the application of the existing DOE sampling plans to standby mode and off mode measures of energy consumption, in particular the newly proposed metrics $P_{W,SB}$ and $P_{W,OFF}$.

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this supplemental notice of proposed rulemaking.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 30, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend part 430 of Chapter II, Subchapter D of Title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.3 is amended by:

a. Revising paragraph (c)(13) to read as follows;

b. Adding a new paragraph (1)(2) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(c) * * *

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(13) ANSI Z21.56—2006 (''ANSI Z21.56''), Standard for Gas-Fired Pool Heaters, approved December 13, 2005, IBR approved for Appendix P to Subpart B.

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(1) * * *

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(2) International Electrotechnical Commission (IEC) Standard 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power* (second edition, February 2011), IBR approved for Appendix G, O, and P to Subpart B.

* * * * *

§ 430.23 [Amended]

3. Section 430.23 is amended by:

a. Removing the words ''section 4.2 of appendix P'' in paragraph (p)(1)(i) and adding in their place ''section 5.2 of appendix P'', and

b. Removing the words ''section 4.3 of appendix P'' in paragraph (p)(1)(ii) and adding in their place ''section 5.3 of appendix P''.

* * * * *

4. Appendix G to Subpart B of Part 430 is amended in section 2 by adding new sections 2.3, 2.3.1, 2.4, and 2.4.1 to read as follows:

* * * * *

Appendix G to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Unvented Home Heating Equipment

* * * * *

2. *Testing and measurements.*

* * * * *

2.3 *Pilot light measurement.* Except as provided in section 2.3.1, measure the energy input rate to the pilot light (Q_p), with an error no greater than 3 percent, for unvented heaters so equipped.

2.3.1 The measurement of Q_p is not required for unvented heaters where the pilot light is designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the gas supply to the burner(s) and the pilot light). This provision applies only if an instruction to turn off the unit is provided on the heater near the gas control valve (*e.g.,* by label) by the manufacturer.

2.4 *Electrical standby mode power measurement.* Except as provided in section 2.4.1, for all electric heaters and unvented heaters with electrical auxiliaries, measure the standby power ($P_{W,SB}$) in accordance with the procedures in the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Publication 62301 second edition, February 2011 (incorporated by reference; see § 430.3), with all electrical auxiliaries not activated. Voltage shall be as specified in section 1.4.1 *Electrical supply* of this appendix. The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

2.4.1 The measurement of $P_{W,SB}$ is not required for heaters designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the electrical supply to the heater). This provision applies only if an instruction to turn off the unit is provided on the heater (*e.g.,* by label) by the manufacturer.

* * * * *

5. Appendix O to Subpart B of Part 430 is amended by:

a. Adding a Note after the heading;

b. Redesignating sections 1.1 through 1.32 as follows:

Old sections	New sections
1.1 to 1.14	1.2 to 1.15
1.15 to 1.19	1.17 to 1.21
1.20 and 1.21	1.23 and 1.24
1.22 to 1.25	1.26 to 1.29
1.26 to 1.32	1.31 to 1.37

c. Adding new sections 1.1, 1.16, 1.22, 1.25 and 1.30;

d. Adding new sections 3.7, 3.7.1, and 3.7.2; and

e. Revising sections 4.6.3 and 4.6.3.1, and adding a new section 4.7.

The additions and revisions read as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

Note: The procedures and calculations that refer to standby mode and off mode energy consumption, (*i.e.,* sections 3.7 and 4.7 of this appendix O) need not be performed to determine compliance with energy conservation standards for vented heaters at this time. However, any representation related to standby mode and off mode energy consumption of these products made after corresponding revisions to the vented home heating equipment test procedure must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For vented home heating equipment, the statute requires that after July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1.0. Definitions

1.1 ''Active mode'' means the condition during the heating season in which the vented heater is connected to the power source, and either the burner or any electrical auxiliary is activated.

* * * * *

1.16 ''IEC 62301'' means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 second edition, February 2011. (incorporated by reference; see § 430.3)

* * * * *

1.22 ''Off mode'' means the condition during the non-heating season in which the vented heater is connected to the power source, and neither the burner nor any electrical auxiliary is activated.

* * * * *

1.25 ''Seasonal off switch'' means the control device, such as a lever or toggle, on the vented heater that affects a difference in off mode energy consumption as compared to standby mode consumption.

* * * * *

1.30 ''Standby mode'' means the condition during the heating season in which the vented heater is connected to the power source, and neither the burner nor any electrical auxiliary is activated.

* * * * *

3.0 Testing and Measurements.

* * * * *

3.7 Measurement of Electrical Standby Mode and Off Mode Power

3.7.1 *Standby power measurements.* With all electrical auxiliaries of the vented heater not activated, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301 (incorporated by reference, see § 430.3), except that section 2.9, *Room ambient temperature,* and the voltage provision of section 2.3.5, *Electrical supply,* of this appendix shall apply in lieu of the IEC 62301 corresponding sections 4.2, *Test room,* and 4.3, *Power supply.* Clarifying further, the IEC 62301 sections 4.4, *Power measuring instruments,* and section 5, *Measurements,* shall apply in lieu of section 2.8, *Energy flow instrumentation,* of this appendix. Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

3.7.2 *Off mode power measurement.* If the unit is equipped with a seasonal off switch or there is an expected difference between off mode power and standby mode power, measure off mode power ($P_{W,OFF}$) in accordance with the standby power procedures in IEC 62301 (incorporated by reference, see § 430.3), except that section 2.9, *Room ambient temperature,* and the voltage provision of section 2.3.5, *Electrical supply,* of this appendix shall apply in lieu of the IEC 62301 corresponding sections 4.2, *Test room,* and 4.3, *Power supply.* Clarifying further, the IEC 62301 sections 4.4, *Power measuring instruments,* and section 5, *Measurements,* shall apply in lieu of section 2.8, *Energy flow instrumentation,* of this appendix. Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby mode power, let $P_{W,OFF} = P_{W,SB}$, in which case no separate measurement of off mode power is necessary. The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

4.0 Calculations

* * * * *

4.6.3 *Average annual auxiliary electrical energy consumption for vented heaters.* For vented heaters with single-stage controls or manual controls, the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$$E_{AE} = BOH_{SS}P_E + E_{SO}$$

Where:

BOH_{SS} = as defined in 4.6.1 of this appendix
P_E = as defined in 3.1.3 of this appendix
E_{SO} = as defined in 4.7 of this appendix

4.6.3.1 For vented heaters with two-stage or modulating controls, E_{AE} is defined as:

$$E_{AE} = (BOH_R + BOH_H)P_E + E_{SO}$$

Where:

BOH_R = as defined in 4.6.1 of this appendix
BOH_H = as defined in 4.6.1 of this appendix
P_E = as defined in 3.1.3 of this appendix
E_{SO} = as defined in 4.7 of this appendix

* * * * *

4.7 *Average annual electric standby mode and off mode energy consumption.* Calculate the annual electric standby mode and off mode energy consumption, E_{SO}, defined as, in kilowatt-hours:

$$E_{SO} = ((P_{W,SB} * (4160—BOH)) + (P_{W,OFF} * 4600)) * K$$

Where:

$P_{W,SB}$ = vented heater standby mode power, in watts, as measured in section 3.7
4160 = average heating season hours per year
$P_{W,OFF}$ = vented heater off mode power, in watts, as measured in section 3.7
4600 = average non-heating season hours per year
K = 0.001 kWh/Wh, conversion factor for watt-hours to kilowatt-hours.
BOH = burner operating hours as calculated in section 4.6.1 where for single-stage controls or manual controls vented heaters BOH = BOH_{SS} and for vented heaters equipped with two-stage or modulating controls BOH = (BOH_R + BOH_H).

6. Appendix P to Subpart B of Part 430 is revised to read as follows:

Appendix P to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 2.2, 2.3, 3.2, 4.2, 4.3, 5.3 equation (3), and 5.4 of this appendix P) need not be performed to determine compliance with energy conservation standards for pool heaters at this time. However, any representations related to standby mode and off mode energy consumption of these products made after corresponding revisions to the pool heaters test procedure must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For pool heaters, the statute requires that after July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. Definitions

1.1. *Active mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and the main burner, electric resistance element, or heat pump is activated to heat pool water.

1.2 *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301, second edition, February 2011. (incorporated by reference; see § 430.3)

1.3 *Off mode* means the condition during the pool non-heating season in which the pool heater is connected to the power source, and neither the main burner, electric resistance elements, nor heat pump is activated.

1.4 *Seasonal off switch* means a switch present on the pool heater that effects a difference in off mode energy consumption as compared to standby mode energy consumption.

1.5 *Standby mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and neither the main burner, electric resistance elements, nor heat pump is activated.

Test Method

2.1 *Active mode.* The test method for testing pool heaters in active mode is as specified in ANSI Z21.56 (incorporated by reference; see § 430.3).

2.2 *Standby mode.* The test method for testing the energy consumption of pool heaters in standby mode is as described in sections 3 through 5 below.

2.3 *Off mode.*

2.3.1 *Pool heaters with a seasonal off switch.*

For pool heaters with a seasonal off switch, no off-mode test is required.

2.3.2 *Pool heaters without a seasonal off switch.*

For pool heaters without a seasonal off switch, the test method for testing the energy consumption of the pool heater is as described in sections 3 through 5 below.

3. Test Conditions

3.1 *Active mode.* Establish the test conditions specified in section 2.10 of ANSI

Z21.56 (incorporated by reference; see § 430.3).

3.2 *Standby mode and off mode.* Following the conclusion of the 30-minute active mode test described in section 3.1, reduce the thermostat setting to a low enough temperature to put the pool heater into standby mode. Reapply the energy sources and operate the pool heater in standby mode for 60 minutes.

4. Measurements

4.1 *Active mode.* Measure the quantities delineated in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The measurement of energy consumption for oil-fired pool heaters in Btu is to be carried out in appropriate units (*e.g.,* gallons).

4.2 *Standby mode.* Record the average electric power consumption during the standby mode test, $P_{W,SB,}$ in W, in accordance with section 5 of IEC 62301 (incorporated by reference; see § 430.3) and the fossil fuel energy consumption during the standby test, Q_p, in Btu. Ambient temperature and voltage specifications of ANSI Z21.56 (incorporated by reference; see § 430.3) shall apply to this standby mode testing. The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

4.3 *Off mode.*

4.3.1 *Pool heaters with a seasonal off switch.* For pool heaters with a seasonal off switch, the average electric power consumption during the off mode, $P_{W,OFF}$ = 0, and the fossil fuel energy consumed during the off mode, Q_{off} = 0.

4.3.2 *Pool heaters without a seasonal off switch.* Record the average electric power consumption during the standby/off mode test, $P_{W,OFF}$ (= $P_{W,SB}$), in W, in accordance with section 5 of IEC 62301 (incorporated by reference; see § 430.3), and the fossil fuel energy consumption during the off mode test, Q_{off} (= Q_p), in Btu. Ambient temperature and voltage specifications of ANSI Z21.56 (incorporated by reference; see § 430.3) shall apply to this off mode testing. The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

5. Calculations

5.1 *Thermal efficiency.* Calculate the thermal efficiency, E_t (expressed as a percent), as specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The expression of fuel consumption for oil-fired pool heaters shall be in Btu.

5.2 *Average annual fossil fuel energy for pool heaters.* The average annual fuel energy for pool heaters, E_F, is defined as:

$E_F = BOH\ Q_{IN} + (POH - BOH)Q_{PR} + (8760 - POH)\ Q_{off,R}$

Where:

BOH = average number of burner operating hours = 104 h

POH = average number of pool operating hours = 4464 h

Q_{IN} = rated fuel energy input as defined according to section 2.10.1 or section 2.10.2 of ANSI Z21.56 (incorporated by reference; see § 430.3), as appropriate.

Q_{PR} = average energy consumption rate of continuously operating pilot light, if employed, = (Q_P/1 h)

Q_P = energy consumption of continuously operating pilot light, if employed, as measured in section 4.2, in Btu

8760 = number of hours in one year

$Q_{off,R}$ = average off mode fossil fuel energy consumption rate = Q_{off}/(1 h)

Q_{off} = off mode energy consumption as defined in section 4.3 of this appendix

5.3 *Average annual auxiliary electrical energy consumption for pool heaters.* The average annual auxiliary electrical energy consumption for pool heaters, E_{AE}, is expressed in Btu and defined as:

(1) $E_{AE} = E_{AE,active} + E_{AE,standby,off}$

(2) $E_{AE,active}$ = BOH * PE

(3) $E_{AE,standby,off} = (POH - BOH)\ P_{W,SB}(Btu/h) + (8760 - POH)\ P_{W,OFF}(Btu/h)$

Where:

$E_{AE,active}$ = auxiliary electrical consumption in the active mode

$E_{AE,standby,off}$ = auxiliary electrical consumption in the standby mode and off mode

PE = $2E_c$, if heater is tested according to section 2.10.1 of ANSI Z21.56 (incorporated by reference; see § 430.3), in Btu/h = 3.412 PE_{rated}, if heater is tested according to section 2.10.2 of ANSI Z21.56, in Btu/h

E_c = electrical consumption of the heater (converted to equivalent unit of Btu), including the electrical energy to the recirculating pump if used, during the 30-minute thermal efficiency test, as defined in section 2.10.1 of ANSI Z21.56, in Btu per 30 min.

2 = conversion factor to convert unit from per 30 min. to per h.

PE_{rated} = nameplate rating of auxiliary electrical equipment of heater, in Watts

BOH = as defined in 5.2 of this appendix

POH = as defined in 5.2 of this appendix

$P_{W,SB}$ (Btu/h) = electrical energy consumption rate during standby mode expressed in Btu/h = 3.412 $P_{W,SB}$, Btu/h

$P_{W,SB}$ = as defined in 4.2 of this appendix

$P_{W,OFF}$ (Btu/h) = electrical energy consumption rate during off mode expressed in Btu/h = 3.412 $P_{W,OFF}$, Btu/h

$P_{W,OFF}$ = as defined in 4.3 of this appendix

5.4 Integrated thermal efficiency.

5.4.1 Calculate the seasonal useful output of the pool heater as:

$E_{OUT} = BOH[(E_t/100)(Q_{IN} + PE)]$

Where:

BOH = as defined in 5.2 of this appendix

E_t = thermal efficiency as defined in 5.1 of this appendix

Q_{IN} = as defined in 5.2 of this appendix

PE = as defined in 5.3 of this appendix

100 = conversion factor, from percent to fraction

5.4.2 Calculate the annual input to the pool heater as:

$E_{IN} = E_F + E_{AE}$

Where:

E_F = as defined in 5.2 of this appendix

E_{AE} = as defined in 5.3 of this appendix

5.4.3 Calculate the pool heater integrated thermal efficiency (TE_I) (in percent).

$TE_I = 100(E_{OUT}/E_{IN})$

Where:

E_{OUT} = as defined in 5.4.1 of this appendix

E_{IN} = as defined in 5.4.2 of this appendix

100 = conversion factor, from fraction to percent

[FR Doc. 2011–23089 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0867 Airspace Docket No. 11–AAL–16]

Proposed Amendment of Class E Airspace; Anaktuvuk Pass, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revise Class E airspace at Anaktuvuk Pass, AK. The creation of two standard instrument approach procedures at the Anaktuvuk Pass Airport has made this action necessary to enhance safety and management of Instrument Flight Rules (IFR) operations.

DATES: Comments must be received on or before October 28, 2011.

ADDRESSES: Send comments on the proposal to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2011–0867/ Airspace Docket No. 11–AAL–16 at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Service Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue,

Box 14, Anchorage, AK 99513–7587; *telephone number:* (907) 271–5898; *fax:* (907) 271–2850; *e-mail: Martha.ctr.Dunn@faa.gov. Internet address: http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–0867/Airspace Docket No. 11–AAL–16.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E5 airspace at the Anaktuvuk Pass Airport in Anaktuvuk Pass, AK, to accommodate the creation of two standard instrument approach procedures at the Anaktuvuk Pass Airport. These standard instrument approach procedures were created in 2009 and the need for airspace upward from 1200 feet above the surface was only recently identified. This amended Class E airspace will provide adequate controlled airspace upward from 700 feet and 1200 feet above the surface, for the safety and management of IFR operations at the Anaktuvuk Pass Airport. This action also brings the coordinates for the Anaktuvuk Pass airport and the Anaktuvuk Pass NDB into agreement with those coordinates on file with the National Flight Data Center.

Class E airspace designated as 700 and 1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9U, Airspace Designations and Reporting Points, signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The airspaces listed in this document would be subsequently published in that Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it proposes to revise Class E airspace at the Anaktuvuk Pass Airport, Anaktuvuk, AK, and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9U, *Airspace Designations and Reporting Points,* signed August 18, 2010, and effective September 15, 2010, is to be amended as follows:

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

AAL AK E5 Anaktuvuk Pass AK [Revised]

Anaktuvuk Pass Airport, AK
(Lat. 68°08′01″ N., long. 151°44′36″ W.)
Anaktuvuk Pass NDB
(Lat. 68°08′12″ N., long. 151°44′39″ W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of the Anaktuvuk Pass Airport, AK and within 8 miles northwest and 4 miles southeast of the Anaktuvuk Pass NDB 240° bearing, extending from the 9.3-mile radius to 16.7 miles southwest of the Anaktuvuk Pass Airport, AK and that airspace extending upward from 1,200 feet above the surface within a 66-mile radius of the Anaktuvuk Pass Airport, AK.

Issued in Anchorage, AK, on September 1, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services.

[FR Doc. 2011–23288 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0837; Airspace Docket No. 11–ANM–17]

Proposed Modification of Class E Airspace; Driggs, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Driggs-Reed Memorial Airport, Driggs, ID. Controlled airspace is necessary to accommodate aircraft using Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Driggs-Reed Memorial Airport, Driggs, ID. This action also would note the airport name change and adjust the geographic coordinates of the airport. The FAA is proposing this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at Driggs-Reed Memorial Airport, Driggs, ID.

DATES: Comments must be received on or before October 28, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2011–0837; Airspace Docket No. 11–ANM–17, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2011–0837 and Airspace Docket No. 11–ANM–17) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0837 and Airspace Docket No. 11–ANM–17''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by modifying Class E airspace at Driggs, ID, to accommodate aircraft using RNAV (GPS) standard instrument approach procedures at Driggs-Reed Memorial Airport. The airport name also would be corrected from Teton Peaks/Driggs Municipal Airport to Driggs-Reed Memorial Airport, and the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database. This action would enhance the safety and management of IFR operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (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); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the

airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish additional controlled airspace at Driggs-Reed Memorial Airport, Driggs, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM ID E5 Driggs, ID [Modified]

Driggs-Reed Memorial Airport, ID
(Lat. 43°44′34″ N., long. 111°05′48″ W.)

That airspace extending upward from 700 feet above the surface within a 10.4-mile radius of Driggs-Reed Memorial Airport, and within 4.5 miles either side of the 344° bearing of the airport extending from the 10.4-mile radius to 14.8 miles northwest of Driggs-Reed Memorial Airport, and within 2 miles west and 5.4 miles east of the 208° bearing of the airport extending from the 10.4-mile radius to 13 miles south of Driggs-Reed Memorial Airport.

Issued in Seattle, Washington, on September 1, 2011.

Robert Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. 2011–23289 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA–2010–0060]

RIN 0960–AH26

Expedited Vocational Assessment Under the Sequential Evaluation Process

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to give adjudicators the discretion to proceed to the fifth step of the sequential evaluation process for assessing disability when we have insufficient information about a claimant's past relevant work history to make the findings required for step 4. If an adjudicator finds at step 5 that a claimant may be unable to adjust to other work existing in the national economy, the adjudicator would return to the fourth step to develop the claimant's work history and make a finding about whether the claimant can perform his or her past relevant work. This proposed new process would not disadvantage any claimant or change the ultimate conclusion about whether a claimant is disabled, but it would promote administrative efficiency and help us make more timely disability determinations and decisions.

DATES: To ensure that your comments are considered, we must receive them no later than November 14, 2011.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2010–0060 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the *Search* function of the webpage to find docket number SSA–2010–0060 and then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately as we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Janet Truhe, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–7203. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Current Sequential Evaluation Process

We use a five-step ''sequential evaluation process'' [1] to decide whether a claimant is disabled [2] when he or she applies for disability benefits under title II of the Social Security Act (Act) or Supplemental Security Income payments based on disability under title XVI of the Act. We follow each step in a set order. If we can find that a claimant is disabled or not disabled at a step, we do not go on to the next step.[3] If we cannot find that a claimant is disabled or not disabled at a step, we evaluate the claim at the next step in the sequential evaluation process.[4] The following is a general overview of the five steps.

At step 1, we consider whether a claimant is working and whether the work qualifies as ''substantial gainful

[1] 20 CFR 404.1520 and 416.920.

[2] A claimant is disabled if he or she is unable to do any substantial gainful activity because he or she has a medically determinable physical or mental impairment that can be expected to result in death or can be expected to last for a period of at least 12 continuous months. See 42 USC 423(d)(1)(A) and 1382c(a)(3)(A); 20 CFR 404.1505 and 416.905.

[3] 20 CFR 404.1520(a)(4) and 416.920(a)(4).

[4] *Id.*

activity.'' [5] If the claimant is doing substantial gainful activity, we will find that the claimant is not disabled, regardless of his or her medical condition, age, education, and work experience. If the claimant is not performing substantial gainful activity, we go to the second step of the sequential evaluation process.

At step 2, we consider whether a claimant has any ''severe'' impairment(s), which significantly limits his or her physical or mental ability to do basic work activities [6] and whether the impairment(s) meets the statutory duration requirement.[7] If the claimant's impairment(s) is not severe or if it does not meet the duration requirement, we will find that the claimant is not disabled.[8] If the claimant has a severe impairment(s) that meets the duration requirement, we go to the third step of the sequential evaluation process.

At step 3, we consider whether a claimant's impairment(s) meets or medically equals in severity an impairment(s) in the Listing of Impairments.[9] If the claimant's impairment(s) meets or medically equals in severity a listed impairment, we will find that the claimant is disabled. If the claimant does not have an impairment(s) that meets or medically equals in severity a listed impairment, we determine the claimant's residual functional capacity (RFC)[10] before we go to the fourth step of the sequential evaluation process.

At step 4, we consider whether a claimant can perform any of his or her past relevant work (either as the claimant actually performed it or as the work is generally performed in the national economy) given his or her RFC.[11] Past relevant work is work that a claimant did within the past 15 years, that qualifies as ''substantial gainful activity,'' and that lasted long enough for the claimant to learn to do it.[12] If we find that the claimant can perform any of his or her past relevant work, we will find that the claimant is not disabled. If the claimant cannot perform any of his or her past relevant work, we go to the fifth step of the sequential evaluation process because we do not allow claims at step 4.

At step 5, we consider whether a claimant's impairment(s) prevents him or her from doing any other work that exists in significant numbers in the national economy, considering his or her RFC and vocational factors (age,[13] education,[14] and work experience [15]).[16] If we find that the claimant cannot perform other work, we will find that the claimant is disabled. If we find that the claimant can perform other work, we will find that the claimant is not disabled.

How We Currently Obtain Evidence and Consider Disability at Step 4 of the Sequential Evaluation Process

At step 4, we determine whether a claimant can perform his or her past relevant work given his or her RFC. We require claimants to provide us with evidence about the work they performed during the relevant 15-year period. This evidence constitutes the claimant's work history.

We need information about each of the claimant's jobs, including but not limited to: (1) The claimant's job duties; (2) any tools, machinery or equipment he or she used; (3) the amount of walking, standing, sitting, lifting, and carrying the claimant did during the workday; (4) how long the claimant worked at each job; and (5) the physical and mental demands required of the job (either as the claimant actually performed it or as it is generally performed in the national economy).[17]

A claimant provides us with work history information on the Form SSA–3368 ''Disability Report—Adult'' (or the Internet version of this form [18]) and, when necessary, the Form SSA–3369 ''Work History Report.'' [19] Sometimes a claimant does not provide enough information on these forms for us to make a step 4 finding. If we do not have sufficient information, we will try to contact the claimant and possibly the claimant's former employer or other person who knows about the work, such as a family member or co-worker.[20]

Once we have obtained all the information we need, we then compare the claimant's RFC to the physical and mental demands of these past relevant jobs to determine whether the claimant can still perform any of them. To make this comparison, we may use the services of vocational experts, vocational specialists, or other resources, such as the *Dictionary of Occupational Titles,* its companions, and supplements (published by the Department of Labor).[21] If we find that a claimant can perform any of his or her past relevant work, either as actually performed or as generally performed in the national economy, we will find that the claimant is not disabled. If the claimant cannot perform any of his or her past relevant work, we go to step 5 to determine whether he or she can perform other work that exists in significant numbers in the national economy.

How We Currently Obtain Evidence and Consider Disability at Step 5 of the Sequential Evaluation Process

At step 5, we determine whether a claimant's impairment(s) prevents him or her from doing any other work that exists in significant numbers in the national economy, considering his or her RFC (physical and mental) and vocational factors (age, education, and work experience).[22] We use several methods to help us make this finding.

First, we determine whether the claimant's impairment(s) and his or her vocational factors match one of the special medical-vocational profiles, which show an inability to adjust to other work.[23] If those profiles do not apply, we use the Medical-Vocational Guidelines (Guidelines) either directly or as a framework [24] to consider whether the claimant can perform any other work that exists in significant numbers in the national economy.[25] If a claimant's RFC and vocational factors do not coincide with any of the

[5] 20 CFR 404.1520(a)(4)(i) and 416.920(a)(4)(i). We explain substantial gainful activity at 20 CFR 404.1510, 404.1572, 416.910, and 416.972.

[6] See 20 CFR 404.1520(a)(4)(ii), 404.1520(c), 416.920(a)(4)(ii) and 416.920(c). We explain what we mean by an impairment that is not severe in 20 CFR 404.1521 and 416.921. We use the term ''impairment(s)'' to mean an ''impairment or combination of impairments'' in this NPRM.

[7] 20 CFR 404.1520(a)(4)(ii) and 416.920(a)(4)(ii). We explain the duration requirement at 20 CFR 404.1509 and 416.909.

[8] 20 CFR 404.1520(a)(4)(ii), 404.1520(c), 416.920(a)(4)(ii), and 416.920(c).

[9] 20 CFR 404.1520(a)(4)(iii) and 416.920(a)(4)(iii). The Listing of Impairments are found at 20 CFR part 404 subpart P, appendix 1, and they apply to title XVI under 20 CFR 416.925.

[10] See 20 CFR 404.1545 and 416.945. The RFC includes an assessment of both a claimant's physical and mental capacities.

[11] 20 CFR 404.1520(a)(4)(iv), 404.1560(b)(2), 416.920(a)(4)(iv), and 416.960(b)(2).

[12] See 20 CFR 404.1560(b)(1) and 416.960(b)(1).

[13] See 20 CFR 404.1563 and 416.963.

[14] See 20 CFR 404.1564 and 416.964.

[15] See 20 CFR 404.1565 and 416.965.

[16] 20 CFR 404.1520(a)(4)(v) and 404.920(a)(4)(v).

[17] 20 CFR 404.1560(b)(2), 404.1565, 416.960(b)(2), and 416.965.

[18] Currently available at *https://secure.ssa.gov/apps6z/radr/radr-fi.*

[19] Currently available at *http://www.socialsecurity.gov/online/ssa-3369.pdf.*

[20] 20 CFR 404.1565(b) and 416.965(b).

[21] 20 CFR 404.1560(b)(2), 404.1566(e), 416.960(b)(2), and 416.966(e).

[22] 20 CFR 404.1560(c)(1) and 416.960(c)(1).

[23] See 20 CFR 404.1562 and 416.962, Social Security Ruling 82–63, and POMS DI 25010.001, available at *http://policynet.ba.ssa.gov/poms.nsf/lnx/0425010001.* However, the special medical-vocational profile in 20 CFR 404.1562(b) and 416.962(b) applies when a claimant does not have past relevant work experience.

[24] We use the Guidelines as a framework to evaluate a disability claim when a claimant has additional limitations that erode the available occupational base. 20 CFR 404.1569a and 416.969a.

[25] 20 CFR 404.1569a, 416.969a, and 20 CFR part 404, subpart P, appendix 2.

Guidelines, we use vocational experts, other vocational specialists, or other sources of reliable job information to obtain information to help us determine whether the claimant's RFC and vocational factors allow the claimant to perform other work that exists in significant numbers in the national economy.[26] If we find that a claimant cannot adjust to other work that exists in significant numbers in the economy, we find the claimant disabled. If we find that a claimant can adjust to other work that exists in significant numbers in the economy, we find the claimant not disabled.

Why We Propose To Change the Current Process

Gathering and evaluating a claimant's work history can be a time-consuming and labor-intensive process, particularly when the claimant has performed multiple jobs during the relevant 15-year period. The time we spend obtaining the work history needed to make step 4 findings frequently delays the processing of claims and requires us to divert our limited administrative resources from processing other claims. This delay can occur at all levels of the administrative review process.

Proposed Changes

We propose to give disability adjudicators at all levels of the disability determination process the discretion to evaluate a claim at step 5 before making a step 4 finding if there is insufficient evidence to make a finding at step 4. If there is insufficient information,[27] the adjudicator would have the discretion to either develop the work history at step 4 *or* go to step 5. If the adjudicator proceeds to step 5, the adjudicator would consider whether the claimant may be disabled based on: (1) The special medical-vocational profiles, (2) the Guidelines, whether directly or as a framework, or (3) an inability to meet the mental demands of unskilled work.[28] If any of these rules would indicate that the claimant may be disabled or if the adjudicator has any doubt whether the claimant can perform other work existing in significant numbers in the economy, the adjudicator *must* return to step 4 to further develop the claimant's vocational information and determine whether the claimant can perform his or her past relevant work. The adjudicator must return to step 4 in this situation because the Act requires us to make a finding about a claimant's ability to do his or her past relevant work before we determine that he or she is disabled at step 5.[29]

However, the Act does not require us to make such a specific finding before we determine that a claimant is not disabled.[30] Therefore, if the adjudicator can determine at step 5 that the claimant is not disabled based solely on age, education, and RFC, regardless of the claimant's skill level and transferability of those skills, the adjudicator would find the claimant is not disabled without returning to step 4. In some cases, we will be able to make a finding without developing a complete work history.[31] This proposed expedited process would not disadvantage any claimant or change our ultimate conclusion about whether a claimant is disabled.

The proposed process would also shorten processing times in some cases because we would not need to collect unnecessary work history at step 4 for claims that we can appropriately deny at step 5 based solely on the claimant's age, education, and RFC. For the same reason, this expedited process also would help us allocate our resources more efficiently and assist in reducing the disability backlog.

We have been using an expedited process similar to the one we propose for almost 12 years in our ten ''prototype'' States.[32] Adjudicators in the prototype States have been able to evaluate and deny a claim at step 5 in certain cases where there is insufficient information to make a finding at step 4.[33] Our experience in the prototype states supports the conclusion that the process does not change our ultimate decision as to whether or not a claimant is disabled.

We would apply this expedited process to adult disability and disabled adult child claims under titles II and XVI and to age 18 redeterminations under title XVI. We would also apply this process when we decide whether a current adult beneficiary's disability continues.[34] We would not use the proposed process to evaluate title XVI childhood disability claims because those claims do not use vocational criteria.[35]

We propose to add this new procedure in new paragraphs 404.1520(h), 404.1594(f)(9), 416.920(h), and 416.994(b)(5)(viii). We also propose to make a number of conforming changes and plain language changes in other sections.

Clarity of These Proposed Rules

Executive Order 12866 requires each agency to write all rules in plain language. In addition to your substantive comments on this NPRM, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?
- Would a different format make the rules easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

When will we start to use these rules?

We will not use these rules until we evaluate public comments and publish final rules in the **Federal Register**. All final rules we issue include an effective date. If we publish final rules, we will include a summary of relevant comments we received, responses to them, and an explanation of how we will apply the new rules.

[26] 20 CFR 404.1566(e) and 416.966(e).

[27] This includes when an adjudicator first receives a claim to process it. We would not require an adjudicator to make a reasonable effort to collect additional evidence if he or she could use this expedited process.

[28] See 20 CFR 404.1569a(c) and 416.969a(c).

[29] 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B) provide that ''an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy * * *.'' Therefore, in order for a claimant to be found disabled, he or she must be both ''unable to do his [or her] previous work'' and unable to do ''any other kind of substantial gainful work * * *.''

[30] *Id.*

[31] The proposed expedited process would also apply when a claimant's mental RFC allows him or her to meet the mental demands of unskilled work.

[32] The ten prototype States are: Alabama, Alaska, California (Los Angeles North and Los Angles West Branches), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania. The prototype combines the use of a single decisionmaker at the initial level of our administrative review process (a disability examiner who may make the initial disability determination in most cases without obtaining the signature of a medical or psychological consultant) with the elimination of the reconsideration level of our administrative review process. 20 CFR 404.906, 416.1406; 74 FR 48797 (2009).

[33] The procedures for processing claims in ''prototype'' States, including the instructions for expedited vocational development and documentation, are in the Prototype Operating Instructions Manual available at *http://www.ssa.gov/disability/Documents/Prototype_Operating_Instructions.doc.*

[34] See 20 CFR 404.1594 and 416.994.

[35] See 20 CFR 416.924.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this NPRM meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB reviewed it.

Regulatory Flexibility Act

We certify that this NPRM will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

Paperwork Reduction Act

This NPRM does not impose new reporting or recordkeeping requirements and is not subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: September 7, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend title 20 of the Code of Federal Regulations part 404 subpart P and part 416 subpart I as set forth below:

PART 404—FEDERAL OLD AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

2. Amend § 404.1505 by revising the sixth sentence of paragraph (a) to read as follows:

§ 404.1505 Basic definition of disability.

(a) * * * If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work (*see* § 404.1520(h) for an exception to this rule.).

* * * * *

3. Amend § 404.1520 by adding a new second sentence to paragraph (a)(4), by revising the last sentence of paragraph (a)(4)(iv), the last sentence of paragraph (a)(4)(v), the second sentence of paragraph (f), and by adding a new paragraph (h), to read as follows:

§ 404.1520 Evaluation of disability in general.

(a) * * *

(4) * * * See paragraph (h) of this section for an exception to this rule.

* * *

(iv) * * * (*See* paragraphs (f) and (h) of this section and § 404.1560(b)).

(v) * * * (*See* paragraphs (g) and (h) of this section and § 404.1560(c)).

* * * * *

(f) * * * (*See* paragraph (h) of this section and § 404.1560(b)). * * *

* * * * *

(h) *Expedited process.* If we do not find you disabled at the third step, and we do not have sufficient evidence about your past relevant work to make a finding at the fourth step, we may proceed to the fifth step of the sequential evaluation process. If we find that you can adjust to other work based solely on your age, education, and the same residual functional capacity assessment we made under paragraph (e), we will find that you are not disabled and will not make a finding about whether you can do your past relevant work at the fourth step. If we find that you may be unable to adjust to other work, we will assess your claim at the fourth step and make a finding about whether you can perform your past relevant work. (*See* paragraph (g) of this section and § 404.1560(c)).

4. Amend § 404.1545 by revising the first sentence of paragraph (a)(5)(ii) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) * * *

(5) * * *

(ii) If we find that you cannot do your past relevant work, you do not have any past relevant work, or if we use the procedures in § 404.1520(h), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can adjust to any other work that exists in the national economy.

* * * * *

5. Amend § 404.1560 by adding a second sentence to paragraph (b) and revising the first two sentences of paragraph (c)(1) to read as follows:

§ 404.1560 When we will consider your vocational background.

* * * * *

(b) * * * See § 404.1520(h) for an exception to this rule.

(c) *Other work.* (1) If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 404.1520(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case (*see* § 404.1520(h) for an exception to this rule).

* * * * *

6. Amend § 404.1565 by revising the second sentence of paragraph (b) to read as follows:

§ 404.1565 Your work experience as a vocational factor.

* * * * *

(b) * * * If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. * * *

7. Amend § 404.1569 by revising the third sentence to read as follows:

§ 404.1569 Listing of Medical-Vocational Guidelines in appendix 2.

* * * We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work (*see* § 404.1520(h) for an exception to this rule). * * *

8. Amend § 404.1594 by revising paragraph (f)(8) and adding a new paragraph (f)(9) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) * * *

(8) If you are not able to do work you have done in the past, we will consider whether you can do other work given the residual functional capacity assessment made under paragraph (f)(7) of this section and your age, education, and past work experience. (*See* § 404.1594(f)(9) for an exception to this rule.) If you can, we will find that your disability has ended. If you cannot, we will find that your disability continues.

(9) We may proceed to the final step, described in paragraph (f)(8) of this section, if the evidence in your file about your past relevant work is not sufficient for us to make a finding under paragraph (f)(7) of this section about whether you can perform your past relevant work. If we find that you can adjust to other work based solely on your age, education, and residual functional capacity, we will find that you are no longer disabled, and we will not make a finding about whether you can do your past relevant work under paragraph (f)(7) of this section. If we find that you may be unable to adjust to other work, we will assess your claim under paragraph (f)(7) of this section and make a finding about whether you can perform your past relevant work.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

9. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

10. Amend § 416.905 by revising the last sentence of paragraph (a) to read as follows:

§ 416.905 Basic definition of disability.

(a)* * * If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work (*see* § 416.920(h) for an exception to this rule.).

* * * * *

11. Amend § 416.920 by adding a new second sentence to paragraph (a)(4), by revising the last sentence of paragraph (a)(4)(iv), the last sentence of paragraph (a)(4)(v), the second sentence of paragraph (f), and by adding a new paragraph (h), to read as follows:

§ 416.920 Evaluation of disability in general.

(a) * * *

(4) * * * See paragraph (h) of this section for an exception to this rule.

* * *

(iv) * * * (*See* paragraphs (f) and (h) of this section and § 416.960(b)).

(v) * * * (*See* paragraphs (g) and (h) of this section and § 416.960(c)).

* * * * *

(f) * * * (*See* paragraph (h) of this section and § 416.960(b)). * * *

* * * * *

(h) *Expedited process.* If we do not find you disabled at the third step, and we do not have sufficient evidence about your past relevant work to make a finding at the fourth step, we may proceed to the fifth step of the sequential evaluation process. If we find that you can adjust to other work based solely on your age, education, and the same residual functional capacity assessment we made under paragraph (e), we will find that you are not disabled and will not make a finding about whether you can do your past relevant work at the fourth step. If we find that you may be unable to adjust to other work, we will assess your claim at the fourth step and make a finding about whether you can perform your past relevant work. (*See* paragraph (g) of this section and § 416.960(c)).

12. Amend § 416.945 by revising the first sentence of paragraph (a)(5)(ii) to read as follows:

§ 416.945 Your residual functional capacity.

(a) * * *

(5) * * *

(ii) If we find that you cannot do your past relevant work, you do not have any past relevant work, or if we use the procedures in § 416.920(h), and § 416.962 does not apply, we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can adjust to any other work that exists in the national economy.

* * * * *

13. Amend § 416.960 by adding a second sentence to paragraph (b) and revising the first two sentences of paragraph (c)(1) to read as follows:

§ 416.960 When we will consider your vocational background.

* * * * *

(b) * * * See § 416.920(h) for an exception to this rule.

(c) *Other work.* (1) If we find that your residual functional capacity does not enable you to do any of your past relevant work or if we use the procedures in § 416.920(h), we will use the same residual functional capacity assessment when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and the vocational factors of age, education, and work experience, as appropriate in your case (*see* § 416.920(h) for an exception to this rule).

* * * * *

14. Amend § 416.965 by revising the second sentence of paragraph (b) to read as follows:

§ 416.965 Your work experience as a vocational factor.

* * * * *

(b) * * * If you cannot give us all of the information we need, we may try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker.

* * *

15. Amend § 416.969 by revising the third sentence to read as follows:

§ 416.969 Listing of Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

* * * We apply these rules in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing vocationally relevant past work (*see* § 416.920(h) for an exception to this rule). * * *

16. Amend § 416.987 by revising the first sentence of paragraph (b) to read as follows:

§ 416.987 Disability redeterminations for individuals who attain age 18.

* * * * *

(b) * * * When we redetermine your eligibility, we will use the rules for adults (individuals age 18 or older) who file new applications explained in §§ 416.920(c) through (h). * * *

* * * * *

17. Amend § 416.994 by revising paragraph (b)(5)(vii) and adding a new paragraph (b)(5)(viii) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) * * *

(vii) If you are not able to do work you have done in the past, we will consider whether you can do other work given the residual functional capacity assessment made under paragraph (b)(5)(vi) of this section and your age,

education, and past work experience. (*See* § 416.994(b)(5)(viii) for an exception to this rule.) If you can, we will find that your disability has ended. If you cannot, we will find that your disability continues.

(viii) We may proceed to the final step, described in paragraph (b)(5)(vii) of this section, if the evidence in your file about your past relevant work is not sufficient for us to make a finding under paragraph (b)(5)(vi) of this section about whether you can perform your past relevant work. If we find that you can adjust to other work based solely on your age, education, and residual functional capacity, we will find that you are no longer disabled, and we will not make a finding about whether you can do your past relevant work under paragraph (b)(5)(vi) of this section. If we find that you may be unable to adjust to other work, we will assess your claim under paragraph (b)(5)(vi) of this section and make a finding about whether you can perform your past relevant work.

* * * * *

[FR Doc. 2011–23396 Filed 9–12–11; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–R4–SFUND–2011–0574; FRL–9463–7]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of proposed rule.

SUMMARY: On July 15, 2011, EPA published a Notice of Intent to Delete and a direct final Notice of Deletion for the Hipps Road Landfill from the National Priorities List. The EPA is withdrawing the Notice of Intent to Delete due to an administrative error in processing the deletion notice. The online Federal Document Management System (FDMS) did not include required documents including the State of Florida's concurrence letter and the Final Closeout Report as required. The FDMS will be updated to include these documents.

After the administrative error is corrected on the intent to delete the Hipps Road Landfill Superfund Site from the National Priority List, EPA will re-publish a Notice of Intent to Delete in the **Federal Register**.

DATES: The proposed rule published on July 15, 2011 (76 FR 41751) is withdrawn as of September 13, 2011.

ADDRESSES:

Information Repositories: Comprehensive information on the Site, as well as the comments that we received during the comment period, are available in docket EPA–R4–SFUND–0574, accessed through the *http://www.regulations.gov* Web site. Although listed in the docket index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

EPA Record Center, 61 Forsyth Street, SW., Atlanta, GA 30303. Hours: 8 a.m. to 4 p.m., Monday through Friday.

Jacksonville Public Library, 6886 103rd Street, Jacksonville, FL 32210. Monday–Thursday: 10 a.m.–9 p.m., Friday & Saturday: 10 a.m.–6 p.m. Sunday: 1 p.m.–6 p.m.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Remedial Project Manager, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, GA 30303, (404–562–9120), *e-mail: miller.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous Waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water Supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: August 30, 2011.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

Accordingly, the amendment to Table 1 of Appendix B to Part 300 to remove the entry ''Hipps Road Landfill'', ''Duval County, FL'' is withdrawn as of September 13, 2011.

[FR Doc. 2011–23522 Filed 9–12–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 07–23; DA 11–1151]

Removal of Approved Non-U.S.-Licensed Space Stations From the Section 214 Exclusion List

AGENCY: Federal Communications Commission.

ACTION: Interpretation.

SUMMARY: In this document, the Federal Communications Commission's (Commission's) International Bureau (Bureau) adopts its proposal to remove from the Section 214 Exclusion List those non-U.S.-licensed space stations that have been allowed to enter the U.S. market for satellite services pursuant to the procedures adopted in the *DISCO II Order.*

DATES: Effective September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Jennifer Balatan or Howard Griboff, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Bureau's *Order,* adopted and released on June 30, 2011 (DA 11–1151). The full text of this document is available for inspection and copying during normal business hours in the Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2011/db0630/DA-11-1151A1.pdf.* The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 488–5300, via facsimile at (202) 488–5563, or via e-mail at *Commission@bcpiweb.com.*

Summary of the Order

On January 18, 2007, the Bureau released a *Public Notice* in IB Docket No. 07–23 (72 FR 9333–02, March 1, 2007), seeking comment on its proposal to further streamline the Section 214 authorization process by removing from the Section 214 Exclusion List those non-U.S.-licensed space stations that have been allowed to enter the U.S. market for satellite services pursuant to the procedures (DISCO II procedures) adopted in the *DISCO II Order* (62 FR 64167–01, December 4, 1997; as amended at 63 FR 6496–02, February 9, 1998). On June 30, 2011, the Bureau released this *Order* which adopts the proposal to remove from the Section 214

Exclusion List those non-U.S.-licensed space stations approved to serve the U.S. market pursuant to the DISCO II procedures. As part of this change, the Bureau will create a webpage that provides access to the space stations approved pursuant to the DISCO II procedures in one central location. Specifically, on the Bureau's web page, the Bureau plans to insert a link entitled *Space Stations Approved for U.S. Market Access.* Once users click on that link, they will be taken to a page with that same title that provides users a way to determine which space stations have been granted market access to the United States pursuant to the DISCO II procedures. The web page will include links to other lists already maintained for DISCO II purposes, such as the Permitted Space Station List and the I–SAT List, as well as entries for non-U.S.-licensed space stations approved for U.S. market access through other procedural means. The Bureau expects that centralizing this information on a web page will facilitate access to such information by common carriers and should address Inmarsat's concern about burdening carriers with the need to review multiple Commission orders in order to determine whether they may access a particular space station. In addition, the non-U.S. space station operator must inform customers that communication with its space station is subject to the conditions and technical requirements specified in the document approving its entry into the U.S. market in addition to the technical requirements in the Commission's rules.

Ordering Clauses

It is ordered that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and Section 0.261 of the Commission's rules, 47 CFR 0.261, this Order *is adopted.*

It is further ordered that this Order *shall be effective* September 13, 2011.

Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 CFR 1.106, may be filed within 30 days from the date of public notice of this Order.

Federal Communications Commission.

Mindel De La Torre,

Chief, International Bureau.

[FR Doc. 2011–23270 Filed 9–12–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 633

[Docket No. FTA–2009–0030]

RIN 2132–AA92

Capital Project Management

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: This proposal would transform the current FTA rule for project management oversight into a discrete set of managerial principles for sponsors of major capital projects; enable FTA to more clearly identify the necessary management capacity and capability of a sponsor of a major capital project; spell out the many facets of project management that must be addressed by a sponsor of a major capital project in a project management plan; change the scope and applicability of the rule; tailor the level of FTA oversight to the costs, complexities, and risks of a major capital project; set forth the means and objectives of FTA risk assessments; and articulate the roles and responsibilities of FTA's project management oversight contractors.

DATES: Comments must be received on or before November 14, 2011. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number (FTA–2009–0030) by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

U.S. Mail: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building, 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: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration) and docket number (FTA–2009–0030) or Regulatory Identification Number (RIN 2132–AA92) for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *http://www.regulations.gov*, where they will be available to internet users. *Please see,* the Privacy Act.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments may wish to consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

FOR FURTHER INFORMATION CONTACT: For program matters, please contact Aaron C. James, Sr. at (202) 493–0107 or *aaron.james@dot.gov*, or Carlos M. Garay at (202) 366–6471 or *carlos.garay@dot.gov.* For legal matters, please contact Scott A. Biehl at (202) 366–0826 or *scott.biehl@dot.gov*, or Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*. FTA is headquartered at 1200 New Jersey Avenue, SE., East Building, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

FTA is authorized by 49 U.S.C. 5327 to conduct oversight of major capital projects, and to promulgate a rule for that purpose. The statute also obliges FTA to codify a definition of *major capital project* to delineate the types of projects governed by the rule. Further, the statute authorizes FTA to obtain the services of Project Management Oversight Contractors (PMOCs) to assist the agency in overseeing the expenditure of Federal financial assistance for major capital projects—both under the discretionary Major Capital Investment (''New Starts'') program and the formula Fixed Guideway Modernization (''FGM'') program authorized by 49 U.S.C. 5309.

FTA's predecessor agency, the Urban Mass Transportation Administration (UMTA), issued the original rule for oversight of major capital projects on September 1, 1989, at 49 CFR part 633 (54 FR 36708). At the time, UMTA's capital programs were comparatively small—the agency's annual capital grants totaled a little more than $2 billion—and there were a mere 25 task orders in effect for the services of PMOCs. Even then, however, the Congress recognized a compelling need to strengthen the agency's management and oversight of major capital projects.

Thus, in 1987, the Surface Transportation and Uniform Relocation Assistance Act (STURAA) (Pub. L. 100–17, Sec. 324, 101 Stat. 132, 235) both directed a rulemaking for oversight of major capital projects and established a ''take down'' of up to one-half of one percent from the annual New Starts and FGM funding levels to finance the retention of PMOC services. Given its relative inexperience in the oversight of major capital projects, and its use of PMOCs for that purpose, UMTA chose to promulgate a limited rule that imposed only a very general requirement that the sponsor of a major capital project develop a project management plan for that project, and a very general framework for the responsibilities of UMTA's PMOCs. That original rule is still in effect.

Today, however, the annual dollar value of the Federal transit capital programs is nearly five times the level authorized under the STURAA in 1987. The number of active PMOC task orders is more than double the number during STURAA. The number of sponsors of New Starts across the United States—many of which are new to the transit industry—has increased exponentially. There is a compelling need for stronger management of fixed guideway modernization projects to help restore rail transit infrastructure to a state of good repair. FTA is participating in a larger number of ''mega projects''—projects costing one billion dollars or more—which entail significant oversight challenges to the agency as the steward of Federal tax dollars. Moreover, FTA has become much more knowledgeable about the risks inherent in major capital projects, having conducted its own risk assessments since 2005, having studied the reasons for cost and schedule changes on a good many major capital projects, and having witnessed project sponsors' lack of management capacity and capability, and appropriate project controls, as discussed below.

The rule that FTA is proposing today follows the Advance Notice of Proposed Rulemaking (ANPRM) the agency published on September 10, 2009, at 74 FR 46515–21. This proposed rule would transform the current, narrow rule for project management oversight to a discrete set of managerial principles for sponsors of major capital projects; enable FTA to more clearly identify the necessary management capacity and capability of a sponsor of a major capital project; spell out the many facets of project management that must be addressed in a Project Management Plan; change the applicability of the rule from one based primarily on total project costs to one based primarily on the amount of Federal financial assistance for a project; tailor the level of FTA oversight to the costs, complexities, and risks of a major capital project; set forth the means and objectives of FTA risk assessments; and more clearly articulate the roles and responsibilities of PMOCs. What follows is a discussion of the comments on the ANPRM, FTA's responses to those comments, and a section-by-section description of the proposed rule and what FTA expects to accomplish through each section.

Comments Received on the ANPRM and FTA Responses

FTA received comments from twenty-one (21) entities, including seventeen (17) transit agencies, one (1) project management oversight contractor, and three (3) private not-for-profit organizations. FTA will address the comments in groups, by subject matter.

Shift from 'Project Oversight Only' to 'Project Management and Oversight'.

Comments: In FTA's proposal to shift the focus of its Project Management Oversight (PMO) rule from ''project oversight only'' to ''project management and oversight,'' many commenters stated that project management is not an appropriate Federal role. They stated that the shift would require more resources for FTA and that the overlay of the FTA project management processes may complicate project delivery and costs. Commenters also asserted that experienced sponsors already use the project management strategies proposed in the ANPRM. One commenter questioned whether FTA has the data and authority to support extending these requirements beyond inexperienced sponsors. Another commenter countered with the view that some sponsors have long shown problems with management capability and project controls and that even those that develop good Project Management Plans (PMPs) often fail to follow those plans. One commenter questioned whether the statute allows FTA to specify project management requirements.

FTA Response: FTA has no role whatsoever in a sponsor's hands-on management of a project. Rather, the FTA role is to oversee the *effectiveness* of a sponsor's project management. As the steward of the Federal funds that help finance these major capital projects, FTA is obliged to protect the taxpayer. The regulations FTA is proposing today are designed to ensure that sponsors of major capital projects possess resources and attributes necessary to successfully manage their major capital projects; that FTA has the means necessary to oversee the Federal investment in those projects; and that there are clear expectations of the PMOCs. Over the past several years, FTA has observed a number of characteristics of successful project management and is using this rule to establish them as minimum expectations for sponsors of major capital projects. Also, FTA has ample data to support the need for this rule. The types of problems the rule is meant to address are described in detail, below.

The plain text of 49 U.S.C. 5327(e) authorizes FTA to conduct oversight of major capital projects, and to promulgate regulations for that purpose. Further, the statute obliges FTA to codify a definition of ''major capital project,'' and 49 U.S.C. 5327(c) enables FTA to obtain the services of Project Management Oversight Contractors (PMOCs) to assist the agency in overseeing the expenditure of Federal financial assistance for major capital projects—both under the discretionary Major Capital Investment (''New Starts'') program and the formula Fixed Guideway Modernization (''FGM'') program authorized by 49 U.S.C. 5309.

Clearly, in authorizing FTA to approve or disapprove Project Management Plans, per 49 U.S.C. 5327(a) and (b), the Congress expects FTA to make judgments about the merits of those plans. Congress does not expect FTA to approve or disapprove plans arbitrarily or to reduce the qualitative assessment of Project Management Plans to mere checklists. In this proposed rule, FTA is making explicit and transparent the criteria by which FTA will determine whether a Project Management Plan merits approval. FTA expects this proposed rule to assist sponsors in developing and executing Project Management Plans of high quality. To the extent that some sponsors already use the project management strategies FTA looks for, the proposed rule will not be burdensome for them; indeed, their current practices attest to the validity of the proposed regulations.

Fixed Guideway Capital Projects Versus Major Capital Projects

Comments: In the ANPRM, FTA proposed to apply this rule to two categories of projects—fixed guideway capital projects and major capital projects—with greater oversight being applied to major capital projects. Many commenters perceived this as an attempt by FTA to extend the reach of its oversight and to take more control of

local project management processes, leading to increased project costs and delays. Some questioned whether the statute allows FTA to specify project management requirements for non-major capital projects. Others suggested that FTA grandfather any project, already underway, which did not meet the definition of a major capital project, such that it would be exempt from the regulations. One commenter said no distinction should be made between types of projects or past experience of a project sponsor; rather, sound project management practices are good for all projects and all project sponsors.

FTA Response: These proposed regulations will apply only to projects designated as ''major capital projects'' under the proposed definition. Therefore, the proposed rule will not apply to fixed guideway capital projects unless they fall within the definition of major capital projects. Nonetheless, the project management principles identified by this NPRM reflect good practices that are germane to all capital projects, large and small; therefore, FTA encourages all FTA grant recipients to follow these principles in managing their capital projects.

Note: The current regulation at 49 CFR part 633 uses the term ''recipient'' to connote a recipient of FTA grant funds for a major capital project. In this preamble FTA is using a broader term, ''sponsor,'' to encompass not only grant recipients but those project sponsors that seek or intend to seek FTA grant funds but have yet to receive any FTA grant funds. Moreover, the *de facto* sponsor of a major capital project and the recipient of an FTA grant for a project are not always one and the same. Nonetheless, it is only a ''recipient'' which enters into a grant agreement with FTA, thus, the text of the proposed rule uses the term ''recipient.'' As a practical matter, the terms are interchangeable.

The proposed regulations, together with other steps FTA is taking, are intended to reduce or eliminate delays in project development that have occurred in connection with some aspects of project risk assessments. From FTA's vantage, the most serious delays are attributable to sponsors' lack of understanding of the risk assessment process, incomplete submittals, or poor quality submittals. The proposed regulations, technical assistance provided at FTA's Annual New Starts Engineering Workshop, and a new guidance document called *A Grantee's Guide to FTA's Risk Assessment Process,* which FTA plans to issue in the near future, will provide every project sponsor with opportunities to thoroughly understand FTA's risk assessment process and better prepare to participate in the process. Moreover, FTA expects the risk assessments to occur concurrently with a sponsor's project development, thus, they should not lengthen the schedule or delay the Federal financing for a major capital project.

It is FTA's tentative view that the project management rule should not allow for a project to be grandfathered from the rule. FTA has every confidence, however, that the promulgation of a final rule will not impede either a New Starts or Fixed Guideway Modernization project already underway when the rule is promulgated.

Readers may be interested in a September 2010 report on FTA's project management oversight program by the United States Government Accountability Office (GAO), which examines the benefits of FTA's approach to project management oversight, challenges FTA faces in conducting that oversight, and FTA's use of both PMOCs and Financial Management Oversight Contractors to help the agency meet its oversight responsibilities. *GAO–10–909, Public Transportation, ''Use of Contractors is Generally Enhancing Transit Project Oversight, and FTA is Taking Actions to Address Some Stakeholder Concerns.''* Among other matters, the GAO report notes recent PMOC contributions to ensuring that PMPs are accurate, and complete; also, that the PMOCs' participation in risk assessments has helped identify risks that threatened the budgets of major capital projects.

Major Capital Project (Definition)

Comments: FTA presented three categories of major capital projects in the ANPRM, essentially: (1) New Starts projects; (2) Fixed Guideway Modernization projects costing $100 million or more; and (3) projects designated as major capital projects at the discretion of the Administrator. FTA also presented an expanded list of circumstances under which the Administrator could designate a project a ''major capital project.'' Many commenters disagreed with the precepts by which the Administrator might deem a capital project ''major.'' Some objected that the proposed criteria are ambiguous and subjective, giving FTA too much latitude to designate projects as ''major.'' Conversely, one commenter suggested that FTA omit the dollar threshold and use only the proposed criteria to which others objected. Some commenters objected to the use of any fixed dollar threshold. One commenter also suggested that FTA should focus this proposed rule on projects that expand a sponsor's fixed guideway system. Commenters further recommended that FTA use a risk-based approach to defining a major capital project; escalate the $100 million cost threshold for identifying a major capital project; and base FTA's level of oversight on the proportion Federal funding bears to the total project costs. Another commenter recommended that the project management regime discussed in the ANPRM should be extended to all capital projects, regardless of size or complexity.

FTA Response: FTA considered all of these recommendations. Today, the agency is proposing that a ''major capital project'' be defined as a project that meets either of two conditions:

(i) Any capital project for which the sponsor seeks $100 million or more in Federal financial assistance under either the Major Capital Investment or Fixed Guideway Modernization programs authorized by 49 U.S.C. 5309. (Note that in the current rule, the threshold is $100 million in total project cost.)

(ii) Any capital project the Administrator finds would benefit from the FTA project management program, given the size or complexity of the project, the uniqueness of the technology, the previous project management experience of the sponsor, or any other risks inherent in the project. (Note: This definition does not include routine acquisition, maintenance, or rehabilitation of rolling stock as specified both in statute and in the current rule.)

Technical Capacity and Capability

Comments: FTA stated in the ANPRM its minimum expectations for a sponsor to demonstrate technical capacity and capability. Commenters strongly supported the idea that sponsors must have ''core competencies.'' Several commenters suggested that a requirement for demonstrating technical capacity and capability through a PMP should not apply to Fixed Guideway Modernization projects, however. Some suggested that FTA consider a sponsor's experience and size, among other things, in determining the level of oversight of technical capacity and capability required for a major capital project. Others argued that the submittal of a staffing plan to FTA or simply self-certification of technical capacity should suffice.

FTA Response: In rule proposed today, FTA would explicitly require a sponsor to demonstrate that it possesses the management capacity and capability to successfully implement its proposed project. It must be emphasized, the proposed requirement for *management capacity and capability* is broader than

the requirement that a recipient possess the *technical* capacity and capability necessary to carry out the scope of work under an FTA grant, which applies to any type of grant under the Federal Transit programs authorized by 49 USC Chapter 53.

Moreover, the argument that self-certification and FTA's ordinary progress reviews would suffice as evidence of a sponsor's *technical* capacity and capability inappropriately discounts the seriousness and consequences of the schedule delays and cost overruns that have occurred on past projects for which grant recipients self-certified. Experience has shown that those practices do not provide sufficient protection for the Federal funds invested in major capital projects. Certainly, FTA acknowledges that there are opportunities to tailor, and in some cases streamline, its oversight process to the size and complexity of a major capital project, as well as to a sponsor's past performance. However, as with any financial investment, a sponsor's past performance is not a guarantee of future results. The persons, processes, or even the organizational elements responsible for past successes may be gone. Moreover, as one commenter noted, a sponsor may possess the requisite expertise, but may not assign the individuals having it to the major capital project in question or may spread those individuals too thinly over too many projects. Likewise, a sponsor's successful experience with one particular approach to project development does not guarantee success under a different development approach. If a sponsor still has the capabilities and resources responsible for past success on a similar project and will devote them to the major capital project in question, FTA's review will be faster and easier. Before awarding Federal funding for the development of a major capital project, however, FTA must determine that the sponsor has sufficient capacity and capability to manage the scope of work for a Fixed Guideway Modernization or the appropriate phase of a New Starts project. While all organizations possess some degree of management capacity and capability, a given organization may need to enhance its management capacity and capability to meet the thresholds for a major capital project, given the constraints and risks of that particular project.

Project Management Plan (PMP)

Comments: In the ANPRM, FTA suggested that a sponsor be required to submit a formal and documented Project Management Plan (PMP) setting forth its policies, practices, and procedures; to secure FTA's approval, the PMP would have to explain in sufficient detail the sponsor's plan for developing and implementing the project, including the monitoring that will take place to ensure that each major phase or stage in the project development process will be duly executed.

Several of the commenters suggested that a PMP be scaled based on project size and type. One commenter liked the idea of an integrated PMP that is modular, but believed it necessary for major capital projects, only. Some thought PMPs unnecessary for *state of good repair* projects regardless of size or complexity. Some commenters requested that FTA provide better guidelines for the development of PMPs. Others stated that the current rule does not and need not allude to sub plans under the PMPs. Another commenter strongly supported FTA's proposed emphasis on the PMP, while recommending that all sub plans be consolidated, the process be simplified, and FTA should act to ensure that a sponsor adheres to its PMP.

FTA Response: The proposed rule provides that PMPs will be required only for major capital projects as defined in this rule. Furthermore, PMPs will be scaled, based on project size and complexity. It is clear, however, that PMPs are effective management tools for any capital project. A PMP should provide for a series of project-specific performance measures that a sponsor can report against. This NPRM specifies a set of core contents for PMPs plus other requirements that are project-specific. Sub Plans are defined in the proposed rule to mean a document either within or related to a Project Management Plan which addresses a specific discipline or managerial practice for the purposes of planning and managing a major capital project.

Project Implementation Checklist

Comments: In the ANPRM, FTA noted the agency has developed checklists that sponsors of New Starts projects can use as quick reference guides to evaluate and monitor their readiness to be approved into the next phase of the New Starts project development process. FTA proposed to create new checklists for all major capital projects as guides to project implementation. Many commenters disagreed that checklists are helpful and suggested, instead, that FTA formulate standard formats and data requirements to be filled out by transit agencies sponsoring major capital projects. These commenters also stated that the readiness evaluation process slows sponsors' receipt of Federal funds, and noted that only New Starts and Small Starts have a structured series of FTA approvals specified in law. Conversely, another commenter thought consolidation and simplification of the checklist would be very helpful. One commenter thought checklists are useful for high-risk projects, and that the checklists should be as demanding as possible but sufficiently flexible to prevent a project from stalling over an unnecessary detail.

FTA Response: This proposed rule limits application of the readiness evaluation criteria to enter a subsequent phase in project development to New Starts and Small Starts projects. FTA intends is to work with New Starts and Small Starts sponsors early in project development to make the readiness evaluation criteria very clear to the sponsors, and to speed up the approval process.

Reporting

Comments: In the ANPRM, FTA proposed specific reporting requirements for sponsors of Federal funding for major capital projects, including, but not limited to, value engineering reports, safety and security management reports, monthly progress reports, and cost updates for FTA's cost databases. Some commenters requested clarification of these proposed requirements, and some suggested that FTA's TEAM grants management system be used for reporting. Another commenter thought that TEAM would not be optimal because milestones and details should be more integrated with the existing system of periodic reports and go deeper into detail than the level of reporting in TEAM.

FTA Response: This proposed rule clarifies the content of a PMP and its specific Sub-Plans for addressing critical aspects of project implementation. The NPRM further specifies monthly reporting requirements. In the near future, FTA will issue an update of its Project and Construction Management Guidelines, as well as its project management oversight procedures, which contain information on most of the requirements pertaining to oversight and project management.

Consideration of Past Performance

Comments: In the ANPRM, FTA raised the possibility of relaxing requirements for sponsors who have successfully completed other major capital projects within the past seven to ten years. To illustrate, if a sponsor could demonstrate that it has retained its most critical resources, such as the project manager; that the sponsor

organization's business processes and procedures have not been significantly altered; and that the project involves the same or similar technology, FTA could relax the requirements accordingly. The majority of commenters agreed with this approach and also suggested that the risk of the project be considered in determining the level of FTA oversight. A handful of commenters expressed a concern that this approach may not be consistently applied across projects and FTA Regional Offices, and that past performance does not guarantee future success. One commenter opposed the proposed approach, arguing that practices seven to ten years old are obsolete, and that all recipients should be held accountable to a consistent set of standards.

FTA Response: The proposed rule would make project risk one of the factors considered in determining the level of oversight required of a project. FTA will make every effort to ensure that the criteria to assess past performance are fair and consistent. Past performance will include making sure that previously implemented projects and any new project are similar in nature and that key personnel and practices are still available to manage the new project. FTA will consider, specifically, the level of complexity of the project, the amount of Federal financial assistance the sponsor seeks for the project, and the sponsor's past performance in managing its major capital projects.

Oversight of Major Capital Projects

Comments: In the ANPRM, FTA stated that the need for oversight has increased even faster than the available Federal funding because the growth in FTA's programs has generated both higher demand and more complex projects. Some commenters expressed concern that an expansion of the FTA oversight role would be inconsistent with FTA's intention to streamline project development under the New Starts program. Some expressed concern whether enhanced oversight would strain FTA's scarce resources. Some suggested that FTA's level of oversight should be based on the proportion of Federal investment, project complexity, or technical expertise of the project sponsor. Some commenters also said they would welcome early PMOC involvement in major capital projects, but noted that some of the PMOCs are not very experienced, and there remains a lack of consistency in the PMOC process. Also, some commenters asserted that FTA oversight activities are too detailed, and duplicative, in some cases, if one considers triennial reviews, annual and biennial certifications, and other FTA program reviews.

FTA response: FTA works continually to improve its oversight processes. Expanding FTA oversight in the ways FTA proposes need not slow the development of major capital projects or compromise efficiency, nor is it inconsistent with FTA's goal of streamlining the New Starts process. As mentioned above, a recent report by the GAO identifies a number of actions FTA has taken to improve its project and financial management oversight of New Starts projects. Both the GAO and the U.S. Department of Transportation's Office of Inspector General have identified challenges FTA faces in providing effective oversight of particularly large and complex major capital projects. Furthermore, FTA has initiated a top-to-bottom review of its oversight policies, procedures, and management practices to further improve its oversight programs. This includes, specifically, enhancing FTA's risk-informed PMO program to ensure robust oversight and monitoring of complex capital projects requiring a significant amount of Federal funding or having inexperienced project sponsors, while at the same time seeking opportunities to streamline the oversight of less costly projects being undertaken by experienced sponsors, and making all oversight more efficient and consistent. FTA has already started working with sponsors to ensure early involvement and will assign PMOCs to match the project complexity and its challenges. Also, FTA emphasizes that the definition of major capital projects in this proposed rule would be based principally on the amount of Federal funding a sponsor seeks for its project.

Risk-Informed Project Management Oversight Approach

Comments: In the ANPRM, FTA observed that, over the past several years, the agency has increased its use of risk assessments, risk-informed management, and risk mitigation strategies to ensure that major capital projects are constructed on time and within budget, while delivering the promised project benefits. FTA relies on a portfolio of risk management tools to prevent project costs from escalating. In general, the comments on the ANPRM suggested that risk assessment should be more in the form of technical assistance designed to enable project sponsors to take greater ''ownership'' of the process. Some commenters argue that risk reviews should be relaxed for those project sponsors capable of performing their own assessments. Others believed that PMPs should be developed much earlier in the life of a project, and that risk assessments preceding preliminary engineering on New Starts projects should concentrate on identifying potential risks for that type of project, developing possible mitigation strategies, and determining key project milestones. One commenter urged that FTA not overemphasize risk to the exclusion of other relevant project management and oversight criteria.

FTA response: FTA does not see technical assistance as a sufficient substitute for the risk assessment and risk management approach set forth in this proposed rule. Obviously, it is desirable for the agency to provide some form of technical assistance in conjunction with risk assessments and risk reviews. This may take the form of suggestions or recommendations for ways to overcome deficiencies disclosed by an assessment or review. FTA already does this as resources and time permit. Certainly, FTA agrees that a PMP early in the life of a project would be useful to local management of the project development process. FTA also agrees with the suggested scope of risk assessments preceding preliminary engineering on New Starts projects, which is consistent with current practice in the New Starts program. Indeed, over the past several years, FTA has gained a great deal of experience in risk assessment, such that the agency is better able to perform a risk assessment at a level commensurate with the nature and characteristics of a major capital project. This experience now provides the means for explicit project execution planning, tools for risk mitigation and management, and allocation of costs and schedule contingencies, as appropriate. FTA's basic methodology for conducting risk assessments, whether done by FTA or the project sponsor, is set forth in the Appendix to the proposed rule.

Procurement of PMOC Services

Comment: One commenter argued that FTA should use only a qualification-based selection process for obtaining PMOC services.

FTA response: The procurement methods FTA uses to retain services from PMOCs are outside the scope of this rulemaking.

Structure of the Proposed Rule

FTA is proposing a significant revision and restructuring of the rule at 49 CFR Part 633. Under the proposed rule, there would be three subparts and a single appendix. Subpart A (''General Provisions'') would address the purpose of the rule, the definitions of certain terms, the applicability of the rule, and

FTA's rights of access to information. Subpart B (''Recipients' Responsibilities for Project Management'') would set a number of fundamental requirements for establishing a sponsor's management capacity and capability; specify the subjects that must be addressed in a sponsor's Project Management Plan; establish special requirements for certain projects based on cost, complexity, or risk; and spell out a sponsor's obligations to carry out all the particulars of its project management plan, report current data on budget and schedule, and meet with FTA and FTA's PMOCs on a quarterly basis. Subpart C (''FTA Project Management Oversight'') would present the principles of FTA project management oversight, describe the various uses of PMOC services, delineate the roles and responsibilities of PMOCs, address FTA's requirement for risk assessments, and specify the circumstances in which FTA may increase its oversight of a major capital project, based on the cost, complexity, or risks of that project. Additionally, in an Appendix to this proposed rule, FTA would set forth the basic methodology used for conducting risk assessments on major capital projects as it deems necessary or prudent.

The following is a section-by-section analysis of each proposed rule:

Section-by-Section Analysis

Section 633.1 Purpose.

This section explains the mandate of 49 USC 5327(e) to perform oversight to both the Major Capital Investment and the Fixed Guideway Modernization programs authorized by 49 USC 5309.

Section 633.3 Definitions.

This section sets forth the definitions of some key terms applicable to this rule. This section would establish new definitions in the rule for ''Project Management Oversight Contractor,'' ''risk,'' ''sub plan,'' and ''management capacity and capability.'' Also, this section would amend the current definitions for ''major capital project,'' ''project management oversight,'' and ''project management plan.''

By definition, a 'major capital project' will be a project using $100 million or more in Federal financial assistance under either the Major Capital Investment or Fixed Guideway Modernization programs authorized by 49 U.S.C. 5309, or any capital project the Administrator finds would benefit from the FTA project management program. Thus, the proposed change to the definition of ''major capital project'' entails a fundamental shift, as follows: The current definition at 49 CFR 633.5 is based on total project costs of $100 million or more, but the proposed definition would be based on a total amount of Federal funding of $100 million or more from programs under 49 U.S.C. 5309. FTA believes it more appropriate to apply the rule to any given project based on the level of Federal investment in that project, as opposed to the total costs of the project.

The proposed changes to the definitions of ''project management oversight'' and ''project management plan'' are simply for clarity.

Insofar as ''project management oversight,'' however, readers should be aware that FTA uses the term to connote the activities of both the agency and its PMOCs in all of the following: First, the activity of continuously assessing a project to evaluate its readiness for further project development, up through the point where FTA determines whether the project is ready for a grant award, based on sufficient confidence that the scope, costs, benefits, and impacts are firm and final. Second, the activity of making ongoing determinations whether the sponsor has the management capacity and capability necessary to carry out a project efficiently, and effectively; the effectiveness of the sponsor's project delivery; and whether the project is on time, within budget, and built to approved plans and specification, consistent with all applicable Federal requirements. Third, the activity of ensuring that a sponsor's management processes are based on sound decision making, driven by a thorough understanding and implementation of well documented, risk-informed project management practices.

Since the original rule was issued more than 20 years ago, a number of disciplines have developed as best practices in the transit industry, including risk and contingency and rail fleet management plans. Other disciplines are now required by law, including, notably, safety and security management plans. Thus, instead of requiring an all-inclusive project management plan, FTA proposes to institutionalize its practice of permitting sponsors to address these different disciplines in 'sub plans.' The proposed definition of ''sub plan'' reflects the use of that term throughout the industry.

FTA framed the proposed definition for ''risk'' based upon the agency's experience in conducting various types of risk assessments for major capital projects over the last several years, including the Lower Manhattan Recovery projects and several New Starts projects entailing tunneling with geotechnical risks. The proposed definition is also consistent with the approaches to ''risk assessment'' taken by other governmental agencies in the fields of human health, nuclear power, defense, security, and other forms of public works. The study of risk is a broad subject. It can be applied to a sponsor's entire organization, or the many functions and levels of an organization, or specific functions, projects and activities. *See, e.g.,* International Organization for Standardization (ISO), ISO/FDIS 31000:2009, Introduction. As a Federal grant agency making investments of taxpayer funds, FTA must examine a sponsor's management capacity and capability at all these levels in assessing risk.

For that very purpose, FTA is proposing a definition of ''management capacity and capability'' to capture the point that while every sponsor must have the underlying technical capacity and capability to carry out a project, for a major capital project, the sponsor's ability to deliver the project on time and within budget is driven by the robustness of both (a) its ''management capacity,'' which consists of the authority and resources of the project team, and (b) its ''management capability,'' which reflects the additional authority and resources the sponsor is able to call upon as necessary to deliver the project. These points are discussed further below.

Section 633.5 Applicability.

This section would amend the current rule at 49 CFR 633.11 (''Covered projects'') by omitting the obsolete legal citations in the current section 633.11, and extending the rule to all major capital projects funded from any source under 49 USC Chapter 53, including those major capital projects using Chapter 53 funds that originate under the Surface Transportation Program (STP) or the Congestion Mitigation and Air Quality Program (''CMAQ'') authorized by the Federal-aid highway statutes.

Readers should note, moreover, that in his or her discretion, the Administrator could designate a Small Starts project as a major capital project subject to these requirements.

Section 633.7 Access to Information.

This section would make a minor change to the current rule at 49 CFR 633.15, but it would also recognize a preferred practice among FTA and many sponsors of major capital projects regarding the custody and control of documents and data that sponsors may wish to withhold from disclosure to third parties. Specifically, this section

would allow FTA and its PMOCs to decline custody or control of documents which are or may be at issue in litigation between project sponsors and third parties.

Section 633.9 Project Management Capacity and Capability.

All organizations that sponsor transit projects are capable of carrying out their projects with some degree of efficiency and effectiveness. To some degree, all of them are capable of managing risk. There is a fundamental linkage, however, between the experience of a sponsor's project ''team'' and the risks of a project. The experience level of a project team can increase or mitigate the risks of a project. Changes in the membership of a project team or the competency levels of acquired team members can precipitate changes to the schedule for a project, or the duration or particular project activities. *See, e.g.,* Project Management Institute, *Body of Knowledge* (2004), Ch. 11.

This NPRM would establish an explicit link between the organizational performance of a project sponsor and the management capacity that is necessary to complete project activities. FTA is convinced that deficits in management capacity impair organizational performance and expose a major capital project to increased risk of negative consequences for costs and schedule. Clearly, a sponsor's project team requires certain minimum skills and competencies, delegated authorities, explicit accountabilities, and assigned resources to accomplish a project, which can be defined as ''management capacity.''

Experience demonstrates, moreover, that the successful completion of a major capital project requires more than a minimum management capacity; it requires that the sponsor organization have the ability to both oversee the project team and provide additional support and resources, as necessary, to address emerging problems, or issues not identified in the original constraints or assumptions. FTA characterizes this as ''management capability.'' This NPRM would require the sponsor of a major capital project to possess both *management capacity and management capability.*

The greater the risks associated with the constraints or assumptions of a project, the greater the demand for management capacity and capability, and the higher the thresholds for managing the project and mitigating risk. At each stage of the process of project development—and prior to awarding a grant of Federal funds—FTA must determine whether a sponsor possesses the necessary management capacity and capability to accomplish that phase of the project or the purpose of that grant. If FTA finds that a gap exists in a sponsor's management capacity and capability, the sponsor must demonstrate, with documentation, an approach to acquiring the means to close the gap within an acceptable timeframe.

Likewise, from the earliest moments of developing a major capital project, a sponsor must balance the authority and resources allocated to that project against any competing priorities, and retain the ability to mobilize additional resources, as necessary. Specifically, the project team must have the sufficient delegated authority and resources to manage the activities to be accomplished at each successive phase of the project. Yet the project team must be explicitly accountable to the sponsor for its exercise of delegated authority and its use of allotted resources. The project team must also be responsible for reporting and elevating issues to higher management of the sponsor's organization—such as a chief executive officer and board of directors—in a manner that is both professional and ethical.

Many readers will be familiar with the term ''technical capacity,'' or ''technical capacity and capability''—which is a subset of management capacity and capability. By law, a recipient of a grant under any of the FTA programs authorized by 49 U.S.C. Chapter 53 must have the legal, financial, and *technical capacity* to carry out the project that is the subject of that grant. In itself, of course, the absence of any key technical skill or the inadequacy of a technical process could lead to significant cost overruns and schedule delays. For example, the lack of geotechnical expertise for a tunnel project, or lack of real estate savvy on a project requiring large amounts of real estate acquisition could seriously jeopardize a project's budget or schedule, or both. And the requisite technical capacity and capability might differ in some aspects from project-to-project or even phase-to-phase within the same project. For example, some of the expertise required to successfully manage a light rail project will not be required for bus rapid transit. Similarly, some of the skills necessary for the construction phase of a project will differ from those needed for the earlier design phase of that same project. Nonetheless, good management is an underlying necessity regardless of the mode of transit, or phase of development, or the technical capacity a sponsor may possess. From the very beginning of a project, a sponsor must develop and maintain the expertise, processes, and procedures necessary to successfully implement and manage the project at each stage of planning, engineering, design, and construction.

In summary: Unlike the current rule at 49 CFR part 633, this NPRM would clearly establish FTA's expectations for management capacity and capability of sponsors of major capital projects. In effect, FTA would codify the skills and practices a sponsor must acquire and maintain to successfully deliver a major capital project. While the proposed rule would cover major capital projects, only, FTA is convinced the requirements of proposed section 633.9 are germane to any capital project, and encourages sponsors to follow these principles in managing all their capital projects.

Section 633.11 Project Management Plan: Contents

The Project Management Plan (PMP) is altogether critical to successful management of any major capital project, throughout the development and implementation of that project. The PMP and its sub plans further enable the sponsor's staff to effectively manage the scope, budget, schedule, and quality of the project through a set of common objectives, while managing the safety and security of the public.

The proposed rule would provide for the scaling of the PMP to match the nature and characteristics of the project. It identifies core PMP requirements and states that depending on the characteristics of the project, additional requirements may apply. For example, the management of any major capital project benefits from the establishment of comprehensive and critical path-driven project schedules, as well as strong document control procedures and procedures for managing contractor performance. The proposed regulatory text would institutionalize FTA's risk-informed project management oversight process, and addresses risk and contingency management sub plans as core PMP requirements. On the other hand, real estate management sub plans would be required only when the acquisition of real estate is necessary to implement a project.

Note that many disciplines can be addressed in separate sub plans, as discussed above. FTA recognizes that some project sponsors have in-house project management tools, so the proposed rule would allow for the sponsor to incorporate by reference its plans, programs, and procedures already in existence which address the various PMP requirements.

Section 633.13 Special Requirements Based on Project Cost, Complexity, or Risk

Over the years the industry has forcefully asserted that not all sponsors are alike, nor are all projects alike, thus, FTA should take individual circumstances into account when applying its requirements for project management. FTA agrees. This section is proposed in direct recognition of that approach. Simply put, while Section 633.11 already recognizes that the PMP for any project has certain core components, there are other components that only apply in certain circumstances. The Administrator will review the sponsor's management capacity and capability, the complexity and risk of the project, the sponsor's experience implementing similar types of projects, and, based on that review, can impose additional requirements the sponsor must address in its PMP. The Administrator may then require the sponsor to report its progress in meeting those special requirements as well as to forecast whether the project will stay on schedule and on budget. This would be a targeted approach, based on individual circumstances, after a careful analysis. It is not and would not be the normal practice. Thus, while the proposed rule requires every sponsor to have in place basic management systems, it also recognizes that in certain circumstances, because of the nature of the investment or the sponsor's own experience level, additional management capacity and capability may need to be put in place to ensure that a project is delivered on time and on budget.

More important, these additional requirements are intended to be developed early enough that they can make a difference in how well the project is managed. These are not ''cookie cutter'' solutions; rather, they will be specific to the sponsor's structure and project approach. These requirements will also help the sponsor ensure that decisions about the project will be made based on the best information available at the time; in an open, transparent, informed manner; at the appropriate management level; and documented in a manner that can be reconstructed by third parties.

This particular provision in the NPRM reflects two corollary lessons learned by FTA in the 22 years since the agency issued the current regulation. First, any problems in implementing a project must be recognized and addressed as early as possible. The proposed rule would oblige a sponsor to anticipate a problem and have a solution already in place should the problem arise. Second, the proposed rule recognizes that if projects experience significant problems, unless the problems are recognized and addressed promptly by the sponsor, the range of options for solving the problems narrows rapidly, and may disappear altogether. Therefore, this proposed rule focuses on the need for the sponsor to track and forecast whether the project is, and is expected to stay, on schedule and within budget, to identify and develop immediate and effective solutions to remediate problems related to schedule and budget, and to report this information to FTA with the understanding that FTA will use this information in making funding decisions, even with respect to approving an annual increment of committed New Starts funds. At heart, these proposed requirements are intended to help FTA and project sponsors meet their stewardship responsibilities to guard against waste and misuse of taxpayer funds.

The fundamental basis for these requirements is substantiated by research. In 2005, an FTA-sponsored study on cost overruns on transit projects, primarily light rail new starts projects (Analysis of Capital Cost Elements and Their Effect on Operating Costs, NTIS report no. FTA–NY–26–7000), *http://www.utrc2.org/research/assets/107/utrc-2005-fta1.pdf*, noted in its introduction that cost overruns are a common phenomenon because ''[a]s projects are developed, costs rise as projects become more complex, unforeseen conditions are encountered, and delays erode the real value of the original budget.'' The study concluded in Section 2.1 that several factors contributed to overruns, including ''[s]ystematic underestimation, including the failure to adequately assess risks, foreseeable adverse conditions, and the full range of project cost components.'' An internal FTA study on risk management performance included an evaluation of forecasted versus actual performance for several projects and concluded that approximately 50 percent of the cost overruns in selected projects were related to poorly managed risk. Finally, in 2006, a TRB report (TCRP Project G–07—Managing Capital Costs of Major Federally Funded Public Transportation) *http://onlinepubs.trb.org/onlinepubs/tcrp/tcrp_w31.pdf,* identified a number of possible causes, which are described in the examples below, for the industry's inability to accurately estimate, manage, and control project costs. These three studies came to similar conclusions and reflect FTA's experience over the last twenty years of investing in major capital projects. Significant risks to major capital projects include:

Unforeseen engineering and construction complexities: Constructing transit projects in dense, older, urban cores may mean rebuilding infrastructure over 100 years old. A recent New Starts project was constructed above older masonry sewers. The sponsor did not realize the contractor would use mass excavation equipment in the street, and the heavy equipment collapsed the fragile, underlying utilities. On another project, the sponsor assumed that the existing utilities could be easily relocated with existing methods for temporary support of older cast iron pipe. That assumption was inaccurate. Correcting the consequences sharply increased the costs of the project. Another project sponsor replacing older storm sewer planned to add tunnel discharge to the waste water flow. The sewer had settled, which required extensive relaying to handle the planned discharge, all of which added to the project costs. Examples abound of problems stemming from construction complexity, but one in particular stands out: A tunnel portal was fully engineered and reviewed for constructability, but the engineers missed the detail that the portal was located in the middle of a municipal corporation yard resulting in significant delay and a substantial increase in cost. All of these risks were foreseeable, and avoidable.

Relevant costs not included in early estimates: In the early implementation of FTA's risk review process there were ''mechanical inaccuracies'' in estimates and frequent problems in the integration of cost data; this has improved in recent years, however. Another problem had to do with escalation in that, as a project advanced, portions of the cost estimate remained in earlier year base dollars. Most recently, one of FTA's major capital projects went through a protracted process towards an amendment of the Full Funding Grant Agreement. About a third of the overrun on that project was due to problems in the base estimate with earlier data that was not updated as part of the on-going budget process. A similar example has to do with indirect costs for construction; most sponsors still budget construction indirects on a percentage or ''parametric'' basis, even though they often develop extensive Division 1 specifications in terms of services, reports and personnel. Another problem has been under-budgeting of contractor design costs in design/build contracts.

Organizational and technical capacity to undertake the project: There are two recent examples where a transit agency that had successfully executed a number of light rail projects stumbled in building a commuter rail project. In a third instance, a transit agency that had successfully delivered a project using a traditional sealed bid approach ran into cost problems when it attempted a design/build project delivery.

Changes in project scope: For a New Starts project, FTA's expectation is that coming out of Final Design, the project scope will be well defined and experience relatively few changes thereafter. Recent experience has shown that this is not always the case. A number of New Starts projects have changed or reconfigured almost half of the construction scope before the projects were halfway bid. Often this was due to changing market conditions, but, in retrospect, the benefits that sponsors received for assuming such risk have been low, at best. At worst, not only have there been no benefits, but costs have actually increased. A less frequent, but still costly, factor is where the physical characteristics of the project have changed. This has happened because of problems identified during geotechnical exploration, and actual changes in the physical configuration of the project made to accommodate stakeholder demands or changes in underlying assumptions.

Geotechnical: The inability of a sponsor to deal with geotechnical issues up front has been shown to increase total geotechnical costs by as much as 40 percent and cause months of delays. For example, of seven recent projects with a planned total of eleven underground transit stations, four stations were moved after entry into Final Design and two were moved during construction. These moves were due to issues identified when better geotechnical information became available from more detailed soil borings during Final Design, which led to both additional redesign costs as increased costs from delays to the schedules. In one instance, a station had to be moved 90 feet deeper to avoid encountering an existing water tunnel. In another instance, the sponsor had to lower the tunnel to achieve the necessary rock cover.

Ability to Define Physical Configuration of a Project: This occurs most frequently when a project sponsor determines during Final Design or construction that a previously relied upon design standard or requirement is no longer valid. In one such instance, a sponsor had managed the design of the project based on an assumption that critical features of the storage yard and its connections with the mainline were determined by the morning peak load. Subsequent to entry into Final Design, the sponsor discovered that constrained yard movements and a new bridge were needed to accommodate evening peak load, which added 30% to the contract package costs and delayed the package design by an additional eighteen months.

Section 633.15 Project Management Plans: Implementation

FTA's review and approval of a PMP seeks to verify that a sponsor has all the relevant capabilities and resources in place to ensure successful management of the project using available best practices. It also verifies the sponsor's readiness to move a New Starts project from one phase of development to the next, and for other major capital projects, the receipt of Federal grant funds. A PMP is a dynamic management tool that requires periodic updates as a project transitions from one phase to another or as a result of other changes, such as turnover in personnel.

This proposed rule would continue the requirement for monthly reporting and clarify other requirements aimed at improving the management of a major capital project. Specifically, the proposed rule would document the need to report and manage the project, based on a risk-informed management process. This would include tracking and reporting on cost and schedule contingencies along with known risks to the budget and schedule, as well as ongoing or planned efforts to mitigate those risks.

Further, the proposed rule would codify FTA's long-standing practice of convening quarterly meetings with major capital project sponsors, as deemed necessary. These quarterly meetings—typically attended by FTA, its PMOC, and local agency management and technical staff—are opportune occasions to analyze the progress of a project and identify issues that threaten timely and cost-effective delivery, and develop remedies and alternatives to maintain cost and schedule. Moreover, in its effort to ensure the implementation of safe rail systems, FTA has recently begun to encourage a project's prospective state safety oversight agency representative to attend these quarterly meetings.

Section 633.17 FTA Project Management Oversight Principles

The basic oversight framework at 49 CFR part 633 has served FTA well, focusing on the assignment of to oversee major capital projects and requiring a project sponsor to develop a comprehensive PMP to guide the planning and implementation of its major capital project. The current rule has helped to protect taxpayer funds and to ensure the efficient, effective design, construction, and opening of transit projects to revenue service.

Today, however, FTA is investing in larger and more complex capital projects, as compared to those in years past. These more recent projects entail greater challenges to the agency as the steward of Federal tax dollars. They require further improvements in the ways sponsors manage their projects and the FTA program for oversight of major capital projects.

The proposed rule is designed to tailor the FTA oversight process for factors such as project complexity, the amount of Federal investment, and the experience level of the project sponsor. FTA has already started working with sponsors earlier in the project development process, and will assign PMOCs to match project complexities and challenges. The proposed rule sets forth the principles for FTA's project management oversight. It specifically establishes and documents FTA's risk assessment practices, the review of project management capacity and capability, and the review of project readiness. These reviews would ''raise the bar'' as compared to the minimal requirements in the current rule, which are limited, essentially, to review of the PMP and its implementation.

Section 633.19 FTA Use of Oversight Services

While FTA's capital programs have grown significantly since 1989, its staff size has stayed essentially the same for the past 30 years. FTA's PMOCs help fill the gaps between staff resources and both the number of major capital projects and the levels of Federal funding for those projects. Further, of course, the PMOCs provide specialized expertise for the challenges that confront a good many projects. Currently, the decision to assign PMOCs to projects is made based on the relative complexities of the major capital projects underway, as well as the experience level of the project sponsors. This proposed rule acknowledges conditions under which FTA may scale its provision of oversight services to the risks (or lack thereof) inherent in a project or to the experience level of its sponsor.

Each PMOC firm assigned to a major capital project is a team of experienced professionals who collectively possess expertise on all aspects of the

development, construction, start-up, and overall management of transit capital projects, including major capital projects. All PMOCs serve as FTA's eyes and ears on-site; monitor and report on a project's development and implementation; and verify whether the management of a project is consistent with the approved project management plan and accepted engineering and project management practices. The PMOCs submit periodic reports to FTA, documenting project status, activities, and open issues.

In this proposed rule, additional project elements such as safety and security have been included as requiring PMOC oversight. These PMOC efforts keep FTA informed of a project's status and the adequacy of a sponsor's project management. They also help support FTA's decision whether to advance a New Starts project to the next phase of development, recommend a New Starts project for a Full Funding Grant Agreement, or provide a large grant to a sponsor of a Fixed Guideway Modernization.

Section 633.21 Roles and Responsibilities of Project Management Oversight Contractors

As discussed previously, a PMOC's primary role is to support FTA in the oversight of a major capital project by reporting and making recommendations to FTA on the sponsor's management of the project. Acknowledging their professional expertise, this section of the proposed rule sets forth the explicit roles and responsibilities of the PMOCs. It also provides for related services that PMOCs may provide to FTA's oversight program. These may take the form of specialized assistance to FTA, for example, in developing oversight procedures, preparing reports on best practices, sharing of lessons learned, conducting independent reviews of capital cost estimates, and other efforts that help FTA improve its transit capital investment programs.

FTA must emphasize, however, that a PMOC has no authority to make decisions for FTA or to act on behalf of FTA in making any findings or judgments regarding a sponsor's compliance with Federal statutes, regulations, or administrative requirements. As explained herein, a PMOC does not and should not interfere with the project sponsor's responsibilities. A PMOC does not sign drawings, for example, nor does it perform field tests, conduct materials testing, or inspect work site conditions, so forth.

To protect all parties that are or may be involved in a major capital project, this NPRM reaffirms that a PMOC performs its services under strict privity of contract with FTA. Regrettably, on a few occasions, PMOC's have been subpoenaed for testimony or production of documents in third party law suits, or even sued in tort, in attempts to blame them for accidents, incidents or injuries related to the project, or to find them liable for errors and omissions associated with the design and construction of the project. FTA's PMOCs bear no such responsibility, of course, and this proposed rule memorializes that point.

Section 633.23 FTA Risk Assessments

FTA's risk assessment of major capital projects has evolved over the years, partly in response to the increasing complexity of projects, but certainly as the result of FTA's growing experience in the oversight of major capital project management. Since 2003, FTA has completed over 40 assessments of the risks associated with New Starts and other major capital projects. During this time, the risk assessment has transitioned from a stand-alone ''bottom-up'' risk analysis to an integrated ''top-down'' risk analysis, and FTA has employed a number of approaches to identify project risk.

The first approach was to identify ''sources of risk'' which are categories of possible risk events (*e.g.,* stakeholder actions, unreliable estimates, team turnover) that could affect the project for better or worse. This approach attempted to compile an estimate of total project risk exposure, which would then be used to determine budget adjustments or requirements for additional contingency. This process resulted in a project level estimate of risk from very detailed estimates but without tracking the estimate to specific contract packages or budget line items. This was characterized as a ''bottoms up'' approach. FTA's experience with the ''bottoms up'' approach was unsatisfactory.

Subsequently, FTA identified common characteristics of satisfactory risk assessments and realized that an evaluation of project deliverables and quality of management planning products tied to individual contract packages or budget line items consistently led to more accurate projections. This became known as the ''top down'' approach. A number of advantages materialized as a result of transitioning to the ''top down'' approach. Most significantly, FTA was able to bring to any individual project assessment a standardized risk classification system, as well as a risk framework to facilitate management planning. In the several years of implementing this ''top down'' approach, FTA has had considerable success in forecasting project risk, and has presented this information at various international forums. Indeed, this new approach has contributed to improvements in project management not only in terms of the tracking of risk, mitigation efforts, and available contingencies, but also in reporting on the risk response and effective contingency management. FTA has been continuously working with the PMOC community to document emerging lessons learned, which will serve as a guide to improving the risk models as well as developing new tools to improve the process.

FTA has also initiated risk assessments prior to entry into Preliminary Engineering for those New Starts projects that have shown signs of potential high risks. This enables the early identification of some critical project risk items and as a result the early development of mitigation strategies. Details of FTA's risk assessment methodology are set forth in Appendix A.

Section 633.25 Increased Oversight Based on Project Cost, Complexity, or Risk

This proposed rule is the counterpart to Section 633.17 in Subpart B, which allows the Administrator to impose additional requirements for certain projects, based on the experience level of the sponsor and the nature of the project, and requires the sponsor to report on its progress. The proposed rule recognizes that, in appropriate circumstances, FTA will provide an increased level of analysis and oversight, again tailored to the specific circumstances of the project, to determine the adequacy of the sponsor's management of project activities, both pre-contract award and post-contract award; the reliability of the sponsor's current and forecast estimates of project costs, and the revenue service date; and the additional actions the sponsor needs to take to maintain that cost and schedule.

This section also provides for FTA to use analytical tools to assess the sufficiency of the sponsor's existing PMP to address the particular project and sponsor characteristics that could oblige the Administrator to call for additional requirements. Because these characteristics are specific to the sponsor and the project, there are no set, generic requirements that will be imposed. When FTA identifies areas that need improvement, the sponsor will be expected to tailor its response to

its own organizational structure and project approaches. Through its analysis, FTA and its PMOC will develop an oversight approach that is specific to the situation. While FTA will provide additional guidance and, if requested, examples of how other sponsors have addressed an issue, there is no ''cookie cutter'' approach that a sponsor will be expected to use in responding to the situation, nor will those examples from other sponsors be used to determine whether a particular sponsor is in conformance with a specific requirement.

As part of its analysis and oversight, FTA will determine the most effective frequency and content of sponsor reporting necessary for it to conclude whether the sponsor is doing everything required to keep the project on budget and schedule. Monthly or quarterly reviews, or both, which are required under proposed Section 663.15, may be used as the forum for FTA to perform this additional oversight.

Many of the requirements directed by FTA in the past have focused on having an open, informed, transparent decision-making process where decisions are made at the appropriate level within the sponsor's organization and are appropriately documented, based on the best information available at the time, and are able to be reconstructed by third parties. These processes and tools need to be tailored to the project's specific stage of development.

In particular, in the development of the procurement documents, a sponsor may be able to include mechanisms, such as options, that allow it to retain the ability to mitigate cost increases at a later date. However, if the design is not done at the beginning to allow for this possibility, the cost and time of redoing the design at a later date becomes prohibitive. With good preplanning, a sponsor may negotiate a unit cost for unforeseen site conditions so that if they do occur, the need to negotiate with the contractor at that stage will be limited to agreeing on the amount of the change that has occurred, not how it should be priced.

It is imperative that a sponsor have an acknowledged process, as cost and schedule problems crop up, for projecting the results of those remedial actions on its ability to maintain the overall costs and schedule. An unacknowledged problem cannot be solved. Unsolved problems drive negative variances to costs and schedules. The forecast process should clearly explain when cost or delay will be recognized. Without a forecast, it is too easy to assume that a problem will be solved while the ability to actually find a solution slips further and further away.

Rulemaking Analyses and Notices

All comments received on or before the close of business on the comment closing date above indicated will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FTA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review), EO 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FTA has determined preliminarily that this action, although not economically significant, would be a significant regulatory action within the meaning of Executive Order 12866 and would be significant within the meaning of Department of Transportation regulatory policies and procedures because of substantial congressional, State and local government, and public interest. Those interests include the receipt of Federal financial support for transportation investments, appropriate compliance with statutory requirements, and balancing of transportation mobility and environmental goals. We anticipate that the direct economic impact of this rulemaking would be minimal. FTA evaluated the industry costs and benefits of this NPRM and has determined that it is not an economically significant rule under E.O. 12866. The proposals contained in this NPRM will not result in an impact on the economy of $100 million or more (adjusted annually for inflation).

As authorized by 49 U.S.C. 5327, this NPRM updates and clarifies FTA's existing oversight principles, tailors them to known risk factors, and redefines major capital project so that projects subject to FTA's project management oversight would change. The rule under this NPRM only imposes regulatory requirements upon applicants requesting funding under the program. The project management plans and their major elements that are the subject of this NPRM are Congressionally-mandated.

We consider this proposal a means to clarify and realign the existing regulatory requirements. Those proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs.

FTA has also considered the industry-wide costs and benefits of this NPRM. First, thanks to the practices adopted in the 1990s and 2000s under the current rule, the best of which are codified in the proposed NPRM, the typical (50th percentile) final costs of major capital projects have been kept within 22 percent of original estimates, compared to 51 percent in the years 1969 to 1987.[1] Further improvement is expected should the proposed NPRM become final. Given the scale and complexity of major capital projects and a history of cost overruns on such projects, these cost savings have been in the hundreds of millions of dollars. The proposed rule would standardize the best of these practices and refine the requirements of the current rule. Secondly, because project management oversight has evolved to incorporate the oversight principles set out in this NPRM (as reflected in the aforementioned cost control), significant increased costs borne by sponsors from the rule, per se, would be exceptional. For example, Project Management Plans and Risk Assessments are the norm in major capital projects. Because this proposed rule would apply on the basis of Federal funds rather than total project costs, as is the case with the current rule, fewer projects may be subject to FTA project management oversight. Also, because the level of oversight would be tailored to the costs, complexities and risks of a project, the rule is likely to reduce overall FTA oversight. Moreover, by their own initiative to reduce risk factors, project sponsors can reduce the level of FTA oversight under this proposed rule.

This proposed rule would apply FTA project management oversight to Fixed Guideway Modernization projects, but only such projects receiving $100 million or more in Federal financial assistance under 49 U.S.C. 5309 or those FTA designates as major capital projects. Sponsors of Fixed Guideway Modernization projects with the most effective track records would receive the least FTA oversight. Those sponsors with less effective track records can

[1] FTA, The Predicted and Actual Impacts of New Starts Projects—2007, p. 13.

improve, with the assistance of the PMOCs employed by FTA. Sponsors that prepare Project Management Plans and Risk Assessments now would be able to prepare those required under the proposed NPRM for roughly the same cost or less, given the guidance provided concerning their contents. Finally, nearly all the other foreseeable incremental costs would be borne by PMOCs that are paid by FTA from a fixed portion of FTA capital program funds.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612) FTA has evaluated the effects of this proposed action on small entities and has determined that the proposed action would not have a significant economic impact on a substantial number of small entities. For this reason, FTA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria established by Executive Order 13132, and FTA has determined that this proposed action would not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. FTA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions. Consistent with Executive Order 13131, FTA examined the direct compliance costs of the NPRM on state and local governments, and determined that the collection and analysis of the data is eligible for Federal funding as part of the overall project costs. Representatives of state and local governments were invited to participate in the Webinars and submit formal comments to the docket on the ANPRM. Furthermore, the preparation of Project Management Plans by project sponsors would not preempt any state law or regulation or limit States' abilities to discharge traditional state governmental functions.

Executive Order 12372 (Intergovernmental Review)

The regulations effectuating Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs and were carried out in the development of this rule. FTA conducted two public meetings via webinar following publication of the ANPRM, in which representatives of state and local governments were able to participate. Also, FTA extended the comment period on the ANPRM for an additional thirty days, receiving twenty-one comments, seventeen of which were submitted by transit agencies representing units of state and local governments. FTA solicits comments on this subject.

Paperwork Reduction Act

In compliance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and the Office of Management and Budget (OMB) implementing regulation at 5 CFR 1320.8(d), FTA is seeking approval from OMB for the Information Collection Request abstracted below. FTA acknowledges that this NPRM entails project-specific information collections to facilitate project oversight for major FTA capital projects, including an effective Project Management Plan and accompanying risk assessments. Therefore, FTA is seeking comment whether the information collected will have practical utility; whether its estimation of the burden of the proposed information collection is accurate; whether the burden can be minimized through the use of automated collection techniques or other forms of information technology; and for ways in which the quality, utility, and clarity of the information can be enhanced.

Readers should note that the information collection will be specific to each project, to facilitate and record the project sponsor's exercise of project management and the PMOC's exercise of FTA-assigned oversight duties. The paperwork burden for each project will be proportionate to the level of oversight that, in turn, is governed by the project's scale, complexity, and risks. Moreover, the labor-burden of reporting requirements such as Risk Assessments and project milestone reports are largely borne by the PMOC, employed and paid for by FTA from program (not project) funds. Please refer to proposed Sections 633.11 and 633.13 for the content of the PMP. Proposed Section 633.23 provides a description of the risk assessment process, and refers to the appendix to the proposed rule, which provides additional information on the risk assessment process.

Type of Review: OMB Clearance. New information collection request.

Respondents: There are approximately 77 possible major capital project sponsors, of which 55 presently are implementing major capital projects. Of those projects in the New Starts program, FTA anticipates six (6) Preliminary Engineering (PE) requests, six (6) Final Design (FD) requests and four (4) Full Funding Grant Agreements (FFGAs) per year. In addition, FTA anticipates five (5) major Fixed Guideway Modernization projects per year. The PRA estimate was based on a total of 21 PMPs. This includes 6 projects entering PE, 6 entering FD, 4 entering into FFGAs and 5 Fixed Guideway Modernization projects. Insofar as risk assessments, the PRA estimate is based on 16 risk assessments for New Start projects.

Frequency: Information will be collected periodically whenever a respondent sponsoring a New Starts project enters into a new project management stage (*i.e.,* Preliminary Engineering, Final Design, or Full Funding Grant Agreement), and once for a respondent sponsoring a Fixed Guideway Modernization project.

Estimated Total Annual Burden Hours: 57,973. This has been estimated as follows: This represents the burden to the project sponsor (recipient) and includes 23,925 hours for preparation and support the review of the PMPs, 9,408 to support the risk assessments and 24,640 hours to report to FTA and hold quarterly meetings.

Additional documentation detailing FTA's Paperwork Reduction Act Information Collection Request, including FTA's Justification Statement, may be accessed from OMB's Web site at *http://www.reginfo.gov/public/do/PRASearch*. OMB is required to file comments or make a decision concerning the proposed information collections contained in this proposed rule within 60 days after receiving the information collection request submission from FTA. FTA will summarize and respond to any comments on the proposed information collection request from OMB and the public in its Final Rule.

National Environmental Policy Act

This proposed action would not have any effect on the quality of the environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and is categorically

excluded under 23 CFR 771.117(c)(20)), which covers the promulgation of rules, regulations and directives.

Executive Order 12630 (Taking of Private Property)

FTA has analyzed this proposed rule under Executive Order 12630, Government Actions and Interface with Constitutionally Protected Property Rights. The agency does not anticipate that this proposed rule would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FTA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. FTA certifies that this proposed rule is not an economically significant rule and would not cause an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13175 (Tribal Consultation)

FTA has analyzed this proposed rule under Executive Order 13175 (Nov. 6, 2000), and believes that the proposed action would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal laws. The proposed rulemaking addresses obligations of Federal funds to States and local public transportation agencies for major capital transit projects and would not impose any direct compliance requirements on Indian tribal governments, nor would the proposed rule impose any new consultation requirements on tribal governments. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Effects)

FTA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). FTA has determined that it is not a significant energy action under that order since, although it is a significant regulatory action under Executive Order 12866, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–8).

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN set forth in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 633

Transportation, Mass transportation, Project management oversight, Major capital projects, Fixed guideway projects, Risk assessment, Project management plans.

Issued on: September 7, 2011.

Peter Rogoff,

Administrator.

For the reasons set forth in the preamble, and under the authority of 49 U.S.C. 5309 and 5327, and the delegations of authority at 49 CFR 1.48(b) and 1.51, FTA proposes to amend Chapter VI of Title 49, Code of Federal Regulations, by revising Part 633 to read as follows:

PART 633—CAPITAL PROJECT MANAGEMENT

Subpart A—General Provisions

Sec.
633.1 Purpose.
633.3 Definitions.
633.5 Applicability.
633.7 Access to information.

Subpart B—Recipients' Responsibilities for Project Management

633.9 Project management capacity and capability.
633.11 Project management plan: contents.
633.13 Special requirements based on project cost, complexity, or risk.
633.15 Project management plan: implementation.

Subpart C—FTA Project Management Oversight

633.17 Project management oversight principles.
633.19 FTA use of oversight services.
633.21 Roles and responsibilities of project management oversight contractors.
633.23 FTA risk-informed project management oversight.
633.25 Increased oversight based on project cost, complexity, or risk.

Appendix A to Part 633—The Use of Risk Assessment in FTA's Risk-Informed Project Management Oversight

Authority: 49 U.S.C. 5301(e), 5309, and 5327; 49 CFR 1.48(b) and 1.51.

Subpart A—General Provisions

§ 633.1 Purpose.

This part carries out the mandate of 49 U.S.C. 5327(e) for project management oversight as applied to both the Major Capital Investment and the Fixed Guideway Modernization programs authorized by 49 U.S.C. 5309.

§ 633.3 Definitions.

As used in this part:

Administrator means the Federal Transit Administrator or the Administrator's designee.

Fixed guideway means any public transportation facility using and occupying a separate right-of-way or rail for the exclusive use of public transportation and other high occupancy vehicles or using a fixed catenary system and a right-of-way usable by other forms of transportation. *Fixed guideway* includes but is not limited to rapid rail, light rail, commuter rail, ferry boat service, automated guideway transit, people movers, and exclusive facilities for buses and other high occupancy vehicles.

FTA means the Federal Transit Administration.

Major capital project means any project for which the Recipient seeks $100 million or more in Federal financial assistance under either the Major Capital Investment (New Starts) or Fixed Guideway Modernization programs authorized by 49 U.S.C. 5309 or any capital project the Administrator finds would benefit from the FTA project management program, given the size or complexity of the project, the uniqueness of the technology, the limited experience of the recipient sponsoring the project, or any other risks inherent in the project. This definition does not include routine acquisition, maintenance, or rehabilitation of rolling stock.

Management Capacity and Capability means, at any point in time, the ability

of the recipient's organization to demonstrate or be likely to demonstrate that it can deliver the project within the recipient's budget and schedule, employing the competencies of the recipient organization and third party contractors, in conjunction with the available authorities, accountabilities, and assigned resources. In principle, *management capacity* connotes the ability of the recipient's project team to complete the project within the recipient's budget and schedule by engaging other stakeholders or resolving issues within defined constraints and assumptions; *management capability* connotes the ability of the recipient's project organization to implement an effective set of internal controls and develop or implement additional competencies, authorities, or resources to minimize risk or negative consequences.

New Starts project means any project for which the sponsor is seeking Federal financial assistance under the discretionary Major Capital Investment program authorized by 49 U.S.C. 5309.

Project Management Oversight (PMO) means the activities of FTA and its Project Management Oversight Contractor in monitoring both the effectiveness of the recipient's project delivery and whether a major capital project is on time, within budget, and built to approved plans and specifications, consistent with all applicable Federal requirements, and using information about the project in making decisions about the award of Federal financial assistance.

Project Management Oversight Contractor (PMOC) means a contractor retained by FTA to assist FTA performing oversight functions for the New Starts and Fixed Guideway Modernization programs.

Project Management Plan (PMP) means a written document prepared and used by a recipient organization, inclusive of its project office and stakeholders, which explicitly and adequately identifies the technical approach, responsible parties and entities, and tasks, budgets and schedules necessary to define, design, construct and startup a major capital project and commence revenue service within defined constraints and assumptions. A PMP may be a single document or a series of documents or sub plans integrated with one another into the PMP either directly or by reference for the purpose of defining how the recipient will effectively manage, monitor, and control the project.

Recipient means a direct recipient of Federal financial assistance from FTA; an entity that intends to apply for Federal financial assistance from FTA; or the sponsor of a major capital project that will receive Federal financial assistance from FTA.

Risk means a measure of the potential inability to achieve project objectives within defined scope, cost, and schedule constraints and assumptions, based on several components: The probability of failing to achieve a particular outcome, the consequences or effects of failing to achieve that outcome, and the root cause or causes which, if eliminated or corrected, would prevent the potential consequences from occurring.

Sub Plan means a document which supplements the PMP by addressing a specific discipline or managerial practice for the purposes of developing and executing a major capital project. A sub plan may be incorporated into the PMP or referenced and configuration controlled by the PMP.

§ 633.5 Applicability.

This part applies to any major capital project that will be assisted with funding under 49 USC Chapter 53, including funding that originates under the Surface Transportation Program or the Congestion Mitigation Air Quality program authorized by Title 23 of United States Code.

§ 633.7 Access to information.

As reasonably necessary in FTA's judgment, a recipient shall give FTA and its PMOCs timely access to construction sites and all records, data and information pertinent to the use of Federal financial assistance for a major capital project. As appropriate, FTA and its PMOCs may decline custody or control of records, data and information pertinent to the use of Federal financial assistance for a major capital project.

Subpart B—Recipients' Responsibilities for Project Management

§ 633.9 Project management capacity and capability.

Before awarding Federal financial assistance for the development of a major capital project, FTA must determine that the recipient has or will have sufficient management capacity and capability to complete the project within the constraints of cost, scope and schedule under the Federal grant award. As part of this determination, FTA will assess the recipient's Project Management Plan to establish whether the recipient has, and will maintain, sufficient staff, financial resources, and processes to:

(a) Continuously manage the project through each sequential phase of project development, including the transition into revenue operations;

(b) Comply with applicable statutes, regulations, circulars, and technical standards;

(c) Ensure the compliance of its staff, contractors and subcontractors with applicable statutes, regulations, technical standards, third party contracts, and inter-agency agreements;

(d) Address all technical aspects of the project, including but not limited to engineering, design, construction, and operations.

(e) Maintain the project schedule and all milestones within that schedule;

(f) Carry out all environmental mitigation required by the environmental record for the project;

(g) Develop and follow a realistic financial plan and keep expenditures within the project budget;

(h) Solicit, award, and manage third party contracts consistent with the recipient's preferred means of project delivery;

(i) Conduct adequate quality assurance and control of all project activities;

(j) Engage project stakeholders in a timely manner to maintain scope, cost and schedule at approved performance levels;

(k) Obtain the proper information to ensure that decisions are made at the appropriate times, based on the best information available, and given the known uncertainties;

(l) Identify, analyze, and mitigate project risks on a continuous basis;

(m) Design and build the project in accordance with applicable safety and security requirements; and

(n) Protect against waste, fraud, or abuse of project funds.

§ 633.11 Project Management Plan: contents.

(a) A Project Management Plan (PMP) must be tailored to the type, costs, and complexity of the major capital project to which it pertains and the recipient's management capacity and capability. A PMP must be revised at the beginning of each project phase (*e.g.,* preliminary engineering, final design, construction), and at other times as necessary and appropriate, throughout the execution of the project. These revisions will enable the recipient to make the necessary adjustments and improvements relative to the phase upon which the recipient's project is about to enter to ensure that the necessary staff and processes are in place to control the scope, budget, schedule, and quality of the project, while managing the safety and security

of all persons. At a minimum, a PMP must address the following in a sufficient level of detail to enable FTA to assess the adequacy of the recipient's plan:

(1) The recipient's staff organization and structure, including, specifically, well-defined functional responsibilities, internal controls, reporting relationships, job descriptions, job qualifications, and the staffing levels required at each successive phase of project development;

(2) The budget for the project, including, specifically, the amounts budgeted for project management, contractors and consultants, property acquisition, utility relocation, systems demonstration, audits, contingencies, and all other necessary costs of the project;

(3) The master schedule for engineering, design and construction, including all items on the critical path for project development, displayed in a format that makes clear the effects of changes or delays on the project schedule;

(4) The document control procedure and recordkeeping system;

(5) The change order procedure, including, specifically, the recipient's policy and procedure for managing change order requests and actual change orders for design, construction and capital acquisition;

(6) Quality control and quality assurance, including, specifically, the functions and procedures associated with project design, procurement, construction, system installation, and integration of system components;

(7) Internal reporting within the recipient's organization, including, specifically, the procedures for reporting all matters affecting costs and schedules;

(8) The criteria and procedures for testing operational systems and their major components;

(9) The procedures for carrying out the environmental mitigation required for the project;

(10) Community and Public Relations;

(11) Management of contractor performance;

(12) Management of the recipient's vehicle fleets;

(13) Management of risks, contingencies, and insurance;

(14) A series of project-specific performance measures against which the recipient will report to FTA (see paragraph (d) of this section); and

(15) Management of safety and security.

(b) Where needed, depending on the type and characteristics of the project (e.g., a project involving right-of-way acquisition must address real estate), the recipient must also address the following in its PMP:

(1) Force Account work that will be performed by the recipient's own staff, and how the cost of that work is calculated;

(2) Operations and Maintenance (O&M), including both the effects of O&M on design and construction and acceptance of project work by the recipient's management responsible for O&M;

(3) Real Estate, including compliance with the requirements of the Uniform Relocation Assistance and Real Property Acquisitions Policy Act;

(4) Alternative Project Delivery methods;

(5) Agreements with utilities, railroads, and other third parties, and inter-agency agreements necessary to project completion; or

(6) Other facets of planning, designing, and constructing a major capital project.

(c) As appropriate, the documentation of a recipient's current plans, programs, and procedures may be incorporated by reference in a PMP rather than set forth in full in the PMP.

(d) As required by paragraph (a) of this section, the PMP must include a series of project-specific performance measures against which the project sponsor will report. This must include at minimum target revenue service date, interim milestones, contingency levels as identified in the risk contingency management plan, and ''check points'' at which the adequacy of contingency levels and risk mitigation will be evaluated.

§ 633.13 Special requirements based on project cost, complexity, or risk.

Based on the size, cost or complexity of a major capital project, the uniqueness of the technology, the experience of the recipient, the chosen method for project delivery, or any other risks, the Administrator, in his or her discretion, may require a recipient to:

(a) Meet discrete, specific targets on a scheduled basis for enhancing or maintaining its management capacity and capability, and incorporate those improvements into its Project Management Plan (PMP);

(b) Make changes in the recipient's managerial plans, practices, internal controls, or governance; develop formal procedures for revising a recipient's PMP and sub-plans; conduct analyses for other process improvements; or develop project-specific performance measures, such as contingency reporting or forecasting, incorporation of lessons learned, and evaluations of project protocols and activities;

(c) Report to FTA, as requested, the recipient's progress in achieving the special requirements of its PMP, as established and managed both at the project level and by contract package; and

(d) Report to FTA, as requested, the recipient's projection of current estimates of project costs, in the form of ''estimates at completion,'' schedule data, and the revenue service date, with basis documentation sufficiently reliable to support those projections and the award of additional Federal financial assistance for the project.

§ 633.15 Project Management Plan: implementation.

(a) Any grant application for Federal financial assistance for a major capital project must include the current iteration of a recipient's Project Management Plan.

(b) Any request for FTA approval to enter into a particular phase of the New Starts process must include the current iteration of a recipient's PMP.

(c) At all times, a recipient shall fully carry out its PMP and take every reasonable action to maintain its capacity and capability for project management; keep the project on schedule and within budget, in accordance with all milestones; and continuously monitor the project for risks to budget and schedule, and mitigate those risks, as necessary and appropriate to maintain approved budget and schedule levels.

(d) If at any time a recipient must revise a PMP, the recipient shall submit its proposed changes to its PMP to FTA, together with a detailed explanation of the need for those revisions.

(e) On a monthly basis, a recipient must submit to FTA the current data on the budget and schedule for the project, arrayed in accordance with FTA's budget and schedule reporting requirements, including, specifically, the current levels of contingency, both allocated and unallocated, and the float or slippage in meeting each milestone on the critical path for project completion. With each monthly submittal the recipient must also report any risks to the project budget and schedule and its efforts to mitigate those risks.

(f) In his or her discretion, the Administrator may require a recipient to hold quarterly meetings with FTA and its PMOC on the progress of a major capital project. These meetings shall provide a means for briefing senior FTA management on the project, transmitting status and progress reports, identifying

current and systemic issues, and opportunities for site inspection. These meetings will be in addition to the monthly reporting required by paragraph (e) of this section.

Subpart C—FTA Project Management Oversight

§ 633.17 FTA project management oversight principles.

The FTA oversight of a major capital project is a due diligence process of periodic reviews and evaluations designed to facilitate agency stewardship of taxpayer funds and to help ensure the efficient and effective design, construction and revenue service opening of a project. Throughout the oversight process, FTA is charged to:

(a) Approve the recipient's Project Management Plan and any revisions to the PMP;

(b) Evaluate the management capacity and capability of the recipient to manage the major capital project within scope, cost and schedule constraints;

(c) Verify the recipient's compliance with all applicable Federal requirements;

(d) Assess the risks of a project, and the readiness of that project to advance through the New Starts process or receive Federal financial assistance for fixed guideway modernization; and

(e) Assess whether the project is being executed in accordance with the recipient's approved Project Management Plan, and in accordance with the approved budget and schedule.

§ 633.19 FTA use of oversight services.

FTA may retain the services of Project Management Oversight Contractors (PMOCs) to assist FTA in determining whether a major capital project is on time and within budget, built to approved plans and specifications, and consistent with all applicable Federal requirements. The scope and level of FTA oversight will be based, in part, on the recipient's experience, resources, and past performance of major capital projects, and the cost, complexity, or risks inherent in a project. The following tenets guide FTA's use of the services of PMOCs:

(a) FTA may deploy the services of a PMOC at any point during the planning, design, construction, and startup of a major capital project, to maximize transportation benefits and constrain costs. To conserve resources, however, FTA will generally defer the use of PMOCs on New Starts projects until those projects have requested FTA approval for entry into preliminary engineering.

(b) FTA will give highest priority in its use of its PMOC resources to major capital projects of highest cost, complexity, or risk.

(c) To the extent practicable, FTA will match the special expertise and experience of a PMOC to the inherent complexity and risk of a major capital project, and the management capacity and capability of the recipient.

§ 633.21 Roles and responsibilities of project management oversight contractors.

The roles and responsibilities of a PMOC on a major capital project are as follows:

(a) A PMOC provides consulting expertise to FTA, alone, in engineering and engineering management on all phases of a major capital project, principally in the areas of design, construction, acquisition of facilities, equipment, rolling stock and real estate, and startup activities.

(b) The primary role and responsibility of a PMOC is to assist FTA in the evaluation of: a PMP and supporting documents, a recipient's management capacity and capability, the risks inherent in a project, a recipient's readiness to use federal funds or to advance in the project development process, and the recipient's on-going management of the major capital project. At the request of FTA, a PMOC may perform additional services or deliver products to FTA for purposes other than the oversight of a particular major capital project.

(c) In the course of providing its services and products, a PMOC may render advice, opinions, observations, and recommendations to the Administrator or FTA staff regarding the progress of a major capital project and the management capacity and capability of a recipient. A PMOC has no authority to make decisions for FTA. A PMOC has no authority to act on behalf of FTA in making any findings or judgments regarding a recipient's compliance with Federal statutes, regulations, or administrative requirements.

(d) A PMOC performs its services to FTA under strict privity of contract with FTA. The products and services rendered under a contract between FTA and a PMOC are for the sole benefit and use of FTA and may not be relied upon by any third party for any purpose. The products and services rendered under a contract between FTA and a PMOC create no liability or responsibility whatsoever to any third party.

(e) A PMOC has no role or responsibility whatsoever for establishing or approving the design, construction, operation, or safety of a major capital project. A PMOC has no control whatsoever over selecting or approving the means, methods, precautions, sequences, or techniques a recipient uses in constructing a major capital project, which are solely the right, responsibility, and choice of the recipient sponsoring that project. A PMOC has no role or responsibility whatsoever for the formal inspection of a major capital project or a recipient's acceptance of construction work or project facilities, equipment, or rolling stock.

§ 633.23 FTA risk-informed project management oversight.

(a) At any time, FTA may, in its discretion, and in consultation with the recipient, perform or allow a recipient to perform a risk assessment at a level commensurate with the size, cost, or complexity of a major capital project. A risk assessment will reflect the capital cost estimates, project schedules, and analyses of contingencies, resulting in an estimate of the total risk exposure for the project given the recipient's defined constraints and assumptions. A risk assessment will entail the identification, analysis, and mitigation of critical geotechnical, market, design, procurement, construction, managerial, organizational, and stakeholder risks to increase the probability of meeting cost, schedule, and performance objectives. FTA and the recipient will use this estimate of total risk exposure to establish the budget and schedule for the project, recognizing that not all risk can or should be funded.

(b) As part of the process of establishing the funded and unfunded portions of the total risk exposure for the project, tradeoffs may be made among needs for additional funding for the project, timeliness of implementation of additional management capacity and capability, and mitigation of specific risks.

(c) To address unfunded risk, FTA may require a recipient to develop explicit plans and tools for risk and contingency mitigation, measures for additional management capacity and capability, or financial mechanisms to accommodate the unfunded risks.

(c) FTA's basic methodology for conducting risk assessments is currently set forth in the Appendix to this rule.

§ 633.25 Increased oversight based on project cost, complexity, or risk.

Based on the size, cost or complexity of a major capital project, the uniqueness of the technology, the limited experience of the recipient, the chosen method for project delivery, or any other risks, the Administrator, in his or her discretion, may perform additional analyses and oversight as a condition precedent to an award of

Federal financial assistance for the project, either at the project level or by contract package, or both. These additional analyses and oversight will assist the recipient in developing a framework to maintain its cost and schedule, consistent with the requirements of § 633.13, and may include, specifically, an FTA assessment of the:

(a) Adequacy of the recipient's management of project activities, both pre-award and post-award, of particular cost, complexity or risk; and

(b) Reliability of the recipient's current and forecast estimates of project costs and the revenue service date.

Appendix A to Part 633—The Use of Risk Assessment in FTA's Risk-Informed Project Management Oversight

Introduction

As a steward of taxpayer funds, and the Federal agency that awards grants-in-aid for transit across the United States, FTA has every interest in ensuring that its grant recipients deliver projects that are meritorious and add value. By law, FTA is obliged to oversee sponsors' management of their major capital projects from inception through implementation. This entails, most notably, the obligation to determine the likelihood a given project can be delivered within an approved budget and schedule.

To perform its oversight of major capital projects, FTA has developed a risk assessment process that enables both the Federal government and a project sponsor to determine how much of the total risk exposure for the project will be funded in an approved budget and schedule with an appropriate contingency. FTA and the sponsor must then agree on how the non-funded risk portion of the total risk exposure can potentially be mitigated through specific actions, increased management capacity and capability, or additional means for funding. This Appendix describes these processes and their underlying steps.

Project Management Context

An assessment of a sponsor's ability to conduct project management is a major part of these processes. Project management is generally defined as the application of knowledge, skills, tools, and techniques to project activities to meet project requirements. Insofar as major capital projects, in particular, FTA expects the sponsors, through competent, accountable personnel, operating within their delegated authority, to make decisions and allocate resources, consistent with the terms of their agreements with FTA and within clear constraints and assumptions.

To determine whether a project can be delivered within its stated constraints and assumptions, the FTA risk assessment process examines whether the sponsor's project team has:

(1) Selected appropriate project management processes;

(2) Used documented approaches to define project deliverables that meet project requirements;

(3) Complied with the requirements of the FTA grant, and met the needs and expectations of other stakeholders; and

(4) Balanced the competing demands of scope, time, cost, quality, resources, and risk.

The Role of Good Practices in Project Management and Risk Assessments

The determination whether a sponsor has selected appropriate management processes will take into account whether the sponsor is using good practices. The Project Management Institute (PMI), in its *Body of Knowledge* (''BoK'') document, and FTA, in its *Project and Construction Management Guidelines,* have identified those project management processes—inclusive of critical knowledge and lessons learned—which have been recognized as good practice. For FTA's purposes, current good practice means there is general agreement that the application of specific project management processes have been shown through documented analyses or engineering assessments to enhance the chances of success in delivering a project within constraints and assumptions.

Over the past decade FTA has had extensive experience in establishing the capacity of good practices to mitigate cost and schedule risk in terms of recommendations for cost contingency. Also, FTA has had experience in identifying certain risks, such as geotechnical risks, that are not amenable to mitigation within known good practices; these types of risk require development of specific management capacities to successfully mitigate.

For the purposes of FTA's risk assessment process, risk can be rewritten as a function of good practices by stating that risk is a measure of the potential inability [*of the sponsor*] to achieve project objectives [*using good practices*] within defined scope, cost, and schedule constraints and assumptions. The risk assessment itself then becomes a management process for evaluating the selected good practices and trend data to determine whether the appropriate or optimal management processes have been selected, and assessing whether any necessary waivers, deviations or non-conformances to these practices—real or potential—have been identified. When combined, this information allows for a characterization of the resulting risks to the project.

FTA's Risk Assessment Process

In its discretion, FTA may perform a risk assessment, working closely with a sponsor of a major capital project. Or FTA may, in its discretion, determine that certain project sponsors are likely to be capable of delivering external risk assessment products and materials that meet FTA's standards and principles for risk assessments. In the latter instance, FTA will work with an interested sponsor to facilitate external risk assessments, in whole or in part, as described in the sponsor's Project Management Plan (PMP) and the material in the risk management section. The PMP must assure FTA of a timely delivery of risk assessment products. The sponsor will be responsible for the initial evaluation and documentation of conformity to FTA standards and policies for quality and reliability, as well as the project-specific performance standards in the sponsor's PMP. The PMP approach must recognize FTA's inherent governmental function to agree to a final cost and schedule. If the sponsor's PMP demonstrates a technical approach and the management capability and capacity to deliver risk assessments satisfactory for FTA's purposes, the PMP will be approved.

Background and Underlying Principles

For FTA's purposes, risk assessment is not a single, fixed method of analysis. Rather, it is a formal, systematic approach to organizing, documenting, and analyzing project-specific recipient information, and comparing that information to previous FTA program experience, to identify what risks which might degrade a sponsor's ability to deliver the project within constraints and assumptions. These include specific geotechnical, market, design, procurement, construction, managerial, organizational, and stakeholder risks, as well as non-conforming inputs or outputs to the budget and schedule, or any other potential inabilities to deliver the required results. A monetary range is assigned to each budget line item based on an assessment of the sponsor's ability to mitigate these risks through selected actions or increased management capacity and capability. The result is an initial estimate of lower and upper bounds for total risk exposure, creating a risk range for purposes of communication and discussions between FTA and the sponsor, leading to an agreement on which portion of the risk will be funded.

There has been a steady increase of sophistication over the last twenty years in the field of risk assessment for transit investments. Likewise, there is a wealth of information available on the Internet. Lessons learned from this experience are that risk assessors must have the ability to recognize and address fully such cross-cutting issues as uncertainty, variability, aggregation and continuity. These lessons learned have directly influenced a number of changes to FTA's own risk assessment process. Consequently, FTA now applies the following principles in the agency's process for risk assessment:

(1) FTA has learned that approximately 50% of the cost drivers for increased budgets on major capital projects were attributable to fundamental problems in the underlying budget and schedule (''project deliverables''). Typically, the root causes were non-conformance with either with the sponsor's own PMP or current good practices. Using this knowledge, FTA now uses a trend analysis on the budget, and tests for consistence between the project level budget and package level submittals of design/construction estimates as they were developed over time. FTA then tests the consistence and support in the indirect cost estimates. Based on the results, FTA makes a quantifiable assessment of the quality and completeness of the sponsor's detailed cost and schedule, and recommends adjustments.

(2) To improve the reliability of any model for forecasting risk, FTA realized that the agency needed to develop an understanding of the strengths and weaknesses of different modeling approaches and assess any bias or incompleteness in these forecasts. This meant developing modeling approaches that minimized inherent bias by combining FTA's previous experience—including the experience documented in studies both by FTA and the Transportation Research Board (TRB)—with the sponsor's project-specific data. One aspect of this was the development of specific contingency recommendations in published TRB research. Another was the development of a mitigation sequence for project cost risk. The key principle is that risk decomposes through mitigation actions in a sequence from requirements risk through design solution into the project delivery method, then into post award specific risks the sponsor retains through its contract documentation or commercial terms. Knowing this, FTA assigns more likelihood of success to those mitigation actions that can be applied earlier in the process.

(3) FTA has long recognized that a project work breakdown structure (WBS) offers a comprehensive look at a major capital project, and forms the basis of sound control systems. Specifically, FTA has learned that the WBS provides more accurate information, and a better way to mitigate risk, than the industry practice of developing ''catalogs of risk,'' ''sources of risk,'' or ''risk registers.'' The WBS approach to risk modeling allows FTA to standardize the model and its parameters, which is a major strength in the context of FTA's obligation to evaluate the reliability of a sponsor's cost estimates and schedules. FTA prefers the use of WBS as the basis for assigning risks.

(4) FTA has learned how to use several models to assess project level cost risk, such as range models [AACE Curran Range model, USAF Space command Range model, FTA Beta model], actuarial models that estimate maximum and minimum credible risk and sources of risk models [PMI and Golder]. Also, FTA has learned how to assess the quality of the forecasting, such as diagnostic evaluations of Monte Carlo simulations, and the adequacy of such forecasts to reliably establish estimates of total risk exposure. Because this is an area still under development, FTA has not developed an explicit choice among modeling methods, nor does FTA rely on a single model for risk assessment.

(5) FTA has learned over a number of projects that for a sponsor to maintain the necessary management capacity and capability, there must be continuity in risk mitigation over extended periods of time. One obstacle to this has been that managerial attitudes toward risk have affected both the accuracy of the perception of risk and the ways in which an organization responds. In sum, FTA recognizes that risk responses reflect a sponsor organization's perceived balance between risk-taking and risk-avoidance. Another obstacle, of course, is that technical approaches for mitigating risk are not explicit. As a result, FTA requires a consistent approach to risk assessment throughout project delivery, which establishes its usefulness as a management tool and demonstrates that the sponsor is controlling cost and schedule, thus ensuring reliability in the forecasts for budget and revenue service date.

FTA Risk Assessment Standards

These principles have given FTA a number of ways to reliably model risk under various mitigation and sponsor management capacity and capability scenarios. The following standards, however, ensure that the risk assessment products and information, whether internally or externally generated, are sufficient to support FTA's decision making on sponsors' grant applications:

(1) Sufficient, reliable, relevant, and useful sponsor or third party data and information is available to perform risk assessment services, deliver risk products and outcomes that meet or exceed FTA's requirements for accuracy, completeness and reliability.

(2) Material errors in third party information and data elements affecting end product data quality are identified and disclosed in the associated risk assessment deliverable.

(3) Risk assessment deliverables are presented within a substantively complete and appropriate engineering or project management context.

(4) Risk assessment deliverables are adequately quantified, fully integrated, traceable and consistent, and compatible with findings or stated fact.

(5) Risk assessment deliverables contain analytic and opinion components that are unqualified or properly qualified, properly structured, and clearly identified with respect to authorship.

(6) Material analytic results of risk assessments are capable of independent analysis or reproduction using disclosed methods and assumptions generating similar analytic results within an acceptable degree of imprecision or error.

(7) FTA is able to assess for itself whether it is appropriate to question the adequacy, accuracy or completeness of the third party data, information, modeling or analysis.

Risk Assessment Steps

FTA has identified a few basic steps that it uses to plan and execute risk assessments which meet the above principles and standards. It is the agency's intent to adequately access cost and schedule risk as appropriate for the complexity and timing of the review. The references to ''risk assessors,'' below, apply equally to internal and external assessments. The steps below would be modified to accommodate specific cost or schedule risk issues:

(1) The first step is to scrutinize the status and soundness of the project's definition of basic—and known—project elements (*e.g.,* requirements, scope, design quality, cost estimates, and schedules), which serve as the starting points for identifying cost and schedule risks and opportunities. This includes a detailed review of all documents that describe project goals and third-party requirements; site evaluations; project plans, estimates and schedules; progress reports; project management documents; and other necessary supporting documents. In this step, the risk assessor works closely with the project team to understand their data, underlying constraints, and assumptions, then makes an independent assessment of the reliability and accuracy of that data, makes adjustments to budget and schedule (hard ''bump to the base''), and determines how such information and data are to be integrated into the internal or external risk assessment products and services.

(2) To avoid double counting, since contingencies are a legitimate way to account for risk, project estimates and schedules must clearly identify and quantify contingency amounts. This includes cost and schedule contingencies that are applied or allocated to individual line items or activities—some of which may be ''hidden''—as well as unallocated contingencies that are often derived as percentages of grouped items. The risk assessor reduces the budget by these amounts to arrive at a revised budget amount as a starting point for risk identification.

(3) Next, risk identification ''surfaces'' risks before they can become problems or adversely affect a major capital project. FTA's definition of risk identification includes examining the elements of project definition and management processes to ''surface'' the associated risks and their root causes that may prevent the project from being delivered within the constraints of minimum scope, schedule and cost, given the particular sponsor's management capacity and capability. As a management process, however, it does not suffice merely to identify risks; the risk assessment must also deliver value throughout project implementation. To achieve the principle of continuity, risk assessors, through their risk identification activities, must facilitate management planning for the sponsor organization through analyses which allows the conversion of ''surfaced'' risk data into risk decision-making information that provides the basis for the sponsor to prioritize and address project risks. It is at this point that the risk assessor develops initial estimates of the cost and schedule risk ranges inclusive of total cost risk exposure, and sets baselines for management capacity and capability.

(4) Risk mitigation is a process that identifies, evaluates, selects, and implements options to set risk at acceptable levels, given project constraints and objectives. This includes the specifics on what should be done, when it should be accomplished, who is responsible, and the associated cost. The mitigation options available can include risk control, risk avoidance, risk assumption, and risk transfer. Risk assessors determine the most appropriate strategy or strategies for risks or groups of actions from these options.

(5) The next step is to identify additional management capacity and capability enhancements that would increase the sponsor's ability to mitigate risks; produce a set of alternative funding and management capacity and capability scenarios (ranging from low to medium to high) for discussion between FTA and the sponsor; and use those scenarios to determine what are often a target grant budget and schedule, as well as an explicit plan and tools for risk mitigation, including management capacity and capability enhancement, and management

and allocation of current and future contingencies.

(6) Subsequent to establishing these targets, the risk assessor will evaluate the efficiency and effectiveness of the sponsor organization in mitigating risk, enhancing management capacity and capability, and managing contingency. Risk assessors will also evaluate realized risks to determine if they were contemplated within the original cost and schedule baselines or were unanticipated, and to trend such experience.

(7) Prior to an award of an FTA grant, the risk assessor will reevaluate the baseline risk mitigation assumptions for cost and schedule to determine the on-going validity of the baseline risk mitigation and management capacity assumptions based upon adequate forecast and trend data.

[FR Doc. 2011–23371 Filed 9–12–11; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2011–0065; MO 92210–0–0008 B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Franklin's Bumble Bee 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 (Service), announce a 90-day finding on a petition to list the Franklin's bumble bee (*Bombus franklini*) as endangered and to designate critical habitat 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 this species 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 Franklin's bumble bee 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 November 14, 2011. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES**, below) is 11:59 p.m. Eastern Time on this date. After November 14, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT**, below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

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

(1) *Federal eRulemaking Portal: http://www.regulations.gov.* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Enter Keyword or ID box, enter FWS–R1–ES–2011–0065, which is the docket number for this rulemaking. Then, in the Search panel at the top of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document. You may submit a comment by clicking on ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R1–ES–2011–0065; 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 we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Ave., Suite 100, Portland, OR 97266, by telephone 503–231–6179, or by facsimile 503–231–6195. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the Franklin's bumble bee throughout its range, which includes parts of Douglas, Jackson, and Josephine counties in Oregon, and Siskiyou and Trinity counties in California, from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(3) Information on pathogens and parasites within and near the range of the Franklin's bumble bee and potential pathways for introductions, including:

(a) Historical and recent records of *Nosema bombi, Crithidia bombi, Apicystis bombi, Locustacarus buchneri,* deformed wing virus and other bee pathogens and parasites within parts of Douglas, Jackson, and Josephine counties in Oregon and Siskiyou and Trinity counties in California, and recent studies about known or potential bumble bee pathogens and their effects on bumble bees; and

(b) The transport and use of commercial honey bees or bumble bees including species, year(s) of use, type(s) of use (e.g., greenhouse or open field pollination) and any associated State or Federal quarantine, inspection, permit, compliance, and enforcement action records related to the import and transport of bees in and around parts of Douglas, Jackson, and Josephine counties in Oregon and Siskiyou and Trinity counties in California;

(3) Information on environmental changes that have occurred within the range of the Franklin's bumble bee that may be associated with climate change or other factors.

If, after the status review, we determine that listing the Franklin's bumble bee is warranted, we will

propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the Franklin's bumble bee, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,''

(2) Where these features are currently found, and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on specific areas outside the geographical area occupied by the Franklin's bumble bee that are essential to the conservation of the species. Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. 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 supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information in the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On June 28, 2010, we received a petition dated June 23, 2010, from The Xerces Society for Invertebrate Conservation and Dr. Robbin W. Thorp, Department of Entomology, University of California, Davis, requesting that the Franklin's bumble bee be listed as endangered and that critical habitat be designated under the Act (hereafter cited as ''Petition''). The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a letter to the petitioners dated August 16, 2010, we responded that we had reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. Our response also stated that we would not be able to address the petition at that time due to court orders and court-approved settlement agreements with specific deadlines, listing actions with absolute statutory deadlines, and high-priority listing actions that required us to spend most of our listing and critical habitat funding for fiscal year 2010. In fiscal year 2011, we received funding to address this petition.

Previous Federal Actions

On January 6, 1989, we published a notice of review that assigned category 2 status to the Franklin's bumble bee (54 FR 554). Category 2 candidates were species for which we had information indicating that protection under the Act may be warranted, but the information was insufficient to determine if elevation to category 1 candidate status was appropriate. Category 2 status was maintained for the Franklin's bumble bee in Candidate Review notices published on November 21, 1991 (56 FR 58804) and November 15, 1994 (59 FR 58982). We discontinued the practice of maintaining the list of category 2 candidate species in 1996 (61 FR 64481; December 5, 1996). Franklin's bumble bee has not held a Federal conservation status designation since 1996.

Species Information

Taxonomy

Bombus (formerly *Bremus*) *franklini* was originally described by Frison (1921, pp. 144–148). Several studies have been published on the taxonomic relationship of the Franklin's bumble bee to other bumble bees ((Stephen 1957, pp. 79–81; Milliron 1971, pp. 58–67; Plowright and Stephen 1980, pp. 475–479; Thorp *et al.* 1983, pp. 29–30; Scholl *et al.* 1992, pp. 46–51; Cameron *et al.* 2007, p. 173) (Note—common names are used in this finding, when presented in the petition or available in our files; otherwise, only the scientific names are used.). With the exception of Milliron (1971), who assigned the Franklin's bumble bee subspecific status under *B. terricola occidentalis,* all of these studies have accorded the Franklin's bumble bee its own specific rank. The Franklin's bumble bee is also recognized as a valid species in the Integrated Taxonomic Information System (ITIS 2011). Therefore, we recognize the Franklin's bumble bee as a valid species and, therefore, a potentially listable entity under the Act.

Physical Description

As described by the petitioners (Petition, pp. 5–6), the Franklin's bumble bees is readily distinguished from other bumble bees in its range by: (1) The extended yellow coloration on the anterior thorax (the middle division of an insect between the head and abdomen), which extends well beyond the wing bases and forms an inverted U-shape around the central patch of black; (2) the lack of yellow on the abdomen; (3) a predominantly black face with

yellow on the top of the head; and (4) white coloration at the tip of the abdomen. Other bumble bees with similar coloration in the range of the Franklin's bumble bee have the yellow coloration extending back to the wing bases or only slightly beyond, and usually have one or more bands of yellow either on the middle or slightly behind the middle of the abdomen. Females of most species have yellow pubescence (fine hair-like structures) on the face, in contrast to black on the Franklin's bumble bee. Females of the western bumble bee (*Bombus occidentalis*) and *B. californicus* that have black pubescence on the face also have the same coloration on the vertex (the top or crown of the head), in contrast to the yellow pubescence on the vertex in the Franklin's bumble bee. Females of *B. californicus* have a long face in contrast to the round face of the Franklin's bumble bee and the western bumble bee. The two types of females (queens and workers), and the males share similar characteristics, although there are some differences.

Life History

As described in the petition (pp. 10–11), the Franklin's bumble bee is a primitively eusocial bumble bee (i.e., the queen is not well-differentiated from her workers). Eusocial organisms live in cooperative groups with both reproductive and nonreproductive individuals, and different types of individuals carry out different specialized tasks such as reproduction, defense, or foraging. Like all other bumble bees, this species lives in colonies consisting of a queen and her female workers and male offspring. Queens are responsible for initiating colonies and laying eggs. Workers are responsible for most food collection, colony defense, nest construction, and feeding of the young. The function of male bumble bees is to mate with new queens produced at the end of the colony season. Bumble bee colonies depend on floral resources for their nutritional needs; nectar provides carbohydrates and pollen provides protein. The petitioners state that the Franklin's bumble bee is restricted to habitat patches where its host species are present, and its limited historical distribution suggests that it probably has a limited ability to disperse.

The nesting biology of the Franklin's bumble bee is unknown, but like other *Bombus* species, it is believed to nest underground in grassy areas, presumably in abandoned rodent burrows (Plath 1927, pp. 122–128; Hobbs 1968, p. 157; Thorp *et al.* 1983, p. 1; Thorp 1999, p. 5). It may occasionally nest on the ground (Thorp *et al.* 1983, p. 1) or in rock piles (Plowright and Stephen 1980, p. 475). Bumble bee colonies are annual occurrences, starting from colony initiation in spring by solitary, mated queens that emerge out of hibernation to search for appropriate nesting sites. There are differences among various bumble bee species in their foraging ranges. Species such as *B. terrestris* and *B. lapidaries* forage farther afield than so-called ''doorstep'' foragers, such as *B. pascuorum, B. sylvarum, B. ruderarius,* and *B. muscorum.* It is perhaps significant that the former two species remain ubiquitous in much of Europe, whereas three of the four doorstep foragers have declined. In theory, a larger foraging range gives a greater chance of colony survival in areas where the average density of floral resources is highly patchy (Goulsen *et al.* 2007, p. 11.12). Although the maximum flight distance of *B. franklini* is not known, as noted above, the petitioners suggest that the species is most likely not capable of long-distance flight, based on its restricted range. Franklin's bumble bee has been observed collecting pollen from lupine (*Lupinus* spp.) and California poppy (*Eschscholzia californica*), and collecting nectar from horsemint or nettle-leaf giant hyssop (*Agastache urticifolia*) and mountain monardella (*Monardella odoratissima*) (Petition, p. 11).

In the early stages of colony development, the queen is responsible for all food collection and care of the larvae. The queen collects nectar and pollen from flowers to support the production of her eggs, which are fertilized by sperm she has stored since mating the previous fall. As the colony grows, the workers take over the duties of food collection, colony defense, nest construction, and larval care, while the queen remains within the nest and spends most of her time laying eggs (Petition, pp. 10–11). Generally, bumble bee colonies consist of multiple broods, with the number of workers for some species ranging from 50 to 400 at their peak (Plath 1927, pp. 123–124; Thorp *et al.* 1983, p. 2, Macfarlane *et al.* 1994, p. 7). Two colonies of Franklin's bumble bees that were initiated in the laboratory and moved to a field location to complete development contained over 60 workers each when censused (counted) in early September, and may have reached a total worker complement of well over 100 individuals by the end of the season (Plowright and Stephen 1980, p. 477).

The flight season of the Franklin's bumble bee is typically from mid-May to the end of September (Thorp *et al.* 1983, p. 30), although a few individuals have been encountered as late as October (Petition, pp. 34–40). Reproductive queens and males are produced near the end of the colony cycle. Queens usually mate with only one male, but males may mate with multiple queens. After mating, the queens feed to build up their fat reserves. The founding queen and all workers and males from the colony die by the end of the season, and inseminated new queens go into hibernation and are left to carry on the line the following year (U.S. Forest Service and Bureau of Land Management 2009, p. 3).

Range and Distribution

The Franklin's bumble bee is thought to have the most limited distribution of all known North American bumble bee species (Plowright and Stephen, p. 479; Petition, p. 6), and one of the most limited geographic distributions of any bumble bee in the world (Williams 1998, as cited in the petition (p. 6)). The original description by Frison (1921, pp. 313–315) was based on two queens reported from Nogales, Arizona. These localities were later determined to be outside of the distribution of all other specimens subsequently assigned to the species, and the location reports were invalidated (Stephen 1957, p. 79; Thorp 1970, pp. 177–180). All other specimens assignable to the species have been found in an area about 190 miles (mi) (306 kilometers (km)) to the north and south and 70 mi (113 km) to east to west between 122° to 124° west longitude and 40° 58′ to 43° 30′ north latitude in Douglas, Jackson, and Josephine counties in southern Oregon, and in Siskiyou and Trinity counties in northern California (Thorp 1999, p. 3; Thorp 2005c, p. 1; IUCN 2009, p. 1).

Survey Efforts

A survey effort specifically focused on the Franklin's bumble bee began in 1998 and continued through 2009 at sites representing both historical and potential new localities for the species. According to the information provided in the petition (Thorp 2001, 2004, 2005a, 2005c), from 9 to 17 historical sites (averaging 13.8 sites annually), and from 2 to 23 additional sites were surveyed each year during this period, and some sites were visited more than once per year, or in multiple years. As presented in Table 1 of the petition, these surveys appear to have been conducted throughout the known range of the species (Petition, p. 9).

During the surveys, the Franklin's bumble bee was observed at 11 sites,

including 7 locations where it had not been previously documented. According to the petitioners, despite continued surveys through 2009, no observations of the Franklin's bumble bee have been reported since 2006, when a single worker was observed at Mt. Ashland in Oregon (Thorp 2008, p. 5). The number of sightings was at its highest in 1998 when surveys were initiated and 94 individuals were documented (Petition, p. 9), and then fluctuated between 0 and 20 individuals in subsequent years up until 2006. In 2006, the Bureau of Land Management conducted a survey of 16 sites that were believed to provide optimal habitat for the Franklin's bumble bee. Each site was surveyed twice by trained technicians, but no Franklin's bumble bees were found (Code and Haney 2006, p. 3). While it has been postulated that the species may be extinct (Natural Research Council 2007, p. 43; NatureServe 2010, p. 1), we do not consider the available evidence to be conclusive, since one individual was observed during surveys in 2006 even after none had been observed in the previous 2 years (Petition, p. 4), and there may be other unknown populations. The failure to detect a species during surveys is not equivalent to a conclusive demonstration of its absence, but may simply reflect the detection probability for that species, which decreases as a function of rarity.

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering which factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the Franklin's bumble bee, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below. The petitioner stated it is likely that disease outbreak in commercial bee pollination facilities in North America, such as the one reported in 1998 (see below discussion), is one major cause responsible for the major severe declines seen in the Franklin's bumble bee since that time, although their current status is not known in detail (Code *et al.* 2006, p. 2). There is some information available on threats specific to the Franklin's bumble bee, although much of the information presented in the petition was extrapolated from what is known about other bumble bee species.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition and Available in Service Files

The petition asserts that threats that have altered Franklin's bumble bee habitat include agricultural intensification (increases in farm sizes and operating efficiencies related to production (irrigation, tilling, etc.)), water impoundments, livestock grazing, urban development, fragmentation of landscapes, natural and introduced fire, and invasive species. The petitioners believe these threats are even more significant and can have a more pronounced impact on the extinction potential of an animal that has been reduced to just a few locations, which they believe is the case with the Franklin's bumble bee (Petition, p. 12). Many of the petitioner's assertions involve activities that may have historically affected habitat for the Franklin's bumble bee, but may no longer be acting on the species. Factor A requires an evaluation of the present (i.e., ongoing) or threatened (i.e., foreseeable) impacts to a species' habitat or range. Accordingly, although historical habitat loss may be instructive with regard to conditions leading to a species' current status, it does not represent an ongoing or foreseeable threat under Factor A. Each of the petitioner's assertions is described in more detail below.

Agricultural Intensification

The petitioners reported one pre-2004 agricultural activity within the Franklin's bumble bee's historical range near Gold Hill in Jackson County, Oregon, where significant excavation and soil deposition altered approximately 50 percent of the available bumble bee foraging habitat (Petition, p. 12). Several references provided with the petition confirm that agricultural intensification can negatively impact wild bees by reducing the floral resource diversity and abundance needed for forage (Johansen 1977, p. 177; Williams 1986, p. 57; Kearns *et al.* 1998, p. 89; Hines and Hendrix 2005, p. 1477; Carvell *et al.* 2006, p. 481; Diekötter *et al.* 2006, p. 57; Fitzpatrick *et al.* 2007, p. 185; Kosior *et al.* 2007, pp. 81, 84–86; Öckinger and Smith 2007, p. 50; Goulson *et al.* 2008, p. 11.1; IUCN 2009, p. 2; Le Féon *et al.* 2010, p. 143) and causing loss of nest sites (Johansen 1977, p. 177; Kearns *et al.* 1998, p. 89; Diekötter *et al.* 2006, p. 57; Öckinger and Smith 2007, p. 50; Goulson *et al.* 2008, p. 11.4). Agricultural intensification was determined to be a primary factor leading to the local extirpation and decline of Illinois bumble bees (Grixti *et al.* 2009, p. 75), and the decline of bumble bees and cuckoo bees (*Bombini spp.*) in countries across western and central Europe (Kosior *et al.* 2007, pp. 81). The petition did not present any information indicating impacts related to agricultural intensification are ongoing or foreseeable in currently occupied habitat for the Franklin's bumble bee, and we have no information in our files in this regard.

Water Impoundments

The petitioners reported that two historical Franklin's bumble bee sites in

Jackson County, Oregon, were inundated following the completion of Applegate Dam in 1980; historical records for the Franklin's bumble bee were documented at this location in 1963 and 1968. The petition did not present any information indicating that impacts related to water impoundments are ongoing or foreseeable in currently occupied habitat for the Franklin's bumble bee, and we have no information in our files in this regard.

Livestock Grazing

The petitioners stated that U.S. Bureau of Land Management and U.S. Forest Service lands historically occupied by the Franklin's bumble bee are periodically subject to substantial livestock impact (Petition, p. 13). According to the petition, livestock grazing may adversely impact bumble bee populations by: (1) Depleting food resources (Morris 1967, p. 472; Sugden 1985, p. 299; Kruess and Tscharntke 2002b, p. 1570; Vazquez and Simberloff 2003, p. 1081; Hatfield and LeBuhn 2007, p. 150); (2) trampling nesting sites (Sugden 1985, p. 299); and (3) negatively impacting ground-nesting rodents (Johnson and Horn 2008, p. 444; Schmidt *et al.* 2009, p. 1), which may in turn reduce the number of nest sites available for bumble bees.

The petition stated that livestock grazing has differing impacts on flora and fauna based on the type, habitat, intensity, timing and length of grazing (Gibson *et al.* 1992, p. 174; Carvell 2002, p. 44; Kruess and Tscharntke 2002a, p. 293; Kruess and Tscharntke 2002b, p. 1577). Several studies of livestock grazing impacts on bees suggest increased intensity of livestock grazing negatively affects the species richness of bees (Morris 1967, p. 473; Sugden 1985, p. 309; Vazquez and Simberloff 2003, p. 1080; Hatfield and LeBuhn 2007, p. 156). Interestingly, one study cited by the petitioners suggests that grazing, especially by cattle (as opposed to sheep or mowing), can play a key positive role in maintaining the abundance and species richness of preferred bumble bee forage (Carvell 2001, p. 44). The petition did not present any information indicating that livestock grazing impacts are ongoing or foreseeable in currently or most recently occupied habitat for the Franklin's bumble bee, and we have no information in our files in this regard.

Urban Development

One study in Boston, Massachusetts, concluded that human-built structures, such as roads and railroads, can fragment plant populations and restrict bumble bee movement (Bhattacharya *et al.* 2003, p. 37). Another study of the factors adversely affecting bumble bees and cuckoo bees in western and central Europe found the expansion of urban areas to be an important driver of pollinator loss in approximately half of the countries examined (Kosior *et al.* 2007, p. 81). The petitioners stated that while urban parks and gardens may provide habitat for some pollinators, including bumble bees (Frankie *et al.* 2005, p. 227; McFrederick and LeBuhn 2006, p. 372), they tend not to support the species richness that was either present historically or found in nearby wild landscapes (petition p. 13; McFrederick and LeBuhn 2006, p. 378). The petitioners reported that the Franklin's bumble bee has been found in urban areas of Ashland, Oregon, and that nests of a close relative, the western bumble bee, have been found in urban San Francisco, California (Petition, p. 13).

Thorp (1999, p. 12) stated that increased urbanization in areas in Oregon (Ashland, Medford-Central Point, Grants Pass and Roseburg) may have already reduced historical populations of the Franklin's bumble bee. The author also stated that the Franklin's bumble bee was found on the Southern Oregon University campus as recently as spring 1998, and acknowledged that most major urban areas within the range of the species have not been intensively surveyed (Thorp 1999, p. 8). The petition did not present any information indicating urban development impacts are ongoing or foreseeable in currently or most recently occupied habitat for the Franklin's bumble bee, and we have no information in our files in this regard.

Habitat Fragmentation

The petitioners asserted that habitat fragmentation from land uses such as agriculture, grazing, urban development and other factors is a threat to the Franklin's bumble bee (Petition, p. 13). One study found that populations of a number of bumble bee species have become increasingly small, making them more vulnerable to local extinctions and less able to recolonize extirpated habitat patches (Goulsen *et al.* 2008, pp. 11.6–11.7). Fragmentation can alter pollinator community composition, change foraging behavior of bumble bees and reduce bee foraging rates (Kearns and Inouye, 1997, p. 299; Öckinger and Smith 2007, p. 50; Rusterholz and Baur 2010, p. 148). Bumble bees have been found to be susceptible to the disruption of healthy metapopulation structures due to fragmentation (National Research Council 2007, p. 93; Goulson *et al.* 2008, p. 11.7), and studies suggest fragmented bumble bee populations can suffer from inbreeding depression as a result of geographic isolation (Darvill *et al.* 2006, p. 601, Goulson *et al.* 2008, p. 11.7). Fragmentation is believed to be one of the factors contributing to the decline of bumble bees and cuckoo bees in countries across western and central Europe (Kosior *et al.* 2010, pp. 81). Information regarding the effects of habitat fragmentation on the Franklin's bumble bee was not provided by the petitioners, although they did present conclusions from studies of other bumble bee species (Petition, p. 13). We have no information available in our files regarding habitat fragmentation of Franklin's bumble bee habitat. However, as stated earlier, there are differences among bumble bee species in their foraging range; some forage farther afield than other species. A larger foraging range gives a greater chance of colony survival in areas where the average density of floral resources becomes highly patchy because of habitat fragmentation (Goulsen *et al.* 2007, p. 11.12). Although further study would be required, the threat of habitat fragmentation would be expected to be greater if the Franklin's bumble bee's geographically limited range is related to a limited foraging distance, as suggested by the petitioners (Petition, p. 20).

Natural and Prescribed Fire

The petition asserted that current fuel loads, including invasive trees and shrubs, combined with reduction and fragmentation of Franklin's bumble bee populations, and reduction in size of native meadows, makes natural or prescribed burning a potential threat (Petition, p. 14). Generally, fire suppression can lead to increased fuel loads and tree densities that dramatically increase the risk of severe fire (Huntzinger 2003, p. 1), and degradation and loss of native prairies and grasslands can occur in the absence of fire due to succession of plant communities to habitats dominated by invasive and woody vegetation (Schultz and Crone 1998, p. 245). Using prescribed fire is a common practice for restoring and managing native prairie and grassland plant communities (Panzer 2002, p. 1297). Although the use of prescribed fire is generally beneficial to insect populations that rely on grassland habitats by maintaining suitable habitat conditions, some taxa can be negatively affected, especially in the short-term (Schultz and Crone 1998, p. 244; Panzer 2002, p. 1296).

The petitioners believe that increased fuel loads due to long-term fire suppression could result in a large-

scale, high-temperature fire that could potentially extirpate an entire population of the Franklin's bumble bee if it were to occur in an area where they are concentrated (Petition, p. 14). The petition did not present any information indicating the extent to which natural or prescribed fire has occurred in currently or most recently occupied habitat for the Franklin's bumble bee, and we have no information in our files in this regard. The petition characterized natural or prescribed fire as a threat to the Franklin's bumble bee because of current site fuel loads (invasive trees and shrubs), combined with the reduction and fragmentation of populations and habitat (Petition, p. 14). Because of current site fuel loads, as characterized by the petitioner, we consider this potential threat to be reasonably foreseeable, even though the timing, magnitude, and location of natural fire events (or prescribed fires that become wild fire events) is unpredictable.

Invasive Species

The petitioners stated that the ''invasion and dominance of native grasslands by exotic plants is a common issue'' (Warren 1993, p. 47; Schultz and Crone 1998, p. 244), which has likely occurred at historical Franklin's bumble bee sites (Petition, p. 14). Invasive plant species that displace native plant communities have the potential to negatively impact the Franklin's bumble bee if they provide less pollen or nectar than the native species, or if they bloom during a different time period than the native plant species available for foraging (Petition, p. 14; Kearns *et al.* 1998, p. 103). The petition did not present any information indicating that invasive species-related impacts are occurring in currently or most recently occupied habitat for the Franklin's bumble bee, and we have no information in our files in this regard.

Summary of Factor A

The publications cited by the petitioners appear to support their assertions that agricultural intensification, livestock grazing, urban development, fragmentation of landscapes, natural and introduced fire, and invasive species can pose threats to bumble bees and other pollinators in general; however, very little information was presented with which to correlate these potential threats to habitat occupied specifically by the Franklin's bumble bee. In addition, one of the petition references indicates that, during surveys conducted from 1998 to 2004, it was observed that most of the sites surveyed remained suitable habitat, based on the constant abundance of other bumble bee species (Thorp 2005c, p. 4). The petition does not indicate whether the sites surveyed from 1998 to 2004 encompass all areas potentially habitable by the Franklin's bumble bee, and implies that at least some sites may have become unsuitable habitat. We have no information available in our files that provides any additional information in this regard.

We find that the petition presents substantial scientific or commercial information indicating that the Franklin's bumble bee may warrant listing due to the present or threatened destruction, modification, or curtailment of habitat, primarily due to the potential impacts of natural or prescribed fire to remaining populations. Habitat fragmentation may additionally pose a threat to the Franklin's bumble bee, although at present we do not have sufficient information to assess the degree of fragmentation that has occurred within its range, or to determine the dispersal limitations of the species. There is no substantial information indicating that agricultural intensification, water impoundments, livestock grazing, urban development, or invasive species specifically, are currently impacting Franklin's bumble bee habitat, or will impact the species' habitat in the foreseeable future. However, we will assess each of these potential threats more thoroughly during our status review, in order to better quantify potential effects on the Franklin's bumble bee.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition and Available in Service Files

The petitioners asserted that, while generally the collection of insects does not present a threat to their populations, the collection of a small number of Franklin's bumble bee queens could significantly reduce the production of offspring and pose a threat to the entire species due to its rarity, small populations, and relatively low fecundity compared to most insects (Petition, p. 14). Based on a table of historical and recent records presented by the petitioners, Franklin's bumble bee specimens (including queens) have been collected as recently as 1998, and deposited at several universities and museums. There are records of 28 queens collected between 1950 and 1998; the records since 1998 are based on observations only with no collections of males, workers, or queens noted (Petition, pp. 34–40). In 1998, the year that the most recent surveys for the Franklin's bumble bee were initiated and the last year for any documented collections (i.e., where specimens were retained), the highest number of individuals ever documented was recorded (94 individuals), and 4 queens were collected by another individual. We are unaware of any collections beyond those documented in the table of historical and recent records provided in the petition (Petition, pp. 34–40). The petition did not present any information indicating that the collection of Franklin's bumble bee queens is currently occurring, and we have no information in our files in this regard.

Summary of Factor B

Neither the petition nor information available in our files presents substantial scientific or commercial information that collection of Franklin's bumble bee queens is still occurring, or if so, occurring at a level that impacts the overall status of the species. In addition, we have no information indicating pre-1998 collections may have been a factor resulting in the Franklin's bumble bee's current population status, although queen specimens have been retained for scientific collections in the past (last recorded in 1998). Therefore, we find that the petition does not present substantial scientific or commercial information to indicate that overutilization for commercial, recreational, scientific, or educational purposes may present a threat such that the petitioned action may be warranted. However, we will assess this factor more thoroughly during our status review for the species.

C. Disease or Predation.

Information Provided in the Petition and Available in Service Files

The petitioners asserted there is potential for the spread of an exotic strain of the microsporidium (parasitic fungus) *Nosema* and other disease organisms, such as the protozoan parasite *Crithidia bombi,* tracheal mite *Locustacarus buchneri,* or deformed wing virus through wild populations of the Franklin's bumble bee and other species in the subgenus *Bombus* in North America. While no specific examples were provided within the range of the Franklin's bumble bee, the petitioners hypothesize that the main cause of the decline of the Franklin's bumble bee is due to a disease organism introduced through the use of

commercially reared bumble bee colonies (Petition, p. 14).

Commercial bumble bee production started in North America in the early 1990s (Petition, p. 15). The petitioners stated that commercially produced bumble bee colonies that were potential carriers of pests or disease were distributed throughout much of North America, when the Franklin's bumble bee and other closely related wild bumble bees started to decline. In addition to being used for commercial pollination, western bumble bee colonies were used in field research between 1991 and 2000 in California, Washington, and Alberta, Canada (Mayer *et al.* 1994, p. 21; Mayer and Lunden 1997, p. 283; Richards and Myers 1997, p. 293; Mayer and Lunden 2001, p. 277; Thomson 2004, p. 460). The petition referenced a news story published by the Associated Press that highlighted a strawberry and vegetable grower in Grants Pass, Oregon (within the range of the Franklin's bumble bee), who purchased *Bombus impatiens* hives in 2007 to pollinate his crop (Associated Press 2007; Petition, p. 18). In 2007, there was also a proposal by a commercial bee company to import nonnative bumble bees (*B. impatiens*) for the pollination of field crops in the State of California (California Department of Food and Agriculture 2006, pp. 1–59).

The Service found that bees were proposed for use less than 150 mi (241 km) from the southern extent of the historical range of the Franklin's bumble bee and raised concerns about potential impacts to the species. In a comment letter to the California Department of Agriculture dated January 17, 2007, the Service specifically mentioned the risk of potential disease transmission that could occur if infected hives were shipped through or used in areas where commercial bees could come into contact with Franklin's bumble bee, and requested that an analysis of potential effects to the species be conducted in accordance with the California Environmental Quality Act (U.S. Fish and Wildlife Service 2007, pp. 1–2). Information about the outcome is not available in our files. Parasites and pathogens have been found to spread from commercial bee colonies to native bee populations through a process sometimes referred to as ''pathogen spillover'' (Colla *et al.* 2006, p. 461; Otterstatter and Thompson 2008, p. 1). Pathogens specifically addressed in the petition are discussed below.

Nosema bombi

Nosema bombi has been detected in native bumble bees in North America, but whether it is an introduced species or occurs naturally is uncertain (Petition, p. 16). As described by the petitioners, *N. bombi* is a microsporidian that infects bumble bees, primarily in the malpighian tubules (small excretory or water regulating glands), but also in fat bodies, nerve cells, and sometimes the tracheae (Macfarlane *et al.* 1995, as cited by the petitioners, Petition, p. 15). Colonies can appear to be healthy but still carry *N. bombi* and transmit it to other colonies. The effect of *N. bombi* on bumble bees varies from mild to severe (Macfarlane *et al.* 1995, as cited by the petitioners (Petition, pp. 15–16); Otti and Schmid-Hempel 2007, p. 118; Larson 2007, as cited by the petitioners (Petition, pp. 15–16); Rutrecht *et al.* 2007, p. 1719; Otti and Schmid-Hempel 2008, p. 577).

The petition described the probable route of introduction and spread as follows: In the early 1990s, queens of both the western bumble bee and *Bombus impatiens* were shipped from the United States to rearing facilities in Belgium that were also likely rearing *B. terrestris,* a close relative of the western bumble bee and the Franklin's bumble bee. The commercially-reared colonies produced from these queens were shipped back into the United States between 1992 and 1994. The petitioners hypothesize that a virulent strain of *Nosema bombi* from *B. terrestris* spread to *B. impatiens* and the western bumble bee prior to their shipment back into the United States, and once in this country the commercially reared colonies of the western bumble bee may have spread this virulent strain of *N. bombi* to wild populations of the Franklin's bumble bee (Petition, p. 15).

Bumble bee producers experienced major problems with *Nosema bombi* infection in commercial western bumble bee colonies in 1997 (Flanders *et al.* 2003, p. 108; Velthius and van Doorn 2006, p. 432), and eventually stopped producing_the western bumble bee. In addition, the morphology of *N. bombi* found in a native bumble bee in China, *Bombus leucorum,* was found to be the same as that found in *B. terrestris* imported from New Zealand (Jilian *et al.* 2005, p. 53), suggesting the disease may have been introduced to native bumble bee populations in China by commercial bees.

Researchers at the University of Illinois recently identified a strain of *Nosema bombi* in multiple species of North American bumble bees (Petition, p. 16). Studies suggest the disease can spread from commercial bumble bees to nearby wild bumble bees (Niwa *et al.* 2004, p. 60; Whittington *et al.* 2004, p. 599; Jilian *et al.* 2005, p. 53; Colla *et al.* 2006, p. 461), even when commercial bumble bees are used for pollination in greenhouses, because commercial bumble bees frequently forage outside greenhouse facilities (Petition, p. 15), and can transmit disease at shared flowers (Whittington *et al.* 2004, p. 599; Colla *et al.* 2006, p. 461). The extent to which this pathogen occurs within the current range of the Franklin's bumble bee was not described in the petition, and we have no information in our files in this regard.

Crithidia bombi

The petitioners believe the internal protozoan parasite, *Crithidia bombi,* could also be leading to the decline of the Franklin's bumble bee. *C. bombi* has been shown to have detrimental effects on colony founding success of queens, the fitness of established colonies, and the survival and foraging efficiency of bumble bee workers (Brown *et al.* 2000, p. 421; Brown *et al.* 2003, p. 994; Otterstatter *et al.* 2005, p. 388; Gegear *et al.* 2005, p. 1; Gegear *et al.* 2006, p. 1073).

As with *Nosema bombi,* studies suggest that *Crithidia bombi* can spread from commercial bumble bees to nearby wild bumble bees through shared use of flowers, even when commercial bumble bees are used for pollination in greenhouses, because they can escape to forage outside and transmit the disease (Durrer and Schmid-Hempel 1994, p. 299; Whittington *et al.* 2004, p. 599; Colla *et al.* 2006, p. 461; Otterstatter and Thompson 2008, p. 1). Although *C. bombi* is considered to be a bumble bee parasite, honey bees have also been shown to be possible vectors (Ruiz-González and Brown 2006, p. 621). This parasite has been shown to be present in higher frequencies in bumble bees near greenhouses where commercial colonies of *Bombus impatiens* are used than in bumble bees remote from these facilities (Colla *et al.* 2006 in litt., p. 3). The extent to which this pathogen occurs within the current range of the Franklin's bumble bee was not described in the petition, and we have no information in our files in this regard. However, as described above, the petition referenced a news story published by the Associated Press that highlighted a strawberry and vegetable grower in Grants Pass, Oregon (within the range of the Franklin's bumble bee), who purchased *B. impatiens* hives in 2007 to pollinate his crop (Associated Press 2007; Petition, p. 18). We are also aware of a proposal to use commercial *B. impatiens* for field pollination at a site in California within 150 mi (241 km) of the historical range of the

Franklin's bumble bee (U.S. Fish and Wildlife Service 2007, p. 1). As *B. impatiens* is a potential carrier of *C. bombi, B. impatiens* would be a potential vector for transmission to the Franklin's bumble bee.

Locustacarus buchneri

The petition stated that *Locustacarus buchneri* is a tracheal mite that affects bumble bees (Petition, p. 17), and that bumble bees in the subgenus *Bombus,* such as the Franklin's bumble bee, may be more susceptible to tracheal mite infestation than other bumble bees, based on a study in southwestern Alberta, Canada, by Otterstatter and Whidden (2004, p. 351). One of the cited references (Goka *et al.,* 2001, pp. 2095–2099) documents the presence of this mite in bumble bee (*Bombus* spp.) populations in Japan, the Netherlands, and Belgium. The petitioners did not describe the specific effects of *L. buchneri* on bumble bees, but Ottersatter and Whidden (2004) found bumble bees containing tracheal mites to have significantly reduced lifespans in the laboratory. Otterstatter and Whidden (2004, p. 351) and Goka *et al.* (2001) cite a study that found heavy mite infestation can severely injure bumble bees (Goka *et al.* 2001, p. 2098). In that study, diarrhea was observed, and some bees became lethargic and no longer able to forage.

Commercially raised bumble bees from Europe were found to be infested with tracheal mites at higher rates than detected in wild bees (Goka *et al.* 2001, p. 2098). The petitioners stated that the method of mite dispersal is not well understood, but they could spread from commercial to wild colonies through drifting workers or contact on shared flowers. The petitioners cited a study of parasitic mites in native and commercial bumble bees in Japan, cautioning that the transportation of bumble bee colonies will cause overseas migration of parasitic mites (Goka *et al.* 2001, p. 2098). The extent to which this pathogen occurs within the current range of the Franklin's bumble bee was not described in the petition, and we have no information available in our files in this regard.

Deformed Wing Virus

The petitioners stated that deformed wing virus, a honey bee pathogen that results in crippled wings, may also be a threat to the Franklin's bumble bee. Deformed wing virus (DWV) was thought to be specific to honey bees until 2004, when dead *Bombus terrestris* and *B. pascuorum* queens with deformities resembling those in honey bees were observed. These DWV-infected specimens were observed in European commercial bumble bee breeding facilities at a frequency of approximately ten percent (Genersch *et al.* 2006, p. 63). In addition to the potential transmission of this and other diseases from honey bees in apiaries to bumble bees, commercial bumble bee rearing may also provide an opportunity for transmission. Commercial bumble bee producers sometimes introduce young honey bees to nesting bumble bee queens to stimulate egg-laying, thus providing a potential interface that exposes bumble bees to diseases carried by the honey bees (Genersch *et al.* 2006, pp. 61–62).

DWV infection could pose a serious threat to bumble bee populations, as infected bumble bees with deformed wings are not able to forage. Those found with the observed deformities were also not viable (Genersch *et al.* 2006, p. 61). The petitioners are aware of unpublished personal observations of DWV symptoms in commercially raised *Bombus impatiens* colonies in North America, but stated that research has not been conducted to determine if other species of bumble bees are also susceptible to this disease (Petition, p. 17). The petitioners did not present any information linking DWV to the Franklin's bumble bee, and we have no information available in our files in this regard.

Summary of Factor C

Information specific to the occurrence of *Nosema bombi, Crithidia bombi, Locustacarus buchneri* or deformed wing virus within the range of the Franklin's bumble bee was not provided by the petitioners, and we have no information in our files regarding these pathogens. However, the studies cited by the petitioners appear to support their assertions related to the threats of the diseases and parasites to bumble bees in general, and it appears each of these diseases may be readily transferred from commercial to wild bumble bees. We, therefore, find that the petition presents substantial scientific or commercial information indicating that the Franklin's bumble bee may warrant listing due to disease, since (1) a microsporidian pathogen genetically identical to *N. bombi* in European bumble bees has been found in bumble bees in the United States (Solter *et al.* 2007, p. 15; Thorp 2008, p. 7); (2) studies on the effects of *N. bombi* generally demonstrate bumble bees are negatively affected; (3) *Bombus impatiens* is a potential carrier of *C. bombi,* and would be a potential vector for transmission to Franklin's bumble bee; and (4) studies have demonstrated infected bumble bees with deformed wings are unable to forage.

There is no information presented in the petition indicating the Franklin's bumble bee is threatened by the tracheal mite *L. buchneri,* and we have no information in our files in this regard. Although this mite has been known to attack at least 25 bumble bee species across the holarctic region (the geographic region that includes the northern areas of the earth), it typically occurs in only a small fraction of the host species available at a site (Otterstatter *et al.* 2004, p. 351). The mite has also parasitized *B. vagans* and *B. bimaculatus* in the eastern United States (Otterstatter *et al.* 2004, p. 351); however, there are no indications it occurs within the known geographic range of the Franklin's bumble bee or within the western United States. The petitioners did not present any information indicating predation was an ongoing or foreseeable threat to the Franklin's bumble bee, and we have no information in our files in this regard. Accordingly, we find that the petition does not present substantial information indicating that predation is a threat to the species. However, we will assess this factor more thoroughly during our status review for the species.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition and Available in Service Files

The petition stated there are currently no Federal regulations that limit the interstate transportation of bumble bees, even outside their native range (Petition, p. 18). The petitioners also stated the Franklin's bumble bee has no substantive protection for habitat or take under Federal law or State laws in Oregon or California, and neither Oregon nor California allows listing of insects under their State endangered species statutes (Petition, p. 17).

The petitioners believe the spread of disease introduced by commercial bees may be the primary threat to the species, and existing regulatory mechanisms are inadequate to protect against this threat (Petition, pp. 21–22). They stated that few precautions are taken to prevent commercially reared colonies from interacting with wild populations. While bumble bee colonies imported to commercial rearing facilities are typically subject to inspection, typical inspections only include honey bee parasites and diseases, even though honey bee diseases and pests are not transmitted to bumble bees (Velthius and van Doorn 2006, p. 430).

The U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the Honey Bee Act (HBA) (Petition, p. 18). According to the petition, sections 322.4 and 322.5 of the HBA allow the transport of two species of bumble bees from Canada (*Bombus impatiens* and the western bumble bee) to all U.S. States except Hawaii, and section 322.12 of the HBA provides for requests to import bumble bees from other countries. The petitioners stated that APHIS is responsible for evaluating applications and making importation determinations (Petition, p. 18). One reference cited by the petitioners stated that the HBA has helped protect the U.S. beekeeping industry from exotic parasites and pathogens, and undesirable bee species and strains of honey bees (Flanders *et al.* 2003, p. 101). The petitioners also stated the California Department of Food and Agriculture allows *B. impatiens* to enter the State for greenhouse pollination (but not for open field pollination), although the law may not be regularly enforced or growers may not be aware of it (Petition, p. 18)). They stated that the Oregon State Department of Agriculture currently does not allow *B. impatiens* to enter the State (Petition, p. 18), but acknowledge a 2007 news story published by the Associated Press that documented a strawberry grower in Oregon who purchased colonies of *B. impatiens* for pollination (Associated Press, 2007; Petition, p. 18). Accordingly, the petitioners asserted that existing regulations and authorities do not effectively protect against the threat of exposure to disease that may be carried by commercial bumble bees (Petition, p. 18), since *B. impatiens* has apparently been successfully imported into the State, despite the existing regulations.

One study cited by the petitioner stated that nearly all laws and regulations addressing the importation, movement, and release of bees in the United States focus almost exclusively on bee diseases and parasites, with little or no consideration for possible adverse environmental impacts associated with the bees themselves (Flanders *et al.* 2003, p. 99). One reference cited by the petitioners stated ''current federal laws pertaining to bees restrict APHIS' oversight to preventing the introduction of parasites and pathogens that may harm bees. Except for the provisions in the HBA about undesirable species and strains of honey bees, it remains unclear whether APHIS has a basis for restricting the release of exotic bee species. Similarly, APHIS has little jurisdiction over the interstate movement and release of native bees, even when that movement is to an area previously unoccupied by the species'' (Flander *et al.* 2003, p. 109). As an example, even though APHIS has regulations in place, problems associated with heavy infestations of *Nosema bombi* in the western bumble bee were discovered in rearing facilities in 1996 (Velthuis and van Doorn 2006, p. 432), and Flanders *et al.* (2003, p. 108) reported disease was found in commercially produced western bumble bees in 1997 (Flanders *et al.* 2003, p. 108). The petitioners reported that bumble bee producers in North America eventually stopped producing the western bumble bee due to the *N. bombi* infestation.

Summary of Factor D

Factor D concerns whether the existing regulatory mechanisms are adequate to address the current threats identified under Factors A, B, C, or E. We find that the petition presents substantial scientific or commercial information indicating (1) the existing regulatory mechanisms may be inadequate to protect against the spread of disease introduced by commercial bumble bees; (2) that few precautions appear to be taken to prevent commercially reared colonies from interacting with wild bumble bee populations; (3) inspections of bumble bee colonies imported to commercial rearing facilities may be ineffective; and (4) open field pollination restrictions may not be regularly enforced by the California Department of Food and Agriculture, which may exacerbate the potential for commercially raised bumble bees to transfer disease to the Franklin's bumble bee. We will assess this factor more thoroughly during our status review for the species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition and Available in Service Files

The petitioners assert that several other natural or manmade factors may be threats to the Franklin's bumble bee, including the use of pesticides, population dynamics and structure, global climate change and competition from honey bees and other nonnative bees. Each of the petitioner's assertions is described in more detail below.

Pesticides

The petitioners asserted the application of pesticides, including insecticides, herbicides, and fungicides, may negatively affect remaining populations of the Franklin's bumble bee (Petition, p. 18–20). Numerous studies were cited related to pesticide use for various purposes in varied environments, including wild, agricultural, urban, and forested areas. Some of the references cited in the petition identify a concern that, while data related to the toxicity of pesticides to honey bees is considered to be generally applicable to other bees (Kevan and Plowright 1995, p. 609), pesticide risk assessments conducted for honey bees may be inadequate for evaluating the risks to bumble bees due to differences in foraging behavior and phenology (Thompson and Hunt 1999, p. 147; Thompson 2001, p. 305; Goulson *et al.* 2008, p. 11.4). Phenology refers to the relationships between regularly recurring biological phenomenon and climatic or environmental influences (i.e., bumble bees and honey bees may have different biological schedules with regard to their ecological needs or behaviors).

Bumble bee exposure can occur from direct spray or drift (Johansen and Mayer 1990, as cited by the petitioners (Petition, p. 19)), or from gathering or consuming contaminated nectar or pollen (Morandin *et al.* 2005, p. 619). Lethal and sublethal effects on bumble bee eggs, larvae, and adults have been documented for many different pesticides under various scenarios (Kevan 1975, p. 301; Johansen 1977, p. 178; Plowright *et al.* 1978, p. 1145; Plowright *et al.* 1980, p. 765; Kearns and Inouye 1997, p. 302; Kearns *et al.* 1998, p. 91–92; Kevan 1999, p. 378; Thompson 2001, p. 305; Gels *et al.* 2002, p. 722; Morandin *et al.* 2005, p. 619; Mommaerts *et al.* 2006, p. 752; Goulson *et al.* 2008, pp. 11.4–11.5). Studies have also found evidence of adverse impacts to bumble bee habitat associated with pesticides due to changes in vegetation and the removal or reduction of flowers needed to provide consistent sources of pollen, nectar, and nesting material (Johansen 1977, p. 188; Plowright *et al.* 1978, p. 1145; Williams 1986, 54; Kearns and Inouye 1997, p. 302; Smallidge and Leopold 1997, p. 264; Kearns *et al.* 1998, p. 91–92; Shepherd *et al.* 2003, as cited by the petitioners (Petition, p. 19)). Declines in bumble bees in parts of Europe have been at least partially attributed to the use of pesticides (Williams 1986, p. 54; Kosior *et al.* 2007, p. 81).

The petition did not present any information indicating that impacts related to pesticide application are occurring or are foreseeable in currently or most recently occupied habitat for the

Franklin's bumble bee, and we have no information in our files in this regard.

Population Dynamics and Structure

The petitioners asserted that small populations are generally at greater risk of extirpation from normal population fluctuations due to predation, disease, and changing food supply, as well as from natural disasters such as droughts (Petition, p. 20), and small and isolated populations can experience a loss of genetic variability (Cox and Elmqvist 2000, p. 1237). The petitioners believe the Franklin's bumble bee is rare and has very small populations, and likely has low genetic diversity. They believe this population structure likely makes the species more vulnerable to habitat change or loss, parasites, diseases, stochastic events, and other natural disasters such as droughts (Petition, p. 20).

Between 1998 and 2009 (when surveys specifically for the Franklin's bumble bee were conducted and for which we have data), the number of Franklin's bumble bee observations declined precipitously from 94 individuals in 1998 to 20 in 1999. Nine individuals were observed in 2000, and one individual in 2001. Although 20 were observed in 2002, only 3 were observed in 2003 (at a single locality), and a single worker was observed in 2006. There were no observations documented in 2007, 2008, or 2009 (Petition, p. 7).

The petitioners cited several papers that discuss the particular susceptibility of bumble bees to threats related to small population size and low genetic diversity, in part because bumble bees exhibit a haplodiploidy sex determination system, as do all other hymenopterans (bees, wasps, ants). In a haplodiploidy sex determination system, unfertilized, or haploid, eggs become males that carry a single set of chromosomes, and fertilized, or diploid, eggs become females that carry two sets of chromosomes. This may result in lower levels of genetic diversity than the more common diploid-diploid sex determination system, in which both males and females carry two sets of chromosomes (Petition, p. 20).

Haplodiploid organisms may be more prone to population extinction than diploid-diploid organisms, due to their susceptibility to low population levels and loss of genetic diversity (Packer and Owen 2001, p. 26; Zayed and Packer 2005, p. 10742; Darvill *et al.* 2006, p. 601; Ellis *et al.* 2006, 4375; Goulson *et al.* 2008, p. 11.7–11.9). Inbreeding depression in bumble bees can lead to the production of sterile diploid males (Goulson *et al.* 2008, p. 11.7), and has been shown to negatively affect bumble bee colony size (Herrmann *et al.* 2007, p. 1167), which are key factors in a colony's reproductive success. Until recently, diploid male production had not been detected in naturally occurring populations of bumble bees, and recent modeling work has shown that diploid male production, where present, may initiate a rapid extinction vortex (a situation where genetic traits and environmental conditions combine to make a species gradually become extinct) (Goulsen *et al.* 2008, p. 11.8).

Global Climate Change

The petitioners asserted that global climate change may threaten the Franklin's bumble bee (Petition, pp. 20–21). For example, changing climate may cause shifts in the range of host plant species, which can be especially detrimental to dependent pollinators when combined with habitat loss (Petition p. 20). The petitioners state that the Franklin's bumble bee is restricted to habitat patches where its host species are present, and its limited historical distribution suggests that it probably has a limited ability to disperse. The petition did not clarify which plant species represent host species for the Franklin's bumble bee, and we have no information in our files in this regard. The petition characterized the Franklin's bumble bee as a generalist forager, meaning they gather pollen and nectar from a wide variety of flowering plants (Petition, p. 11), which may somewhat mitigate any potential impacts of climate change relative to food resources. Darvell *et al.* (2010) suggest the decline of another bumble bee species, *Bombus muscorum,* from the United Kingdom mainland has been severe because of its limited ability to disperse, although in this study the stressor was agricultural intensification (Petition, pp. 20–21). The petitioners believe the ecology of the Franklin's bumble bee, combined with the patchy distribution of its remaining habitat, might similarly hinder dispersal made necessary by climate change and cause the extirpation of the remaining populations (Petition, p. 21), although no specific supporting information was presented and we have no information in our files in this regard.

The petitioners asserted that an increase in atmospheric carbon dioxide from global climate change may alter plant nectar production, which could negatively impact bumble bees (Petition, p. 21). They also believe the reduction in ozone, as a result of climate change, could delay flowering in plants and reduce the amount of flowers plants produce, which could have negative effects on all bumble bees (Petition, p. 21). However, no specific supporting information was presented correlating these potential impacts to the Franklin's bumble bee or its host plants, and we have no information in our files in this regard.

Competition From Honey Bees

The petitioners believe European honey bees (*Apis mellifera*), which are not native to North America, could be a threat to the Franklin's bumble bee (Petition, p. 21). The honey bee was first introduced to eastern North America in the early 1620s, and introduced to California in the early 1850s. The petition acknowledges that honey bees have been present without noticeable declines in bumble bee populations over large portions of their ranges (Petition, p. 21), but cited several studies on the effects of honey bees on native bumble bees, which found: (1) Resource overlap and competition for resources (Thomson 2004, p. 458; Thomson 2006, p. 407); (2) decreased foraging activity and lowered reproductive success of *Bombus* (bumble bee) colonies nearest honey bee hives (Evans 2001, p. 32–33; Thomson 2004, p. 458; Thomson 2006, p. 407); and (3) reduced native bumble bee worker sizes where honey bees were present, which may be detrimental to bumble bee colony success (Goulson and Sparrow 2009, p. 177).

The petitioners stated it is likely that the effects discussed in these studies are local in space and time, and most pronounced where floral resources are limited and large numbers of commercial honey bee colonies are introduced (Petition, p. 21). They also stated that due consideration should be given to when, where, and how many honey bee colonies should be imported to areas with sensitive bumble bee populations (Petition. p. 21), to minimize competition for floral resources. The petition did not present information related to the placement of commercial honey bee colonies in or near Franklin's bumble bee habitat, and we have no information in this regard.

Competition From Other Nonnative Bumble Bees

The petitioners asserted there is potential for nonnative commercially raised bumble bees to naturalize and outcompete native bumble bees for limited resources such as nesting sites and forage areas. Five commercially reared *Bombus impatiens* workers and one queen were captured in the wild near greenhouses where commercial bumble bees are used, suggesting this species has naturalized outside of its native range. In this study, *B. impatiens,*

which has a native range in eastern North America, was detected in western North America (Ratti and Colla 2010, pp. 29–31). A study of bumble bees in Japan found that nonnative *B. terrestris* colonies founded by bees that had escaped from commercially produced colonies had over four times the mean reproductive output of native bumble bees (Matsumura *et al.* 2004, p. 93). A study in England found that commercially raised *B. terrestris* colonies had higher nectar-foraging rates and greater reproductive output than a native subspecies of *B. terrestris* (Ings *et al.* 2006, p. 940). The petitioners stated commercial bumble bee producers have likely selected for colonies that are highly productive to ensure strong colony populations for use in pollination. They expressed concern that while this is a desirable quality for commercial rearing, this practice could introduce nonnative bumble bees that could outcompete native bumble bee populations (Petition, pp. 21–22). As stated earlier, the petitioners cited a 2007 Associated Press story on the importation of *B. impatien*s colonies to pollinate agricultural crops and strawberries in Grants Pass, Oregon, which is within the range of the Franklin's bumble bee (Associated Press 2007; Petition, p. 18).

Summary of Factor E

The assertions made by the petitioners appear to be supported by the cited references and information available in our files for bumble bees and other pollinators in general. Pesticides, global climate change, small population size, and low genetic variability are of concern for other rare invertebrates for reasons similar to those outlined by the petitioners for the Franklin's bumble bee. The potential adverse impacts of honey bee competition on declining *Bombus* species in western and central Europe have been recognized by surveyed experts from several European countries (Kosior *et al.* 2007, p. 85). Possible negative effects of introduced bees on native organisms may include competition with native pollinators for floral resources, competition for nest sites, and introduction of pathogens (Goulsen 2003, pp. 1, 18).

It remains uncertain whether or to what extent any of the threats suggested by the petitioners are occurring within habitat currently or most recently occupied by the Franklin's bumble bee. We acknowledge that some of the information presented by the petitioners addresses other bumble bee species, and not the Franklin's bumble bee. However, survey results for this species clearly demonstrate a precipitous decline in the number of individuals observed since 1998 (94 in 1998; 1 in 2006; none in 2007, 2008, or 2009). Therefore, we believe it is reasonable to conclude that the potential threats associated with pesticides, global climate change, competition from honey bees, competition with other nonnative bees, or some other presently unknown natural or manmade factor may be affecting the continued existence of Franklin's bumble bee. In addition, any threats acting on the Franklin's bumble bee are likely particularly perilous in light of the species' limited geographic distribution and extremely low population numbers, based on recent surveys. Therefore, we find that the petition presents substantial scientific or commercial information indicating the Franklin's bumble bee may warrant listing due to other natural or manmade factors affecting its continued existence. We will assess each of these factors more thoroughly during our status review for the species.

Finding

On the basis of our determination under section 4(b)(3)(A) of the Act, we determine that the petition presents substantial scientific or commercial information indicating that listing the Franklin's bumble bee throughout its entire range may be warranted. This finding is based on the information presented in the petition documenting the precipitous decline of the Franklin's bumble bee since 1998, to the point that only a single individual of the species has been observed since 2006, despite continued survey efforts. The petition additionally presented information regarding a variety of threats that may potentially be acting on the species; this suite of threats falls under Factors A, C, D, and E, as discussed above. Although the information presented does not allow us to definitively identify which of these threats, acting either singly or in concert, may be the causative factor of the species' decline, we believe the petition has presented substantial information demonstrating that some natural or manmade factor is affecting the continued existence of the Franklin's bumble bee to the point that the species may be considered threatened or endangered. Because we have found that the petition presents substantial information indicating that listing the Franklin's bumble bee may be warranted, we are initiating a status review to determine whether listing the species under the Act is warranted.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this notice are the staff members of the Oregon Fish and Wildlife Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 31, 2011.

Daniel M. Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–23282 Filed 9–12–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 76, No. 177

Tuesday, September 13, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Perception of Risk, Trust, Responsibility, and Management Preferences Among Fire Prone Communities.

OMB Control Number: 0596–0186.

Summary of Collection: The Forest and Rangeland Renewable Resource Research Act of 1978 (Pub. L. 95–307), direct the Secretary of Agriculture to conduct, support, and cooperate in investigations, experiments, tests, and other activities the Secretary deems necessary to obtain, analyze, develop, demonstrate, and disseminate scientific information about protecting, managing, and utilizing forest and rangeland renewable resources in rural, suburban, and urban areas. Fire risk and the impact of recent fires have been significant on several Western urban-proximate national forests. The Forest Service (FS) is proposing to expand the scope of the initial information collection to other fire-prone communities in the western United States. FS will conduct a study using a questionnaire to gain first-hand information from residents in communities proximate to and surrounded by urban national forests in the Western United States. The information gathered will help resource managers better understand the beliefs, perceptions, and behaviors of those residents.

Need and Use of the Information: The Agency needs to know how residents have been addressing fire risk, residents' beliefs about individual responsibility in reducing fire risk, and the myriad of other concerns residents have related to fire and fire risk. Results from the information collected will be helpful in managing fire education and information programs, continuing public collaboration efforts, and in the selection of fire management and risk mitigation strategies. Other fire management agencies and organizations will also benefit from this knowledge. The information collected will be used to construct a technical report on findings, to prepare journal articles for submission to peer view outlets, for presentations at scientific meetings, and for presentations to natural resource managers as appropriate. Without the information management decisions will be made on limited and anecdotal information regarding public values and perceptions as well as perceived responsibility in management of fire risk.

Description of Respondents: Individuals or households.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 435.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–23294 Filed 9–12–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 7, 2011.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Child and Adult Care Food Program (CACFP) Improper Payment Meal Claims Assessment.

OMB Control Number: 0584–NEW.

Summary of Collection: The Improper Payments Information Act (IPIA) of 2002 (Pub. L. 107–300) requires the Food and Nutrition Service (FNS), to provide estimates of erroneous payments in the Child and Adult Care Food Program (CACFP), and to identify and report corrective actions the agency is taking to reduce them. These measures are necessary to enhance the accuracy and integrity of Federal payments in the CACFP. The CACFP reimburses family day care home for serving nutritious meals and snacks to children, especially low-income children who receive day care services in these facilities. The Food and Nutrition Service (FNS), on behalf of the Secretary of Agriculture, is conducting a feasibility evaluation of the parent-recall data collection methodology for validating the number and type of meals claimed for reimbursement by family day care homes (FDCHs) in the CACFP.

Need and use of the Information: Data collection is to be conducted in sixteen states to evaluate whether a parent-recall data collection methodology under evaluation can: (1) Validate the meal reimbursement claims submitted by FDCHs for the number of children who are CACFP eligible and present in the FDCHs during the time period(s) for which the meals/snacks were claimed. (2) Generate data required for developing an estimate of improper payments, based on the meals claimed for reimbursement by FDCHs that meet the requirements of the Improper Payments Information Act of 2002. (3) Be implemented nationwide in an efficient and cost effective method. Observations conducted on-site in the homes of FDSCH providers will be used in the feasibility evaluation. Without the information no assessment of the cost, amount and type of meal claiming errors can be estimated nor can corrective action be developed and implemented.

Description of Respondents: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government; Individuals or households.

Number of Respondents: 1,520.

Frequency of Responses: Report: On occasion.

Total Burden Hours: 2,439.

Food and Nutrition Service

Title: National Assistance in Farmers Markets: Understanding Current Operations.

OMB Control Number: 0584–NEW.

Summary of Collection: The growing obesity crisis in the United States has created urgency among scientists and public health officials to develop and test sustainable programs that improve American diets. Fruits and vegetable intake has been shown to reduce the long term risk of obesity and other chronic diseases such as heart disease and cancer and serves as a market for a healthy diet. However, two thirds of U.S. adults do not meet the USDA Dietary Guidelines for fruit and vegetable intake. The Food and Nutrition Service (FNS) is conducting a new study titled ''Nutrition Assistance in Farmers Markets: Understanding Current Operations.'' The study, planned for FY 2011–2012 affirms the Food, Nutrition and Consumer Services (FNCS) priority for expanding the farm-food connection in FNS programs. The collection is authorized under paragraph 17(a)(1) of the Food and Nutrition Act of 2008 (7 U.S.C. 2026).

Need and use of the Information: The proposed study involves a national survey of Farmers Market managers and Direct Marketing (DM) farmers to understand their current operations and how those affect participation in USDA nutrition assistance programs. The information gathered in the data collection activities will be used by FNS to understand the characteristics of farmers markets and direct marketing farmers and facilitators and barriers to participating in the Supplemental Nutrition Assistance Program. These data will inform FNS policy decision intended to increase the number of DM farmers and farmers markets that participate as SNAP retailers, as well as improve operations for currently authorized DM farmers and farmers markets. If data is not collected, FNS will be unable to improve its understanding of the farmers' market environment, particularly barriers to participation in nutrition assistance programs by these markets.

Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Farms.

Number of Respondents: 2,859.

Frequency of Responses: Report: On occasion.

Total Burden Hours: 911.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–23295 Filed 9–12–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to PMC–Biogenix of Memphis, Tennessee, an exclusive license to U.S. Patent Application Serial No. 12/774,347, ''Process for Preparing Saturated Branched Chain Fatty Acids'', filed on May 5, 2010.

DATES: Comments must be received within thirty (30) days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as PMC–Biogenix of Memphis, Tennessee has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 2011–23325 Filed 9–12–11; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kootenai National Forest, Sanders, County, MT; Rock Creek Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Kootenai National Forest will prepare a Supplemental Environmental Impact Statement (SEIS) for the Rock Creek Project. The project is located within the Trout Creek Ranger District, Kootenai National Forest, Sanders County, Montana, and east of Noxon, Montana. The Final EIS was made available in September 2001. The Forest Service Record of Decision was issued in June 2003. The Montana Department of Environmental Quality issued a Record of Decision in 2001 that provided the State's approval of the project. The SEIS will respond to the US District Court Decision in *Rock Creek Alliance et al.* v. *USFS, Revett Silver Company, and USFWS,* (CV 05–107–M–DWM and CV 08–028–M–DWM consolidated) May 4, 2010 opinion. In that opinion the Court found deficiencies in the 2001 Rock Creek Project FEIS. The court remanded the FEIS back to the Forest Service for further action and vacated the 2003 Record of Decision. The SEIS will focus on the issues directed by the Court, and will update other resource analyses, if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts in order ensure appropriate analysis of the proposed mining project.

DATES: Under 40 CFR 1502.9(c)(4), there is no formal scoping period for a SEIS. The Forest Service is not inviting comments at this time. A comment period for the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

ADDRESSES: Kootenai National Forest, 31374 US Highway 2, Libby, MT 59923.

FOR FURTHER INFORMATION CONTACT: Bobbie Lacklen, Project Coordinator, Kootenai National Forest, Supervisor's Office, 31374 US Highway 2, Libby, MT 59923–3022. Phone (406) 293–6211 or e-mail at *blacklen@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Following is a brief summary of the proposed action. Detailed descriptions of the proposed action and alternatives analysis are provided in the original FEIS and ROD, which can be can be viewed or downloaded from the following Web site: *http://www.fs.usda.gov/goto/kootenai/minerals.*

Proposed Action

The proposed action is divided into two phases: Phase I consists of construction of the evaluation adit and data collection, and Phase II is comprised of construction operation and reclamation of the mine, mill, and tailings disposal facility. The two phases are described below:

Phase I

The proposed evaluation adit would be driven prior to other major construction work on the Rock Creek Project in an attempt to better understand the configuration and grade of the ore body. During the mine production (Phase II), this adit will not be utilized for production but rather would serve as an exhaust ventilation opening and as a secondary escape-way. Conventional methods would be used for adit construction. Existing roads would provide access. Approximately 10 acres of National Forest System lands would be disturbed at the adit site and 10 acres of private lands would be disturbed at a support facility site and from required road improvements. More details on the evaluation adit can be found in the Rock Creek Evaluation Adit Project Revised Application for Exploration License at: *http://www.fs.usda.gov/goto/kootenai/minerals.*

The portal of the evaluation adit would be located at about 5,755 feet in elevation. The adit would be 18 feet high by 18 feet wide, with an estimated length of 6,592 feet at a decline of 10 percent. Forty-foot cross cuts would be driven from the adit every 500 feet to provide turnouts for vehicle passing, sump construction, and space for pump installations.

About 90,000 tons of barren development rock and 88,000 tons of ore would be excavated from the proposed adit during the evaluation phase. Unmineralized or barren rock would be placed near the portal to form a flat-topped pile sloping downhill to its angle of repose. Mineralized material would be placed in a stockpile near the portal for later processing when the mill would be in operation.

Additional support facilities are proposed to be constructed for the evaluation adit. These facilities would be located on Rock Creek Resources (RC Resources) private property near State Highway 200. These include: An office; a dry change house facility; a garage, warehouse and water treatment facility; water retention ponds, a graded, graveled employee parking lot, and a soil stockpile.

Phase II

RC Resources proposes to construct, operate, and reclaim all facilities (including the evaluation adit) necessary to mine, remove, and transport economically mineable minerals from the Rock Creek deposit. The Rock Creek Mine would consist of an underground copper/silver mine and mill/concentrator complex in northwestern Montana with a mine life of 30 to 37 years. The disturbance area for the project including the tailings impoundment would encompass 482 acres, of which 140 acres are National Forest System lands. The Rock Creek ore deposit is located beneath and adjacent to the Cabinet Mountain Wilderness (CMW) in the Kaniksu National Forest. The mill and service adit access to the ore body would be located 2 miles from the wilderness boundary, near State Highway 200. The mill and other facilities would be primarily located within the Kaniksu National Forest in Sanders County. The Kootenai National Forest (KNF) administers the Kaniksu National Forest (within Montana).

Lead and Cooperating Agencies

The USDA Forest Service is the Lead Agency for this project. The US Environmental Protection Agency and the US Army Corps of Engineers will participate in the project as a Cooperating Agencies. Other agencies may become a Cooperating Agency as the SEIS progresses.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive

comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplemental environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Paul Bradford, Forest Supervisor Kootenai National Forest, 31374 US Highway 2, Libby, MT 59923 is the Responsible Official for the Rock Creek Project.

Dated: September 1, 2011.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2011–23304 Filed 9–12–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of the Census (Census Bureau) is giving notice of a joint meeting of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the American Community Survey, the 2010 Decennial Census, and early 2020 Census planning. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on October 6–7, 2011. Last-minute changes to the schedule are possible, which could prevent giving advance public notice of schedule adjustments.

DATES: October 6–7, 2011. On October 6, the meeting will begin at approximately 8:30 a.m. and end at approximately 6 p.m. On October 7, the meeting will begin at approximately 8:30 a.m. and end at approximately 2:15 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4600 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, *Jeri.Green@census.gov,* Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone 301–763–6590. For TTY callers, please use the Federal Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations comprise up to nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the Census Bureau. The Committees provide an outside-user perspective and advice on research and early design plans for the 2020 Census, the American Community Survey, and other related programs particularly as they pertain to an accurate count of these communities. The Committees also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users. The Committees are established in accordance with the Federal Advisory Committee Act (Title 5, United States Code, Appendix 2, Section 10(a)(b)).

All meetings are open to the public. A brief period will be set aside at the meeting for public comment on October 7. However, individuals with extensive questions or statements must submit them in writing to Ms. Jeri Green at least three days before the meeting. If you plan to attend the meeting, please register by Monday, October 3, 2011. You may access the online registration from with the following link: *http://www.regonline.com/reac_fall2011_meeting.* Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as possible, preferably two weeks prior to the meeting.

Due to increased security and for access to the meeting, please call 301–763–9906 upon arrival at the Census Bureau on the day of the meeting. A photo ID must be presented in order to receive your visitor's badge. Visitors are not allowed beyond the first floor.

Dated: September 7, 2011.

Robert M. Groves,

Director, Bureau of the Census.

[FR Doc. 2011–23312 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube From Turkey: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Victoria Cho, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–5075, respectively.

Background

On June 8, 2011, the Department published the preliminary results of the administrative review of the antidumping order on certain welded carbon steel pipe and tube from Turkey for the period May 1, 2009, through April 30, 2010. *See Certain Welded Carbon Steel Pipe and Tube From Turkey; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 33204 (June 8, 2011). The final results are currently due no later than October 6, 2011.

Extension of Time Limit of the Final Results

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the ''Act''), requires the Department to make a final determination in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to a maximum of 180 days.

We determine that it is not practicable to complete the final results of this administrative review within the 120-day time limit, because the Department requires additional time to analyze issues in case and rebuttal briefs

submitted by parties, including comments on our cost calculation methodology. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is fully extending the time limit for the final results to December 5, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: September 7, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–23381 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–819]

Magnesium Metal from the Russian Federation: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 6, 2011, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. The period of review (POR) is April 1, 2009, through March 31, 2010.

Based on our analysis of the comments received we have made changes in the margin for one company. Therefore, the final results differ from the preliminary results. The final margin is listed below in the section entitled ''Final Results of the Review.''

DATES: *Effective Date:* September 13, 2011.

FOR FURTHER INFORMATION: Hermes Pinilla, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3477.

SUPPLEMENTARY INFORMATION:

Background

On May 6, 2011, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on magnesium metal from the Russian Federation. See *Magnesium Metal From the Russian Federation: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 26247 (May 6, 2011) (*Preliminary Results*).

We invited interested parties to comment on the *Preliminary Results* and received case and rebuttal briefs from interested parties. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the order [1] is magnesium metal (also referred to as magnesium), which includes primary and secondary pure and alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the order includes blends of primary and secondary magnesium.

The subject merchandise includes the following pure and alloy magnesium metal products made from primary and/or secondary magnesium, including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes, and magnesium ground, chipped, crushed, or machined into raspings, granules, turnings, chips, powder, briquettes, and other shapes: (1) Products that contain at least 99.95 percent magnesium, by weight (generally referred to as ''ultra-pure'' magnesium); (2) products that contain less than 99.95 percent but not less than 99.8 percent magnesium, by weight (generally referred to as ''pure'' magnesium); and (3) chemical combinations of magnesium and other material(s) in which the magnesium content is 50 percent or greater, but less that 99.8 percent, by weight, whether or not conforming to an ''ASTM Specification for Magnesium Alloy.''

The scope of the order excludes: (1) Magnesium that is in liquid or molten form and (2) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[2]

The merchandise subject to the order is currently classifiable under items 8104.11.00, 8104.19.00, 8104.30.00, and 8104.90.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive.

No-Shipment Determination

Based on the information Solikamsk Magnesium Works (SMW) provided on the record, we continue to find that SMW did not have knowledge of exports or involvement in imports of magnesium metal into the United States during the POR. Thus, we did not request SMW to report such sales for purposes of calculating a dumping margin in this administrative review.

See *Preliminary Results,* 76 FR at 26248–49. Therefore, we have determined that SMW did not make shipments of subject merchandise during the POR.

Analysis of the Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review of the order on magnesium metal from the Russian Federation are addressed in the ''Issues and Decision Memorandum'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated concurrently with this notice (Decision Memorandum), which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded is in the Decision Memorandum and attached to this notice as an Appendix. The

[1] We revoked the order effective April 15, 2010. See Magnesium Metal From the Russian Federation: Revocation of Antidumping Duty Order Pursuant to Five-Year Sunset Review, 76 FR 13128 (March 10, 2011).

[2] This second exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from the People's Republic of China, Israel, and the Russian Federation. See *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form From the People's Republic of China,* 66 FR 49345 (September 27, 2001), *Notice of Final Determination of Sales at Less Than Fair Value: Pure Magnesium From Israel,* 66 FR 49349 (September 27, 2001), and *Notice of Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys because they are not chemically combined in liquid form and cast into the same ingot.

Decision Memorandum, which is a public document, is on file in the Central Records Unit, main Department of Commerce building, Room 7046, and is accessible on the Web at *http://ia.ita.doc.gov/frn/index.html.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes From the Preliminary Results

As a result of our analysis of the comments we received, we have made certain changes to the margin calculation for PSC VSMPO–AVISMA Corporation (AVISMA) for the final results. Specifically, we have revised AVISMA's reported costs of production for the April 1 through December 31, 2009, period to reflect the treatment of chlorine gas as a byproduct of raw magnesium production. We then calculated AVISMA's POR costs as the weighted average of the revised costs for the period April 1 through December 31, 2009, and the costs for the period January 1 through March 31, 2010, that we calculated for the *Preliminary Results.* For further discussion of this change, see Comment 1.A of the Decision Memorandum.

Our comparison of AVISMA's revised costs to its reported sales establishes that all of AVISMA's sales in the comparison market were made at prices below cost. In accordance with section 773(b)(1)(B) of the Act, we have relied upon the constructed value of the subject merchandise for purposes of these final results. For further discussion of this change, see Comment 1.B of the Decision Memorandum.

Final Results of the Review

As a result of our review, we determine that the following weighted-average dumping margins on magnesium metal from the Russian Federation exist for the period April 1, 2009, through March 31, 2010:

Manufacturer/exporter	Margin (percent)
PSC VSMPO–AVISMA Corporation	2.24
Solikamsk Magnesium Works	*

* No shipments or sales subject to this review.

Assessment Rates

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an importer-specific assessment rate for AVISMA reflecting these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by AVISMA or SMW for which AVISMA or SMW did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of merchandise produced by AVISMA or SMW at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

The Department intends to issue instructions to CBP 15 days after the publication of the final results of review.

Cash-Deposit Requirements

Because we revoked the order effective April 15, 2010, no cash deposit for estimated antidumping duties on future entries of subject merchandise is required.

Notifications

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: *September 6, 2011.*

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

1. Cost Methodology
2. Affiliation
3. Zeroing

[FR Doc. 2011–23379 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–929]

Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of the First Administrative Review of the Antidumping Duty Order and Final Rescission of the Administrative Review, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 7, 2011, the Department of Commerce (''Department'') published the preliminary results of the first administrative review of the antidumping duty order on small diameter graphite electrodes (''SDGE'') from the People's Republic of China (''PRC''), covering the period August 21, 2008, through January 31, 2010. *See Small Diameter Graphite Electrodes from the People's Republic of China: Preliminary Results of the First Administrative Review of the Antidumping Duty Order; Partial Rescission of Administrative Review; and Intent to Rescind Administrative Review, in Part,* 75 FR 12325 (March 7, 2011) (''*Preliminary Results*'').

We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we made certain changes to our margin calculations for the mandatory respondents. The final dumping margins for this review are

listed in the ''Final Results of the Review'' section below.

DATES: *Effective Date:* September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Lindsey Novom or Frances Veith, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC, 20230; telephone: (202) 482–5256 or (202) 482–4295, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2011, the Department published the *Preliminary Results* of the first administrative review of the antidumping duty order on SDGE from the PRC. On March 28, 2011, the following parties each submitted additional surrogate value (''SV'') information: SGL Carbon LLC and Superior Graphite Co. (''Petitioners''); Fushun Jinly Petrochemical Carbon Co., Ltd. (''Fushun Jinly''); and Beijing Fangda Carbon Tech Co., Ltd. (''Beijing Fangda''), Chengdu Rongguang Carbon Co., Ltd. (''Rongguang''), Fangda Carbon New Material Co., Ltd. (''Fangda Carbon''), Fushun Carbon Co., Ltd. (''Fushun Carbon''), and Hefei Carbon Co., Ltd. (''Hefei'') (collectively ''the Fangda Group''). On March 28, 2011, Petitioners submitted comments on an apparent discrepancy between the volume of subject merchandise sold and exported to the United States during the period of review (''POR'') as (1) reported in the U.S. sales listings of the mandatory respondents (*i.e.,* Fushun Jinly and the Fangda Group) and (2) reported in the U.S. Customs and Border Protection (''CBP'') data on the administrative record relating to entries of subject merchandise during the period of review. On April 5, 2011, the Department requested new factual information from the mandatory respondents regarding their customers' import processes, including a description of any documents generated by the customer, the Fangda Group, and/or Fushun Jinly related to the importation process. On April 11, 2011, the mandatory respondents submitted new factual information as requested by the Department. On April 25, 2011, Petitioners provided comments on the mandatory respondents' April 11, 2011 new factual information submission. On April 28, 2011, the Department placed CBP data on the record. Petitioners submitted comments on the CBP data on May 5, 2011, and the mandatory respondents rebutted Petitioners' comments regarding CBP data on May 16, 2011. On May 23, 2011, Petitioners submitted a case brief and the mandatory respondents submitted a joint case brief. On May 31, 2011, the mandatory respondents submitted a joint rebuttal brief and Petitioners submitted a rebuttal brief; however, on June 2, 2011, the Department rejected Petitioners' rebuttal brief because it contained comments on arguments not raised in respondents' case brief. Petitioners submitted their redacted rebuttal brief on June 6, 2011. We did not receive briefs or rebuttal briefs from any other interested party to this review. On June 21, 2011, the Department published a notice in the **Federal Register** extending the time limit for the final results of review by the full 60 days allowed under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), to September 6, 2011.[1] On June 29, 2011, the Department released a Memorandum to the File, titled ''Industry-Specific Surrogate Wage Rates and Surrogate Financial Ratio Adjustments,'' dated June 29, 2011 (''Wage Rate Memorandum''), for use in these final results. We did not receive comments from interested parties pertaining to the Wage Rate Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, titled ''Small Diameter Graphite Electrodes from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2008–2010 Administrative Review,'' dated concurrently with this notice (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 7046, and is also accessible on the web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

[1] *See Small Diameter Graphite Electrodes From the People's Republic of China: Extension of Time Limit for the Final Results of the First Administrative Review of the Antidumping Duty Order,* 76 FR 36092 (June 21, 2011).

Period of Review

The POR is August 21, 2008, through January 31, 2010.

Scope of the Order

The merchandise covered by this order includes all small diameter graphite electrodes of any length, whether or not finished, of a kind used in furnaces, with a nominal or actual diameter of 400 millimeters (16 inches) or less, and whether or not attached to a graphite pin joining system or any other type of joining system or hardware. The merchandise covered by this order also includes graphite pin joining systems for small diameter graphite electrodes, of any length, whether or not finished, of a kind used in furnaces, and whether or not the graphite pin joining system is attached to, sold with, or sold separately from, the small diameter graphite electrode. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes are most commonly used in primary melting, ladle metallurgy, and specialty furnace applications in industries including foundries, smelters, and steel refining operations. Small diameter graphite electrodes and graphite pin joining systems for small diameter graphite electrodes that are subject to this order are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 8545.11.0000. The HTSUS number is provided for convenience and customs purposes, but the written description of the scope is dispositive.

Changes Since the Preliminary Results

Based on an analysis of the comments received from interested parties, the Department has made certain changes to the margin calculations. For the final results, the Department has made the following changes:

Changes to Fushun Jinly's Margin Calculation

- We revised Fushun Jinly's toller's electricity consumption because, in the *Preliminary Results,* we inadvertently overstated this toller's electricity consumption when we applied partial facts available to the toller's FOP data.[2]
- We have revised Fushun Jinly's by-product offset in the final results and

[2] *See* Issues and Decision Memorandum at Comment 13. *See also* Memorandum to the File, titled ''2008–2010 Administrative Review of the Antidumping Duty Order on Small Diameter Electrodes from the People's Republic of China: Analysis of the Final Results Margin Calculation for Fushun Jinly Petrochemical Carbon Co., Ltd.,'' dated concurrently with this notice (''Fushun Jinly's Final Analysis Memorandum'').

will use the production quantity from the verification documentation as the basis for Fushun Jinly's by-product offsets.[3]

• We are excluding certain sales reported in Fushun Jinly's U.S. shipment database where we have evidence that they did not enter the United States for consumption.[4]

• In accordance with sections 776(a)(2)(C) and 776(b) of the Act, as partial adverse facts available, we have adjusted the reported graphitizing FOPs by increasing the reported consumption of inputs used in the graphitization stage to reflect the largest difference between the weight of semi-finished products before graphitizing and the weight of semi-finished products after graphitizing based on Fushun Jinly's Verification Exhibit 19.[5]

Changes to the Fangda Group's Margin Calculation

• We are excluding certain sales reported in the Fangda Group's U.S. shipment database where we have evidence that they did not enter the United States for consumption during the POR.[6]

Changes to Surrogate Values

• We have revised the surrogate value source used to value respondents' natural gas. The revised surrogate value is derived from the Indian gas prices as published by the Indian Gas Utility Gail.[7]

• In light of *Dorbest Ltd.* v. *United States,* 604 F.3d 1363 (Fed. Cir. 2010) and consistent with *Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011), we have made revisions to the surrogate labor rate and the surrogate manufacturing overhead (''MOH'') ratio for the final results of this administrative review. For these final results, the surrogate labor rate has changed from US$1.47/hour to 75.41 Indian Rupees per hour and the surrogate MOH ratio changed from 25.94 percent to 23.87 percent. *See* Wage Rate Memorandum; *see also* Final Factors Memorandum.

Final Rescission, in Part, of the Administrative Review

In the *Preliminary Results,* the Department stated its intent to rescind the review with respect to UK Carbon & Graphite (''UKCG'') because the Department preliminarily determined that UKCG had no shipments of subject merchandise to the United States during the POR.[8] Interested parties had an opportunity to submit comments on the Department's intent to rescind this review with respect to UKCG. The Department did not receive any comments from interested parties with respect to rescinding the review of UKCG. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to UKCG.

Separate Rates Determination

In the *Preliminary Results,* we determined that Fushun Jinly, the Fangda Group, and Xinghe County Muzi Carbon Co., Ltd. (''Muzi Carbon'') met the criteria for separate rate status.[9] We have not received any information since issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. Therefore, the Department continues to find that Fushun Jinly, the Fangda Group, and Muzi Carbon meet the criteria for a separate rate.

Margin for Separate Rate Company

Consistent with the Department's practice, as the separate rate, we have established a margin for Muzi Carbon based on the weighted-average of the rates we calculated for the mandatory respondents, the Fangda Group and Fushun Jinly, excluding, where appropriate, any rates that were zero, *de minimis,* or based entirely on AFA.[10]

The PRC-Wide Entity

As explained in the *Preliminary Results,* Shijiazhuang Huanan Carbon Factory (''Huanan Carbon''), Sinosteel Jilin Carbon Co., Ltd./Sinosteel Jilin Carbon Import & Export Co., Ltd. (''Sinosteel Jilin''), Jilin Carbon Graphite Material Co., Ltd. (''Jilin Carbon''), and Jilin Carbon Import and Export Company (''Jilin Carbon I&E'') did not apply for separate-rate status. As such, they have not demonstrated their eligibility for a rate separate status in this administrative review.[11] Additionally, none of these companies notified the Department that they had no shipments of subject merchandise during the POR. In the *Preliminary Results* we determined that, because there were exports of merchandise under review from PRC exporters that did not demonstrate their eligibility for separate rate status, they should be treated as part of the PRC-wide entity. We have not received any information since issuance of the *Preliminary Results* that provides a basis for reconsidering this preliminary determination. Therefore, the Department continues to find that they should be treated as part of the PRC-wide entity and subject to the PRC-wide entity rate.

In accordance with section 776(a) and (b) of the Act and as explained in more detail in the *Preliminary Results,* we determined that the PRC-wide entity's rate should be based on total AFA.[12] No party has commented on the use of a total AFA rate for the PRC-wide entity. Accordingly, the Department continues to assign an AFA rate to the PRC-wide entity. As an AFA rate, the Department continues to use the highest percent margin alleged in the Petition,[13] 159.64 percent.[14] As explained in the *Preliminary Results,* the Department considers that rate corroborated pursuant to section 776(c) of the Act based upon our pre-initiation analysis of the adequacy and accuracy of the information in the Petition.[15] No party has commented on the Department's corroboration of the selected total AFA rate for the PRC-wide entity.

[3] *See* Issues and Decision Memorandum at Comment 12. *See also* Fushun Jinly's Final Analysis Memorandum. *See also* Fushun Jinly's Verification Exhibit 22.

[4] *See* Issues and Decision Memorandum at Comment 1. *See also* Fushun Jinly's Final Analysis Memorandum.

[5] *See* Issues and Decision Memorandum at Comment 18. *See also* Fushun Jinly's Final Analysis Memorandum.

[6] *See* Issues and Decision Memorandum at Comment 1. *See also* Memorandum to the File, titled ''2008–2010 Administrative Review of the Antidumping Duty Order on Small Diameter Electrodes from the People's Republic of China: Analysis of the Final Results Margin Calculation for the Fangda Group,'' dated concurrently with this notice.

[7] *See* Issues and Decision Memorandum at Comment 10. *See also* Memorandum to the File, titled ''First Administrative Review of the Antidumping Duty Order on Small Diameter Graphite Electrodes from the People's Republic of China: Selection of Factor Values,'' (''Final Factors Memorandum'') dated concurrently with this notice.

[8] *See Preliminary Results,* 75 FR at 12328–29.

[9] *See Preliminary Results,* 75 FR at 12330–31.

[10] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[11] *See Preliminary Results,* 75 FR at 12331–32.

[12] *See Preliminary Results,* 75 FR at 12331–33.

[13] *See* Petition for the Imposition of Antidumping Duties Against Small Diameter Graphite Electrodes from the People's Republic of China, Exhibit General 3, Volume I (January 17, 2008) (''Petition'').

[14] *See Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances: Small Diameter Graphite Electrodes from the People's Republic of China,* 74 FR 2049, 2054 (January 14, 2009).

[15] *See Preliminary Results,* 75 FR at 12332–33.

Final Results of the Review

The Department has determined that the following margins exist for the period August 21, 2008, through January 31, 2010:

SDGE from the PRC	
Exporters	Percent margin
Beijing Fangda Carbon Tech Co., Ltd., Fangda Carbon New Material Co., Ltd., Fushun Carbon Co., Ltd., Hefei Carbon Co., Ltd., (collectively, The Fangda Group)	2.75
Fushun Jinly Petrochemical Carbon Co., Ltd	56.63
Xinghe Country Muzi Carbon Co., Ltd	23.47
PRC-wide Entity*	159.64

* The PRC-wide Entity includes, *inter alia,* Huanan Carbon, Sinosteel Jilin, Jilin Carbon, and Jilin Carbon I&E.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of these reviews. For assessment purposes, we calculated exporter/importer- (or customer-) specific assessment rates for merchandise subject to this review consistent with 19 CFR 351.212(b)(1). Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer- (or customer-) specific assessment rate is *de minimis* (*i.e.,* less than 0.50 percent), the Department will instruct CBP to assess that importer's (or customer's) entries of subject merchandise without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review.

Cash-Deposit Requirements

The following cash-deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the Fangda Group, Fushun Jinly, and Muzi Carbon, the cash deposit rate will be the margins listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 159.64 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We intend to disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: *September 6, 2011.*

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix

Comment 1: Whether To Apply Total Adverse Facts Available To the Mandatory Respondents
Comment 2: Whether the Fangda Group and Fushun Jinly Properly Reported Their Universe of U.S. Sales
Comment 3: Whether the Respondents Reported All of Their U.S. Selling Expenses
Comment 4: Whether the Fangda Group Reported Accurate Energy & Labor Consumption
Comment 5: Whether to Impute Reporting Failures of Fushun Carbon to the Other Fangda Group Producers
Comment 6: Whether the Fangda Group Reported Accurate Supplier Distances
Comment 7: Whether the Fangda Group Reported Accurate Market Economy Purchases
Comment 8: The Fangda Group's By-Products
Comment 9: Whether the Fangda Group Reported Complete and Reliable FOPs for Itself and Its Tollers

Comment 10: Whether the Fangda Group Reported Accurate Sales Prices
Comment 11: Surrogate Value for Natural Gas
Comment 12: Whether Fushun Jinly Failed to Submit CONNUM-Specific Factor Data
Comment 13: Whether Fushun Jinly's By-Product Offsets Should Be Rejected
Comment 14: Whether Fushun Jinly Reported Accurate Electricity Consumption Factors and Whether the Department Incorrectly Valued Fushun Jinly's Coal Consumption
Comment 15: Whether Fushun Jinly's Reported Market Economy Purchase Prices for Needle Coke Are Understated
Comment 16: Whether Fushun Jinly Reported All Factor Data
Comment 17: Whether to Reject Fushun Jinly's Tollers' Data Because It Included Non-Subject Merchandise in the FOP Allocations
Comment 18: Whether Fushun Jinly's Graphitization Toller's FOP Data are Understated, Incomplete and Unreliable
Comment 19: Whether Fushun Jinly's Accounting Records Can Be Reconciled to the Toller's Records With Respect to Quantities
Comment 20: Whether Fushun Jinly's Toller #1's Data Are Incomplete
Comment 21: Whether Fushun Jinly's Toller #2's Data Are Incomplete
Comment 22: Fushun Jinly's Toller #2's Electricity Consumption
Comment 23: Whether Fushun Jinly's Toller's Data Are Otherwise Understated
Comment 24: Offsetting Negative Margins

[FR Doc. 2011–23357 Filed 9–12–11; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Final Results of the Antidumping Duty Administrative Review, and Revocation of the Order, in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 4, 2011, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India. The review covers shipments of subject merchandise to the United States for the period February 1, 2009, through January 31, 2010, by Facor Steels Ltd./Ferro Alloys Corporation, Ltd. (''Facor''), Mukand Ltd. (''Mukand''), and Venus Wire Industries Pvt. Ltd. (''Venus Wire'').[1] Based on our analysis of the comments received, we have made changes to the preliminary results, which are discussed below. For the final dumping margins, see the ''Final Results of the Review'' section below. Finally, we are announcing our revocation of the order on stainless steel bar from India, in part, with respect to subject merchandise produced and/or exported by Venus to the United States.

DATES: *Effective Date:* September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Austin Redington, Scott Holland, or Yasmin Nair, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1664, (202) 482–1279, or (202) 482–3813, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2011, the Department published *Stainless Steel Bar From India: Preliminary Results of, and Partial Rescission of, the Antidumping Duty Administrative Review, and Intent Not To Revoke the Order, in Part,* 76 FR 12044 (March 4, 2011) (''*Preliminary Results*''). After publishing the *Preliminary Results,* the Department conducted verification of the cost of production responses from Venus Wire and its affiliate, Sieves, from March 7, 2011, through March 18, 2011. The results of this verification were disclosed to the interested parties on April 29, 2011. *See* Memorandum from Angie Sepulveda and Heidi K. Schriefer to Neal M. Halper, ''Verification of the Cost Response of Venus Wire Industries Pvt. Ltd. in the Antidumping Review of Stainless Steel Bar from India,'' dated April 29, 2011; *see also* Memorandum from Angie Sepulveda and Heidi K. Schriefer to Neal M. Halper, ''Verification of the Cost Response of Sieves Manufacturers (India) Private Limited in the Antidumping Review of Stainless Steel Bar from India,'' dated April 29, 2011, which are on file in the Central Records Unit (''CRU'') in room 7046 in the main Department building.

We preliminarily determined to treat Venus Wire and its affiliate Hindustan as a single entity for this review. *See Preliminary Results; see also* Memorandum from Austin Redington to the File, ''Whether to Collapse Venus Wire Industries Pvt., Ltd. and Hindustan Inox in the Preliminary Results,'' dated July 20, 2010. We invited comment on this issue from the interested parties: None was received. We are continuing to treat Venus Wire and its affiliate Hindustan as a single entity for the final results of this review.

On April 14, 2011, the Department extended the time limit for the completion of the final results of this review by 60 days (to August 31, 2011), in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213(h)(2). *See Stainless Steel Bar From India: Extension of Time Limit for the Final Results of the 2009–2010 Antidumping Duty Administrative Review,* 76 FR 20950 (April 14, 2011).

We invited parties to comment on the *Preliminary Results.* On April 4, 2011, we received a letter from Venus detailing and correcting administrative errors in its questionnaire response and verification. On April 25, 2011, we received a response to Venus' April 4, 2011 letter from Petitioners.[2] On May 3, 2011, we received an additional letter from Venus, which clarified its comments of April 4, 2011.

On June 16, 2011, we received case briefs from Venus and Petitioners. On June 16, 2011, pursuant to a request from Mukand, we extended the deadline for submission of case briefs to June 20, 2011. *See* Memorandum from Seth Isenberg to the File, ''2009/2010 Administrative Review of Stainless Steel Bar from India: Revised Briefing Schedule,'' dated June 16, 2011. On June 20, 2011, we again extended the deadline, pursuant to a request from Mukand, Ltd. *See* Memorandum from Seth Isenberg to the File, ''2009/2010 Administrative Review of Stainless Steel Bar from India: Revised Briefing Schedule,'' dated June 20, 2011. On June 22, 2011, we received case briefs from Mukand and Facor. On June 24, 2011, we extended the deadline for submission of rebuttal briefs to June 29, 2011, pursuant to a request from Petitioners. *See* Memorandum from the Team to the File, ''2009/2010 Administrative Review of Stainless Steel Bar from India: Revised Briefing Schedule,'' dated June 24, 2011. We

[1] For the reasons explained in the *Preliminary Results,* we have determined that Venus Wire and its affiliates, Hindustan Inox, Precision Metals (''Hindustan'') and Sieves Manufacturers (India) Pvt. Ltd. (''Sieves''), should be treated as a single entity and collapsed for the purposes of this review. *See* Memorandum from Patricia Tran and Austin Redington to the File, ''Whether to Collapse Venus Wire Industries Pvt., Ltd. and Hindustan Inox in the Preliminary Results'' dated July 20, 2010; *see also* Memorandum from Austin Redington to the File, ''Relationship of Venus Wire Industries Pvt. Ltd. and Precision Metals,'' dated May 20, 2010; *see also* Memorandum from Austin Redington to the File, ''Relationship of Wire Industries Pvt. Ltd. and Sieves Manufactures (India) Pvt. Ltd.,'' dated May 20, 2010. The collapsed entity is referred to as ''Venus.''

[2] Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., Universal Stainless (collectively ''Petitioners'').

received rebuttal briefs on June 27, 2011, and June 29, 2011, from Venus and Petitioners, respectively. On July 13, 2011, we rejected Mukand's June 21, 2011 case brief because it contained new factual information. *See* Letter from the Department to Mukand, ''June 22, 2011 Case Brief,'' dated July 13, 2011. In response to the Department's July 13, 2011 letter, Mukand re-filed its case brief on July 13, 2011, having removed the new factual information from its June 22, 2011 case brief.

Scope of the Order

Imports covered by the order are shipments of stainless steel bar. Stainless steel bar means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi-finished products, cut-to-length flat-rolled products (*i.e.,* cut-to-length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.,* cold-formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat-rolled products), and angles, shapes, and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11, 7222.19, 7222.20, 7222.30 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs are addressed in the ''Issues and Decision Memorandum for the 2009–2010 Administrative Review of Stainless Steel Bar from India'' (''Issues and Decision Memorandum''), which is dated concurrently with and hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document which is on file in the CRU, and is accessible on the web at *http://www.ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made the following changes in calculating dumping margin for Venus: (1) We reversed our determination regarding Venus' eligibility for revocation from the order; (2) we corrected a clerical error identified by Sieves regarding an incorrect grade reported in its home market for two control numbers (''CONNUMs''); (3) we corrected a clerical error identified by Venus regarding an incorrect size reported for two U.S. market CONNUMs; (4) we corrected a clerical error identified by Venus regarding an incorrect credit expense that resulted from a misreported date of sale for one home market sale; (5) we made an adjustment to one of Venus' U.S. sales to reflect a reimbursement it received for international freight expenses; (6) we recalculated Venus' and Sieves' annealing related charges based on the quantity processed, by grade series, regardless of size; (7) we revised Venus' reported conversion costs to correct minor errors found in the calculation of the direct labor, selected variable overhead items, and depreciation amounts; (8) we revised Sieves' reported conversion costs to allocate direct labor and selected variable overhead items only to stainless steel bright bar and to correct the processing related charges; (9) we increased Sieves' reported direct material costs to account for inputs obtained from affiliates at less than market prices; (10) we revised Sieves' general and administrative expense rate to exclude from the numerator the portion of the director remuneration expense reported as a selling expense; (11) we increased Hindustan's reported cost of manufacture (''COM'') to include the unreconciled difference between the COM from its normal books and records and the reported COM; and (12) we changed the AFA rate applied to Mukand to the 21.02 percent rate calculated in the petition. *See* Issues and Decision Memorandum at Comments 1, 3, and 7. For further details on how the changes relating to Venus were applied in the calculation, *see* Memorandum from Austin Redington to the File, ''Final Results Calculation Memorandum for Venus Wire Industries Pvt. Ltd.,'' dated August 31, 2011; *see also* Memorandum from Angie Sepulveda and Heidi K. Schriefer to Neal M. Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Venus Wire Industries Pvt. Ltd.,'' dated August 31, 2011.

Use of Adverse Facts Available

The Department found in the *Preliminary Results* that Mukand failed to cooperate to the best of its ability by withholding information requested in the Department's questionnaire and, thereby, impeding the proceeding. *See Preliminary Results.* Therefore, in accordance with sections 776(a) and (b) of the Act, and 19 CFR 351.308, the Department preliminarily selected 22.63 percent as the adverse facts available (''AFA'') dumping margin. For these final results, the Department continues to find that an AFA margin should be applied to Mukand; however, as stated above, the Department has changed the AFA margin applied to Mukand and is now applying the rate calculated in the petition. *See* Issues and Decision Memorandum at Comment 7 for further discussion.

Revocation

Under section 751(d)(1) of the Act, the Department ''may revoke, in whole or in part'' an antidumping duty order upon completion of a review. Although Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is set forth at 19 CFR 351.222. Under 19 CFR 351.222(b)(2), the Department may revoke an antidumping duty order in part if it concludes that (A) an exporter or producer has sold the merchandise at not less than normal value for a period of at least three consecutive years, (B) the exporter or producer has agreed in writing to its immediate reinstatement in the order if the Secretary concludes that the exporter or producer, subsequent to the revocation, sold the subject merchandise at less than normal value, and (C) the continued application of the antidumping duty order is no longer necessary to offset dumping.

A request for revocation of an order in part for a company previously found dumping must address three elements. The company requesting the revocation must do so in writing and submit the following statements with the request: (1) The company's certification that it sold the subject merchandise at not less

than normal value during the current review period and that, in the future, it will not sell at less than normal value; (2) the company's certification that, during each of the consecutive years forming the basis of the request, it sold the subject merchandise to the United States in commercial quantities; (3) the company's agreement to reinstatement in the order if the Department concludes that, subsequent to revocation, the company has sold the subject merchandise at less than normal value. *See* 19 CFR 351.222(e)(1). For these final results, we find that Venus' revocation request dated February 24, 2010, meets all of the criteria under 19 CFR 351.222(e)(1).

With regard to the criteria of 19 CFR 351.222(b)(2), we have determined that application of the antidumping duty order to Venus is no longer warranted for the following reasons: (1) The company had zero or *de minimis* margins for a period of at least three consecutive years; (2) the company has agreed to immediate reinstatement of the order if we find that it has resumed making sales at less than fair value (''LTFV''); (3) the continued application of the order is not otherwise necessary to offset dumping.

Therefore, for the final results, we determine that Venus qualifies for revocation from the order on stainless steel bar from India pursuant to 19 CFR 351.222(b)(2)(i). We received comments concerning the revocation of the order on stainless steel bar from India produced and/or exported by Venus to the United States. For further discussion of this issue, *see* Issues and Decision Memorandum at Comment 1. *See also* Memorandum from Scott Holland to the File ''Determination to Revoke the Antidumping Duty Order on Stainless Steel Bar from India for Venus Wire Industries Pvt., Ltd.; Precision Metals, Sieves Manufacturers (India) Pvt., Ltd., and Hindustan Inox, Ltd.,'' dated August 31, 2011. In accordance with 19 CFR 351.222(b)(2)(ii), we are revoking the order on stainless steel bar from India produced and/or exported by Venus to the United States, effective February 1, 2010.

Cost of Production

As discussed in the *Preliminary Results,* we conducted an investigation to determine whether Venus and Facor made home market sales of the foreign like product during the POR at prices below their costs of production (''COP'') within the meaning of section 773(b) of the Act. *See Preliminary Results.* For these final results, we performed the cost test following the same methodology as discussed in the *Preliminary Results.*

We found 20 percent or more of each respondent's sales of a given product during the reporting period were made at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(1) and (2) of the Act.

For purposes of these final results, we continue to find that Venus and Facor made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales (if any) as the basis for determining normal value, pursuant to section 773(b)(1) of the Act. Where there were no home market sales made in the ordinary course of trade, we based normal value on constructed value.

Final Results of the Review

We determine that the following weighted-average dumping margins exist for Venus, Mukand, and Facor for the period February 1, 2009, through January 31, 2010.

Exporter/manufacturer	Margin (percent)
Venus Wire Industries Pvt. Ltd./Precision Metal/Sieves Manufacturing (India) Pvt. Ltd./Hindustan Inox Ltd	0.07
Mukand, Ltd	21.02
Facor Steels Ltd./Ferro Alloys Corporation, Ltd	9.86

De minimis

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212(b)(1). The Department intends to issue appropriate assessment instructions for the companies subject to this review to CBP 15 days after the date of publication of these final results.

Pursuant to 19 CFR 351.212(b)(1), for all sales made by the respondent for which it has reported the importer of record and the entered value of all the U.S. sales to that importer, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. Where the respondent did not report the entered value for all U.S. sales to an importer, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales.

To determine whether the duty assessment rates were *de minimis* (*i.e.,* less than 0.50 percent) in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific *ad valorem* rates based on reported and estimated entered values (when no entered value was reported). Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis.*

Cash Deposit Requirements

Because we are revoking the order with respect to Venus' exports of subject merchandise, we will order CBP to terminate the suspension of liquidation for exports of such merchandise entered, or withdrawn from warehouse, for consumption on or after February 1, 2010, and to refund all cash deposits collected.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of stainless steel bar from India entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis,* the cash deposit will be zero; (2) for previously reviewed

or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 12.45 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915 (December 28, 1994). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether to Revoke the Order as it Applies to Venus
Comment 2: Whether to Compare U.S. Sales to Home Market Sales of Similar Merchandise
Comment 3: Whether to Accept Venus' Minor Corrections
Comment 4: Whether Venus' Air Freighted Sales are Outside the Ordinary Course of Trade
Comment 5: Whether to Grant a Level of Trade (''LOT'') Adjustment to Facor
Comment 6: Whether Application of Total Adverse Facts Available (''AFA'') is Warranted
Comment 7: Whether the AFA Rate is Corroborated
Comment 8: Whether to Use Zeroing Methodology in this Administrative Review

[FR Doc. 2011–23390 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration,

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On August 29, 2011, the binational panel issued its decision in the review of the United States International Trade Commission's (the Commission) final injury determination in Large Diameter Line Pipe and Tube from Mexico (NAFTA Secretariat File Number USA–MEX–2007–1904–03) affirming the Commission's remand determination. Copies of the panel decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Dated: September 6, 2011.

Patricia Vidangos,

NAFTA Trade Specialist.

[FR Doc. 2011–23157 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

MINORITY BUSINESS DEVELOPMENT AGENCY

Meeting of the National Advisory Council on Minority Business Enterprise

AGENCY: Minority Business Development Agency, U.S. Department of Commerce

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council for Minority Business Enterprise (NACMBE) will hold its third meeting to discuss the work of the three subcommittees and deliverables to fulfill the NACMBE's charter mandate. The agenda may change to accommodate Council business.

DATES: The meeting will be held on Thursday, September 29, 2011 from 8 a.m. to 5 p.m. Eastern Time (ET).

ADDRESSES: The meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Demetria Gallagher, National Director's Office, Minority Business Development Agency (MBDA), U.S. Department of Commerce at (202) 482–1624 e-mail: *dgallagher@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the NACMBE pursuant to his discretionary authority and in accordance with the *Federal Advisory Committee Act,* as amended (5 U.S.C. App. 2) on April 28, 2010. The NACMBE is to provide the Secretary of Commerce with recommendations from the private sector on a broad range of policy issues that affect minority businesses and their ability to access successfully the domestic and global marketplace.

Topics to be considered: During the meeting the three subcommittees will

report on their work and the Council will discuss and deliberate on possible recommendations. The Subcommittee topics include: (1) Definition of Minority Business Enterprises (MBEs) and MBDA's role, (2) Creation of an MBE Forum, and (3) Strategic Alliances & Exports.

Public Participation: The meeting is open to the public. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Demetria Gallagher at the contact information above by 5 p.m. EST on Thursday, September 22, 2011, to preregister. Please specify any requests for reasonable accommodation at least ten (10) business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fulfill.

A limited amount of time, in the afternoon, 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 affairs of the NACMBE at *http://www.mbda.gov/main/nacmbe-submit-comments.* To be considered during the meeting, comments must be received no later than 5 p.m. ET on Wednesday, September 21, 2011, to ensure transmission to the Council prior to the meeting. Comments received after that date will be distributed to the members but may not be considered at the meeting.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Demetria Gallagher, at (202) 482–1624, or *dgallagher@mbda.gov,* at least ten (10) days before the meeting date.

Copies of the NACMBE open meeting minutes will be available to the public upon request.

Dated: September 1, 2011.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2011–23343 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA695

Western Pacific Regional Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Regional Fishery Management Council (Council) will convene a meeting of the Hawaii Members of its Non-Commercial Fisheries Advisory Committee, Hawaii Members of its Advisory Panel, and Hawaii Members of its Bottomfish Advisory Review Board in Honolulu, HI, to provide comments on two items on which the Council is expected to take action at its 152nd Council Meeting to be held between October 19–22.

DATES: The meeting will be held on Wednesday, September 28, 2011 from 10 a.m. to 4 p.m. (see **SUPPLEMENTARY INFORMATION** for agenda items).

ADDRESSES: The meeting will be held at the Council Office Conference Room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808) 522–8220.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION:

Wednesday, September 28, 2011; 10 a.m.

A. Introduction.

B. Recommendations for non-Deep 7 bottomfish management unit species Annual Catch Limit and Accountability Measures.

C. Recommendations on Hawaii Non-Commercial Data Collection.

D. Public Comment.

E. Closure of meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: September 8, 2011.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2011–23308 Filed 9–12–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Reserve Forces Policy Board (RFPB); Notice of Advisory Committee Meeting

AGENCY: Department of Defense; Office of the Secretary of Defense Reserve Forces Policy Board.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces the following Federal advisory committee meeting of the Reserve Forces Policy Board (RFPB).

DATES: Thursday, October 13, 2011, from 7:30 a.m. to 4:30 p.m.

ADDRESSES: Meeting address is Pentagon, Conference Room 3E863, Arlington, VA. Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300.

FOR FURTHER INFORMATION CONTACT: Lt. Col. Kenneth Olivo, Designated Federal Officer, (703) 697–4486 (Voice), (703) 693–5371 (Facsimile), *RFPB@osd.mil.* Mailing address is Reserve Forces Policy Board, 7300 Defense Pentagon, Washington, DC 20301–7300. Web site: *http://ra.defense.gov/rfpb/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To conduct administration and orientation of the new members of the RFPB.

Agenda: Administrative meeting will be conducted on October 13, 2011.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this administrative meeting is not open to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Reserve Forces Policy Board at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Reserve Forces Policy Board's Designated Federal Officer. The Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to a scheduled meeting of the Reserve Forces Policy Board may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: September 8, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23309 Filed 9–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Department of Defense Military Family Readiness Council (MFRC); Cancellation

AGENCY: Department of Defense, Office of the Under Secretary of Defense for Personnel and Readiness.

ACTION: Notice of cancellation.

SUMMARY: On August 3, 2011 (76 FR 46756), the Department of Defense Military Family Readiness Council announced a meeting to be held September 19, 2011, from 2 p.m. to 4 p.m. at the Pentagon in Conference Center B6. Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a meeting cancellation of the Department of Defense Military Family Readiness Council (MFRC). The purpose of the Council meeting is to review the military family programs which will be the focus for the Council for next year, review the status of warrior care, and address selected concerns of military family organizations.

The September 19, 2011 meeting is cancelled due to non-conformance of the members to hold a quorum.

FOR FURTHER INFORMATION CONTACT: Ms. Melody McDonald or Ms. Betsy Graham, Office of the Deputy Under Secretary (Military Community & Family Policy), 4000 Defense Pentagon, Room 2E319, Washington, DC 20301–4000. Telephones (571) 256–1738; (703) 697–9283 and/or *e-mail: FamilyReadinessCouncil@osd.mil.*

Dated: September 8, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23310 Filed 9–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Science and Technology Reinvention Laboratory Demonstration Project; Department of the Army; Army Research, Development and Engineering Command; Tank Automotive Research, Development and Engineering Center (TARDEC); Correction

AGENCY: Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD (CPP)), Department of Defense (DoD).

ACTION: Notice; correction.

SUMMARY: On March 7, 2011 (76 FR 12508–12548), DoD published notice of approval of a personnel management demonstration project for eligible TARDEC employees. Within that notice the table showing the compensation regions defined by Normal Pay Ranges was misprinted. The Reduction-in-Force service credit was described erroneously, and several occupational series were omitted from the Occupational Families listed. This notice corrects these errors.

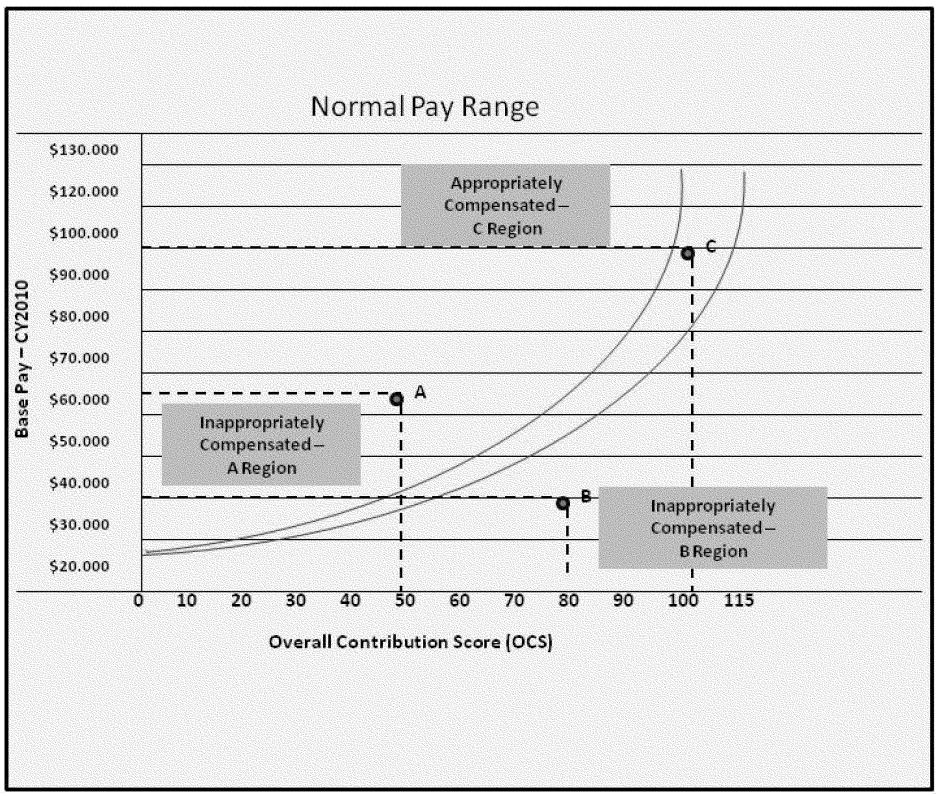
DATES: Implementation of this demonstration project will begin no earlier than March 9, 2010.

FOR FURTHER INFORMATION CONTACT: *TARDEC:* Mr. Gregory Berry, U. S. Army Tank Automotive Research, Development and Engineering Center (TARDEC), 6501 East 11 Mile Road, *Attn:* RDTA–COS/MS 204, Warren, MI 48397–5000.

DoD: Ms. Betty Duffield, CPMS–PSSC, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

Correction:

1. On page 12520, Table 7. Compensation Regions Defined by NPR is replaced with the table below:



2. On page 12529, **Section H. Reduction-in-Force (RIF) Procedures**, the fourth paragraph is replaced with:

The additional RIF service credit for performance shall be based on the last three OCS scores and will be applied as follows:

a. 20 years of credit for each year the OCS is equal to or greater than the expected OCS.

b. 16 years of credit for each year the OCS is less than the expected OCS but greater than 94% of the expected OCS.

c. 12 years of credit for each year the OCS is less than 94% but greater than 90% of the expected OCS.

d. Zero (0) year of credit for each year the OCS is less than 90% of the expected OCS.

Note 1: Expected OCS is the OCS that corresponds to the employee's base pay at the time of rating.

3. On page 12529, **Section H. Reduction-in-Force (RIF) Procedures**, fifth paragraph, second to last sentence is changed to read: If an employee has not been rated under the demonstration project their rating will be considered acceptable and they will be given the full 20 years of performance credit.

4. On page 12537, **Appendix B: Occupational Series by Occupational Family**, the following series are added to the Occupational Families indicated:

a. Engineering & Science:

0810 Civil Engineer Series.

b. Business/Technical:

0399 Administration and Office Support Trainee Series.

1082 Writing and Editing.

c. General Support:

0399 General Support Student Trainee Series.

Dated: September 8, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23336 Filed 9–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of a Draft Supplemental Environmental Impact Statement/Supplemental Overseas Environmental Impact Statement for the Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2) of the National Environmental Policy Act of 1969 as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508) and Executive Order 12114 (Environmental Effects Abroad of Major Federal Actions), the Department of the Navy (DoN) has prepared and filed with the U.S. Environmental Protection Agency (USEPA) a Draft Supplemental Environmental Impact Statement/ Supplemental Overseas Environmental Impact Statement (Draft SEIS/SOEIS) to provide supplemental analyses for the DoN's employment of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar systems. USEPA published their notice of availability of the SURTASS LFA sonar draft supplement on August 19, 2011 (EIS No. 20110269).

DATES: Public comment period will end on October 17, 2011.

ADDRESSES: Written comments on the SURTASS LFA Sonar Draft SEIS/SOEIS should be addressed to: Chief of Naval Operations, Code N2/N6F24, c/o SURTASS LFA Sonar SEIS/SOEIS Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, Virginia 22203; or e-mail: *eisteam@mindspring.com.*

FOR FURTHER INFORMATION CONTACT: Chief of Naval Operations, Code N2/ N6F24, c/o SURTASS LFA Sonar SEIS/ SOEIS Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, Virginia 22203; or e-mail: *eisteam@mindspring.com.*

SUPPLEMENTARY INFORMATION: The proposed action is the DoN's employment of up to four SURTASS LFA sonar systems in the oceanic areas of the Pacific, Atlantic, and Indian Oceans, and the Mediterranean Sea. The Draft SEIS/SOEIS has been distributed to various Federal, state, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft SEIS/SOEIS have been distributed to the following regional libraries for public review:

1. Los Angeles Public Library, Malabar Branch, 2801 Wabash Ave, Los Angeles, CA 90033.

2. San Diego Public Library, 820 E St., San Diego, CA 92101–6478.

3. California State Library, Sutro Library, 480 Winston Drive, San Francisco, CA 94132.

4. San Francisco Public Library, 100 Larkin St. (at Grove), San Francisco, CA 94102.

5. Hawaii Documents Center, Hawaii State Library, 478 South King St., Honolulu, HI 96813.

6. Kaneohe Public Library, 45–829 Kamehameha Highway, Kaneohe, HI 96744.

7. Hilo Public Library, 300 Waianuenue Ave., Hilo, HI 96720.

8. Wailuku Public Library, 251 High St., Wailuku, HI 96793.

9. Lihue Public Library, 4344 Hardy St., Lihue, HI 96766.

10. Boston Public Library, 700 Boylston St., Copley Square, Boston, MA 02116.

11. Norfolk Public Library, Kirn Memorial Library, 301 East City Hall Ave., Norfolk, VA 23510.

12. Virginia Beach Public Library, 4100 Virginia Beach Blvd., Virginia Beach, VA 23452.

13. Seattle Public Library, 1000 Fourth Ave., Seattle, WA 98104.

14. Martin Luther King Memorial Library, 901 G St., NW., Washington, DC 20001.

An electronic copy of the Draft SEIS/ SOEIS is available for public viewing and download at: *http://www.surtass-lfa-eis.com/.* Single CDs and copies of the Draft SEIS/SOEIS and Executive Summary are available upon request by contacting: SURTASS LFA Sonar EIS Program Manager, 4100 Fairfax Drive, Suite 730, Arlington, VA 22203; or e-mail: *eisteam@mindspring.com.*

Federal, State, and local agencies and interested parties are invited and urged to provide written comments, which can be submitted by mail to: SURTASS LFA Sonar EIS Program Manager, 4100 Fairfax Drive, Ste 730, Arlington, VA 22203; or e-mail: *eisteam@mindspring.com.* All written comments must be postmarked by Monday, October 17, 2011, to ensure that they become part of the official record. No public hearings or meetings are planned. All timely comments will be addressed in the Final SEIS/SOEIS.

Dated: September 6, 2011.

L. M. Senay,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2011–23306 Filed 9–12–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, Department of Defense (DoD).

ACTION: Notice of open meeting.

SUMMARY: The Naval Research Advisory Committee (NRAC) will meet September 19–21, 2011 to discuss materials in support of the study: Processes for the Use of BA4 Funding. All sessions on Monday, September 19; Tuesday, September 20; and Wednesday, September 21 will be open to the public.

DATES: Monday, September 19; Tuesday, September 20; and Wednesday, September 21, from 8 a.m. to 4 p.m. each day.

ADDRESSES: The NRAC study meeting will take place in the Didactic Room, Herrmann Hall, Naval Postgraduate School, 699 Dyer Rd., Monterey, CA 93943, Phone: 831–656–2098, Fax: 831–656–2038.

FOR FURTHER INFORMATION CONTACT: Mr. William H. Ellis, Jr., Program Director, Naval Research Advisory Committee, 875 North Randolph Street, Arlington, VA 22203–1955, 703–696–5775.

SUPPLEMENTARY INFORMATION: Access instructions for the public:

All guests must notify the NRAC office of their intention of attending one or more days of the meeting. Please submit the following information via FAX to the NRAC office no later than Thursday, September 15, 2011: Full name, last four digits of your Social Security Number (SSN), contact address, contact telephone, citizenship.

A list of potential visitors will be provided to the security personnel at the Naval Postgraduate School (NPGS). Please present two forms of identification and request the security officer to search for your name on the visitor access roster for the NRAC meeting. All guests must have at least two forms of government issued identification. All guests will be limited to only those areas related to the study meeting activities. All guests will be required to leave NPGS upon completion of the NRAC activities open to the public, unless otherwise authorized to remain aboard military installations (Active duty, Retirees, etc.).

Please forward this information to the below NRAC staff:

Mr. William Ellis, NRAC Program Director, william.h.ellis@navy.mil; FAX: 703–696–4837 or Mr. Miguel Becerril, NRAC Program Manager, *Miguel.becerril.ctr@navy.mil;* FAX: 703–696–4837.

Due to internal DoD difficulties, beyond the control of the Naval Research Advisory Committee or its Designated Federal Officer, the Board was unable to process the Federal Register notice for the September 19–21, 2011 meeting of the Naval Research Advisory Committee as required by 41 CFR § 102–3.150(a). Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: September 7, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–23291 Filed 9–12–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 14, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 7, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Communications and Outreach

Type of Review: NEW.

Title of Collection: Green Ribbon Schools Application Package.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State Educational Agencies, Local Educational Agencies or Tribal Governments.

Total Estimated Number of Annual Responses: 61,108.

Total Estimated Number of Annual Burden Hours: 38,764.

Abstract: U.S. Department of Education (ED)—Green Ribbon Schools is a recognition award that will recognize public and private elementary, middle and high schools that save energy, reduce costs, protect health, foster wellness, feature environmentally sustainable learning spaces, and offer effective environmental education.

ED will request information from nominating authorities documenting their evaluation of schools according to the following categories: (1) Environmental impact and energy efficiency; (2) healthy environment; and (3) environmental literacy. This information will be used at the Department to conduct final review to ensure schools meet eligibility requirements, including compliance with applicable federal civil rights and federal, state and local health, environment and safety statutory and regulatory requirements; meet high college- and career-ready academic standards; and are among the highest performing in the three areas provided, according to the practices and metrics indicated.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4713. When you access the information collection,

click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–23393 Filed 9–12–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Interim Approval

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of rate order.

SUMMARY: The Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis, Rate Schedules JW–1–J and JW–2–F. The rates were approved on an interim basis up to September 19, 2016, and are subject to confirmation and approval by the Federal Energy Regulatory Commission (Commission) on a final basis.

DATES: Approval of rates on an interim basis is effective September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Virgil G. Hobbs III, Assistant Administrator, Finance and Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800. Relevant documents and transcripts are available for inspection.

SUPPLEMENTARY INFORMATION: The Commission, by Order issued April 15, 2010, in Docket No. EF09–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–I and JW–2–F. Rate schedule JW–1–J replaces rate schedule JW–1–I and rate schedule JW–2–F is extended up to September 19, 2016.

Dated: September 2, 2011.

Daniel B. Poneman,

Deputy Secretary.

Department of Energy

Deputy Secretary

Rate Order No. SEPA–54

In the Matter of: Southeastern Power Administration—Jim Woodruff Project Power Rates

Order Confirming and Approving Power Rates on an Interim Basis

Pursuant to Sections 302(a) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (''Southeastern'' or ''SEPA'') were transferred to and vested in the Secretary of Energy. By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated to Southeastern's Administrator the authority to develop power and transmission rates, delegated to the Deputy Secretary of Energy the authority to confirm, approve, and place in effect such rates on an interim basis, and delegated to the Federal Energy Regulatory Commission (''Commission'') the authority to confirm, approve, and place into effect on a final basis or to disapprove rates developed by the Administrator under the delegation. This rate order is issued by the Deputy Secretary pursuant to said delegation.

Background

Power from the Jim Woodruff Project is presently sold under Wholesale Power Rate Schedules JW–1–I and JW–2–F. These rate schedules were approved by the Commission on April 15, 2010, for a period ending September 19, 2014 (131 FERC ¶62,044).

Public Notice and Comment

Southeastern prepared a Power Repayment Study, dated January 2011, showing revenues at current rates were adequate to meet repayment criteria. However, the Jim Woodruff preference customers asked Southeastern to revise the rates to include a pass-through of purchased power expenses. The proposed capacity and energy charge reduction to the preference customers will be completely recovered through this separate, pass-through charge to the affected customers. This rate structure revision will result in no net loss of revenue and will fully meet system repayment criteria. On February 17, 2011, by **Federal Register** notice (76 FR 9349), Southeastern proposed a rate adjustment. The notice also announced a Public Information and Comment Forum to be held March 29, 2011, in Tallahassee, Florida. Three parties asked questions at the forum. Responses to the questions are part of the written record of the forum, and a transcript of the forum is available at Southeastern Power Administration (see **FOR FURTHER INFORMATION CONTACT** section). The transcript of the forum is part of the record to be filed with the Commission and will be available on the Commission's Web site at *http://www.ferc.gov*. Written comments were accepted on or before May 18, 2011. Written comments were received from one source the Southeastern Federal Power Customers.

Staff Review of Comments

Written comments received from the Southeastern Federal Power Customers are summarized below. Southeastern's response follows each comment.

Comment 1: The Jim Woodruff preference customers support the revised rate design SEPA has prepared.

Response 1: The rate schedules Southeastern will propose to the Deputy Secretary will include the pass-through of purchased power expenses as discussed with the preference customers.

Comment 2: While the preference customers of the Jim Woodruff support the overall rate structure, including the new pass through mechanism for purchased power expenses, they have concerns regarding the assumptions for the Operations and Maintenance (''O&M'') expenses. In materials provided by SEPA on April 25th, the Corps 2011 projections revealed projected expenses for joint activities not specific to a single business function had increased by more than three hundred percent for each year until 2015. While preference customers throughout the Southeast have long questioned the practices of the U.S. Army Corps of Engineers (''Corps'') in assigning various costs of the Corps program to this ''catch-all'' account, there appears to be no basis for a three hundred percent increase in joint use costs.

Response 2: From fiscal year 2009 to fiscal year 2010, Joint O&M allocated to power increased from $664,000 to $1,653,000, primarily as a result of improvement projects funded by the American Recovery and Reinvestment Act. The estimated Joint O&M allocated to power included in the repayment study used to support the proposed rates, set forth below, are similar to the

Joint O&M amounts from fiscal year 2009:

2011.....$627,731
2012.....$646,458
2013.....$665,746
2014.....$685,614
2015.....$685,614
2016.....$685,614

These estimates have been used to develop the proposed rate schedules. Any variance of the actual costs incurred from these estimates will impact the repayment of the federal investment and will be accounted for in the next rate adjustment. Repayment is the residual of all variances. The expenses reported by the Corps are reviewed annually by Southeastern and are made available to the customers through the O&M Committee of the SeFPC.

Comment 3: The full extent of SeFPC's O&M Committee is important to note here because of statements that SEPA has made in the past when questions have been raised regarding the amount of O&M in a rate. On more than one occasion, SEPA has stated that questions regarding the level of O&M in a rate should be addressed in the meeting of the O&M committee, thereby indicating the SeFPC's O&M committee has a quasi administrative review of the Corps operations. The record needs to be corrected and set clear on this point.

Response 3: The activities of the O&M Committee of the SeFPC, in which both Southeastern and the Corps participate, provides customers an opportunity to review the Corps O&M Expenses. Participation in the O&M Committee does not require participants to sign off on the Corps' projections or the actual costs incurred. Adjustments to the program are often made as a result of questions raised at the meetings.

Questions regarding the level of Corps O&M in a rate may be raised at any time. If the questions are raised to Southeastern, Southeastern will usually forward the questions to the Corps for a response. The Corps provides representatives who participate and answer questions in the meetings of the O&M Committee. The SeFPC's O&M committee does not conduct any administrative review of the Corps operations.

Comment 4: The Corps has no authority to set the rates charged to the preference customers. This responsibility is solely vested with the Administrator pursuant to Section 5 of the Flood Control Act of 1944. Thus, when there is a question regarding the amount of O&M to be included in a proposed rate, the preference customers appropriately raise concerns with SEPA.

However, SEPA does have a relationship with the Corps as defined in a Memorandum of Understanding setting forth the responsibilities between the two agencies. Moreover, the Administrator has the responsibility under the Flood Control Act of 1944 to set the rates. Therefore, in the context of a rate increase which involves questions regarding O&M, the Administrator has the final say and all questions regarding the ultimate level of O&M recovery are appropriately resolved by SEPA rather than the SeFPC O&M committee.

Response 4: There is a Memorandum of Understanding between the South Atlantic Division of the U.S. Army Corps of Engineers and the Administrator of Southeastern Power Administration (MOU) established June 20, 1991. The MOU is available at Southeastern Power Administration (See **FOR FURTHER INFORMATION CONTACT** Section). This MOU recognizes the respective roles these two federal entities play in the Southeastern Federal Power Program.

Section 4 (c.) of the MOU states, ''It is recognized that the preference customers of the Southeastern Federal Power Program have an interest in the maintenance, operation and maintenance expense, and funding. It is the intent of the parties to develop a relationship of mutual respect and trust between the parties and the preference customers to resolve controversial issues through discussion rather than confrontation. The parties, therefore, agree to meet as needed with the customers, or their designated representatives, to discuss maintenance, expense and funding procedures.''

The MOU also provides that the Corps will provide Southeastern with summarized financial statements and the statements will be audited periodically by an independent auditing firm.

Section 5 of the Flood Control Act of 1944 states, ''Rate schedules shall be drawn having regard to the recovery (upon the basis of the application of such rate schedules to the capacity of the electric facilities of the projects) of the cost of producing and transmitting such electric energy, including the amortization of the capital investment allocated to power over a reasonable period of years.''

The Corps does not submit its budget to Southeastern, and Southeastern has no authority over the Corps' spending of Congressional appropriations. Southeastern is legally responsible for the recovery of costs properly allocated to the power function. While the Administrator is responsible for formulating rate schedules for the recovery of these costs, the rate schedules are required to be submitted to the Deputy Secretary of the Department of Energy for interim approval and to the Federal Energy Regulatory Commission for final approval.

The O&M Committee of the SeFPC also has no authority over the Corps O&M expense.

Discussion

System Repayment

An examination of Southeastern's revised system power repayment study, prepared in July 2011, for the Jim Woodruff Project, shows the proposed rates will pay all system power costs within the 50-year repayment period required by existing law and DOE Order RA 6120.2. The Administrator of Southeastern has certified the rates are consistent with applicable law and are the lowest possible rates to preference customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded the adjusted rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials, is available for public review in the offices of Southeastern Power Administration, 1166 Athens Tech Road, Elberton, Georgia 30635–6711.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning September 20, 2011, and ending no later than September 19, 2016.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective September 20, 2011, attached Wholesale Power Rate Schedules JW–1–J and JW–2–F. The rate schedules shall remain in effect on an interim basis

through September 19, 2016, unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Dated: September 2, 2011.

Daniel B. Poneman,
Deputy Secretary.

Wholesale Power Rate Schedule JW–1–J

Availability:

This rate schedule shall be available to public bodies and cooperatives served by the Progress Energy Florida and having points of delivery within 150 miles of the Jim Woodruff Project (hereinafter called the Project).

Applicability:

This rate schedule shall be applicable to firm power and accompanying energy made available by the Government from the Project and sold in wholesale quantities.

Character of Service:

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the customer.

Monthly Rate:

The monthly rate for capacity and energy made available or delivered under this rate schedule shall be:

Demand Charge:

$10.29 per kilowatt of monthly contract demand.

Energy Charge:

26.51 mills per kilowatt-hour.

Purchased Power Pass-Through:

In addition to the capacity and energy charges, each preference customer will be charged for power purchased by Southeastern on behalf of the preference customer. This pass-through will be computed as follows:

On or about the 20th of each month, Progress Energy provides Southeastern with the meter readings for preference customer's delivery points that have an allocation of capacity from Southeastern. Subsequently, Progress Energy provides Southeastern with reports of purchased power and support capacity requirements around the 10th of the succeeding month. Southeastern will compute its purchased power obligation for each delivery point monthly. Southeastern will compute any revenue from sales to Progress Energy for each delivery point monthly. Southeastern will sum the purchased power obligation and any revenue from sales to Progress Energy for each preference customer monthly. The purchased power obligation minus any revenue from sales to Progress Energy for each customer will be called the Net Purchased Power Cost. Southeastern will charge each customer its respective monthly Net Purchased Power Cost in equal portions over the next eleven billing months. This computation of the pass-through is to begin 11 months before the pass-through is implemented. The first bill prepared using this method is to include the computations for the previous 11 months.

Billing Demand:

The monthly billing demand for any billing month shall be the lower of (a) the Customer's contract demand or (b) the sum of the maximum 30-minute integrated demands for the month at each of the Customer's points of delivery; provided, that, if an allocation of contract demand to delivery points has become effective, the 30-minute maximum integrated demand for any point of delivery shall not be considered to be greater than the portion of the Customer's contract demand allocated to that point of delivery.

Contract Demand:

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy Made Available:

During any billing month in which the Government supplies all the Customer's capacity requirements for a particular delivery point, the Government will make available the total energy requirement of said point. When both the Government and the Progress Energy Florida are supplying capacity to a delivery point, each kilowatt of capacity supplied to such point during such month will be considered to be accompanied by an equal quantity of energy.

Billing Month:

The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service:

The customer shall, at its own expense, provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Progress Energy Florida on its side of the delivery point.

Service Interruption:

When energy delivered to the Customer's system for the account of the Government is reduced or interrupted for one hour or longer, and such reduction or interruption is not due to conditions on the Customer's system or has not been planned and agreed to in advance, the demand charge for the month shall be appropriately reduced.

Wholesale Power Rate Schedule JW–2–F

Availability:

This rate schedule shall be available to the Florida Power Corporation (or Progress Energy Florida, hereinafter called the Company).

Applicability:

This rate schedule shall be applicable to electric energy generated at the Jim Woodruff Project (hereinafter called the Project) and sold to the Company in wholesale quantities.

Points of Delivery:

Power sold to the Company by the Government will be delivered at the connection of the Company's transmission system with the Project bus.

Character of Service:

Electric power delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second.

Monthly Rate:

The monthly rate for energy sold under this schedule shall be equal to 100 percent of the calculated saving in the cost of fuel per kWh to the Company determined as follows:

$$\text{Energy Rate} = 100\% \times \frac{\text{Fm}}{\text{Sm}}$$

[Computed to the nearest $0.00001 (1/100mill) per kWh]

[Computed to the nearest $0.00001 (1/100mill) per kWh]

Where:

Fm = Company fuel cost in the current period as defined in Federal Power Commission Order 517 issued November 13, 1974, Docket No. R–479.

Sm = Company sales in the current period reflecting only losses associated with wholesale sales for resale. Sale shall be equated to the sum of (a) generation, (b) purchases, (c) interchange-in, less (d) inter-system sales, less estimated wholesale losses (based on average transmission loss percentage for preceding calendar year).

Determination of Energy Sold:

Energy will be furnished by the Company to supply any excess of Project use over Project generation. Energy so supplied by the Company will be deducted from the actual deliveries to the Company's system to determine the net deliveries for energy accounting and billing purposes. Energy for Project use shall consist of energy used for station service, lock operation, switchyard, village lighting, and similar uses.

The on-peak hours shall be the hours between 7:00 a.m. and 11:00 p.m., Monday through Sunday, inclusive. Off-peak hours shall be all other hours.

All energy made available to the Company shall, to the extent required, be classified as energy transmitted to the Government's preference customers served from the Company's system. All energy made available to the Company from the Project shall be separated on the basis of the metered

deliveries to it at the Project during on-peak and off-peak hours, respectively. Deliveries to preference customers of the Government shall be divided on the basis (with allowance for losses) of 77 percent being considered as on-peak energy and 23 percent being off-peak energy. Such percentages may by mutual consent be changed from time to time as further studies show to be appropriate. In the event that in classifying energy there is more than enough on-peak energy available to supply on-peak requirements of the Government's preference customers but less than enough off-peak energy available to supply such customers off-peak requirements, such excess on-peak energy may be applied to the extent necessary to meet off-peak requirements of such customers in lieu of purchasing deficiency energy to meet such off-peak requirements.

Billing Month:

The billing month under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Power Factor:

The purchaser and seller under this rate schedule agree that they will both so operate their respective systems that neither party will impose an undue reactive burden on the other.

[FR Doc. 2011–23356 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program 2011 Annual Plan

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of report availability.

SUMMARY: The Office of Fossil Energy announces the availability of the *2011 Annual Plan* for the Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research and Development Program on the DOE Web site at *http://www.fossil.energy.gov/programs/oilgas/ultra_and_unconventional/2011–2012_Committees/2011_annual_plan.pdf* or in print form (see ''Contact'' below). The *2011 Annual Plan* is in compliance with the *Energy Policy Act of 2005, Subtitle J, Section 999B(e)(3)* which requires the publication of this plan and all written comments in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Elena Melchert, U.S. Department of Energy, Office of Oil and Natural Gas, Mail Stop FE–30, 1000 Independence Avenue, SW., Washington, DC 20585 or phone: (202) 586–5600 or e-mail to *UltraDeepwater@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary [Excerpted From the 2011 Annual Plan p. iii]

As the Nation transitions to the clean energy economy of the future, we must also ensure that we effectively mitigate the risks of our current energy portfolio.

This 2011 Annual Plan, the fifth such plan to be produced since the launch of the *Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research Program,* reflects an important shift in priorities towards safety and environmental sustainability. This shift is based on the recognition that a critical element in prudently developing our domestic resource base is a scientific assessment of the risks which exploration and production activities entail, and the development of appropriate technologies and processes to mitigate these risks.

Domestic deepwater and ultra-deepwater oil and gas resources, and domestic unconventional natural gas resources, are important contributors to our Nation's energy supply portfolio. Recent events, the Macondo well blowout and the Deepwater Horizon explosion in the Gulf of Mexico, and growing public opposition to the rapid pace of shale gas development onshore are stark reminders of the environmental risks of our current energy portfolio. The 2011 Annual Plan proposes scientific research that will quantify and mitigate risks associated with oil and gas exploration and production onshore and offshore, thereby improving safety and minimizing environmental impacts.

The Department will ensure that the federal government's understanding of the risks associated with these operations keeps pace. This will be accomplished through scientific assessment of the risks, potential impacts, and adequacy of current response and mitigation technologies.

The research discussed in this Annual Report will be administered by the Research Partnership to Secure Energy for America (RPSEA), which operates under the guidance of the Secretary of Energy. RPSEA is a consortium which includes representatives from industry, academia and research institutions. RPSEA's expertise in all areas of the exploration and production value chain ensure that the Department of Energy's research program has access to relevant emerging technologies and processes, and that projects are designed in a way that have a direct impact on practices in the field.

Background

Offshore and onshore research activities are administered pursuant to an annual plan in compliance with Title IX, Subtitle J of EPACT, which directs that $50 million per year of federal royalties, rents and bonus payments be used to fund an oil and natural gas research and development (R&D) effort, the *Ultra-Deepwater and Unconventional Natural Gas and Other Petroleum Resources Research Program* (Program).

The Secretary of Energy approves all awards to research performers, and the planned R&D activities support the goals and objectives of the annual plan. The research activities are administered by a Program Consortium that has been selected by the Secretary, as detailed in the Program Consortium section below.

The National Energy Technology Laboratory (NETL) is responsible for implementation of the Program. Within NETL, the responsibility for overall program implementation, including oversight of the Program Consortium contract, has been assigned to the Strategic Center for Natural Gas and Oil.

Complementary research prescribed under Section 999A(d) is carried out by NETL's Office of Research and Development.

Program Consortium

In 2006, DOE selected the Research Partnership to Secure Energy for America (RPSEA) through a competitive solicitation to serve as the Program Consortium and administer the research activities pursuant to Section 999B(c).

RPSEA has a broad membership base that includes representatives from all levels and sectors of both the oil and natural gas exploration and production (E&P) and oil and natural gas R&D communities. The breadth of membership helps to ensure that R&D funds leverage existing industry efforts in accomplishing the Program's objectives.

Administration funds provided to RPSEA cannot exceed 10 percent pursuant to Section 999G(3). The private companies, universities, and other organizations that are awarded contracts through this program provide cost-share contributions of at least 20 percent.

The Annual Plan Development Process

Pursuant to Section 999B(e)(2)(A), the Program Consortium prepared its 2011 Draft Annual Plan (DAP) which it delivered to the Secretary July 2010. The Department of Energy prepared a Draft 2011 Annual Plan. Subsequently, the Draft 2011 Annual Plan and the DAP were reviewed by the Unconventional Resources Technology Advisory Committee (URTAC) which presented

its final report of findings and recommendations in October 2010.

On February 2, 2011, the Secretary of Energy appointed new members to his Ultra-Deepwater Advisory Committee (UDAC), and met with the members on February 23, 2011 to discuss his goals for offshore research and development. Before presenting its final report of findings and recommendations to the Secretary in April 2011, the UDAC established a Subcommittee on Risk Assessment.

The Department of Energy will be continually informed by the UDAC based on the work of its Subcommittee on Risk. In addition, other Federal advisory bodies will help inform the Department. These include the Secretary of Energy Advisory Board (SEAB) which established a Subcommittee on Natural Gas, and the Department of the Interior's Ocean Energy Safety Committee (OESC) which has established four subcommittees including the Spill Prevention Subcommittee, and the Containment Subcommittee. The Department of Energy is a member of the OESC. The Department will take new information into account in the preparation of solicitations and the selection of research projects for the 2011 portfolio.

Issued in Washington, DC, on September 7, 2011.

Christopher A. Smith,

Deputy Assistant Secretary, Office of Oil and Natural Gas, Office of Fossil Energy.

[FR Doc. 2011–23328 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Docket No. EERE–2011–BT–BC–0046]

Building Energy Codes Cost Analysis

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (DOE) is soliciting public input on how it may improve the methodology DOE intends to use for assessing cost effectiveness (which includes an energy savings assessment) of changes to residential building energy codes. DOE supports the development of the International Code Council's (ICC) International Energy Conservation Code (IECC), the national model code adopted by or forming the basis of residential energy codes promulgated by a majority of U.S. states, as well as other voluntary building energy codes. DOE performs a cost effectiveness analysis of proposed modifications to the codes as part of that support. DOE also performs an analysis of cost effectiveness of new code versions. DOE is interested in public input on its methodology, preferred data sources, and parameter assumptions.

DOE is publishing this request for information to allow interested parties to provide suggestions, comments, and other information. This notice identifies several areas in which DOE is particularly interested in receiving information; however, any input and suggestions considered relevant to the topic are welcome.

DATES: Written comments and information are requested by October 13, 2011.

ADDRESSES: Interested persons may submit comments in writing, identified by docket number EERE–2011–BT–BC–0046, by any of the following methods:

E-mail: Res-CEAM-2011-BC-0046@ee.doe.gov. Include EERE–2011–BT–BC–0046 in the subject line of the message.

Mail: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Building Energy Codes, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Phone (202) 586–2945. Please submit one signed paper original.

Hand Delivery/Courier: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Internet: http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR+PS;rpp=250;so=DESC;sb=postedDate;po=0;D=EERE-2011-BT-BC-0046. Please use the input form and complete all required fields.

Instructions: All submissions received must include the agency name and docket number.

Docket: For access to the docket to read background documents, or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024, (202) 586–2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Dewey, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Telephone: (202) 287–1354, E-mail: *Robert.Dewey@ee.doe.gov.*

Ms. Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, Mailstop GC–71, 1000 Independence Ave., SW., Washington, DC 20585, Telephone: (202) 586–0669, E-mail: *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Authority and Background

Section 307(b) of the Energy Conservation and Production Act (ECPA, Public Law 102–486), as amended, directs DOE to support voluntary building energy codes by periodically reviewing the technical and economic basis of the voluntary building energy codes and ''seek adoption of all technologically feasible and economically justified energy efficiency measures; and * * * otherwise participate in any industry process for review and modification of such codes.'' [1]

This Request for Information (RFI) seeks public input on DOE's methodology for assessing the cost effectiveness of proposed changes to residential building energy codes and new editions of such codes. Historically, DOE's analyses have been conducted in an ad hoc manner, with the methodology selected based on the type of code change contemplated and the nature of ongoing stakeholder debates on the topic. Because residential energy codes lagged advances in residential efficiency measures, DOE relied on successes in relevant research, demonstration, and voluntary beyond-code programs (*e.g.,* Building America, ENERGY STAR) rather than directly calculating the cost effectiveness of code changes. However, recent advances in the IECC and other voluntary building energy codes have improved the energy performance of buildings and building components to levels that in many cases rival those of the beyond-code programs. Consequently, for its future efforts advancing and promoting voluntary building energy codes, DOE sees the need for a consistent and transparent methodology for assessing the cost effectiveness of code change proposals and for assessing the cost effectiveness of new code versions.

DOE intends to use the methodology described in this document to address DOE's legislative direction related to

[1] 42 U.S.C. 6836(b)(2) and (3).

building energy codes. DOE also intends to use this methodology to inform its participation in the update processes of the IECC and other building energy codes, both in developing code-change proposals and in assessing the proposals of others when necessary. DOE further intends to use this methodology in assessing the cost effectiveness of new code versions in lieu of prior versions or existing state energy efficiency codes.

The focus of this RFI is residential buildings, which DOE defines in a manner consistent with the IECC—one- and two-family dwellings, townhouses, and low-rise (three stories or less above grade) multifamily residential buildings.

The cost effectiveness methodology is separate from the statutory requirement that DOE issue a determination ''whether such revision would improve energy efficiency in residential buildings'' whenever the IECC (as successor to the 1992 Model Energy Code) is revised (42 U.S.C. 6833(a)(5)). The determinations under 42 U.S.C. 6833 are required only for the IECC, not any other building energy codes; require analysis of only energy savings, not cost effectiveness; and may be based on qualitative assessments of energy efficiency improvements rather than quantitative analysis of energy savings.

DOE's methodology is intended to assess cost effectiveness based on a 30-year period of analysis, assuming a home buyer takes out a 30-year mortgage to purchase the home. This approach is intended to represent the economic perspective of a typical home owner or sequence of owners who own the home over the 30-year analysis period. The perspective of a single 30-year owner allows consideration of economic impacts on home buyers as well as consideration of long-term energy savings.

Steps Included in Assessing Cost Effectiveness of Code Changes

Assessing the cost effectiveness of a proposed code change or a newly revised code involves three primary steps:

1. Estimating the energy savings of the changed code provision(s),
2. Estimating the first cost of the changed provision(s), and
3. Calculation of the corresponding economic impacts of the changed provision(s).

These steps are the focus of this Request for Information and are described in the sections that follow.

Estimating Energy Savings of Code Changes

The first step is estimating the energy savings of code changes. In estimating the energy impact of a code change DOE will usually employ computer simulation analysis (situations in which other analysis approaches might be preferred are discussed later). DOE may also rely on extant studies that directly address the building elements involved in a proposed change if such can be identified. When evaluating code changes proposed by entities other than DOE,[2] DOE may rely on energy estimates provided by the proponent(s) if DOE deems the calculations credible. Where credible energy savings estimates are not available, DOE intends to conduct analysis using an appropriate building energy estimation tool. DOE intends to use the EnergyPlus [3] software for its analyses unless the code change at hand involves a building component or strategy that is outside the scope of that software. Such code changes would be addressed case by case.

Code changes affecting a particular climate zone would be simulated in a weather location representative of that zone. Where a code change affects multiple climate zones, DOE intends to produce an aggregate (national) energy impact estimate based on simulation results from weather locations representative of each zone, weighted to account for estimated housing starts by zone and other factors representing the fraction of homes that would be affected by the code change (building types, foundation types, fuel/equipment types). These methodologies, weighting factors, and other assumptions are described in the sections that follow.

Building Energy Use Simulation Assumptions and Methodology

The energy performance of most energy-efficiency measures in the scope of building energy codes can be estimated by computer simulation. In estimating the energy performance of pre- and post-revision codes, two prototype buildings would be analyzed—one that exactly complies with the pre-revision code and an otherwise identical building that exactly complies with the revised code under analysis.[4] These two buildings would be simulated in a variety of locations to estimate the overall (national average) energy impact of the new code. The inputs and assumptions used in those simulations are discussed in the following sections.

Energy Simulation Tool

DOE intends to use an hour-by-hour simulation tool to calculate annual energy consumption for relevant end uses. For most situations, the EnergyPlus software, developed by DOE, would be the tool of choice. EnergyPlus provides for detailed hour-by-hour simulation of a home's energy consumption throughout a full year, based on typical weather data for a location. It covers almost all aspects of residential envelopes, HVAC equipment and systems, water heating equipment and systems, and lighting systems. Depending on how building energy codes evolve, it may be necessary to identify additional tools to estimate the impacts of some changes.

Prototypes

Separate simulations would be conducted for single-family and multifamily buildings. The prototypes used in the simulations are intended to represent a typical new one- or two-family home or townhouse and a low-rise multifamily building (apartment, cooperative, or condominium). Five foundation types would be examined for single-family homes: Vented crawlspace, unvented (conditioned) crawlspace, slab-on-grade, heated basement with wall insulation, and unheated basement with insulation in the floor above the basement. Table 1 shows the characteristics DOE intends to assume for the single-family prototype. Note that any of these characteristics may be modified if a code change impacts it.

[2] All code change proposals are publicly available and are published by the ICC months before the code hearings (open to the public) that determine whether the code changes are approved for addition to the next edition of the IECC.

[3] *http://www.energyplus.gov/.*

[4] ''Exactly complies'' means that the prototype complies with the primary prescriptive manifestation of the code's requirements. DOE will address codes without such primary requirements (*e.g.*, a purely performance code) on a case by case bais.

TABLE 1—SINGLE-FAMILY PROTOTYPE CHARACTERISTICS

Parameter	Assumption	Notes
Conditioned floor area	2400 ft²	Characteristics of New Housing, U.S. Census Bureau.
Footprint and height	30 ft by 40 ft, two-story, 8.5 ft high ceilings.	
Area above unconditioned space	1200 ft²	Over a vented crawlspace or unconditioned basement.
Area below roof/ceilings	1200 ft², 70% with attic, 30% cathedral.	
Perimeter length	140 ft.	
Gross wall area	2380 ft².	
Window area (relative to gross wall area)	15%.	
Door area	42 ft².	
Internal gains	91,436 Btu/day	2006 IECC, Section 404.
Heating system	Natural gas furnace	Efficiency will be based on prevailing federal minimum manufacturing standards. Where relevant code changes impact different heating system types differently, additional types will be simulated (see below for equipment type weightings).
Cooling system	Central electric air conditioning (AC)	Minimum manufacturing standards.
Water heating	Natural gas.	

For the multifamily building prototype, U.S. Census data (2006) [5] show that the size and number of dwelling units per building in new construction varies greatly. The median number of dwelling units per building is in the range of 20 to 29 with the median floor area per unit in the range of 1000 to 1199 ft². The multifamily prototype characteristics intended to be used for DOE's analyses are:

- A rectangular two-story building containing dwelling units with 1200 ft² of conditioned floor area.
- 600 ft² floor area and roof/ceiling area per dwelling unit.
- The average exterior wall perimeter per dwelling unit is 43 ft, which is set to a 20 by 23 ft rectangle in the simulations. With 8.5 ft ceilings, the wall area is 731 ft² per dwelling unit. The 43 ft perimeter is based on assuming a 20-unit building that is 30-ft wide and 400-ft long, yielding an 860-ft perimeter, which averages 43 ft per dwelling unit. (The dimensions used here represent average values of both middle and end units, yielding a hypothetical dwelling unit with dimensions that do not exactly match the conditioned floor area.).
- 42 ft² of exterior door area per dwelling unit.
- 54668 Btu/day internal gains per dwelling unit (2006 IECC).
- Window area is estimated at 14% of the conditioned floor area.

The heating, cooling, and water heating system characteristics are the same as for the single-family prototype (each dwelling unit is assumed to have its own separate heating and cooling equipment).

Weather Locations

Simulations (and other analyses as appropriate) would be conducted in one weather location per climate zone in the code, including a separate location for each moisture regime, for a total of 15 climate locations.[6] Simulation results from the climate zones would be weighted based on new residential building permit data obtained from the U.S. Census Bureau. Table 2 shows the shares of national construction by IECC primary climate zone based on year-2000 Census data. More than 90% of the construction occurred in climate zones 2 through 5. Climate zones 7 and 8 are combined here, because zone 8 (northern Alaska) represents only a small fraction of the national construction activity.

Within a climate zone, simulation results from different moisture regimes would be weighted based on population densities estimated from USGS Populated Places data. Table 3 shows the climate locations, each of which is represented by a Typical Meteorological Year (TMY2) [7] file. The final column shows the final weight intended to be applied to each TMY2 location, based on a combination of the within-zone weight of the previous column and the by-zone housing starts of Table 2.

TABLE 2—HOUSING START SHARES BY CLIMATE ZONE

Climate zone	Percentage of building permits
1	2
2	19
3	27
4	19
5	27
6	6
7 & 8	0.3

TABLE 3—CLIMATE LOCATIONS USED IN ENERGY SIMULATIONS WITH CLIMATE ZONE AND MOISTURE REGIME WEIGHTS

Climate zone	Moisture regime	Representative location				Regime weight within zone (percent)	Overall location weight (percent)
		State	City	HDD(65) *	CDD(65) **		
1	Moist	Florida	Miami	139	4157	100	2
2	Dry	Arizona	Phoenix	1350	4162	17	3.2
	Moist	Texas	Houston	1371	3012	83	15.8
3	Dry	Texas	El Paso	2708	2094	47	12.7

[5] U.S. Census Bureau. 2006 Characteristics of New Housing. *http://www.census.gov/const/www/charindex.html.*

[6] The IECC has eight temperature-oriented climate zones crossed with three moisture regimes, for a theoretical total of 24 distinct climate zones. However, only 15 of the possible zones occur within the U.S.

[7] See *http://rredc.nrel.gov/solar/old_data/nsrdb/tmy2/.*

TABLE 3—CLIMATE LOCATIONS USED IN ENERGY SIMULATIONS WITH CLIMATE ZONE AND MOISTURE REGIME WEIGHTS—Continued

Climate zone	Moisture regime	Representative location				Regime weight within zone (percent)	Overall location weight (percent)
		State	City	HDD(65) *	CDD(65) **		
	Marine	California	San Francisco	3005	65	13	3.5
	Moist	Tennessee	Memphis	3082	2118	40	10.8
4	Dry	New Mexico	Albuquerque	4562	941	3	0.6
	Marine	Oregon	Salem	4927	247	10	1.9
	Moist	Maryland	Baltimore	4068	1608	87	16.5
5	Dry	Idaho	Boise	5861	754	13	3.5
	Moist	Illinois	Chicago	5753	989	87	23.5
6	Dry	Montana	Helena	8031	386	11	0.7
	Moist	Vermont	Burlington	7771	388	89	5.3
7		Minnesota	Duluth	9169	223	100	0.2
8		Alaska	Fairbanks	13697	44	100	0.1

* HDD = heating degree-days, base 65F.
** CDD = cooling degree-days, base 65F.

The locations in Table 3 were selected to be reasonably representative of their respective climate zones by Briggs *et al.* (2002).[8]

Note that the above assumes that the climate basis of the revised code is the same as that of the previous code. Revisions that change the climate zones or switch to a new climate basis would require development of a custom procedure to capture the impacts on residential energy efficiency.

Default Assumptions

Input values for building components that do not differ between the two subject codes would be set to match a shared code requirement if one exists, to match standard reference design specifications from the code's performance path if the component has such specifications, or to match best estimates of typical practice otherwise. Because such component inputs are used in both pre- and post-revision simulations, their specific values are of secondary importance and it is important only that they be reasonably typical of the construction types being evaluated.

Weighting Factors

Building Types

Building permit data for 2006 through 2010 indicate that 22% of new construction in terms of total dwelling units is multifamily (Census 2011).[9] However, only 60% of these dwelling units are ''low-rise'' units, the other 40% being in buildings of four stories or more in height and therefore falling under the IECC's nonresidential provisions.[10] Therefore, about 13.2% (0.22×0.60) of *all* residential dwelling units are in multifamily buildings that fall under the purview of the residential requirements of the IECC. About 8.8% (0.22×0.4) of all residential dwelling units fall under the nonresidential IECC classification. Thus, low-rise multifamily dwelling units account for about 14.5% ($0.132/(1 - 0.088)$) of dwelling units classified as residential in the IECC. This figure would be used to aggregate results from DOE's single-family and multifamily simulation results.

TABLE 4—BUILDING TYPE SHARES [PERCENT]

Building type	Weighting factor (percent)
Single-Family	84
Multifamily	16

Foundation Types

Simulations would be based on a vented crawlspace foundation except in cases that deal explicitly with changes to requirements for other foundation types. In the latter cases, foundation-specific energy changes would be weighted by an estimate of foundation shares in each climate zone. These shares are estimated from the Census Bureau data for 2004 housing characteristics data (Census 2006)[11] shown in Table 5.

TABLE 5—FOUNDATION TYPE SHARES (PERCENT) BY CENSUS ZONE

Zone	Basement	Slab	Crawlspace
Northeast	84	13	3
Midwest	76	17	6
South	12	70	17
West	15	65	20
Total	31	54	15

The data in Table 5 provide the fraction of new residences having basements, but do not distinguish conditioned from unconditioned basements. DOE estimates the shares of conditioned and unconditioned basements based on data from the DOE Residential Energy Consumption Survey (DOE 2005).[12]

Because foundation share data is available only for census zones, not

[8] Briggs, R. S., R. G. Lucas, and Z. T. Taylor. 2002. *Climate Classification for Building Energy Codes and Standards: Part 2—Zone Definitions, Maps, and Comparisons.* ASHRAE Transactions, Vol. 109, Part 1. Atlanta, Georgia.

[9] http://www.census.gov/const/www/charindex.html.

[10] *Ibid.*

[11] *Ibid.*

[12] U.S. DOE. 2005. Residential Energy Consumption Survey (Table HC5.2). *http://www.eia.doe.gov/emeu/recs2005/hc2005 tables/detailed tables2005.html.*

IECC climate zones, it is necessary to estimate the climate zone shares from census data and general knowledge about regional construction techniques (*e.g.,* basements are almost never used in the far south). Table 6 shows the shares DOE intends to assume.

TABLE 6—FOUNDATION TYPE SHARES (PERCENT) BY 2006 IECC CLIMATE ZONE

Climate zone	Heated basement	Crawlspace	Slab-on-grade	Unheated basement
1	0	0	100	0
2	0	5	95	0
3	10	15	70	5
4	30	20	40	10
5	45	20	20	15
6	65	10	5	20
7 & 8	70	5	5	20

Equipment/Fuel Types and Energy Costs

The impacts of code changes would be estimated for multiple fuel/equipment types and the results weighted by equipment type shares derived from Census construction data for new houses. 55% of new single-family homes in 2010 used natural gas for heating, 39% used electric heat pumps, and 6% used electric resistance furnaces.[13] For new multifamily dwellings, 36% used natural gas for heating, 49% used electric heat pumps, and 15% used electric resistance furnaces. Only 1% of new single-family and multifamily used oil, so this heating type would not be analyzed separately for national-average analyses as it does not have a significant share of the national market. These shares would be used to weight results for all residential buildings. Electric central air conditioning would be assumed in all climates.

Provisions Requiring Special Consideration

Some building components and/or energy conservation measures do not lend themselves to straightforward pre- and post-change simulation of energy consumption. For example, the use of hourly simulation was of dubious value in assessing the energy savings of duct testing required by the 2009 IECC because the prior edition of the IECC had no testing requirement from which a meaningful baseline leakage rate could be established. In this case, the majority of the uncertainty was in the decision of what pre-2009 leakage rate should be used as a baseline. This type of uncertainty arises from any code change that expands the scope of the code. Rather than comparing one code to another, a new code must be compared to an unstated prior condition.[14]

In the case of a scope expansion, it is sometimes inappropriate to compare a new code's requirement against an average or typical pre-code level, because doing so tends to understate the savings of the new requirement. Returning to the example of a new requirement for testing the duct leakage rate, consider Figure 1. The curve represents a hypothetical distribution of leakage rates prior to the code's regulation of leakage rates. Even if the new code requirement were set equal to or worse than the pre-change average rate, savings would accrue from houses that would have had higher leakage rates.[15] DOE intends to evaluate scope expansions case by case to determine the most appropriate way to estimate energy savings. DOE seeks public input on this topic.

[13] *http://www.census.gov/const/www/charindex.html.*

[14] In DOE's proposal to add duct testing requirements to the 2009 IECC energy savings was approximated based on findings from extant post-occupancy studies of duct leakage rather than by simulation. These studies include: Washington State University. 2001. *Washington State Energy Code Duct Leakage Study Report.* WSUCEEP01105. Washington State University Cooperative Extension Energy Program, Olympia, Washington. Hales, D., A. Gordon, and M. Lubliner. 2003. 2003. *Duct Leakage in New Washington State Residences: Findings and Conclusions.* ASHRAE transactions. KC–2003–1–3. Hammon, R. W., and M. P. Modera. 1999. ''Improving the Efficiency of Air Distribution Systems in New California Homes-Updated Report.'' Consol. Stockton, California. Journal of Light Construction. April 2003. ''Pressure-Testing Ductwork.'' Michael Uniacke. Sherman *et al.* 2004. Instrumented HERS and Commissioning. Xenergy. 2001. Impact Analysis Of The Massachusetts 1998 Residential Energy Code Revisions. *http://www.mass.gov/Eeops/docs/dps/inf/inf_bbrs_impact_analysis_final.pdf.*

Where better data on the distribution of actual leakage rates available, a more rigorous analysis might have been contemplated.

[15] Although this is a hypothetical illustration, a similar issue did arise in DOE's proposal to add duct testing requirements to the 2009 IECC described in Footnote 14.

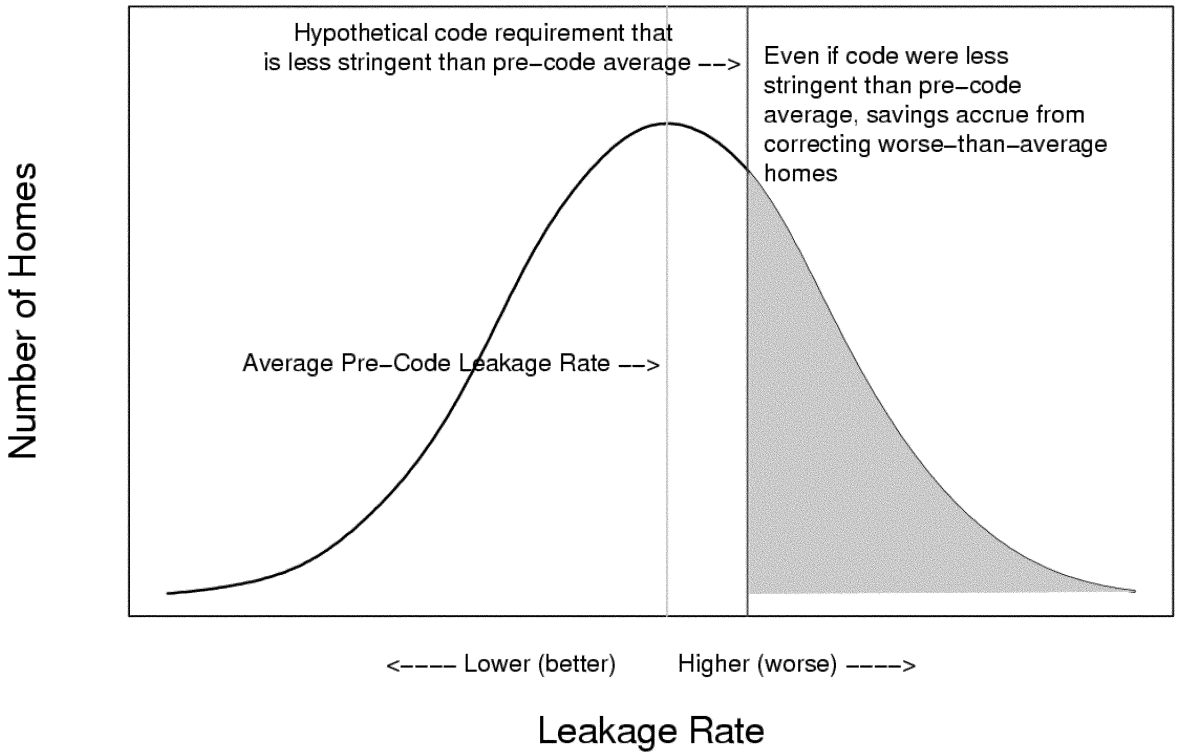


Figure 1. Illustration of Energy Savings from a Code Change that Improves the Worst-Performing Homes

A second situation requiring special consideration is accounting for code changes that induce additional, unwritten requirements. An example is an envelope air tightness requirement that results in leakage rates so low that a home would need supplemental mechanical ventilation to avoid moisture and other air quality problems. In such a case a proper cost effectiveness assessment might require accounting for the cost and energy penalty of the mechanical ventilation system even though the code didn't require it. DOE would evaluate such changes case by case to determine whether implied requirements must be assumed. DOE seeks public input on this topic.

Estimating the First Cost of Code Changes

The second step in assessing the cost effectiveness of a proposed code change or a newly revised code is estimating the first cost of the changed provision(s). The ''first cost'' of a code change refers to the marginal cost of implementing one or more changed code provisions. For DOE's analyses, it refers to the retail cost (the cost to a home buyer) prior to amortizing the cost over multiple years through the home mortgage, and includes the full price paid by the home buyer, including materials, labor, overhead, and profit, minus any tax rebates or other incentives generally available to home buyers when the new code takes effect.

DOE recognizes that estimating the cost of a code change can be challenging, and will attempt to identify credible cost estimates from multiple sources when possible. Judgment is often required to determine an appropriate cost for energy code analysis when multiple credible sources of construction cost data yield a range of first costs. Cost data would be obtained from existing sources such as cost estimating publications such as R.S. Means, industry sources such as Lowes or Home Depot, and other resources including journal articles and research studies. DOE has also issued a subcontract specifically to collect cost data for residential energy efficiency measures. DOE would utilize all of these resources to determine the most appropriate construction cost assumptions based on factors including the applicability and thoroughness of the data source.

Historical Approach to Cost Data Collection

For code changes that impact many insulation and/or construction assembly elements of a home, DOE consults the national construction cost estimation publication *RS Means Residential Cost Data,*[16] which provides a wide variety of construction cost data. This is appropriate for many code changes that impact the construction of the home (*e.g.,* switching from 2x4 to 2x6 walls) such that both materials and labor differ. RS Means, however, covers only a portion of potential code changes. It does not, for example, have detailed costs on improved duct sealing or building envelope sealing, and its costs for fenestration products (windows, doors, and skylights) are focused on aesthetic features rather than energy efficiency.

When a code change impacts only the materials used in a home, without impacting labor, cost data can often be obtained from national home hardware suppliers, such as Home Depot and Lowe's Home Improvement. These sources can have the advantage of providing recent costs and the costs can

[16] *http://www.rsmeans.com/.*

be localized if a state or local analysis is needed. However, these sources do not provide all the specific energy efficiency measure improvements that are typically needed for code improvement analyses.

As needed, DOE conducts literature searches of specialized building science research publications that assess the costs of new or esoteric efficiency measures that are not covered in other data sources. Examples include reports from DOE's own Building America [17] program, those generated from the Environmental Protection Agency's Energy Star [18] program, and buildings-oriented research publications such as ASHRAE Transactions.

A Plan for the Future

DOE anticipates that as building energy codes advance and incorporate more energy features, the traditional cost sources will be less useful in estimating the first costs of code changes. To support analysis of codes going forward, DOE has tasked Pacific Northwest National Laboratory with placing a subcontract for professional cost-estimating services to help populate a publicly available online database of building construction costs. A Request for Proposals (RFP) was issued in May 2011 and calls for the services of a professional cost-estimating firm to provide cost data for equipment and components related to building envelope systems, building lighting systems, building mechanical systems, and building renewable energy systems. The database would differentiate cost data to the extent practicable by building type, building location, and building size, and would provide both national-average and regional/local costs to the extent such are available.

Addressing Code Changes With Multiple Approaches to Compliance

One of the challenges of estimating the costs of energy code changes is selecting an appropriate characterization of new code requirements. A requirement for an improved wall R-value, for example, might be met with higher-density insulation within the between-stud cavities, with standard-density insulation in a thicker wall (*e.g.,* moving from 2x4 to 2x6 construction), adding a layer of insulating sheathing to the wall, or switching to an entirely different construction approach (*e.g.,* straw bale). Each approach will have different costs and may be subject to differing constraints depending on the situation. Some construction approaches, for example, may be inappropriate in regions subject to high winds or high probabilities of seismic activity. Some approaches may open the possibility for new and less expensive construction approaches. A change that forces a move from 2x4 to 2x6 wall construction, for example, opens the possibility of placing wall studs on 24-inch centers rather than the more common 16-inches. This can reduce both material and labor costs, but requires other changes that may exact additional costs or restrict designs, such as ''stack framing,'' in which ceiling joists/rafters are aligned directly over wall studs.

It is difficult for DOE to anticipate either the types of code changes that will emerge in future building energy codes or the manner in which builders will choose to meet the new requirements. It is DOE's intent, however, to evaluate changes on a case by case basis and seek the least-first cost way to achieve compliance unless that approach is deemed inappropriate in a large percentage of new home situations. For code changes that touch on techniques with which there is recent research experience (*e.g.,* through DOE's Building America program), DOE would consult the relevant publications for advice on appropriate construction assumptions. DOE is seeking public input on this matter.

DOE anticipates that some new code provisions may have significantly different first costs depending on unrelated aesthetic choices. For example, a requirement for overhangs on south-facing windows might be more costly on a two-story home than on a one-story home. Limits on west-facing glazing might have substantial effect or no effect depending on the lot orientation. Again, DOE cannot anticipate all future changes, and will address each one individually. DOE is seeking public input on the proper approach to assessing the cost effectiveness of such changes.

Finally, some new code provisions may come with no specific construction changes at all, but rather be expressed purely as a performance requirement. It has been suggested, for example, that a new IECC might require all homes to comply with the energy performance path, with a requirement that calculated energy consumption be shown to be some predetermined percentage below that implied by the prescriptive specifications. It is also conceivable that a code could be expressed simply as an energy use intensity (EUI), in which the requirement is a limit on energy use per square foot of conditioned floor area. DOE intends to evaluate any such code changes on a case by case basis and will search the research literature and/or conduct new analyses to determine the reasonable construction changes that could be expected to emerge in response to such new requirements. DOE is seeking public input on this issue.

Economies of Scale and Market Transformation Effects

Construction costs often show substantial differences between regions, sometimes based primarily on local preferences and the associated economies of scale. Because new code changes may push building construction to new and potentially unfamiliar techniques in some locations, local cost estimates may overstate the long-term costs of implementing the change. Similar issues may arise where manufacturers produce large quantities of a product that just meets a current energy code requirement, giving that product a relatively low price in the market. Should the code requirement increase, it is likely that manufacturers will increase production of a conforming product, lowering its price relative to the current situation.

DOE intends to evaluate new code changes case by case to determine whether it is appropriate to adjust current costs for anticipated market transformation after a new code takes effect. DOE intends to evaluate specific new or proposed code provisions to determine whether and how prices might be expected to follow an experience curve with the passage of time. See, for example, DOE's Notice of Data Availability published in the **Federal Register** on February 22, 2011 (76 FR 9696) (*http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/rf_noda_fr_notice.pdf*) for information on projecting future costs in the manufacture of new refrigeration products. It is noted that site-built construction may involve several types of efficiency improvements. The real cost of code changes requiring new technologies may drop in the future as manufacturers learn to produce them more efficiently. The real cost of code changes that involve new techniques may likewise drop as builders and subcontractors learn to implement them in the field more efficiently and with less labor. Finally, code changes that simply require more of a currently used technology or technique may have relatively stable real costs, with prices generally following inflation over time. DOE is seeking public input on this issue.

[17] *http://www.buildingamerica.gov/.*

[18] *http://www.energystar.gov/.*

Estimating the Cost Effectiveness of Code Changes

Economic Metrics To Be Calculated

The last step in assessing the cost effectiveness of a proposed code change or a newly revised code is calculating the corresponding economic impacts of the changed provision(s). In evaluating code change proposals as part of the IECC consensus process, assessing new editions of the IECC published by the ICC, and participating in the development of other voluntary building energy codes, DOE intends to calculate three metrics.

- Life-cycle cost.
- Simple payback period.
- Cash flow.

Life-cycle cost (LCC) is the primary metric DOE intends to use to evaluate whether a particular code change is cost effective. Any code change that results in a net LCC less than or equal to zero (*i.e.,* monetary benefits exceed costs) will be considered cost effective. The payback period and cash flow analyses provide additional information DOE believes is helpful to other participants in code-change processes and to states and jurisdictions considering adoption of new codes. These metrics are discussed further below.

Life-Cycle Cost

Life-cycle cost (LCC) is a robust cost-benefit metric that sums the costs and benefits of a code change over a specified time period. Sometimes referred to as net present value analysis or engineering economics, LCC is a well-known approach to assessing cost effectiveness. Because the key feature of LCC analysis is the summing of costs and benefits over multiple years, it requires that cash flows in different years be adjusted to a common year for comparison. This is done with a discount rate that accounts for the time value of money. Like most LCC implementations, DOE's sums cash flows in year-zero dollars, which allows the use of standard discounting formulas. Cash flows adjusted to year zero are termed present values. The procedure described herein combines concepts from two ASTM International standard practices, E917 [19] and E1074.[20] The resultant procedure is both straightforward and comprehensive and is in accord with the methodology recommended and used by the National Institute of Standards and Technology (NIST).[21]

Present values can be calculated in either nominal or real terms. In a nominal analysis all compounding rates (discount rate, mortgage rate, fuel escalation rate, etc.) include the effect of inflation, while in a real analysis, inflation is removed from those rates. The two approaches are algebraically equivalent, but DOE intends to generally conduct economic analyses of residential energy codes in nominal terms because accounting for mortgage cash flows and associated income tax effects is more straightforward.

LCC is defined formally as the present value of all costs and benefits summed over the period of analysis. Because it is defined in terms of costs, the LCC of a code change must be zero or negative for the change to be considered cost effective, as shown in Equation 1.

$$LCC = PV(Costs) - PV(Benefits) \qquad (1)$$

A future cash flow (positive or negative) is brought into the present by assuming a discount rate (D). The discount rate is an annually compounding rate [22] by which future cash flows are discounted in value. It represents the minimum rate of return demanded of the investment in energy-saving measures. It is sometimes referred to as an alternative investment rate. Thus the present value, (PV) of a cash flow in year Y (CF_y) is defined as

$$PV = \frac{CF_y}{(1+D)^y} \qquad (2)$$

The present value of a stream of annual cash flows over the period of analysis, L years, is then the sum of all of those discrete cash flows:

$$PV(\text{cashflow stream}) = \sum_{Y=0}^{L}\left(\frac{CF_y}{(1+D)^y}\right) \qquad (3)$$

For an annualized stream of cash flows *A* that is the same from year to year, such as a mortgage payment lasting *L* years, Equation (3) is equivalent to the following.

$$PV(annuity) = A \times \left[\frac{(1+D)^L - 1}{D \times (1+D)^L}\right] \qquad (4)$$

For an annualized stream of cash flows that is escalating with time, such as the energy cost savings *ES* that increases from year to year because of escalations in fuel prices, Equation (5)

[19] ASTM International. ''Practice for Measuring Life-Cycle Costs of Buildings and Building Systems,'' E917, *Annual Book of ASTM Standards: 2010,* Vol. 4.11. West Conshohocken, PA: ASTM International.

[20] ASTM International. ''Practice for Measuring Net Benefits and Net Savings for Investments in Buildings and Building Systems,'' E1074, *Annual Book of ASTM Standards: 2010,* Vol. 4.11. West Conshohocken, PA: ASTM International.

[21] For a detailed discussion of LCC and related economic evaluation procedures specifically aimed at private sector analyses, see Ruegg and Petersen (Ruegg, Rosalie T., and Petersen, Stephen R. 1987. Comprehensive Guide to Least-Cost Energy Decisions, NBS Special Publication 709. Gaithersburg, MD: National Bureau of Standards).

[22] The analysis can be done for other periods of time (*e.g.,* monthly), but for simplicity DOE uses annual periods for the subject analyses.

can be used (E^F is the fuel price escalation rate):

$$PV(escalating\ annuity) = ES \times \left[\frac{1+E_F}{D-E_F}\right] \times \left[1-\left(\frac{1+E_F}{1+D}\right)^L\right] \quad (5)$$

Because DOE intends to compute and publish annual cash flow impacts, Equation (3) will generally be preferred to Equations (4) and (5) because it allows presentation and analysis of all the yearly cash flows during the LCC analysis. Equations (4) and (5) are algebraically equivalent and useful when year-by-year cash flows are not needed.

There are seven primary cash flows that are relevant to LCC analysis of energy code changes, summarized in Table 7. The down payment cost associated with the code changes is the down payment rate (R_D) multiplied by the total cost of the code changes (C) and is incurred at the onset (year 0). On top of the down payment is a mortgage fee, which is the cost of the code changes multiplied by the mortgage fee rate (R_M). Property tax occurs every year, starting on year 1, and is the property tax rate (R_P) multiplied by C, and further adjusted by a factor of $(1+E_H)^Y$ to take into account a compounding home price escalation rate (E_H). This assumes that the tax assessment of the house increases exactly the amount of the code-related cost increase, and that the tax assessment increases in step with the home price. Energy savings occur every year, starting at year 1, and are equal to the modeled energy cost savings at year 0, adjusted by a factor of $(1+E_F)^Y$ to take into account a compounding fuel (electricity and natural gas) price escalation rate (E_F). Mortgage payments occur every year of the term of the mortgage (ML), are constant payments, and is equal to 12 times the monthly payment, as calculated using the industry standard equation shown in Table 7. Tax deductions for mortgage interest payments and property tax payments begin in year 1 and continue through the end of the analysis period L. They are calculated as the marginal income tax rate (R_I) multiplied by the sum of mortgage interest payments and property tax payments each year. Finally, the residual value, incurred at the end of the analysis period, is the cost of the code changes, adjusted for the home's price appreciation, multiplied by the fraction of the lifetime (*i.e.,* value) of the code changes still remaining at resale (R_R). This is a rough number, but is meant to encapsulate an average of the remaining lifetime of all of the components. DOE intends to assume R_R is 50% at the end of 30 years, which would roughly correspond to straight-line depreciation of home features with a 60-year life.

Additional rigor can be required to account for the shorter lifetimes of certain equipment (*e.g.,* 12–15 years for water heaters, 15–20 years for HVAC equipment). However, because the efficiencies of most residential equipment generally are preemptively regulated by federal rulemakings, DOE does not expect the IECC to impose specific equipment efficiency requirements. Nonetheless, high-efficiency equipment is likely to be a common alternative approach to energy code compliance, so the shorter lifetimes of equipment would be accounted for. While equipment will undoubtedly be replaced at the end of its useful life, there is no guarantee that it will be replaced with equipment of comparable efficiency. Because DOE cannot predict either minimum code requirements or homeowner preferences in the future, it will assume that replacement equipment efficiency will be unaffected by the initial efficiency of the equipment—that is, replacement equipment will be the same regardless of the initial efficiency. This implies that the energy savings resulting from high-efficiency equipment will accrue only for the life of the equipment, not the full 30-year period of analysis, and that there will be no equipment replacement costs at the end of its useful life. Thus, when estimating energy savings of high-efficiency equipment, a home would be simulated twice, once with and once without the high-efficiency equipment.

Table 1. Cash flow components

Cash flow	When is it incurred	Equation for Cash flow in year Y (V_y)	Cost or Benefit
Down payment	Year 0	$R_D * C$	Cost
Mortgage Fee	Year 0	$R_M * C$	Cost
Property Tax	Years 1 through L	$R_P * C * (1+ E_H)^Y$	Cost
Energy Savings	Years 1 through L	$ES_0 *(1+ E_F)^Y$	Benefit
Mortgage Payments	Years 1 through ML, except that high-efficiency equipment options will accrue savings only over their useful lifetimes.	$12\left[\frac{C(1-R_D)\cdot(i/12)}{1-\left(1+\frac{i}{12}\right)^{-12ML}}\right]$	Cost
Tax Deduction	Years 1 through ML	R_I * (mortgage interest paid plus property tax paid in year Y[(a)])	Benefit
Residual Value	Year L	$R_R *C *(1+ E_H)^Y$	Benefit

[(a)] Interest paid in a given year is simply the mortgage interest rate multiplied by the loan balance. The loan balance is calculated as the present value in year Y of the remaining stream of loan payments, discounted at the mortgage interest rate (see Equation 1).

Simple Payback Period

The simple payback period is a straightforward metric that includes only the costs and benefits directly related to the implementation of the energy-saving measures associated with a code change. It represents the number of years required for the energy savings to pay for the cost of the measures, without regard for changes in fuel prices, tax effects, measure replacements, resale values, etc. The payback period *P*, which has units of *years,* is defined as the marginal cost of compliance with a new code (*C*, the ''first costs'' above and beyond the baseline code), divided by the annual marginal benefit from compliance (ES_0, the energy cost savings in year 0), as shown in Equation 6.

$$P = \frac{C}{ES_0} \qquad (6)$$

The simple payback period is a metric useful for its simplicity and ubiquity. Because it focuses on the two primary characterizations of a code change—cost and energy performance—it allows an assessment of cost effectiveness that is easy to compare with other investment options and requires a minimum of input data. The simple payback period is used in many contexts, and is written into some state laws governing the adoption of new energy codes, hence DOE would calculate the payback period when it assesses the cost effectiveness of code changes. However, because it ignores many of the longer-term factors in the economic performance of an energy efficiency investment, DOE does not intend to use the payback period as a primary indicator of cost effectiveness for its own decision making purposes.

Cash Flow Analysis

In the process of calculating LCC, year-by-year cash flows are computed. These can be useful in assessing a code change's impact on consumers and will be shown by DOE for the code changes it analyzes. The cash-flow analysis simply shows each year's net cash flow (costs minus benefits) separately (in nominal dollars), including any time-zero cash flows such as a down payment. By publishing the net cash flow value for each year, reviewers will be able to calculate various metrics of interest, such as net cumulative cash flow, the year in which cumulative benefits exceed cumulative costs, etc. DOE believes this information will be useful to some stakeholders.

Economic Parameters and Other Assumptions

Calculating the metrics described above requires defining various economic parameters. Table 8 shows the primary parameters of interest and how they apply to the three metrics.

TABLE 8—ECONOMIC PARAMETERS FOR COST EFFECTIVENESS METRICS

Parameter	Needed for
First costs	Payback.
Fuel prices	Cash flow. LCC.
Fuel price escalation rates	Cash flow.
Mortgage parameters	LCC.
Inflation rate.	
Tax rates (property, income).	
Period of analysis.	
Residual value.	
Discount rate	LCC.

These parameters are chosen to be representative of a typical home buyer who purchases a home with a 30-year mortgage. DOE intends to consult appropriate sources of information to establish assumptions for each financial, economic, and fuel price assumption. Whenever possible, economic assumptions will be taken from the published sources discussed below. DOE notes that most values vary across time, location, markets, institutions, circumstances, and individuals. Where multiple sources for any parameter are identified, DOE will prefer recent values from sources DOE deems best documented and reliable. DOE intends to update parameters for future analyses to account for changing conditions.

First Cost

As discussed earlier, the first cost represents the full cost of code-related energy features to a home buyer. It represents the full (retail) cost of such features, including materials, labor, builder overhead and profit, etc., but excludes any future costs such as for maintenance.

Mortgage Parameters

The majority of homes purchased are financed. Indeed, the 2010 Characteristics of New Housing report from the Census Bureau reports that 91% of new homes were purchased using a loan while only 9% were purchased with cash. Accordingly, for purposes of the analysis of the economic benefits to the home buyer for improved energy efficiency, DOE intends to assume that a home is purchased using a loan.

Mortgage Interest Rate (i)

DOE intends to use recent mortgage rates in cost/benefit analyses, and would consult Freddie Mac and the Federal Home Finance Administration to determine a representative rate for each analysis. Currently, Freddie Mac reports that conventional 30-year real estate loans have averaged about 5% since the beginning of 2009 (*http://www.freddiemac.com/pmms/pmms30.htm*) though historical rates have been higher. FHFA (*http://www.fhfa.gov/Default.aspx?Page=252*) reports similar rates. Thus DOE intends to use a mortgage rate of 5% for cost/benefit analyses at this time.

An alternative approach would be to evaluate historical mortgage rates and identify a real rate that approximates a long-term average, then use that rate in a real analysis or combine it with a recent (and anticipated future) inflation rate in a nominal analysis. DOE intends to use the former approach on the theory that recent rates are a better indicator of near-term future rates that will be in effect when a new code goes into effect.

Loan Term (ML)

For real estate loans, 30 years is by far the most common term and is the value DOE intends to use in its analyses. According to the 2009 American Housing Survey (U.S. Census), Table 3–15, approximately 75% of all home loans have a term between 28 and 32 years, with 30 being the median.

Down Payment (R_D)

The 2009 American Housing Survey reports a wide range of down payment amounts for loans for new homes (see Table 9). DOE intends to assume a down payment of 10%. Among the possible rates, this is low enough that it is likely to favor the experience of first-time and younger home buyers (who have little significant equity to bring forward from a previous home) and is among the more common rates (the 6–10% block, at 13.6% of all mortgages, is the most populous block except for ''no down payment''). Almost half (47.1%) of all loans have a down payment at or below 10%.

TABLE 9—DOWN PAYMENT—2009 AMERICAN HOUSING SURVEY, TABLE 3–14

Percent of purchase price	Percentage of homes
No down payment	16.3
Less than 3 percent	6.4
3–5 percent	10.8
6–10 percent	13.6
11–15 percent	4.7
16–20 percent	12.2
21–40 percent	10.4
41–99 percent	6.1
Bought outright	6.9
Not reported	12.6

Points and Loan Fees (R_M)

Points represent an up-front payment to buy down the mortgage interest rate. As such they are tax deductible. DOE assumes all interest is accounted for by the mortgage rate, so the points are taken to be zero. The loan fee is likewise paid up front in addition to the down payment and varies from loan to loan. DOE assumes the loan fee to be 0.7% of the mortgage amount, based on recent data from Freddie Mac Weekly Primary Mortgage Market Survey: *http://www.freddiemac.com/pmms/*.

Discount Rate (D)

The purpose of the discount rate is to reflect the time value of money. Because DOE's economic perspective is that of a home buyer, that time value is determined primarily by the consumer's

best alternative investment at similar risk to the energy features being considered.

The discount rate is chosen to represent the desired perspective of the economic analysis, in this case a typical home buyer who holds a home throughout a 30-year mortgage term.

DOE intends to set the discount rate to be equivalent to the mortgage interest rate in nominal terms. Because mortgage prepayment is an investment available to consumers who purchase homes using financing, the mortgage interest rate is a reasonable estimate of a consumer's alternative investment rate. That the home buyer has borrowed money at that rate demonstrates that his or her implicit discount rate must be at least that high.

Period of Analysis (L)

DOE's economic analysis is intended to examine the costs and benefits impacting all the consumers who live in the house. Because energy efficiency features generally last longer than the average length of ownership for the initial home buyer, a longer analysis period than the initial ownership period is used. Assuming a single owner keeps the house throughout the analysis period accounts for long-term energy benefits without requiring complex accounting for resale values at home turnover.

Homes will typically last 50 years or more. However, some energy efficiency measures may not last as long as the house does. DOE intends to assume a 30-year lifetime to match the typical mortgage term. Although 30 years is less than the life of the home, some efficiency measures, equipment in particular, may require replacement during that timeframe. As discussed earlier, when equipment efficiencies are analyzed, energy savings will be limited to the life of the equipment. This will impact the present value of energy savings only—all other cash flow streams will accrue over the entire period of analysis. The impact of the selection of an analysis term is significantly moderated by the effect of the discount rate in reducing the value of costs and benefits far into the future.

Property Tax Rate (R_P)

Property taxes vary widely within and among states. The median property tax rate reported by the 2007 [23] American Housing Survey (U.S. Census Bureau 2007, Table 1A–7) for all homes is $9 per $1,000 in home value. Therefore, for purposes of code analysis, DOE intends to assume a property tax rate of 0.9%. For state-level analyses, state-specific rates will be used.

Income Tax Rate (R_I)

The marginal income tax rate paid by the homeowner determines the value of the mortgage tax deduction. The 2009 American Housing Survey (*http://www.census.gov/hhes/www/housing/ahs/ahs09/ahs09.html*) on ''income characteristics'' reports a median income of $70,200 for purchasers of new homes. The Internal Revenue Service SOI Tax Stats, Table 2.1 for 2008 (latest year available) reported that of the tax filers in this income bracket, most itemize deductions. DOE intends to account for income tax deductions for mortgage interest in the cost/benefit analyses. A family earning $70,200 in 2011, with a married-filing-jointly filing status, would have a marginal tax rate of 25%, which is DOE's current assumption. Where state income taxes apply, rates will be taken from state sources or collections of state data such as provided by the Federation of Tax Administrators (*http://www.taxadmin.org*).

Inflation Rate (R_{INF})

The inflation rate R_{INF} is necessary only to give proper scale to the mortgage payments so that interest fractions can be estimated for tax deduction purposes. It does not affect the present values of cash flows because all other rates are expressed in nominal terms (*i.e.,* are already adjusted to match the inflation rate). The assumed inflation rate must be chosen to match the assumed mortgage interest rate (*i.e.,* be estimated from a comparable time period). Estimates of the annual inflation rate would be taken from the most recent Consumer Price Index (CPI) data published by the Bureau of Labor Statistics (*http://www.bls.gov/*), which currently lists the most recent annualized CPI to be 1.6%.

[23] The 2007 survey was used as financial charcteristic data is not available in the 2009 survey.

Residual Value

The residual value of energy features is the value assumed to be returned to the home buyer upon sale of the home (after 30 years). As shown earlier it is calculated from an assumed home price escalation rate and an assumed fraction of the original market value that remains and is recoverable at sale.

Home Price Escalation Rate (E_H)

DOE intends to assume that home prices have a real escalation rate of 0%, which is equivalent to a nominal escalation rate equal to the general rate of inflation. While many homes do experience nonzero increases in value over time, the factors that influence future home prices (location, style, availability of land, etc.) are too varied and situation-specific to warrant direct accounting in this methodology.

Resale Value Fraction (R_R)

DOE intends to assume that 50% of the original value of code-related energy features remains at the end of 30 years (after adjusting for the Home Price Escalation Rate). This is roughly equivalent to assuming straight-line depreciation of features with a 60-year service life.

Fuel Prices

Fuel prices over the length of the period of analysis are needed to determine the energy cost savings from improved energy efficiency. Both current fuel prices and fuel price escalation rates are needed to establish estimated fuel prices in future years.

DOE intends to use the most recently available national average residential fuel prices from the DOE Energy Information Administration. If fuel prices from the most recent year(s) are unusually high or low, DOE may consider using a longer-term average of past fuel prices, such as the average from the past 5 years. However, DOE notes that fuel price escalation rates (see below) may be tied to specific recent-year prices, so departures from the recent-year prices will be approached with caution. For air conditioning, fuel prices from the summer would be used, and for space heating winter prices would be used.

Fuel price escalation rates would be obtained from the most recent Annual Energy Outlook to account for projected changes in energy prices.

TABLE 10—SUMMARY OF CURRENT ECONOMIC PARAMETER ESTIMATES

Parameter	Symbol	Current estimate
Mortgage Interest Rate	I	5%.
Loan Term	M_L	30 years.
Down Payment Rate	R_D	10% of home price.
Points and Loan Fees	R_M	0.7% (nondeductible).
Discount Rate	D	5% (equal to Mortgage Interest Rate).
Period of Analysis	L	30 years.
Property Tax Rate	R_P	0.9% of home price/value.
Income Tax Rate	R_I	25% federal, state values vary.
Home Price Escalation Rate	E_H	Equal to Inflation Rate.
Inflation Rate	R_{INF}	1.6% annual.
Fuel Prices and Escalation Rates		Latest national average prices based on current DOE EIA data and projections[24] (as of July 2011, 12 cents/kwh for electricity, $0.963/therm for natural gas); price escalation rates taken from latest Annual Energy Outlook

Public Participation

A. Submission of Information

DOE will accept information in response to this notice under the timeline provided in the DATES section above. Information submitted to the Department by e-mail should be provided in WordPerfect, Microsoft Word, PDF, or text file format. Those responding should avoid the use of special characters or any form of encryption, and wherever possible, comments should include the electronic signature of the author. Comments submitted to the Department by mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles will be accepted. Comments submitted in response to this notice will become a matter of public records and will be made publicly available.

B. Issues on Which DOE Seeks Information

DOE is particularly interested in receiving information on the following issues/topics:

- General comments on DOE's use of cost effectiveness calculations to evaluate code-change proposals and new code versions.
- The appropriateness of DOE's energy simulation methodology for evaluating the energy savings of code changes.
  - DOE's tool choice (EnergyPlus).
  - The default assumptions to be used in conducting energy simulations.
  - The methodology for assessing climatic/regional variation in code impacts.
  - Approaches to assessing energy savings of code changes that expand the scope of the code, imply the need for additional measures not directly required in the new code, or are otherwise difficult to evaluate in a straightforward pre-post simulation analysis.
- The appropriateness of DOE's approach to assessing the first cost of new code requirements
  - Preferred cost data sources.
  - Arbitrating among differing costs from multiple data sources.
  - Assessing costs where a new or changed requirement can be met by multiple construction approaches with varying cost implications.
  - Desirable features for DOE's planned public cost database.
  - Adjusting current costs for likely market transformation impacts (economies of scale, learning curves, etc.).
- The appropriateness and sufficiency of DOE's cost effectiveness methodology
  - The appropriateness of the economic metrics to be calculated (life-cycle cost, annual cash flows, simple payback period).
  - The appropriateness of life-cycle cost as the primary metric for DOE's cost effectiveness determinations.
  - Whether DOE should consider constraints on payback period and/or cash flow metrics in addition to its life-cycle cost requirement in making decisions on cost effectiveness and, if so, on appropriate threshold values for those metrics
  - The appropriateness of the economic perspective (that of a home buyer with a 30-year loan) of DOE's life-cycle cost analysis and of the economic parameters chosen to represent that perspective.
  - The appropriateness of the identified data sources for economic parameters.
- Input on how DOE's methodology and process should evolve in response to changing economic and social conditions.

Issued in Washington, DC, on September 2, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–23236 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

[24] U.S. Department of Energy.2011a. Electric Power Monthly. DOE/EIA–0226. Washington, DC. U.S. Department of Energy.2011b. Natural Gas Monthly. DOE/EIA–0130. Washington, DC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 459–311]

Union Electric Company, dba Ameren Missouri; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:* 459–311.

c. *Date Filed:* August 16, 2011.

d. *Applicant:* Union Electric Company, dba Ameren Missouri.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The proposed non-project use would be located at the Ozark Yacht Club marina which is located at mile marker 0.8 + 0.6 in the Jennings Branch Cove on the Lake of the Ozarks in Camden County, Missouri. The location coordinates are 38.199986 North, −92.645562 West.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren Missouri,

P.O. Box 993, Lake Ozark, MO 65049, 573–365–9214.

i. *FERC Contact:* Mr. Lorance Yates at 678–245–3084, or *lorance.yates@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 7, 2011.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–459–311) on any comments, motions, or recommendations filed.

k. *Description of Request:* Ameren Missouri, licensee for the Osage Hydroelectric Project, requests Commission authorization to permit the Ozark Yacht Club to modify an existing dock and to add 3 new docks. Dock 1 would be expanded by 9 slips. Dock number 2 is a proposed T-shaped courtesy dock with 5 mooring spots, dock number 3 would serve as a courtesy dock with no watercraft mooring, and dock number 4 would contain 5 double slips, plus 4 additional moorings, thus accommodating 14 watercraft. Twenty eight watercraft mooring areas/slips would be added to the existing 79 slips for a total capacity of 107 at the marina. These improvements would serve patrons of the Ozark Yacht Club. No dredging activities, shoreline stabilization, or fueling facilities are associated with the proposal.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23317 Filed 9–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 553–221]

City of Seattle, Washington; Notice of Application Accepted for Filing, Ready for Environmental Analysis, Soliciting Comments, Motions to Intervene, Protests, Recommendations, Terms and Conditions, and Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment of License.

b. *Project No.:* 553–221.

c. *Date Filed:* July 12, 2011.

d. *Applicant:* City of Seattle, Washington.

e. *Name of Project:* Skagit River Project.

f. *Location:* The project is located on the Skagit River in Skagit, Snohomish, and Whatcom Counties, Washington and occupies federal lands within the Ross Lake National Recreation Area administered by the National Park Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Seattle City Light, P.O. Box 34023, Seattle, WA 98124–4023, (206) 684–3974.

i. *FERC Contact:* Mr. Steven Sachs (202) 502–8666 or *Steven.Sachs@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and fishway prescriptions is November 7, 2011; reply comments are due December 20, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://*

www.ferc.gov/docs-filing/ecomment.asp. You must include your name and contact information at the end of your comments.

Please include the project number (P–553–221) on any comments, motions, recommendations, or terms and conditions filed.

k. *Description of Request:* The applicant proposes to bore a second 22-foot-diameter, 11,000-foot-long power tunnel immediately adjacent to the existing one at it's Gorge Development in order to reduce frictional head losses. An additional 1.21 acres of federal land would need to be included within the project boundary for tunnel construction. The proposed tunnel would not change the development's hydraulic or authorized installed capacity but would increase energy generation by about 56 gigawatt-hours annually due to efficiency improvements. The applicant also intends to incorporate into the license four fish protection measures that were developed by the applicant, agencies, and tribes which it has been voluntarily implementing since 1995. These measures are: (1) Limit downramping rates to < 3,000 cfs/hr from October 16 to December 31 each year; (2) begin salmon fry stranding protection January 1 instead of February 1; (3) change the chum salmon spawning default start date to November 1 rather than November 15; and (4) increase November/December chum salmon minimum incubation flows in Table C–3 of the Fisheries Settlement Agreement.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* All filings must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', ''MOTION TO INTERVENE'', ''TERMS AND CONDITIONS'' or ''FISHWAY PRESCRIPTIONS'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the amendment. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23318 Filed 9–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–175]

California Department of Water Resources; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 2100–175.

c. *Date Filed:* August 17, 2011.

d. *Applicant:* California Department of Water Resources (CDWR).

e. *Name of Project:* Feather River Hydroelectric Project.

f. *Location:* The project is located on the Feather River in Butte County near Oroville, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Bill Cochran, Chief of CDWR's License Coordination Branch, 1416 Ninth Street, P.O. Box 942836, Sacramento, California, 94236; 530–534–2376.

i. *FERC Contact:* Mr. Lorance Yates at 678–245–3084, *lorance.yates@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* October 7, 2011.

All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. Please include the project number (P–2100–175) on any comments, motions, or recommendations filed.

k. *Description of Request:* The California Department of Water Resources (CDWR), licensee for the Feather River Hydroelectric Project, has filed a request for authorization to seasonally close the Lime Saddle Campground. Due to low winter usage, CDWR proposes to close the Lime

Saddle Campground from November 1, 2011 through April 30, 2012. The Lime Saddle Campground contains 44 individual sites and 6 group campsites. During this closure, the public will be directed to the licensee's other two campgrounds at the project. The Bidwell Canyon Campground which contains 75 individual sites and the Loafer Creek Campground which contains 137 individual sites and 6 group campsites. CDWR will monitor campground attendance during the closure to ensure that adequate facilities are open to meet user demand. If, during the closure, occupancy of the Loafer Creek and Bidwell Canyon Campgrounds exceeds 80 percent of their maximum capacity, CDWR will reopen the Lime Saddle Campground.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/efiling.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: September 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23316 Filed 9–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX11–1–000]

Southern Cross Transmission LLC; Pattern Power Marketing LLC; Notice of Filing

Take notice that on September 6, 2011, pursuant to sections 210, 211, and 212 of the Federal Power Act and Part 36 of the Federal Energy Regulatory Commission's (Commission) Regulations, 18 CFR 36.1, Southern Cross Transmission, LLC (SCT) and Pattern Power Marketing LLC (PPM) jointly filed an application requesting that the Commission direct (1) the City of Garland, Texas and Garland Power & Light to provide an interconnection at a point at the Texas-Louisiana border; and (2) Oncor Electric Delivery Company LLC (Oncor) and CenterPoint Energy Houston Electric, LLC to provide the requested transmission service to PPM or any other entity that is an eligible customer under Oncor's Tariff for Transmission Service To, From, and Over Certain Inconnections.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 6, 2011.

Dated: September 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23314 Filed 9–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–5–000]

City of Holland, Michigan Board of Public Works; Notice of Filing

Take notice that on September 2, 2011, pursuant to section 39.2 of the

Federal Energy Regulatory Commission's (Commission) Regulations [1] and Rule 501.1.3.4 of the Rules of Procedure of the North American Electric Reliability Corporation (NERC) [2] the City of Holland, Michigan Board of Public Works (Holland BPW) filed an appeal with the Commission of the August 12, 2011 decision of the NERC Board of Trustees Compliance Committee denying Holland BPW's appeal of the decision of ReliabilityFirst Corporation to register Holland BPW as a Transmission Owner and Transmission Operator on the NERC Compliance Registry.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 3, 2011.

Dated: September 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–23315 Filed 9–12–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 2011, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note** —Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400. For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

973RD—MEETING; REGULAR MEETING

[September 15, 2011, 10 a.m.]

Item No.	Docket No.	Company
		Administrative
A–1	AD02–1–000	Agency Business Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	OMITTED	
A–4	AD11–9–000	Report on Outages and Curtailments During the Southwest Cold Weather Event of February 1–5, 2011.
		Electric
E–1	RM11–11–000	Version 4 Critical Infrastructure Protection Reliability Standards.
E–2	OMITTED	
E–3	RM08–13–004	Transmission Relay Loadability Reliability Standard.
E–4	RM10–6–000	Interpretation of Transmission Planning Reliability Standard.
E–5	RM10–29–000	Electric Reliability Organization Interpretation of Transmission Operations Reliability Standard.
E–6	RM11–16–000	Transmission Relay Loadability Reliability Standard.
E–7	RD11–7–000	North American Electric Reliability Corporation.
E–8	ER11–3970–000	Midwest Independent Transmission System Operator, Inc.
E–9	TS11–5–000	Bangor Hydro Electric Company.
E–10	ER11–3967–000	Southwest Power Pool, Inc.
E–11	ER11–3064–001	PJM Interconnection, L.L.C. and Trans-Allegheny Interstate Line Company.
E–12	ER11–3972–000	PJM Interconnection, L.L.C.
E–13	ER11–3953–000	ISO New England Inc. and New England Power Pool.

[1] 18 CFR 39.2 (2010).

[2] *Rules of Procedure of the North American Electric Reliability Corporation,* rule 501.1.3.4 (effective April 12, 2011) (stating a decision of the NERC Board of Trustees Compliance Committee may be appealed to the applicable governmental authority within 21 days of the date of the decision.

973RD—MEETING; REGULAR MEETING—Continued

[September 15, 2011, 10 a.m.]

Item No.	Docket No.	Company
E–14	ER11–2224–004, ER11–2224–005, ER11–2224–009	New York Independent System Operator, Inc.
E–15	ER11–3949–000, ER11–3949–001, ER11–3951–000	New York Independent System Operator, Inc.
E–16	ER11–3973–000	California Independent System Operator Corporation.
E–17	EL11–12–002	Idaho Wind Partners 1, LLC.
	Gas	
G–1	RM11–4–000	Storage Reporting Requirements of Interstate and Intrastate Natural Gas Companies.
	Hydro	
H–1	P–2698–050, P–2686–062	Duke Energy Carolinas, LLC.
H–2	P–13681–002	Grand Coulee Project Hydroelectric Authority.
H–3	DI10–9–001	Woodland Pulp LLC.
	Certificates	
C–1	CP11–30–000	Tennessee Gas Pipeline Company.
	CP11–41–000	Dominion Transmission, Inc.
C–2	CP10–510–000	El Paso Natural Gas Company.

September 8, 2011.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2011–23442 Filed 9–9–11; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: In this notice, the Deputy Secretary of Energy approves the Fiscal Year (FY) 2012 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2011. These Rates will stay in effect through September 30, 2012, or until superseded by other rates.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov* .

SUPPLEMENTARY INFORMATION: Hoover Dam, authorized by the *Boulder Canyon Project Act* (45 Stat. 1057, December 21, 1928), sits on the Colorado River along the Arizona and Nevada border. Hoover Power Plant has nineteen (19) generating units (two for plant use) and an installed capacity of 2,078,800 kW (4,800 kW for plant use). High-voltage transmission lines and substations make it possible for consumers in southern Nevada, Arizona, and southern California to receive power from the Project. BCP electric service rates are adjusted annually using an existing rate formula established on April 19, 1996.

Rate Schedule BCP–F8, Rate Order No. WAPA–150, effective October 1, 2010, through September 30, 2015, allows for an annual recalculation of the rates.[1] This notice sets forth the recalculated rates for FY 2012. Under Rate Schedule BCP–F8, the existing composite rate effective on October 1, 2010, was 19.73 mills per kilowatthour (mills/kWh). The base charge was $75,182,522, the energy rate was 9.86 mills/kWh, and the capacity rate was $1.90 per kilowattmonth (kW-month).

The re-calculated rates for BCP electric service, effective October 1, 2011, will result in an overall composite rate of 21.11 mills/kWh. The proposed rates were calculated using the FY 2011 Final Master Schedule. This results in an increase of approximately 6.99 percent when compared with the existing BCP electric service composite rate. The increase is due to an increase in the annual revenue requirement. The

[1] FERC confirmed and approved Rate Order No. WAPA–150 on December 9, 2010, in Docket No. EF10–7–000, See *United States Department of Energy, Western Area Power Administration, Boulder Canyon Project,* 133 FERC ¶ 62,229 (December 9, 2010).

FY 2012 base charge increased to $84,536,772. The major contributing factors to the base charge increase are the increases in annual operation and maintenance expenses and replacement costs. The FY 2012 energy rate of 10.56 mills/kWh is approximately a 7 percent increase from the existing energy rate of 9.86 mills/kWh. The increase in the energy rate is an outcome of the increase in the annual revenue requirement, caused by the previously mentioned increases in replacement costs and annual operating expenses. The FY 2012 capacity rate of $1.84/kW-month reflects a decrease of approximately 3.16 percent compared to the existing capacity rate of $1.90/kW-month. The decrease in the capacity rate is due to the increase in the annual capacity sales when compared with FY 2011. Although the revenue requirement for FY 2012 is increasing, the large projected increase in capacity results in a decrease to the capacity rate.

The following summarizes the steps taken by Western to ensure involvement of all interested parties in determining the Rates:

1. A **Federal Register** notice was published on February 14, 2011 (76 FR 8359), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 10, 2011, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates and held a question and answer session.

3. At the public information forum held on April 6, 2011, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2012 in greater detail and held a question and answer session.

4. A public comment forum held on April 27, 2011, in Phoenix, Arizona, provided the public an opportunity to comment for the record. Three individuals commented at this forum.

5. Western received three comment letters during the 90-day consultation and comment period. The consultation and comment period ended May 16, 2011. All comments were considered in developing the Rates for FY 2012. Written comments were received from:

- Arizona Power Authority, Phoenix, Arizona.
- Irrigation & Electrical Districts Association of Arizona, Phoenix, Arizona.
- Moyes Sellers, Ltd., Phoenix, Arizona.

Comments and responses, paraphrased for brevity when not affecting the meaning of the statements, are presented below.

Significant Rate Impact

Comment: A commenter expressed concern over the magnitude of the rate increase and questioned whether some replacement cost estimates are higher than the actual costs will be. The commenter suggested the estimates be reduced to mitigate the rate increase for FY 2012. Another commenter suggested that the formula used by Reclamation for estimating breaker capacities and service lives is not commonly used in the electric industry, and since the breaker costs are a main contributor of the rate increase, Reclamation should provide additional information on why the formula is being used.

Response: Western and Reclamation reviewed the replacement costs based on these comments. Reclamation engineers use current industry testing evaluation methodologies to determine potential shortfalls in the existing breaker capacity ratings and associated transfer trip schemes. Based on this analysis, the decision to replace the two breakers in question in FY 2012 will ensure the continued safe and reliable operation of the project.

Comment: A commenter suggested that Western and Reclamation explore ways to capitalize and amortize replacement costs instead of expensing them each year, as is the existing practice. The commenter further states that such an approach would result in a significant decrease to the FY 2012 base charge, and would conform to the Boulder Canyon Project Implementation Agreement (BCPIA). The commenter states that under the terms of the BCPIA, Reclamation is to seek annual appropriations prior to utilizing other sources of funding.

Response: Western and Reclamation appreciate the commenter's concern over rate increases and continuously look for ways to contain costs while maintaining a safe, reliable system. The existing process for the treatment of replacement costs is outlined in the BCPIA. This process provides BCP Contractors the opportunity for input into decisions on replacements and includes quarterly Engineering and Operating Committee (E&OC) meetings, an annual technical review committee meeting, and the annual Coordinating Committee meeting. The contractors are provided with several opportunities throughout the year to review Western's and Reclamation's 10-year plans and debate and discuss the plans for the upcoming year at each meeting. All data has been reviewed by Contractors prior to being included in the annual calculation of the base charge.

The existing treatment of replacement in the Boulder Canyon Project is consistent with the BCPIA. One of the key objectives of the agreement when it was executed in 1995 was to eliminate the need for Reclamation to seek Federal appropriations. The formula for calculating replacement capital advances in Section 6 of the BCPIA recognizes the intent to operate the project without appropriations, while developing a method to recognize that existing Contractors' payments for expensed replacements are potentially higher each year than if the replacements had been funded via appropriations and repaid over the useful life of the asset. While a capitalized, amortized replacement program may result in reduced annual expenses, it will increase overall costs to the project due to future interest costs. Additionally, since Reclamation has not requested Federal appropriations for BCP since 1996, a request for appropriations would represent a significant change in policy and would be unusual given the successful operation of the current structure. Further, the earliest opportunity to make such a request would likely be for FY 2015, resulting in no change for the FY2012 base charge.

Comment: A commenter requested an explanation regarding why the projected increase in the Base Charge as reflected in the initial notice published in the **Federal Register** differed significantly from the projected increase disclosed at the Public Information Forum.

Response: Differences in projected changes to the base charge between publication of the initial proposal in February and that disclosed in the public forums in April/May are the result of the availability of final, audited financial data. When the initial notice is sent for publication in early February, the final audited data for the previous year is typically not available. The inclusion of this data into the Power Repayment Study (PRS) will almost always result in adjustments to the estimated base charge.

It is also important to note that the total base charge increase for FY 2012 is a result of an increase in total costs along with the fact that prior year carryover is significantly reduced when compared to previous years.

Future Rates

Comment: A commenter suggested that one way to mitigate the FY 2012 rate increase would be to restructure capital plans, reducing rates for the next few years, and increasing rates in the later years.

Response: Western and Reclamation are responsible for ensuring the safe and reliable operation of the power system while keeping rates as low as possible consistent with sound business principles. Moving costs into future years may result in a short term savings and a lower rate for the upcoming year, but is otherwise not consistent with the agencies' responsibilities. Prior to the annual rate process, Western, Reclamation and the BCP Contractors engage in quarterly E&OC meetings, a technical review committee and, when necessary, subcommittee processes where the projected annual expenses are reviewed thoroughly. The rates announced in today's notice were developed after consideration of all the information generated in these meetings and reviews.

Reduction to Annual Costs

Comment: BCP commenters have concerns that Reclamation rescheduled the spillway drum gate seal work to mitigate the rate impact for FY 2012. The commenters believe this item is critical to dam safety and would prefer that Reclamation reschedule breaker replacements or other alternatives listed in the work plan that do not appear to be critical to safety at this time.

Response: Western notes that Reclamation chose not to spend $1.7 million on the Spillway Drum Gates in FY 2011 for the following reasons: The first is to help lower the FY 2012 Base Charge. Secondly, due to the low lake level, moving this work into the future would not pose a risk to Dam safety because there is very low probability that Lake Mead will be at an elevation that will require drum gate usage in the foreseeable future. Lastly, the decision was due to a recent Value Engineering study that proposes to combine and restructure the four major maintenance tasks associated with the spillway drum gates, which are: drum gate seals, drum gate drain hoses, drum gate pivot pins, and drum gate re-coating.

Visitor Center Revenues and Expenses

Comment: A commenter expressed concern that the visitor center revenue projections are not broken out separately in the cost projections as the visitor center expenses are. The commenter stated that it appears the visitor center revenue projections are a place holder, and further stated projections should be based on past experience as well as having supportable evidence upon which to base future projections.

Response: Western and Reclamation appreciate the commenter's concern over the visitor center revenues and continue to look for ways to maximize revenues. In its monthly Hoover Fax sent to all Contractors, Reclamation reports year-to-date revenue as well as a comparison to the previous year. For the last 5 years, the Visitor Center revenue and expense projections were as follows:

Visitor Center	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
Projected Revenues	$11,564,000	$12,769,000	$14,625,000	$12,000,000	$12,000,000
Projected Expenses	8,435,000	9,024,000	9,148,000	9,173,000	8,996,000

Reclamation projects the revenue to the best of its ability based on recent experience as well as projecting future revenues based on specific assumptions and known factors (e.g., bridge construction, estimated number of visitors to the region based on historical visitor numbers and on general economic conditions, and other factors). The projected revenues are updated each year based on these factors. The $12 million projection is felt to be reasonably conservative and was done in consultation with the BCP Contractors and in line with the BCPIA. The Contractors expressed concerns that visitor center revenue estimates be somewhat conservative so as to not create a situation where an over estimation of visitor center revenues would result in an under collection of the base charge in a given year.

Security Costs

Comment: A commenter expressed concern that the security costs are increasing even while the expectation was that once the by-pass bridge was completed, costs would decrease.

Response: Reclamation continually reviews its security costs and seeks ways to reduce its overall costs. Hoover Dam security costs from FY 2010 to FY 2012 were reduced by approximately $780,000. This reduction was due to the opening of the Mike O'Callaghan-Pat Tillman Memorial Bridge and the closure of the Arizona security checkpoint. An estimated $400,000 in additional costs related to the Hoover Defense Plan and operation and maintenance of the Electronic Access Control and Surveillance System have been factored into the proposed FY 2012 and out-year budgets to meet minimum requirements for protection of the facility. Projected costs are identified each fiscal year and routinely shared with the BCP Contractors. Reclamation's annual security costs are spent in accordance with current Reclamation Legislative Guidelines, and the BCP Contractors receive annual reimbursement for costs in excess of the identified cost reimbursement ceiling. Information on Reclamation's Legislative Guidelines regarding site security costs may be found online at *http://www.usbr.gov/ssle/documents*.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes operation and maintenance expenses, payments to states, visitor services, the uprating program, replacements, investment repayment, and interest expense. Western's PRS allocates the projected annual revenue requirement for electric service equally between capacity and energy.

Availability of Information

Information about this base charge and rate adjustment, including PRS, comments, letters, memorandums, and other supporting material developed or maintained by Western used to develop the FY 2012 BCP Rates is available for public review at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, AZ 85005. The information is also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm*.

Ratemaking Procedure Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent

enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through Western.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing Department of Energy procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835), and 18 CFR part 300. DOE procedures were followed by Western in developing the rate formula approved by FERC on December 9, 2010, at 133 FERC ¶ 62,229.[2]

The Boulder Canyon Project Implementation Agreement requires that Western determine the annual rates for the next fiscal year before October 1 of each rate year. The rates for the first rate year, and each fifth rate year thereafter, become effective provisionally upon approval by the Deputy Secretary of Energy (Deputy Secretary) and subject to final approval by FERC. For all other rate years, the rates become effective on a final basis upon approval by the Deputy Secretary. Because FY 2012 is an interim year, these rates become effective on a final basis upon approval by the Deputy Secretary.

Western will continue to provide annual rates to the BCP Contractors by October 1 of each year using the same rate-setting formula. The rates are reviewed annually and adjusted to assure sufficient revenues are collected to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, Western prepares a PRS for the BCP to update actual revenues and expenses including interest, estimates of future revenues, expenses, and capitalized costs.

The BCP rate-setting formula includes a base charge, an energy rate, and a capacity rate. The rate-setting formula was used to determine the BCP FY 2012 Rates.

Western proposed a FY 2012 base charge of $84,536,772, an energy rate of 10.56 mills/kWh, and a capacity rate of $1.84/kW-month.

Consistent with procedures set forth in 10 CFR part 903 and 18 CFR part 300, Western held a consultation and comment period. The notice of the proposed FY 2012 Rates for electric service was published in the **Federal Register** on February 14, 2011 (76 FR 8359).

Under Delegation Order Nos. 00–037.00 and 00–001.00C, and in compliance with 10 CFR part 903 and 18 CFR part 300, I hereby approve the FY 2012 Rates for BCP Electric Service on a final basis under Rate Schedule BCP–F8 through September 30, 2012. By this order I am placing the rates into effect in less than 30 days to meet contract deadlines and to avoid financial difficulties.

Dated: September 2, 2011.

Daniel B. Poneman,

Deputy Secretary of Energy.

[FR Doc. 2011–23329 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

[2] The existing rate-setting formula was established in Rate Order No. WAPA–70 on April 19, 1996, in Docket No. EF96–5091–000, at 75 FERC ¶ 62,050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94, extending the existing rate-setting formula beginning on October 1, 2000, and ending September 30, 2005, was approved on July 31, 2001, in Docket No. EF00–5092–000,at 96 FERC ¶ 61,171. Rate Order No. WAPA–120, extending the existing rate-setting formula for another five-year period beginning on October 1, 2005, and ending September 30, 2010, was approved on June 22, 2006, in Docket No. EF05–5091–000 at 115 FERC ¶ 61,362. WAPA–150, extending the existing rate-setting formula for another five-year period beginning on October 1, 2010, was approved on December 9, 2010, in Docket No. EF10–7–000 at 133 FERC ¶ 62,229.

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects—Western Area Colorado Missouri Balancing Authority—Rate Order No. WAPA–155

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Order Concerning Transmission and Ancillary Services Formula Rates.

SUMMARY: The Deputy Secretary of Energy has confirmed and approved Rate Order No. WAPA–155 and Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, and L–UU1, placing Loveland Area Projects (LAP) transmission and Western Area Colorado Missouri (WACM) Balancing Authority ancillary services formula rates into effect on an interim basis. The provisional formula rates will be in effect until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis or until they are replaced by other formula rates. The provisional formula rates will provide sufficient revenue to pay all annual costs, including interest expense, and to repay power investment within the allowable periods.

DATES: Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, and L–UU1 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 2011, and will remain in effect until FERC confirms, approves, and places the rate schedules into effect on a final basis for a 5-year period ending September 30, 2016, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Bradley S. Warren, Regional Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7201, or Mrs. Sheila D. Cook, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, 5555 East Crossroads Boulevard, Loveland, CO 80538–8986, telephone (970) 461–7211, e-mail *scook@wapa.gov.*

SUPPLEMENTARY INFORMATION: The Deputy Secretary of Energy approved current Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, and L–AS7 on December 30, 2003 (Rate Order No. WAPA–106, 69 FR 1723, January 12, 2004).[1] These rates became effective on March 1, 2004, with an expiration date of February 28, 2009. The rate schedules, with the exception of Rate Schedule L–AS3, Regulation and Frequency Response, were extended through February 28, 2011, under Rate Order No. WAPA–141.[2] Rate Schedule L–AS3 was revised and approved under Rate Order No. WAPA–118,[3] which became effective on June 1, 2006, with an expiration date of May 31, 2011. Under Rate Order No. WAPA–154,[4] all LAP transmission and WACM ancillary services rate schedules, including L–

[1] WAPA–106 was approved by FERC on a final basis on January 31, 2005, in Docket No. EF2–04–5182–000 (110 FERC ¶62,084).

[2] WAPA–141, Extension of Rate Order No. WAPA–106 through February 28, 2011. 73 FR 48382, August 19, 2008.

[3] WAPA–118 was approved by FERC on a final basis on November 17, 2006, in Docket No. EF–06–5182–000 (117 FERC ¶62,163).

[4] WAPA–154, Extension of Rate Order Nos. WAPA–106 and WAPA–118 through February 28, 2013. 76 FR 1429, January 10, 2011.

AS3, were extended through February 28, 2013.

LAP Transmission Service

Rate Schedules L–NT1, L–FPT1, and L–NFPT1 for LAP transmission services are based on a revenue requirement that recovers the LAP transmission system costs for facilities associated with providing all transmission services as well as the non-transmission facility costs allocated to transmission services. These firm and non-firm LAP transmission service rates include the costs for scheduling, system control, and dispatch service needed to provide the transmission service.

Rate Schedule L–UU1, Unreserved Use Penalties, is a new rate schedule established in accordance with Western's Open Access Transmission Tariff (Tariff). This rate will recover costs for transmission service that has not been reserved or has been used in excess of the amount reserved. Rate Schedule L–UU1 also provides for a penalty in addition to the base charge for the transmission service used. Previously, a penalty for unauthorized use of transmission was included in the Point-to-Point Transmission Service, Rate Schedules L–FPT1 and L–NFPT1.

Rate Schedule L–AS7, Transmission Losses Service, is designed to recover losses on all real-time and prescheduled transactions on transmission facilities inside WACM.

Ancillary Services

Western will provide seven ancillary services pursuant to its Tariff. These are: (1) Scheduling, System Control, and Dispatch Service (L–AS1); (2) Reactive Supply and Voltage Control from Generation or Other Sources Service (L–AS2); (3) Regulation and Frequency Response Service (L–AS3); (4) Energy Imbalance Service (L–AS4); (5) Spinning Reserve Service (L–AS5); (6) Supplemental Reserve Service (L–AS6); and (7) Generator Imbalance Service (L–AS9). Generator Imbalance Service is also a new rate schedule established under the Tariff. Currently, Generator Imbalance Service is provided under Rate Schedule L–AS4, Energy Imbalance Service.

Rates for LAP transmission and ancillary services will be recalculated each year to incorporate the most recent financial, load, and schedule information and will be applicable to all transmission and ancillary services customers.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) The authority to develop power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing Department of Energy procedures for public participation in power rate adjustments (10 CFR 903) were published on September 18, 1985 (50 FR 37835).

Under Delegation Order Nos. 00–037.00 and 00–001.00C, 10 CFR part 903, and 18 CFR part 300, I hereby confirm, approve, and place Rate Order No. WAPA–155, the proposed LAP transmission and WACM ancillary services formula rates, into effect on an interim basis. By this order, I am placing the rates into effect in less than 30 days to meet contract deadlines, to avoid financial difficulties, and to provide rates for new services. The revised Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, and L–UU1 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: September 2, 2011.

Daniel B. Poneman,

Deputy Secretary.

Order Confirming, Approving, and Placing The Loveland Area Projects Transmission and Western Area Colorado Missouri Balancing Authority Ancillary Services Formula Rates Into Effect on an Interim Basis

These transmission and ancillary services formula rates are established pursuant to section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152). This act transferred to and vested in the Secretary of Energy the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), and other acts that specifically apply to the projects involved.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) were published on September 18, 1985.

Acronyms/Terms and Definitions

As used in this Rate Order, the following acronyms/terms and definitions apply:

Acronym/term	Definition
$/kW-month:	Dollars per kilowatt per month.
12-cp:	Rolling 12-month average of customers' loads in excess of Federal Entitlement, coincident with the Loveland Area Projects (LAP) transmission system peak.
Administrator:	The Administrator of the Western Area Power Administration.
Area Control Error (ACE):	The instantaneous difference between a Balancing Authority's net actual and scheduled interchange, taking into account the effects of frequency bias and correction for meter error.
Ancillary Services:	Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's transmission system in accordance with good utility practice.
ATRR:	Annual transmission revenue requirement.
Automatic Generation Control:	Equipment that automatically adjusts generation in a Balancing Authority area from a central location to maintain the Balancing Authority's interchange schedule plus frequency bias.
Balancing Authority:	The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a Balancing Authority area, and supports interconnection frequency in real time.
Control Area:	The term used for a Balancing Authority area in Western's Open Access Transmission Tariff.
CRSP:	Colorado River Storage Project.
DOE:	Department of Energy.
Energy Imbalance Service:	The ancillary service in which the Balancing Authority corrects hourly for the difference between a customer's energy supply and energy usage.
Federal Customers:	LAP customers taking delivery of long-term firm service under firm electric service contracts, project use, and special use contracts.
Firm Electric Service Contracts:	Contracts for the sale of long-term firm LAP Federal energy and capacity, pursuant to the Post-1989 General Power Marketing and Allocation Criteria (Marketing Plan).
Firm Point-to-Point Transmission Service:	The highest priority transmission service offered to customers on a specified path that anticipates no planned interruption.
Federal Entitlements:	The energy and capacity delivered to Federal Customers under Firm Electric Service Contracts.
FERC:	Federal Energy Regulatory Commission.
Fry-Ark:	Fryingpan-Arkansas Project.
FY:	Fiscal Year, October 1 through September 30.
Generator Imbalance Service:	The ancillary service in which the Balancing Authority corrects hourly for the difference between a customer's actual generation and scheduled generation.
kW:	Kilowatt. The electrical unit of capacity equal to 1,000 watts.
kWh:	Kilowatt-hour. The electrical unit of energy equal to 1 kW produced or delivered for 1 hour.
kW-month:	Kilowatt-month. The electrical unit of energy equal to 1 kW produced or delivered for 1 month.
LAP:	Loveland Area Projects.
LAP Transmission System or Service:	Transmission system operated by, or service provided by, the Loveland Area Projects.
LAP Transmission System Total Load:	Sum of 12-cp averages for all customer loads for Network Integration Transmission Service, plus 12-month rolling average of monthly entitlements of Federal Customers, plus reserved capacity for all Long-Term Firm Point-to-Point Transmission Service.
Load ratio share:	Network Transmission Customer's 12-cp load coincident with LAP's monthly transmission system peak, expressed as a ratio.
Load Serving Entity (LSE):	An entity within the Balancing Authority that secures energy and transmission service (and related interconnected operations services) to serve the electrical demand and energy requirements of its end-use customers.
Long-Term Firm Point-to-Point Transmission Service:	Firm Point-to-Point Transmission Service reservation for a duration of at least 12 consecutive months.
Losses:	The reduction of power being delivered as it moves across transmission lines or other equipment, due to resistance in the conducting material.
M&I:	Municipal and Industrial.
Mill:	Unit of monetary value equal to .001 of a U.S. dollar; *i.e.,* 1/10th of a cent.
Mills/kWh:	Mills per kilowatt-hour.
Monthly Entitlements:	Maximum capacity to be delivered each month under Firm Electric Service Contracts. Each monthly entitlement is a percentage of the seasonal contract-rate-of-delivery.
MW:	Megawatt. The unit of electrical capacity that equals 1,000 kW or 1,000,000 watts.
NERC:	North American Electric Reliability Corporation.
Network Integration Transmission Service:	Firm transmission service for the delivery of capacity and energy from designated network resources to designated network loads not using one specific path.
Non-Firm Point-to-Point Transmission Service:	Point-to-point transmission service reserved on an as-available basis for periods ranging from 1 hour to 1 year.
Open Access Same Time Information System (OASIS):.	An electronic posting system that the Transmission Provider maintains for transmission access data that allows all transmission customers to view the data simultaneously.
Operating Reserve—Spinning Reserve Service:	Generation capacity needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output.

Acronym/term	Definition
Operating Reserve—Supplemental Reserve Service:	Generation capacity needed to serve load in the event of a system contingency, which capacity is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generation units that are on-line but unloaded, by quick start generation, or by interruptible load.
Provisional Formula Rate:	A formula rate that has been confirmed, approved, and placed into effect on an interim basis by the Deputy Secretary.
P–SMBP:	Pick-Sloan Missouri Basin Program.
P–SMBP—WD:	Pick-Sloan Missouri Basin Program—Western Division.
RMR:	Rocky Mountain Customer Service Region.
Reactive Supply and Voltage Control from Generation or Other Sources Service:.	The ancillary service under which a Balancing Authority operates generation facilities under its control to produce or absorb reactive power to maintain voltages on all transmission facilities within acceptable limits.
Reclamation:	The United States Bureau of Reclamation.
Regulation and Frequency Response Service:	The ancillary service under which a Balancing Authority maintains moment-by-moment load-interchange-generation balance with the Balancing Authority area and supports interconnection frequency.
Scheduling, System Control, and Dispatch Service:	The ancillary service under which a Balancing Authority sets up an arrangement for an energy interchange transaction for delivery and receipt of energy between the two entities involved in the transaction.
Service Agreement:	The initial agreement and any amendments or supplements entered into by a Transmission Customer and Western for service under the Tariff.
Short-Term Firm Point-to-Point Transmission Service:	Firm Point-to-Point Transmission Service for a duration of less than 12 consecutive months.
Sub-Balancing Authority:	An area within a Balancing Authority area which has its own boundary metering scheme and for which an ACE can be measured.
Tariff:	Western's revised Open Access Transmission Service Tariff, effective December 1, 2009 (Docket NJ10–1–000).
Transmission Customer:	The RMR customer taking Network Integration Transmission Service or Point-to-Point Transmission Service.
Transmission Losses Service:	The service provided by the Balancing Authority to supply electrical losses on pre-scheduled and real-time transmission transactions.
Transmission Provider:	An entity that administers a transmission tariff and provides transmission service to transmission customers under applicable transmission service agreements.
Unreserved Use Penalties:	The use of transmission capacity that was not reserved, or the use of transmission in excess of reserved capacity.
WACM:	Western Area Colorado Missouri Balancing Authority.
WECC:	Western Electricity Coordinating Council.
Western:	Western Area Power Administration.

Effective Date

The Provisional Formula Rates will take effect on the first day of the first full billing period beginning on or after October 1, 2011, and will remain in effect through September 30, 2016, pending approval by FERC on a final basis.

Public Notice and Comment

Western has followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in the development of these formula rates and schedules. The steps Western took to involve interested parties in the rate process were:

1. On September 29, 2010, Western held an informal meeting with customers and interested parties to discuss the proposed formula rates for LAP Transmission and WACM Ancillary Services. Western posted all information presented at the informal meeting, as well as responses to questions asked at the meeting, on its Web site at *http://www.wapa.gov/rm/ratesRM/2012/default.htm*.

2. Western published a **Federal Register** notice on January 28, 2011 (76 FR 5148), officially announcing the proposed LAP Transmission and WACM Ancillary Services formula rates adjustment, initiating the public consultation and comment period, announcing the date and location of the public information and public comment forums, and outlining procedures for public participation.

3. On February 2, 2011, Western sent a letter to all interested parties providing them with a copy of the **Federal Register** notice published on January 28, 2011 (76 FR 5148).

4. On March 9, 2011, Western held its public information forum in Loveland, Colorado, where Western representatives explained the need for the formula rates adjustment in detail and answered questions.

5. On March 9, 2011, following the public information forum, Western held a public comment forum in Loveland, Colorado, to provide an opportunity for customers and other interested parties to comment for the record. At this forum, one individual expressed general support of Western's efforts to communicate with its customers well in advance of implementation of the proposed rates.

6. Western received one written comment during the 90-day consultation and comment period, which ended on April 28, 2011. This comment is addressed below following the ancillary services discussion.

All comments received have been considered in the preparation of this Rate Order.

Project Descriptions

The Post-1989 General Power Marketing and Allocation Criteria, published in the **Federal Register** on January 31, 1986 (51 FR 4012), integrated the resources of the P–SMBP—WD and Fry-Ark. This operational and contractual integration, known as LAP, allowed an increase in marketable resources, simplified contract administration, and established a blended rate for LAP power sales. WACM offers Ancillary Services from a combination of all LAP generation resources and some CRSP generation resources.

P–SMBP—WD

The P–SMBP was authorized by Congress in section 9 of the Flood Control Act of December 22, 1944 (Pub. L. 534, 58 Stat. 877, 891). This multipurpose program provides flood control, M&I water supply, irrigation, navigation, recreation, preservation and enhancement of fish and wildlife, and hydroelectric power. Multipurpose projects have been developed on the Missouri River and its tributaries in Colorado, Montana, Nebraska, North Dakota, South Dakota, and Wyoming.

In addition to the multipurpose water projects authorized by section 9 of the Flood Control Act of 1944, certain other existing projects have been integrated with the P–SMBP for power marketing, operation, and repayment purposes. The Colorado-Big Thompson, Kendrick, Riverton, and Shoshone Projects were combined with P–SMBP in 1954, followed by the North Platte Project in 1959. These projects are known as the ''Integrated Projects'' of the P–SMBP. The Riverton Project was reauthorized as a unit of the P–SMBP in 1970. Together, the P–SMBP—WD and the Integrated Projects have 19 power plants.

There are six power plants in P–SMBP—WD: Glendo, Kortes, and Fremont Canyon power plants on the North Platte River; Boysen and Pilot Butte power plants on the Wind River; and Yellowtail power plant on the Big Horn River. The Colorado-Big Thompson Project has six power plants: Green Mountain power plant on the Blue River is on the West Slope of the Continental Divide; and Mary's Lake, Estes, Pole Hill, Flatiron, and Big Thompson power plants along the Big Thompson River are on the East Slope of the Continental Divide. The Kendrick Project has two power plants: Alcova and Seminoe power plants on the North Platte River. Power plants in the Shoshone Project are the Shoshone, Buffalo Bill, Heart Mountain, and Spirit Mountain plants on the Shoshone River. The only power plant in the North Platte Project is the Guernsey power plant, also on the North Platte River.

Fry-Ark

Fry-Ark is a trans-mountain diversion development in southeastern Colorado authorized by the Act of Congress on August 16, 1962 (Pub. L. 87–590, 76 Stat. 389, as amended by Title XI of the Act of Congress on October 27, 1974 (Pub. L. 93–493, 88 Stat. 1486, 1497)). The Fry-Ark diverts water from the Fryingpan River and other tributaries of the Roaring Fork River in the Colorado River Basin on the West Slope of the Rocky Mountains to the Arkansas River on the East Slope. The water diverted from the West Slope, together with regulated Arkansas River water, provides supplemental irrigation and M&I water supplies and produces hydroelectric power. Flood control, fish and wildlife enhancement, and recreation are other important purposes of Fry-Ark. The only generating facility in Fry-Ark is the Mt. Elbert Pumped-Storage power plant on the East Slope.

CRSP

CRSP was authorized by the Colorado River Storage Project Act, ch. 203, 70 Stat. 105, on April 11, 1956. The project provides water-use developments for states in the Upper Basin (Colorado, New Mexico, Utah, and Wyoming) while still maintaining water deliveries to the states of the Lower Basin (Arizona, California, and Nevada) as required by the Colorado River Compact of 1922. CRSP hydroelectric facilities providing ancillary services for WACM are the Aspinall power plant (formerly Curecanti) on the Gunnison River, the Flaming Gorge power plant on the Green River, the Towaoc Power Plant on the Towaoc Canal in southwestern Colorado, and the Glen Canyon power plant on the Colorado River.

LAP Transmission Service

Transmission formula rates, including those for Firm and Non-Firm Point-to-Point Transmission Service and Network Integration Transmission Service, are designed to recover the annual costs of the LAP Transmission System. The transmission rates include the cost of Scheduling, System Control, and Dispatch Service. Western will continue to bundle transmission service for delivery of LAP long-term firm Federal power to Federal Customers in the firm electric service rate under existing Firm Electric Service Contracts that expire in 2024.

The penalty for unauthorized use of transmission, currently assessed under the Point-to-Point Transmission rate schedules, will now be assessed as a penalty for unreserved use under a separate rate schedule, L–UU1. Unreserved Use Penalties will include the basic rate for the transmission service used and not reserved, plus a penalty equal to the basic rate.

Transmission losses are assessed for all real-time and prescheduled transactions on transmission facilities inside WACM. The current loss factor, as posted on the RMR OASIS, is 4.5 percent.

WACM Ancillary Services

Western will offer seven Ancillary Services pursuant to its Tariff. The seven Ancillary Services are: (1) Scheduling, System Control, and Dispatch Service (SSCD Service); (2) Reactive Supply and Voltage Control from Generation or Other Sources Service (VAR Support Service); (3) Regulation and Frequency Response Service (Regulation Service); (4) Energy Imbalance Service; (5) Spinning Reserve Service; (6) Supplemental Reserve Service; and (7) Generator Imbalance Service. Generator Imbalance Service, currently provided as part of Rate Schedule L–AS4 for Energy Imbalance Service, is a new service under the Tariff. The Ancillary Services formula rates are designed to recover only the costs incurred for providing the service(s).

Comparison of Existing and Provisional Formula Rates for Transmission and Ancillary Services

The following table displays a comparison of existing formula rates and the Provisional Formula Rates for FY 2012. These rates will be recalculated annually based on updated financial, schedule, and load data.

FORMULA RATE COMPARISON TABLE

Class of service	Provisional formula rates effective October 1, 2011 (FY 2012)	Existing formula rates effective October 1, 2010 (FY 2011)
Network Integration Transmission Service	L–NT1 Load ratio share of 1/12 of the revenue requirement of $56,775,913.	L–NT1 Load ratio share of 1/12 of the revenue requirement of $48,000,660.

FORMULA RATE COMPARISON TABLE—Continued

Class of service	Provisional formula rates effective October 1, 2011 (FY 2012)	Existing formula rates effective October 1, 2010 (FY 2011)
Firm Point-to-Point Transmission Service	L–FPT1 $3.48/kW-month	L–FPT1 $3.18/kW-month Unauthorized Use Penalty of 150% of demand charge, with a maximum of monthly service.
Non-Firm Point-to-Point Transmission Service	L–NFPT1 Maximum of 4.77 mills/kWh.	L–NFPT1 Maximum of 4.17 mills/kWh Unauthorized Use Penalty of 150% of demand charge, with a maximum of monthly service.
Unreserved Use Penalties	L–UU1 Penalized 200% of demand charge, with a maximum of monthly service.	Provided Under Rate Schedules L–FPT1 and L–NFPT1 as Unauthorized Use.
Transmission Losses Service	L–AS7 Transmission losses may be settled either financially or with energy. Insufficient losses supplied will be settled financially by default. All customers will have the option to return the loss obligation for both prescheduled and real-time transactions 7 days later, same profile. Pricing used is WACM weighted average hourly purchase price. Current loss factor as posted is 4.5%.	L–AS7 Transmission losses may be settled either financially or with energy. Insufficient losses supplied will be settled financially by default. All customers will have the option to return the loss obligation for both prescheduled and real-time transactions 7 days later, same profile. Pricing used is LAP weighted average hourly real-time purchase price. Current loss factor as posted is 4.5%.
Scheduling, System Control, and Dispatch Service	L–AS1 $24.22 per schedule per day for non-Federal transmission customers. Not applicable to schedules for delivery of Losses to WACM.	L–AS1 $38.30 per tag per day for non-Federal transmission customers. Applicable to all tags.
Reactive Supply and Voltage Control from Generation or Other Sources Service	L–AS2 $0.305/kW-month.	L–AS2 $0.180/kW-month.
Regulation and Frequency Response	L–AS3 $0.331/kW-month.	L–AS3 $0.339/kW-month.
Energy Imbalance Service	L–AS4 —Imbalances less than or equal to 1.5% (minimum 4 MW) of metered load settled using WACM hourly pricing with no penalty. Imbalances between 1.5% and 7.5% (minimum 4 MW to 10 MW) of metered load settled using WACM hourly pricing with a 10% penalty. —Imbalances greater than 7.5% (minimum 10 MW) of metered load settled using WACM hourly pricing with a 25% penalty. —WACM aggregate imbalance determines pricing in all bands—aggregate surplus dictates sale pricing, aggregate deficit dictates purchase pricing.	L–AS4 —Imbalances less than or equal to 5% (minimum 4 MW) of metered load settled using WACM hourly pricing with no penalty. —Imbalances greater than 5% of metered load settled using WACM hourly pricing with a 10% penalty. —WACM aggregate imbalance dictates pricing in no-penalty band. Customer imbalance dictates pricing in penalty band (surpluses indicate sale pricing, deficits indicate purchase pricing). —Intermittent resources not subject to penalties.
Operating Reserve Service—Spinning and Supplemental	L–AS5, L–AS6 Long-term Reserves are not available from WACM. Reserves may be acquired and provided at pass-through cost, plus an amount for administration.	L–AS5, L–AS6 Long-term Reserves are not available from WACM. Reserves may be acquired and provided at pass-through cost, plus an amount for administration.

FORMULA RATE COMPARISON TABLE—Continued

Class of service	Provisional formula rates effective October 1, 2011 (FY 2012)	Existing formula rates effective October 1, 2010 (FY 2011)
Generator Imbalance Service	L–AS9 —Imbalances less than or equal to 1.5% (minimum 4 MW) of metered generation settled using WACM hourly pricing with no penalty. —Imbalances between 1.5% and 7.5% (minimum 4 MW to 10 MW) of metered generation settled using WACM hourly pricing with a 10% penalty. —Imbalances greater than 7.5% (minimum 10 MW) of metered generation settled using WACM hourly pricing with a 25% penalty. —Intermittent resources not subject to 25% penalties. —WACM aggregate imbalance determines pricing in all bands—aggregate surplus dictates sale pricing, aggregate deficit dictates purchase pricing.	Provided under Rate Schedule L–AS4.

Certification of Rates

Western's Administrator certified that the Provisional Formula Rates for LAP Transmission and WACM Ancillary Services under Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, and L–UU1 are the lowest possible rates consistent with sound business principles. The Provisional Formula Rates were developed following administrative policies and applicable laws.

LAP Transmission Service Discussion

Network Integration Transmission Service

The monthly charge for Network Integration Transmission Service for the Transmission Customer will be as follows:

$$\text{Monthly Charge} = \text{Customer Load Ratio Share} \times \frac{\text{ATRR}}{12}$$

The customer's load-ratio share is the ratio of its network load to the LAP Transmission System Total Load at the LAP system peak. This is calculated on a rolling 12-month average (12 coincident peak average or 12-cp).

Firm Point-to-Point Transmission Service

The formula rate for Firm Point-to-Point Transmission Service is as follows:

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{ATRR}}{\text{12-month average of the LAP Transmission System Total Load}}$$

The rates for FY 2012 are as follows:

The rates for FY 2012 are as follows:

Yearly Delivery: $41.80/kW of reserved capacity per year $= \frac{\$56,775,913}{1,358,342 \text{ kW}}$

Monthly Delivery: $3.48/kW of reserved capacity per month.
Weekly Delivery: $0.80/kW of reserved capacity per week.
Daily Delivery: $0.11/kW of reserved capacity per day.

Discussions of the ATRR and the LAP Transmission System Total Load are located below.

Non-Firm Point-to-Point Transmission Service

The maximum Non-Firm Point-to-Point Transmission Service formula rate is the same as the Firm Point-to-Point Transmission Service rate. Non-Firm Point-to-Point Transmission Service is available for periods ranging from 1 hour to 1 year.

Maximum Hourly Non-Firm Rate: 4.77 mills/kW of reserved capacity per hour.

Annual Transmission Revenue Requirement

The ATRR is applicable to both Network and Point-to-Point Transmission Service. The ATRR is the annual cost of the LAP Transmission System, adjusted for revenue credits, costs that increase the capacity available for transmission, other miscellaneous charges or credits, and the prior year true-up. The formula, with amounts calculated for the FY 2012 rate, is as follows:

Annual Transmission Revenue Requirement	=	Annual Cost of Transmission System	+	System Augmentation Expense	-	Scheduling and Dispatch Revenue Credits	-	Point-to-Point Transmission Revenue Credits	+/-	Misc Charges/ Credits	+/-	Prior Year True-Up
Annual Transmission Revenue Requirement	=	$66,533,166	+	$-0-	-	$694,016	-	$9,063,237	-	$-0-	+	$-0-
Annual Transmission Revenue Requirement	=	$56,775,913										

The annual cost of the LAP Transmission System is the ratio of gross investment cost for transmission facilities to gross investment cost for all facilities multiplied by the total annual costs for all facilities. Total annual costs include operations and maintenance, interest, and depreciation expenses. The calculation, with amounts for FY 2012, is as follows:

$$\text{Annual Cost of Transmission System} = \frac{\text{Gross Investment Cost for Transmission Facilities}}{\text{Gross Investment Cost for All Facilities}} \times \text{Total Annual Costs for All Facilities}$$

$$\text{Annual Cost of Transmission System} = \frac{\$527{,}853{,}417}{\$715{,}485{,}652} \times \$90{,}183{,}229$$

$$\text{Annual Cost of Transmission System} = \$66{,}533{,}166$$

The source for the annual costs is the formalized work plans for FY 2012 and the FY 2010 Results of Operations for P–SMBP—WD, with certain items adjusted for projected asset capitalization or historical trends. See discussion below on ''Change to Forward-Looking Transmission Rates.''

The gross investment cost for transmission facilities is determined by an analysis of the LAP Transmission System. Each LAP facility is classified by function: Transmission, sub-transmission, distribution, or generation-related. The facilities identified as performing the function of transmission include all transmission lines that are normally operated in a continuously-looped manner and the associated substations and switchyard facilities. In the LAP Transmission System, these are primarily the 115-kV and the 230-kV transmission lines. In addition, portions of the communication, maintenance, and administration facilities are included in the investment costs for transmission. Only the investment costs of the facilities identified as ''transmission'', including allocated costs for communication, maintenance, and administration facilities, are used in developing the annual cost of the transmission system. The investment costs of facilities identified as ''sub-transmission'' and ''distribution'' are excluded from the ATRR, as the LAP sub-transmission and distribution systems are used primarily for delivery of Federal power to Federal Customers. If a Transmission Customer requires the use of the sub-transmission or distribution systems, an additional facility-use charge will be assessed. All Fry-Ark costs are considered generation-related and, therefore, are excluded from the ATRR.

System augmentation expense includes payments made to others for their systems' augmentation of the LAP

Transmission System. Miscellaneous charges and credits will include, but will not be limited to, Unreserved Use Penalties and facility use charges for transmission facility investments included in the revenue requirement. For a description of the prior year true-up, see discussion below on ''Change to Forward-Looking Transmission Rates.''

Change to Forward-Looking Transmission Rates

Western has changed the method it uses to calculate the ATRR to recover transmission expenses and investments on a current basis rather than a historical basis. The change allows Western to more accurately match cost recovery with cost incurrence. Western will use projections to estimate transmission costs and load for the upcoming year in the annual rate calculation, rather than using historical information. The method is a change in the manner in which the inputs for the rate are developed, rather than a change to the formula rate itself. When actual cost information for a year becomes available, Western will calculate the actual revenue requirement for that year. Revenue collected in excess of the actual revenue requirement will be included as a credit in the ATRR in a subsequent year. Similarly, any under-collection of the revenue requirement will be included as a charge in the ATRR in a subsequent year. This true-up procedure will ensure that Western recovers no more and no less than the actual transmission costs for any year. For example, as FY 2012 actual financial data becomes available during FY 2013, the under- or over-collection of revenue during FY 2012 can be determined. When the rates are recalculated for FY 2014, the implemented rates will include an adjustment for revenue under- or over-collected in FY 2012.

Transmission System Total Load for Point-to-Point Service

The LAP Transmission System Total Load is a 12-month average of the sum of (1) All Network Integration Transmission Service customer loads in excess of deliveries of Federal Entitlements, measured at the monthly LAP Transmission System peak hour, plus (2) the monthly entitlements of Federal Customers, plus (3) the reserved capacity for Long-Term Firm Point-to-Point Transmission Service. This load calculation is prepared once annually and is used to calculate the point-to-point rates for the entire year.

The LAP Transmission System Total Load is calculated as follows, based upon data projected for FY 2012:

Federal Customers	604,639 kW
Network Transmission Customers	743,818 kW
Subtotal	1,348,457 kW
Point-to-Point Reserved Capacity	9,885 kW
LAP Transmission System Total Load	1,358,342 kW

Unreserved Use Penalties

Unreserved use of the transmission system (Unreserved Use) occurs when a Transmission Customer uses transmission service that exceeds its reserved capacity or an eligible customer uses transmission service that it has not reserved. Western will assess Unreserved Use Penalties against a customer that has not secured reserved capacity or exceeds its reserved capacity at any point of receipt or any point of delivery. Unreserved Use may also include a Transmission Customer's failure to curtail transmission when requested.

A customer that engages in Unreserved Use will be assessed a penalty charge of 200 percent of LAP's approved transmission service rate for Firm Point-to-Point Transmission Service as follows:

(1) The Unreserved Use penalty for a single hour of Unreserved Use will be based upon the rate for daily Firm Point-to-Point Service.

(2) The Unreserved Use penalty for more than one assessment for a given duration (*e.g.,* daily) will increase to the next longest duration (*e.g.,* weekly).

(3) The Unreserved Use penalty charge for multiple instances of Unreserved Use (*e.g.,* more than one hour) within a day will be based on the rate for daily Firm Point-to-Point Service. Multiple instances of Unreserved Use isolated to one calendar week will result in a penalty based on the charge for weekly Firm Point-to-Point Service. The penalty charge for multiple instances of Unreserved Use during more than one week during a calendar month will be based on the charge for monthly Firm Point-to-Point Service.

A Transmission Customer that exceeds its firm reserved capacity at any point of receipt or point of delivery or an eligible customer that uses transmission service at a point of receipt or point of delivery that it has not reserved will be required to pay, in addition to the Unreserved Use Penalties, for all applicable Ancillary Services identified in Western's Tariff based on the amount of transmission service it used and did not reserve.

Unreserved Use Penalties collected over and above the base Point-to-Point Transmission Service rate will be included as a credit in the calculation of the ATRR in a subsequent year.

Transmission Losses Service

Transmission Losses are assessed for all real-time and prescheduled transactions on transmission facilities inside WACM. In the case of Network Integration Transmission Service Customers, transmission and transformer Losses applicable under customers' respective contracts are calculated as part of the customers' Energy Imbalance Service settlements. Other customers are allowed the option of financial settlement or energy repayment. Energy repayment is either concurrently or 7 days later, to be delivered using the same profile as the related transmission transaction. When a transmission loss energy obligation is not provided (or is under-provided) by a customer for a transmission transaction, the energy still owed for Losses is calculated and a charge is assessed to the customer, based on the WACM weighted average hourly purchase price. The loss factor, currently 4.5 percent, is updated periodically and posted on the RMR OASIS Web site.

Transmission Service Comments

RMR received no comments concerning transmission service, Unreserved Use Penalties, or Transmission Losses during the public consultation and comment period.

Ancillary Services Discussion

Pursuant to Western's Tariff, WACM will offer seven Ancillary Services. Two of these services, SSCD Service and VAR Support Service, are services that, under Western's Tariff, the Transmission Provider is required to provide (or offer to arrange with the Balancing Authority operator) and the Transmission Customer is required to purchase.

The other five Ancillary Services, Regulation Service, Energy Imbalance Service, Generator Imbalance Service, Operating Reserve—Spinning Reserve Service, and Operating Reserve—Supplemental Reserve Service, are services that the Transmission Provider is required to *offer* to provide to the Transmission Customer. The Transmission Customer is required to acquire these Ancillary Services, either from the Transmission Provider or from a third party, or to self-supply them.

Scheduling, System Control, and Dispatch Service

The formula for SSCD Service, with amounts shown for FY 2012, is as follows:

$$\text{Rate per Schedule} = \frac{\text{Annual Cost of Scheduling Personnel and Related Costs}}{\text{Number of Schedules per Year, excluding Schedules for Delivery of Losses to WACM}}$$

$$\text{Rate per Schedule} = \frac{\$3{,}094{,}350}{127{,}778 \text{ Schedules}}$$

$$\text{Rate per Schedule} = \$24.22$$

This rate recovers the annual expenses associated with transmission scheduling. The annual cost of scheduling personnel and related costs is comprised of annual expenses for personnel, facilities, equipment, and software, as well as credits representing fees for agent services and unscheduled flow mitigation services. This revenue requirement is divided by the number of schedules (excluding schedules for delivery of losses to WACM) per year to derive a rate per schedule per day.

Per Schedule 1 of Western's Tariff, ''this service can be provided only by the operator of the Control Area in which the transmission facilities used for transmission service are located.'' In cases in which the Transmission Provider (LAP and/or CRSP) directly provides the service as the Control Area operator, the costs for this service are bundled in the respective Federal transmission rate. In cases in which the Transmission Providers on the schedules are not the operator, WACM indirectly performs this service for those Transmission Providers' transmission systems. Western has historically invoiced the *last* Transmission Provider that is inside WACM on the schedule. Since all non-Federal Transmission Providers are indirectly taking this service from WACM, Western will allocate the cost of each schedule equally among *all* Transmission Providers (Federal and non-Federal) listed on the schedule that are inside WACM. The Federal transmission segments will be exempt from invoicing, as costs for these segments will continue to be included in the Federal (LAP and CRSP) transmission service rates.

Western will not include schedules for delivery of transmission losses to WACM in the calculation of the rate and will not invoice for them, so that entities delivering losses may create individual loss schedules associated with specific transactions without charge. Western will accept any number of schedule changes over the course of a day, without additional charge, so that entities attempting to follow their loads closely may do so without penalty.

Reactive Supply and Voltage Control From Generation or Other Sources Service

The formula for VAR Support Service is the following:

$$\text{VAR Support Rate} = \frac{\text{TARRG} \times \text{\% of Resource}}{\text{Load Requiring VAR Support}}, \text{ where}$$

TARRG = Total Annual Revenue Requirement for Generation.

% of Resource = Percentage of Resource Used for VAR Support.

The numerator captures the percentage of annual generation plant costs that are used for this service. Most of the LAP generation plant facilities are owned and operated by Reclamation, but Western has some facilities that are considered generation-related. Net generation plant costs are multiplied by a fixed charge rate (FCR) for generation to determine the TARRG, where

$$FCR = \frac{\text{Annual Operation \& Maintenance Expenses} + \text{Annual Depreciation Expenses}}{\text{Net Total Plant Investment}} + \frac{\text{Annual Interest Expenses}}{\text{Unpaid Balances}}$$

The FCR is a methodology used to assign a portion of total expenses to generation. Applying these formulas to FY 2010 data provides the following results:

$$FCR = \frac{\$42{,}446{,}705 + \$739{,}534}{\$376{,}063{,}242} + \frac{\$16{,}450{,}805}{\$246{,}301{,}546}$$

$$FCR = 17.847\%$$

Applying this percentage to the amount of net generation plant investment results in the TARRG:

TARRG = $334,166,538 × 17.847% = $59,638,020

The percentage of the TARRG that is included in the revenue requirement is based on the nameplate capability of the generating units with regard to reactive and real power production. The TARRG is multiplied by the complement of the weighted average power factor rating for generating units. The weighted average power factor rating for the LAP generating units is 94.77 percent, so the revenue requirement for this rate includes 5.23 percent of the TARRG. The portion of the revenue requirement contributed by LAP plant costs is as follows:

LAP Plant Costs = $59,638,020 × 5.2284% = $3,118,089

Plant costs for CRSP plants providing VAR Support Service are calculated using identical methodology. The contribution to the revenue requirement from CRSP plants is $1,539,255. The total revenue requirement, after adjusting for a small amount of VAR Support Service revenue on point-to-point transmission transactions not in the rate design, is as follows:

LAP Plant Costs	$3,118,089
CRSP Plant Costs	1,539,255
PTP Revenue	*(53,525)*
Revenue Requirement	4,603,819

The load taking this service totals 1,258,524 kW, resulting in a proposed rate for FY 2012 of:

$$\text{VAR Support Rate} = \frac{\$4{,}603{,}819}{1{,}258{,}524\ \text{kW}}$$

$$\text{VAR Support Rate} = \$3.658\ /\ \text{kW-year}$$
$$\text{VAR Support Rate} = \$0.305\ /\ \text{kW-month}$$

The rate is applicable to all transmission transactions inside WACM in excess of any Federal Entitlements. For Federal Entitlements, the cost for this service will be included in the firm electric service rates. Customers with generators providing WACM with VAR Support Service may be excluded from the application of this rate. Any such exclusion must be documented in the customer's Service Agreement.

Regulation and Frequency Response Service

The formula rate for Regulation Service has two different applications:

Load-based Assessment

The formula for the Load-based Assessment is as follows:

$$\text{Regulation Service Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation Service}}{\text{Load in WACM Requiring Regulation Service Plus the Installed Nameplate Capacity of Intermittent Generators Serving Load Inside WACM}}$$

The rate applies to all entities' auxiliary load (total metered load less Federal Entitlements) and also to the installed nameplate capacity of intermittent generators serving load inside WACM.

The revenue requirement will include costs such as plant costs, purchases of a regulation product, purchases of power in support of the generating units' ability to regulate, purchases of transmission for regulating units that are trapped geographically inside another balancing authority, purchases of transmission required to relocate energy due to regulation/load following issues, and lost sales opportunities resulting from the requirement to generate at night to permit units to have ''down'' regulating capability.

The methodology for determining annual plant costs is as follows. First, the annual costs for plants used to regulate is calculated by multiplying the net plant costs by the FCR for generation.

Annual Costs = 17.847% × $159,716,812
Annual Costs = $28,504,334

Then, the annual cost per unit of capacity for regulating plants is calculated by dividing the annual costs for regulating plants by the capacity of those plants:

$$\text{Annual Cost per Unit of Capacity} = \frac{\$28{,}504{,}334}{472{,}550\ \text{kW}}$$

$$\text{Annual Cost per Unit of Capacity} = \$60.32\ /\ \text{kW}$$

Next, the portion of the total annual plant costs to be recovered in the Regulation Service rate is calculated by multiplying the annual unit cost by the amount of capacity required for regulation. The capacity required for regulation is subject to re-evaluation every year. Current analyses indicate that 75 MW of capacity will be required for WACM Regulation Service for FY 2012. Of this total, 55 MW will be supplied by LAP plants and 20 MW will be supplied by CRSP plants.

Regulating Plant Costs (LAP) = $60.32 × 55,000 kW

Regulating Plant Costs (LAP) = $3,317,614

CRSP regulating plant costs are calculated in a similar manner. Inserting this and other financial data for FY 2010 into the formula results in the following Revenue Requirement:

LAP Plant Costs	$3,317,614
Purchase Power Costs in Support of Regulation	5,049,193
Lost Sales Opportunities from having to generate in off-peak hours	1,320,110
Transmission Costs for Trapped Regulating Units	1,042,800
Purchases of Transmission	52,598
CRSP Plant Costs	590,429
Annual Revenue Requirement	11,372,744

The load inside WACM requiring Regulation Service and the installed nameplate capacity of intermittent resources serving load inside WACM are 2,791,390 kW and 73,220 kW, respectively.

$$\text{Rate for Load-based Assessment} = \frac{\$11{,}372{,}744}{2{,}864{,}610\ \text{kW}}$$

$$\text{Rate for Load-based Assessment} = \$\ 3.970\ /\ \text{kW-year}$$

$$\text{Rate for Load-based Assessment} = \$\ 0.331\ /\ \text{kW-month}$$

2. Self-Provision Assessment

Western allows entities with AGC to self-provide for all or a portion of their loads. Entities with AGC are known as Sub-Balancing Authorities (SBA) and must meet all of the following criteria:

a. Have a well-defined boundary, with WACM-approved revenue-quality metering, accurate as defined by NERC, to include MW flow data availability at 6-second or smaller intervals;

b. Have AGC capability; and

c. Have demonstrated Regulation Service capability.

Self-provision will be measured by use of the entity's 1-minute average ACE to determine the amount of self-provision. The ACE will be used to calculate Regulation Service charges every hour as follows:

a. If the entity's 1-minute average ACE for the hour is less than or equal to 0.5 percent of its hourly average load, no Regulation Service charges will be assessed by WACM.

b. If the entity's 1-minute average ACE for the hour is greater than or equal to 1.5 percent of its hourly average load, WACM will assess full Regulation Service charges using the Load-based Assessment applied to the entity's 12-cp load for that month.

c. If the entity's 1-minute average ACE for the hour is greater than 0.5 percent of its hourly average load, but less than 1.5 percent of its hourly average load, WACM will assess Regulation Service charges based on linear interpolation of zero charge and full charge, using the Load-based Assessment applied to the entity's 12-cp load for that month.

d. Western will monitor the entity's self-provision on a regular basis. If Western determines that the entity has not been attempting to self-regulate, Western will, upon notification, employ the full Load-based Assessment described above.

Alternative Arrangements

1. *Exporting Intermittent Resource Requirement:* An entity that exports the output from an intermittent generator to another Balancing Authority will be

required to dynamically meter or dynamically schedule that resource out of WACM to another Balancing Authority unless arrangements, satisfactory to Western, are made for that entity to acquire this service from a third party or self-supply (as outlined below). An intermittent generator is one that is volatile and variable due to factors beyond direct operational control and, therefore, is not dispatchable.

2. *Self- or Third-party supply:* Western may allow an entity to supply some or all of its required regulation, or contract with a third party to do so, even without well-defined boundary metering. This entity must have revenue quality metering at every load and generation point, accurate as defined by NERC, to include MW flow data availability at 6-second or smaller intervals. WACM will evaluate the entity's metering, telecommunications and regulating resource, as well as the required level of regulation, and determine whether the entity qualifies to self-supply under this provision. If approved, the entity will be required to enter into a separate agreement with Western, which will specify the terms of the self-supply application.

Energy Imbalance Service

WACM provides Energy Imbalance Service using a penalty and bandwidth structure with three deviation bands as follows. The term ''metered load'' is defined to be ''metered load adjusted for losses.''

1. An imbalance of less than or equal to 1.5 percent of metered load (or 4 MW, whichever is greater) for any hour will be settled financially at 100 percent of the WACM weighted average hourly price. Each hour will stand on its own—there will be no monthly netting.

2. An imbalance between 1.5 percent and 7.5 percent of metered load (or 4 to 10 MW, whichever is greater) for any hour will be settled financially at 90 percent of WACM weighted average hourly price when net energy scheduled exceeds metered load or 110 percent of the WACM weighted average hourly price when net energy scheduled is less than metered load.

3. An imbalance greater than 7.5 percent of metered load (or 10 MW, whichever is greater) for any hour will be settled financially at 75 percent of the WACM weighted average hourly price when net energy scheduled exceeds metered load or 125 percent of the WACM weighted average hourly price when net energy scheduled is less than metered load.

Aggregate Imbalance, Pricing, and Settlement

All Energy Imbalance Service provided by WACM will be accounted for hourly and settled financially after the end of each month. The WACM aggregate imbalance will determine the pricing used in all settlements, including those subject to a penalty. For each hour, the gross energy imbalance for all entities inside WACM will be totaled/netted to determine an aggregate energy imbalance for WACM. The sign of the aggregate energy imbalance will determine whether WACM sale or purchase pricing will be used for settling imbalances in that hour. A calculated surplus will dictate the use of sale pricing; a calculated deficit will dictate the use of purchase pricing.

When there are no real-time sales or purchases within an hour, pricing defaults will be applied in the following order:

1. Weighted average sale or purchase pricing for the day (on- and off-peak).
2. Weighted average sale or purchase pricing for the current month (on- and off-peak).
3. Weighted average sale or purchase pricing for the prior month (on- and off-peak).
4. Weighted average sale or purchase pricing for the month immediately prior to the prior month (and continuing in this manner until sale or purchase pricing is located) (on- and off-peak).

Expansion of the Bandwidth

Expansion of the bandwidth may be done to accommodate the following: (1) Response to physical resource loss; (2) transition of large thermal resources. Details are as follows:

1. Western will expand the bandwidth during an event established by a Western-recognized reserve-sharing group, such as the Rocky Mountain Reserve Group. A response made by a member of the reserve group will be accounted for by an after-the-fact schedule. Normally, these events are 1–2 hours in duration. Since the after-the-fact schedule replaces lost generation, no expansion will be necessary for the entity receiving the response. The expanded bandwidth will apply to the customer that increased generation in response to the event and will be based on the magnitude of that customer's generation response.

2. During transition of large base-load thermal resources (capacity greater than 200 MW) between off-line and on-line following a reserve sharing group response, Western may expand the bandwidth to eliminate all penalties during hours in which the unit generates less than the predetermined minimum scheduling level. Western may not have access to information necessary to determine these hours for some generators and will not have access to information on events for reserve sharing groups outside RMR. Customers should request bandwidth expansion in hours in which they believe it to be warranted. Western may request additional information for its decision as to whether to grant the request. Bandwidth will not be expanded when ramping services have been acquired by another entity.

Balancing Authority Operating Constraints

Western reserves the right to offer no credit for Energy Imbalance Service over-deliveries during times of WACM operating constraints, such as ''must-run'' hydrologic conditions, or times when WACM cannot dispose of surplus energy. Due to the unpredictable nature of hour-to-hour energy imbalances and the very short notice for disposition of over-deliveries, WACM may experience some hours of zero-value sales and may eliminate credits in these hours.

If WACM is unable to dispose of the entire net over-delivery and operating criteria for the Balancing Authority are not met, there may be financial sanctions to Western from reliability oversight agencies, such as NERC or WECC. In these cases, credits to customers will be eliminated and customers over-delivering may share in the cost of the sanction. Also, there may be conditions under which customers who under-deliver may share in any sanctions imposed on Western by reliability oversight agencies.

Generator Imbalance Service

WACM will provide Generator Imbalance Service to the following customers:

1. Jointly-owned generators whose output is shared by several entities. At the written request of all entities who jointly own the generator's output, WACM will accept allocations of the generation among the participants. In this situation, a participant's share of actual generation will be included in its separate Energy Imbalance calculation.

2. Intermittent generators. At the written request of the customer, WACM will include the intermittent generator(s) in the customer's Energy Imbalance calculation. The customer makes this choice with the understanding that the intermittent generator will be subject to 3rd band (25 percent) penalties (see formula rate details below).

3. Non-intermittent generators serving load only outside WACM.

An entity's solely-owned non-intermittent generator serving load inside WACM will be included in its Energy Imbalance Service calculation.

WACM will provide Generator Imbalance Service using a penalty and bandwidth structure with three deviation bands as follows:

1. An imbalance of less than or equal to 1.5 percent of metered generation (or 4 MW, whichever is greater) for any hour is settled financially at 100 percent of the WACM weighted average hourly price.

2. An imbalance between 1.5 percent and 7.5 percent of metered generation (or 4 to 10 MW, whichever is greater) for any hour is settled financially at 90 percent of the WACM weighted average hourly price when actual generation exceeds scheduled generation or 110 percent of the WACM weighted average hourly price when actual generation is less than scheduled generation.

3. An imbalance greater than 7.5 percent of metered generation (or 10 MW, whichever is greater) for any hour is settled financially at 75 percent of the WACM weighted average hourly price when actual generation exceeds scheduled generation or 125 percent of the WACM weighted average hourly price when actual generation is less than scheduled generation.

Intermittent generators will be exempt from the 25 percent penalty band. All imbalances greater than 1.5 percent of metered generation for an intermittent generator will be subject only to a 10 percent penalty.

The features of Energy Imbalance Service described above under Aggregate Imbalance, Pricing, and Settlement, Expansion of the Bandwidth, and Balancing Authority Operating Constraints, also apply to Generator Imbalance Service.

Penalty Elimination

In any hour, Western will charge a customer a penalty for either Generator Imbalance Service or Energy Imbalance Service, but not both, unless the imbalances aggravate rather than offset each other. In an hour in which penalties on offsetting imbalances would exist based on the separate imbalance calculations, Western will remove the penalty from the Generator Imbalance calculation. There will be no penalty elimination for jointly-owned generators whose participants have a separate Energy Imbalance calculation.

Administrative Charge

In the Notice of Proposed Rates (76 FR 5148), Western proposed to assess an administrative charge on each monthly settlement under both Energy Imbalance and Generator Imbalance Services. After further analysis and customer input, Western has decided not to implement an administrative charge under either service.

Operating Reserve—Spinning and Supplemental

WACM has no long-term Reserves available for sale. At a customer's request, WACM will purchase and pass through the cost of Reserves and any activation energy, plus a fee for administration. For all Reserves purchased, the customer will be responsible for providing the transmission to deliver the Reserves.

Ancillary Services Comments

Western received one written comment concerning the Ancillary Services during the public consultation and comment period. This comment has been paraphrased where appropriate, without compromising the meaning of the comment.

Comment: The customer requested that, for Regulation Service, rather than requiring an intermittent generator that exports its output to dynamically meter or dynamically schedule the generation out of WACM, Western open communications to pursue other options to avoid this requirement. The customer expressed concern about the cost of implementing this requirement and the effects the unexpected costs will have on member municipalities and their customers. The customer also noted that these additional costs were not known at the inception of its existing projects when cost analyses were being performed.

Response: Western thanks the customer for its comment. As noted above under Regulation and Frequency Response Service (Alternative Arrangements), Western has included as a part of the Regulation Service rate schedule, a condition under which an exporting intermittent generator will not have to be dynamically removed from WACM. Under this condition, the entity must make arrangements, satisfactory to Western, to acquire Regulation and Frequency Response Service from a third party or self-supply it. Western believes that this is a reasonable requirement that will not place an undue burden on existing or potential customers who will export intermittent generation from WACM, but will support the concept in Western's Tariff that WACM is required to provide Ancillary Services only for Load-Serving Entities.

Availability of Information

All brochures, studies, comments, letters, memorandums, or other documents that Western used to develop the Provisional Formula Rates are available for inspection and copying at the Rocky Mountain Regional Office, located at 5555 East Crossroads Boulevard, Loveland, Colorado. Many of these documents and supporting information are also available on Western's web site under the ''2012 Rate Adjustment—Transmission and Ancillary Services'' section located at *http://www.wapa.gov/rm/ratesRM/2012/default.htm.*

Ratemaking Procedure Requirements

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The formula rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

Order

In view of the foregoing, and under the authority delegated to me, I confirm and approve on an interim basis, effective on the first full billing period on or after October 1, 2011, formula rates for Loveland Area Projects Transmission and Western Area Colorado Missouri Balancing Authority Ancillary Services under Rate Schedules L–NT1, L–FPT1, L–NFPT1, L–AS1, L–AS2, L–AS3, L–AS4, L–AS5, L–AS6, L–AS7, L–AS9, and L–UU1. By this order, I am placing the rates into effect in less than 30 days to meet contract deadlines, to avoid financial difficulties, and to provide rates for new services. These rate schedules shall remain in effect on an interim basis, pending FERC's confirmation and approval of them or substitute formula

rates on a final basis through September 30, 2016.

Dated: September 2, 2011.

Daniel B. Poneman,
Deputy Sectretary.

Rocky Mountain Region

Western Area Colorado Missouri Balancing Authority

Scheduling, System Control, and DISPATCH SERVICE

Applicable

Scheduling, System Control, and Dispatch Service is required to schedule the movement of power into, out of, inside, or through the Western Area Colorado Missouri Balancing Authority (WACM). This service must be purchased from the WACM operator. The rate will be applied to all schedules, except those for the delivery of transmission losses to WACM.

Unless other arrangements are made with Western, the rate will be divided equally among the transmission providers displayed in the schedule that are inside WACM. The charges applicable to non-Federal transmission will be assessed to those transmission providers. The charges applicable to Federal transmission will be included in the Federal transmission service rates.

WACM will accept any number of scheduling changes over the course of the day without any additional charge.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

$$\text{Rate per Schedule} = \frac{\text{Annual Cost of Scheduling Personnel and Related Costs}}{\text{Number of Schedules per Year, excluding schedules for Delivery of Losses to WACM}}$$

Rate

The rate to be in effect October 1, 2011, through September 30, 2012, is $24.22 per schedule per day. A revised rate will go into effect October 1 of each year of the effective rate period based on the formula above and updated financial and schedule data. Western will notify the Customer annually of the revised rate before October 1.

Any change to the rate for Scheduling, System Control, and Dispatch Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Western Area Colorado Missouri Balancing Authority

Reactive Supply and Voltage Control From Generation or Other Sources Service

Applicable

To maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Colorado Missouri Balancing Authority (WACM) are operated to produce or absorb reactive power. Thus, Reactive Supply and Voltage Control from Generation or Other Sources Service (VAR Support Service) is provided for each transaction on the transmission facilities. The amount of VAR Support Service supplied to the Customer's (Federal Transmission Customers and customers on others' transmission systems inside WACM) transactions will be based on the VAR Support Service necessary to maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by WACM. The Customer must purchase this service from the WACM operator.

Customers with generators providing WACM with VAR Support Service may be excluded from the application of this rate. Any such exclusion must be documented in the Customer's service agreement.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

Total Annual Revenue Requirement for Generation = TARRG
Percentage of Resource Capacity Used for VAR Support Service = % of Resource.

$$\text{VAR Support Rate} = \frac{\text{TARRG} \times \text{\% of Resource}}{\text{Load in WACM Requiring VAR Support Service}}$$

Rate

The rate to be in effect October 1, 2011, through September 30, 2012, is:

Monthly	$0.305/kW-month
Weekly	$0.070/kW-week
Daily	$0.010/kW-day
Hourly	$0.000418/kWh

A revised rate will go into effect October 1 of each year of the effective rate period based on the formula above and updated financial and load data. Western will notify the Customer annually of the revised rate before October 1.

Any change to the rate for VAR Support Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Regulation and Frequency Response Service

Applicable

Regulation and Frequency Response Service (Regulation Service) is necessary to provide for the continuous balancing of resources with obligations, and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation Service is accomplished by committing on-line generation whose output is raised or lowered as necessary, predominantly through the use of automatic generation control (AGC) equipment, to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Colorado Missouri Balancing Authority (WACM) operator. Customers (Federal Transmission Customers and customers on others' transmission systems inside WACM) must purchase this service from WACM or make alternative comparable arrangements to satisfy their Regulation Service obligations.

Types

There are two different applications of this Formula Rate:

1. Load-based Assessment: The rate for the load-based assessment is reflected in the Formula Rate section and is applied to entities that take Regulation Service from WACM. This load-based rate is assessed on an entity's auxiliary load (total metered load less Federal entitlements) and is also applied to the installed nameplate capacity of all intermittent generators serving load inside WACM.

2. Self-provision Assessment: Western allows entities with AGC to self-provide for all or a portion of their loads. Entities with AGC are known as Sub-Balancing Authorities (SBA) and must meet all of the following criteria:

a. Have a well-defined boundary, with WACM-approved revenue-quality metering, accurate as defined by the North American Electric Reliability Corporation (NERC), to include MW flow data availability at 6-second or smaller intervals;

b. Have AGC capability;

c. Demonstrate Regulation Service capability; and

d. Execute a contract with WACM:

i. Provide all requested data to WACM.

ii. Meet SBA error criteria as described under section 2.1 below.

2.1. Self-provision is measured by use of the entity's 1-minute average Area Control Error (ACE) to determine the amount of self-provision. The ACE is used to calculate the Regulation Service charges every hour as follows:

a. If the entity's 1-minute average ACE for the hour is less than or equal to 0.5 percent of its hourly average load, no Regulation Service charge is assessed by WACM for that hour.

b. If the entity's 1-minute average ACE for the hour is greater than or equal to 1.5 percent of its hourly average load, WACM assesses Regulation Service charges to the entity's entire auxiliary load, using the hourly Load-based Assessment applied to the entity's auxiliary 12-cp load for that month.

c. If the entity's 1-minute average ACE for the hour is greater than 0.5 percent of its hourly average load, but less than 1.5 percent of its hourly average load, WACM assesses Regulation Service charges based on linear interpolation of zero charge and full charge, using the hourly Load-based Assessment applied to the entity's auxiliary 12-cp load for that month.

d. Western monitors the entity's Self-provision on a regular basis. If Western determines that the entity has not been attempting to self-regulate, WACM will, upon notification, employ the Load-based Assessment described in No. 1, above.

Alternative Arrangements

Exporting Intermittent Resource Requirement: An entity that exports the output from an intermittent generator to another balancing authority will be required to dynamically meter or dynamically schedule that resource out of WACM to another balancing authority unless arrangements, satisfactory to Western, are made for that entity to acquire this service from a third party or self-supply (as outlined below). An intermittent generator is one that is volatile and variable due to factors beyond direct operational control and, therefore, is not dispatchable.

Self- or Third-party supply: Western may allow an entity to supply some or all of its required regulation, or contract with a third party to do so, even without well-defined boundary metering. This entity must have revenue quality metering at every load and generation point, accurate as defined by NERC, to include MW flow data availability at 6-second or smaller intervals. Western will evaluate the entity's metering, telecommunications and regulating resource, as well as the required level of regulation, and determine whether the entity qualifies to self-supply under this provision. If approved, the entity is required to enter into a separate agreement with Western which will specify the terms of the self-supply application.

Customer Accommodation

For entities unwilling to take Regulation Service, self-provide it as described above, or acquire the service from a third party, Western will assist the entity in dynamically metering its loads/resources to another balancing authority. Until such time as that meter configuration is accomplished, the entity will be responsible for charges assessed by WACM under the rate in effect.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

$$\text{Regulation Service Rate} = \frac{\text{Total Annual Revenue Requirement for Regulation Service}}{\text{Load inside WACM Requiring Regulation Service Plus the Installed Nameplate Capacity of Intermittent Generators Serving Load Inside WACM}}$$

Rate

The rate to be in effect October 1, 2011, through September 30, 2012, for Nos. 1 and 2, as described above in the ''Types'' section of this rate schedule, is:

Monthly	$0.331/kW-month
Weekly	$0.076/kW-week
Daily	$0.011/kW-day
Hourly	$0.000458/kWh.

A revised rate will go into effect October 1 of each year of the effective rate period based on the formula above

and updated financial and load data. Western will notify the Customer annually of the revised rate before October 1.

Any change to the rate for Regulation Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Rocky Mountain Region

Energy Imbalance Service

Applicable

The Western Area Colorado Missouri Balancing Authority (WACM) provides Energy Imbalance Service when there is a difference between a Customer's (Federal Transmission Customers and customers on others' transmission systems inside WACM) resources and obligations. Energy Imbalance is calculated as resources minus obligations (adjusted for transmission and transformer losses) for any combination of generation, scheduled transfers, transactions, or actual load integrated over each hour. Customers inside WACM must either obtain this service from WACM or make alternative comparable arrangements to satisfy their Energy Imbalance Service obligation. This rate applies to all customers with load inside WACM.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

Imbalances are calculated in three deviation bands as follows. The term ''metered load'' is defined to be ''metered load adjusted for losses.''

1. An imbalance of less than or equal to 1.5 percent of metered load (or 4 MW, whichever is greater) for any hour is settled financially at 100 percent of the WACM weighted average hourly price.

2. An imbalance between 1.5 percent and 7.5 percent of metered load (or 4 to 10 MW, whichever is greater) for any hour is settled financially at 90 percent of the WACM weighted average hourly price when net energy scheduled exceeds metered load or 110 percent of the WACM weighted average hourly price when net energy scheduled is less than metered load.

3. An imbalance greater than 7.5 percent of metered load (or 10 MW, whichever is greater) for any hour is settled financially at 75 percent of the WACM weighted average hourly price when net energy scheduled exceeds metered load or 125 percent of the WACM weighted average hourly price when net energy scheduled is less than metered load.

All Energy Imbalance Service provided by WACM is accounted for hourly and settled financially. The WACM aggregate imbalance determines the pricing used in all deviation bands. A surplus dictates the use of sale pricing; a deficit dictates the use of purchase pricing. When no hourly data is available, the pricing defaults for sales and purchase pricing are applied in the following order:

1. Weighted average sale or purchase pricing for the day (on- and off-peak).

2. Weighted average sale or purchase pricing for the month (on- and off-peak).

3. Weighted average sale or purchase pricing for the prior month (on- and off-peak).

4. Weighted average sale or purchase pricing for the month prior to the prior month (and continuing until sale or purchase pricing is located) (on- and off-peak).

Expansion of the bandwidth may be allowed during the following instances:

- Response to the loss of a physical resource.
- During transition of large base-load thermal resources (capacity greater than 200 MW) between off-line and on-line following a reserve sharing group response, when the unit generates less than the predetermined minimum scheduling level.

During periods of balancing authority operating constraints, Western reserves the right to eliminate credits for over-deliveries. The cost to Western of any penalty assessed by a regulatory authority due to a violation of operating standards resulting from under- or over-delivery of energy may be passed through to Energy Imbalance Service customers.

Rate

The bandwidths, penalties, and pricing described above are in effect October 1, 2011, through September 30, 2012.

Any change to the rate for Energy Imbalance Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Operating Reserve—Spinning Reserve Service

Applicable

Spinning Reserve Service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The Customers (Federal Transmission Customers and customers on others' transmission system inside Western Area Colorado Missouri Balancing Authority (WACM)) must either purchase this service from WACM or make alternative comparable arrangements to satisfy their Reserves obligation.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

WACM has no long-term Reserves available for sale. At a Customer's request, WACM will purchase Reserves and pass through the cost of Reserves and any activation energy, plus a fee for administration. The Customer will be responsible for providing the transmission to deliver the Reserves.

Rocky Mountain Region

Operating Reserve—Supplemental Reserve Service

Applicable

Supplemental Reserve Service (Reserves) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load. The Customers (Federal Transmission Customers and customers on others' transmission system inside Western Area Colorado Missouri Balancing Authority (WACM)) must either purchase this service from WACM or make alternative comparable arrangements to satisfy their Reserves obligation.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

WACM has no long-term Reserves available for sale. At a Customer's request, WACM will purchase Reserves and pass through the cost of Reserves and any activation energy, plus a fee for administration. The Customer will be responsible for providing the transmission to deliver the Reserves.

Rocky Mountain Region

Transmission Losses Service

Applicable

The Western Area Colorado Missouri Balancing Authority (WACM) provides Transmission Losses Service to all

Transmission Service Providers who market transmission inside WACM. The loss factor currently in effect is posted on the Rocky Mountain Region (RMR) Open Access Same-Time Information System (OASIS) Web site.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

Transmission Losses are assessed for all real-time and prescheduled transactions on transmission facilities inside WACM. The Customer is allowed the option of energy repayment or financial repayment. Energy repayment may be either concurrently or seven days later, to be delivered using the same profile as the related transmission transaction. Customers must declare annually their preferred methodology of energy payback.

When a transmission loss energy obligation is not provided (or is under-provided) by a Customer for a transmission transaction, the energy still owed for Transmission Losses is calculated and a charge is assessed to the Customer, based on the WACM weighted average hourly purchase price.

Pricing for loss energy due 7 days later, and not received by WACM, will be priced at the 7-day-later-price based on the WACM weighted average hourly purchase price.

There will be no financial compensation or energy return to Customers for over-delivery of Transmission Losses, as there should be no condition beyond the control of the Customer that results in overpayment.

Rate

This loss factor, as posted on the RMR OASIS, is in effect October 1, 2011, through September 30, 2012. Customers may settle financially or with energy. The pricing for this service will be the WACM weighted average hourly purchase price. When no hourly data is available, pricing defaults will be applied in the following order:

1. Weighted average purchase pricing for the day (on- and off-peak).
2. Weighted average purchase pricing for the current month (on- and off-peak).
3. Weighted average purchase pricing for the prior month (on- and off-peak).
4. Weighted average purchase pricing for the month prior to the prior month (and continuing until or purchase pricing is located) (on- and off-peak).

Any change to the rate for Transmission Losses Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Loveland Area Projects

Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service

Applicable

The Transmission Customer shall compensate the Loveland Area Projects (LAP) each month for Reserved Capacity under the applicable Firm Point-to-Point Transmission Service Agreement and the rate outlined herein.

Discounts

Three principal requirements apply to discounts for transmission service as follows:

(1) Any offer of a discount made by LAP must be announced to all eligible customers solely by posting on the Rocky Mountain Region's Open Access Same-Time Information System Web site (OASIS); (2) any customer-initiated requests for discounts, including requests for use by the LAP merchant, must occur solely by posting on the OASIS; and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, LAP must offer the same discounted transmission service rate for the same time period to all eligible customers on all unconstrained transmission paths that go to the same point(s) of delivery on the transmission system.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

$$\text{Firm Point-to-Point Transmission Rate} = \frac{\text{Annual Transmission Revenue Requirement}}{\text{LAP Transmission System Total Load}}$$

Rate

The rate to be in effect October 1, 2011, through September 30, 2012, is:

	Maximum of
Yearly	$41.80/kW of reserved capacity per year.
Monthly	$ 3.48/kW of reserved capacity per month.
Weekly	$ 0.80/kW of reserved capacity per week.
Daily	$ 0.11/kW of reserved capacity per day.

A revised rate will go into effect October 1 of each year of the effective rate period based on the formula above, updated financial and load projections, and the true-up of previous projections. Western will notify the Transmission Customer annually of the revised rate before October 1.

Any change to the rate for Long-Term Firm and Short-Term Firm Transmission Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Non-Firm Point-to-Point Transmission Service

Applicable

The Transmission Customer will compensate Loveland Area Projects (LAP) for Non-Firm Point-to-Point Transmission Service under the applicable Non-Firm Point-to-Point Transmission Service Agreement and the rate outlined herein.

Discounts

Three principal requirements apply to discounts for transmission service as follows: (1) Any offer of a discount made by LAP must be announced to all eligible customers solely by posting on Rocky Mountain Region's Open Access Same-Time Information System Web site (OASIS); (2) any customer-initiated requests for discounts, including requests for use by the LAP merchant, must occur solely by posting on the OASIS; and (3) once a discount is negotiated, details must be immediately posted on the OASIS. For any discount agreed upon for service on a path, from Point(s) of Receipt to Point(s) of Delivery, LAP must offer the same discounted transmission service rate for the same time period to all eligible customers on all unconstrained

transmission paths that go to the same point(s) of delivery on the transmission system.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

$$\text{Maximum Non-Firm Point-to-Point Transmission Rate} = \text{Firm Point-to-Point Transmission Rate}$$

Rate

The rate to be in effect October 1, 2011, through September 30, 2012, is:

	Maximum of
Yearly	$41.80/kW of reserved capacity per year.
Monthly	$3.48/kW of reserved capacity per month.
Weekly	$0.80/kW of reserved capacity per week.
Daily	$0.11/kW of reserved capacity per day.
Hourly	4.77 mills/kWh.

A revised rate will go into effect October 1 of each year of the effective rate period based on the formula above, updated financial and load projections, and the true-up of previous projections. Western will notify the Transmission Customer annually of the revised rate before October 1.

Any change to the rate for Non-Firm Point-to-Point Transmission Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Annual Transmission Revenue Requirement for Network Integration Transmission Service

Applicable

Transmission Customers will compensate the Loveland Area Projects each month for Network Integration Transmission Service under the applicable Network Integration Transmission Service Agreement and the Annual Transmission Revenue Requirement described herein.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

$$\text{Monthly Charge} = \text{Transmission Customer's Load-Ratio Share} \times \frac{\text{Annual Transmission Revenue Requirement}}{12}$$

Rate

The Annual Transmission Revenue Requirement in effect October 1, 2011, through September 30, 2012, is $56,775,913.

A revised Annual Transmission Revenue Requirement will go into effect October 1 of each year of the effective rate period based on updated financial projections and the true-up of previous projections. Western will notify the Transmission Customer annually of the revised Annual Transmission Revenue Requirement before October 1.

Any change to the rate for Network Integration Transmission Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Generator Imbalance Service

Applicable

The Western Area Colorado Missouri (WACM) Balancing Authority provides Generator Imbalance Service when there is a difference between a Customer's (Federal Transmission Customers and customers on others' transmission systems inside WACM) resources and obligations. Generator Imbalance is calculated as actual generation minus scheduled generation for each hour. Customers inside WACM must either obtain this service from WACM or make alternative comparable arrangements to satisfy their Generator Imbalance Service obligation. This rate applies to all jointly-owned generators (unless arrangements are made to allocate actual generation to each individual owner), intermittent generators (unless arrangements are made to assess the intermittent generator under Rate Schedule L–AS4), and any non-intermittent generators serving load only outside WACM.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Formula Rate

Imbalances are calculated in three deviation bands as follows:

1. An imbalance of less than or equal to 1.5 percent of metered generation (or 4 MW, whichever is greater) for any hour is settled financially at 100 percent of the WACM weighted average hourly price.

2. An imbalance between 1.5 percent and 7.5 percent of metered generation (or 4 to 10 MW, whichever is greater) for any hour is settled financially at 90 percent of the WACM weighted average hourly price when actual generation exceeds scheduled generation or 110 percent of the WACM weighted average hourly price when actual generation is less than scheduled generation.

3. An imbalance greater than 7.5 percent of metered generation (or 10 MW, whichever is greater) for any hour is settled financially at 75 percent of the WACM weighted average hourly price when actual generation exceeds scheduled generation or 125 percent of the WACM weighted average hourly price when actual generation is ou . less than scheduled generation.

Intermittent generators are exempt from 25 percent penalties. All imbalances greater than 1.5 percent of metered generation are subject only to a 10 percent penalty.

All Generator Imbalance Service provided by WACM is accounted for hourly and settled financially. The WACM aggregate imbalance determines the pricing used in all deviation bands. A surplus dictates the use of sale

pricing; a deficit dictates the use of purchase pricing. When no hourly data is available, the pricing defaults for sales and purchase pricing are applied in the following order:

1. Weighted average sale or purchase pricing for the day (on- and off-peak).
2. Weighted average sale or purchase pricing for the current month (on- and off-peak).
3. Weighted average sale or purchase pricing for the prior month (on- and off-peak).
4. Weighted average sale or purchase pricing for the month prior to the prior month (and continuing until sale or purchase pricing is located) (on- and off-peak).

Expansion of the bandwidth may be allowed during the following instances:

- Response to the loss of a physical resource.
- During transition of large base-load thermal resources (capacity greater than 200 MW) between off-line and on-line following a reserve sharing group response, when the unit generates less than the predetermined minimum scheduling level.

During periods of balancing authority operating constraints, Western reserves the right to eliminate credits for over-deliveries. The cost to Western of any penalty assessed by a regulatory authority due to a violation of operating standards resulting from under- or over-delivery of energy may be passed through to Generator Imbalance Service customers.

Rate

The bandwidths, penalties, and pricing described above are in effect October 1, 2011, through September 30, 2012.

Any change to the rate for Generator Imbalance Service will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Loveland Area Projects

Unreserved Use Penalties

Applicable

The Transmission Customer shall compensate the Loveland Area Projects (LAP) each month for any unreserved use of the transmission system (Unreserved Use) under the applicable transmission service rates as outlined herein. Unreserved Use occurs when an eligible customer uses transmission service that it has not reserved or a Transmission Customer uses transmission service in excess of its reserved capacity. Unreserved Use may also include a Customer's failure to curtail transmission when requested.

Penalty Rate

The penalty rate for a Transmission Customer that engages in Unreserved Use is 200 percent of LAP's approved rate for firm point-to-point transmission service assessed as follows: The Unreserved Use Penalty for a single hour of Unreserved Use is based upon the rate for daily firm point-to-point service. The Unreserved Use Penalty for more than one assessment for a given duration (*e.g.,* daily) increases to the next longest duration (*e.g.,* weekly). The Unreserved Use Penalty for multiple instances of Unreserved Use (*e.g.,* more than one hour) within a day is based on the rate for daily firm point-to-point service. The Unreserved Use Penalty for multiple instances of Unreserved Use isolated to one calendar week is based on the rate for weekly firm point-to-point service. The Unreserved Use Penalty for multiple instances of Unreserved Use during more than one week in a calendar month is based on the rate for monthly firm point-to-point service.

A Transmission Customer that exceeds its firm reserved capacity at any point of receipt or point of delivery, or an eligible customer that uses transmission service at a point of receipt or point of delivery that it has not reserved, is required to pay for all ancillary services that were provided by the Western Area Colorado Missouri Balancing Authority and associated with the Unreserved Use. The Customer will pay for ancillary services based on the amount of transmission service it used and did not reserve.

Effective

The first day of the first full billing period beginning on or after October 1, 2011, through September 30, 2016.

Rate

The rate for Unreserved Use Penalties is 200 percent of LAP's approved rate for firm point-to-point transmission service assessed as described above.

Any change to the rate for Unreserved Use Penalties will be listed in a revision to this rate schedule issued under applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

[FR Doc. 2011–23391 Filed 9–12–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9461–6]

Proposed Administrative Settlement Agreement and Order on Consent for Removal Action for 6472 Selkirk Avenue Superfund Site (a/k/a ''Reclamation Oil Site''), Detroit, MI

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

ACTION: Notice of proposed settlement agreement and order on consent; request for public comment.

SUMMARY: Notice is hereby given that a proposed Administrative Settlement Agreement and Order on Consent for Removal Action (''AOC'') for a removal action at the 6472 Selkirk Avenue Superfund site (a/k/a ''Reclamation Oil Site'' or ''Site'') has been negotiated by the United States Environmental Protection Agency (''EPA'') and the following potentially responsible parties (''PRPs''): Univar USA Inc., SPX Corporation, BorgWarner Inc., and Ford Motor Company subject to the final review and approval of EPA and the U.S. Department of Justice.

The proposed AOC relates to the removal action at the Reclamation Oil Site to be performed by the Respondents in exchange for a covenant by EPA not to sue for EPA's Past Response Costs incurred at the Site and to require Respondents to pay only the first fifty thousand dollars ($50,000) of Future Response Costs incurred at the Site.

The Site is located at 6472 Selkirk Avenue, Detroit, Wayne County, Michigan 48211. The Site is a partially fenced lot measuring 199 by 220 feet, approximately 1 acre in size. The work to be done by the Respondents includes: removal and disposal of concrete in areas to be excavated; excavate identified contaminated soils on Site above applicable Michigan Act 451, Part 201 Direct Contact Criteria for residential sites (''Part 201''); if field screening indicates that soil contamination exceeds Part 201 requirements at the Site boundaries, continue excavation to the extent practicable; collect and analyze excavation sidewall and floor confirmation soil samples in accordance with the State of Michigan Sampling Strategies and Statistics Training Materials for Part 201; removal and disposal of a storm drain on site; backfilling and compacting of all excavations with clean soil; and revegetating the area of excavation. Soils containing fifty (50) ppm of PCBs or more will be disposed of at a TSCA-regulated landfill; all other materials

will be disposed of at a nonhazardous waste disposal facility (Michigan Type II disposal facility). This removal action will be conducted in accordance with the National Contingency Plan pursuant to Section 104(a)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (''CERCLA''), as amended, 42 U.S.C. 9604(a)(1).

EPA is negotiating the proposed AOC pursuant to its authority under Section 122 of CERCLA, 42 U.S.C. 9622. The PRPs will perform the activities EPA has determined are necessary to protect the public health and environment at the Site, which are estimated to cost approximately $1,016,863, in exchange for a covenant by EPA not to sue for Past Response Costs incurred at the Site, which are estimated to be $203,642.11, and for a requirement that the Respondents only pay the first fifty thousand ($50,000) of Future Response Costs incurred at the Site. EPA is proposing to compromise its response costs for this removal action is by approximately 25% under its ''Orphan Share Policy'' because there are a number of potentially responsible parties at the Site who are no longer financially viable and who are responsible for a substantial amount of the waste disposed of at the Site.

DATES: For thirty (30) days following the date of publication of this Notice, EPA will receive written comments relating to the cost forgiveness portions of the above referenced AOC. EPA will consider all comments received and will only approve the cost forgiveness portions of the AOC after the public comment period has ended and after it has considered all comments received.

ADDRESSES: EPA's response to any comments and the proposed AOC is available for public inspection at the EPA Superfund Record Center, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Comments and requests for copies of the proposed AOC should be addressed to Karen L. Peaceman, Associate Regional Counsel, EPA Region 5, Mail Code 14–J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590; E-mail: *Peaceman.karen@epa.gov* and should reference the 6472 Selkirk Avenue Superfund Site, Detroit, Michigan. A copy of the proposed AOC may also be found at the Detroit Public Library, 5201 Woodward Street, Detroit, MI 48202.

FOR FURTHER INFORMATION CONTACT: Karen L. Peaceman, Associate Regional Counsel, EPA Region 5, Mail Code 14–J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 353–5751.

Dated: September 6, 2011.

Richard C. Karl,

Director, Superfund Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 2011–23364 Filed 9–12–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before October 13, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via e-mail *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via e-mail *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *<http://www.reginfo.gov/public/do/PRAMain>*, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0174.

Title: Sections 73.1212, 76.1615 and 76.1715, Sponsorship Identification.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents and Responses: 22,761 respondents and 1,831,610 responses.

Estimated Time per Response: .0011 to .2011 hours.

Frequency of Response: Recordkeeping requirement; Third party disclosure; On occasion reporting requirement.

Total Annual Burden: 242,633 hours.

Total Annual Cost: $33,828.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 317 and 507 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: No need for confidentiality required.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: 47 CFR 73.1212 requires a broadcast station to identify

the sponsor of any matter transmitted for consideration.

47 CFR 76.1615 states that, when a cable operator engaged in origination cablecasting presents any matter for which consideration is provided to such cable television system operator, the cable television system operator, at the time of the telecast, shall identify the sponsor. For both sections, for advertising commercial products or services, the mention of the sponsor's name or product, when it is clear that the mention of the product constitutes sponsorship identification, is all that is required. In the case of television political advertisements concerning candidates for public office, the sponsor shall be identified with letters equal to or greater than four (4) percent of the vertical height of the television screen that airs for no less than four (4) seconds.

47 CFR 73.1212 and 76.1715 state that, with respect to sponsorship announcements that are waived when the broadcast/origination cablecast of ''want ads'' sponsored by an individual, the licensee/operator shall maintain a list showing the name, address and telephone number of each such advertiser. These lists shall be made available for public inspection.

47 CFR 73.1212 states that, when an entity rather than an individual sponsors the broadcast of matter that is of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matter in its public file.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–23341 Filed 9–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 11–1493]

Consumer Advisory Committee Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date and agenda of its Consumer Advisory Committee (Committee). The purpose of the Committee is to make recommendations to the Commission regarding consumer issues within the jurisdiction of the Commission and to facilitate the participation of all consumers in proceedings before the Commission.

DATES: The meeting of the Committee will take place on September 27, 2011, 2 p.m. to 3:30 p.m., at the headquarters of the Federal Communications Commission (FCC).

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room 6–B516 (6th Floor South Conference Room), Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Consumer and Governmental Affairs Bureau, (202) 418–2809 (voice), (202) 418–0179 (TTY), or e-mail *Scott.Marshal@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice DA 11–1493, released on September 6, 2011, announcing the agenda, date and time of the Committee's next meeting. At its September 27, 2011 meeting, the Committee will focus on administrative matters concerning the operation of its working groups including a discussion of possible issues to be addressed by the Committee at future meetings. It is anticipated that a majority of Committee members will participate via teleconference. Meetings are open to the public on site, and a limited amount of time on the agenda will be available for oral comments from the public attending in person.

The Committee is organized under, and operates in accordance with, the provisions of the Federal Advisory Committee Act, 5 U.S.C., App. 2 (1988). A notice of each meeting will be published in the **Federal Register** at least fifteen (15) days in advance of the meeting. Records will be maintained of each meeting and made available for public inspection. Members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee. *scott.marshall@fcc.gov.*

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, assistive listening devices, and Braille copies of the agenda and handouts will be provided on site.

Other reasonable accommodations for people with disabilities are available upon request. The request should include a detailed description of the accommodation needed and contact information. Please provide as much advance notice as possible; last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Federal Communications Commission.

Joel Gurin,

Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2011–23268 Filed 9–12–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: September 6, 2011.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10393	CreekSide Bank	Woodstock	GA	9/2/2011
10394	Patriot Bank of Georgia	Cumming	GA	9/2/2011

[FR Doc. 2011–23345 Filed 9–12–11; 8:45 am]

BILLING CODE 6714–01–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 October 7, 2011.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Trade Street Holdings, LLC, Trade Street BFHI Holdings, LLC,* both in Aventura, Florida, and Florida Carpenters Regional Council Pension Fund, Hialeah, Florida; to become bank holding companies by acquiring 52.41 percent of the voting shares of Broward Financial Holdings, Inc., and its subsidiary, Broward Bank of Commerce, both in Fort Lauderdale, Florida.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Equity Bancshares, Inc.,* Wichita, Kansas; to acquire 100 percent of the voting shares of the University National Bank of Lawrence, Lawrence, Kansas.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *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, September 8, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–23321 Filed 9–12–11; 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 28, 2011.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Investors Bancorp, MHC and Investors Bancorp, Inc., both of Short Hills, New Jersey; to acquire BFS Bancorp, MHC, Brooklyn Federal Bancorp, Inc., and Brooklyn Federal Savings Bank, all in Brooklyn, New York, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–23322 Filed 9–12–11; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 111 0103]

DaVita, Inc.; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 5, 2011.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''DaVita, Inc., File No. 111 0103'' on your comment, and file your

comment online at *https://ftcpublic.commentworks.com/ftc/davitaconsent,* by following the instructions on the Web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lisa D. DeMarchi Sleigh (202–326–2535), FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 2, 2011), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before October 5, 2011. Write ''DaVita, Inc., File No. 111 0103'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/davitaconsent* by following the instructions on the Web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''DaVita, Inc., File No. 111 0103'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before October 5, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from DaVita Inc. (''DaVita''). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from DaVita's purchase of CDSI I Holding Company, Inc. (''DSI''). Under the terms of the Consent Agreement, DaVita is required to divest 28 dialysis clinics and terminate one management contract in 22 markets across the United States.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or make it final.

Pursuant to an agreement dated February 4, 2011, DaVita proposes to acquire DSI for approximately $689 million. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition for the provision of outpatient dialysis services in 22 markets.

The Parties

Headquartered in Denver, Colorado, DaVita is the second largest provider of outpatient dialysis services in the United States. DaVita operates 1,612 outpatient dialysis clinics in 42 states and the District of Columbia at which approximately 125,000 end stage renal disease (''ESRD'') patients receive treatment. In 2010 DaVita's revenues were approximately $7.63 billion.

DSI, headquartered in Nashville, Tennessee, is a privately held company and the fifth largest provider of outpatient dialysis services in the United States. DSI operates 106 dialysis centers, providing dialysis services to approximately 8,000 patients in 23 states.

Outpatient Dialysis Services

Outpatient dialysis services is the appropriate relevant product market in which to assess the effects of the proposed transaction. For patients suffering from ESRD, dialysis treatments are a life-sustaining therapy that replaces the function of the kidneys by removing toxins and excess fluid from the blood. Most ESRD patients receive dialysis treatments three times per week in sessions lasting between three and five hours. Kidney transplantation is the only alternative to dialysis for ESRD patients. However, the wait-time for donor kidneys—during which ESRD patients must receive dialysis treatments—can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, many ESRD patients have no alternative to ongoing dialysis treatments.

The relevant geographic markets for the provision of dialysis services are local in nature. They are limited by the distance ESRD patients are willing and/or able to travel to receive dialysis treatments. Most ESRD patients are quite ill and suffer from multiple health problems. As such, it is difficult for ESRD patients to travel long distances for dialysis treatment. Generally, ESRD patients are unwilling and/or unable to travel further than 30 miles or 30 minutes to receive dialysis treatments, depending on traffic patterns, local geography, and the patient's proximity to the nearest center. As a result, competition among dialysis clinics occurs at a local level, corresponding to metropolitan areas or subsets thereof.

Entry into the outpatient dialysis services markets addressed by the Consent Agreement on a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction is not likely to occur in a timely manner. The primary barrier to entry is the difficulty associated with locating nephrologists with established patient pools to serve as medical directors. By law, each dialysis clinic must have a nephrologist medical director. As a practical matter, medical directors are essential to the success of a clinic because they are the primary source of referrals. The lack of available nephrologists with an established referral stream is a significant barrier to entry into each of the relevant markets. Beyond that, entry is also inhibited where certain attributes (such as a rapidly growing ESRD population, a favorable regulatory environment, average or below nursing and labor costs, and a low penetration of managed care) are not present, as is the case in many of the geographic markets identified in the Commission's complaint.

Each of the geographic markets addressed by the Consent Agreement is highly concentrated. The proposed acquisition represents a merger to monopoly in one market and would cause the number of providers to drop from three to two in fifteen other markets. Additionally, concentration increases significantly in the remaining six markets addressed by the Consent Agreement. In each of these markets, the post-acquisition HHI level exceeds 3,500, and the change in HHI is more than 170. The high post-acquisition concentration levels, along with the elimination of DaVita and DSI's head-to-head competition in these markets, indicates that the combined firm would be able to exercise unilateral market power. The evidence shows that health insurance companies and other private payors who pay for dialysis services used by their members benefit from direct competition between DaVita and DSI when negotiating rates charged by dialysis providers. As a result, the proposed combination likely would result in higher prices and diminished service and quality for outpatient dialysis services in many geographic markets.

The Consent Agreement

The Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in 22 markets where both DaVita and DSI operate dialysis clinics by requiring DaVita to divest—prior to acquiring DSI—29 outpatient dialysis clinics to Dialysis Newco, Inc., a corporation formed by Frazier Healthcare and New Enterprise Associates (''Frazier/NEA'').

As part of these divestitures, DaVita is required to obtain the agreement of the medical directors affiliated with the divested clinics to continue providing physician services after the transfer of ownership to Frazier/NEA. Similarly, the Consent Agreement requires DaVita to obtain the consent of all lessors necessary to assign the leases for the real property associated with the divested clinics to Frazier/NEA. These provisions ensure that Frazier/NEA will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to ensure that the divestitures are successful. First, the Consent Agreement provides Frazier/NEA with the opportunity to interview and hire employees affiliated with the divested clinics and prevents DaVita from offering these employees incentives to decline Frazier/NEA's offer of employment. This will ensure that Frazier/NEA has access to patient care and supervisory staff who are familiar with the clinics' patients and the local physicians. Second, the Consent Agreement prevents DaVita from contracting with the medical directors (or their practice groups) affiliated with the divested clinics for three years. This provides Frazier/NEA with sufficient time to build goodwill and a working relationship with its medical directors before DaVita can attempt to capitalize on its prior relationships in soliciting their services. Third, to ensure continuity of patient care and records as Frazier/NEA implements its quality care, billing, and supply systems, the Consent Agreement allows DaVita to provide transition services for a period of 12 months. Firewalls and confidentiality agreements have been established to ensure that competitively sensitive information is not exchanged. Fourth, the Consent Agreement requires DaVita to provide Frazier/NEA with a license to use DSI's policies, procedures, and medical protocols, as well as the option to obtain DaVita's medical protocols, which will further enhance Frazier/NEA's ability to provide continuity of care to patients. Finally, the Consent Agreement requires DaVita to provide prior notice to the Commission of its planned acquisitions of dialysis clinics located in the 22 markets addressed by the Consent Agreement. This provision ensures that subsequent acquisitions do not adversely impact competition in the markets at issue and undermine the remedial goals of the proposed order.

The Commission is satisfied that Frazier/NEA is a qualified acquirer of the divested assets. Dialysis Newco, Inc. is a newly-formed company whose management has experience operating, acquiring, integrating, and developing outpatient dialysis clinics. The company has received a substantial equity investment from Frazier, a firm with a dedicated focus on healthcare, and NEA, the world's largest venture capital firm with over $10.5 billion under management.

The Commission has appointed Richard Shermer of R. Shermer & Co. as an Interim Monitor to oversee the transition service agreements, and the implementation of, and compliance with, the Consent Agreement. Mr. Shermer assists client companies undergoing regulator-mandated ownership transitions, including experience with transitions of outpatient dialysis clinics.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 2011–23305 Filed 9–12–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Meeting of the Advisory Council on Alzheimer's Research, Care, and Services

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces public meetings of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Advisory Council on Alzheimer's Research, Care, and Services will provide advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. Representatives from the Department of Health and Human Services (HHS) will present inventories of Federal activities related to Alzheimer's disease and related dementias in three areas: research, clinical care, and long-term services and support. The representatives will also identify gaps and opportunities in these areas. The Advisory Council will discuss the inventories, gaps, and opportunities, and make recommendations to the Secretary for priority areas and actions for a national plan to address Alzheimer's disease and related dementias.

Meeting Date: September 27, 2011, 9:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at Administration on Aging headquarters at 1 Massachusetts Ave., NW., Washington, DC, 20001, Room 5604/5403.

Comments: Time is allocated on the agenda to hear public comments at the end of the meeting. In lieu of oral comments, formal written comments may be submitted for the record to Helen Lamont, OASPE, 200 Independence Ave., SW., Washington, DC 20201, Room 424E. Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont (202) 690–7996, *helen.lamont@hhs.gov* **Note:** Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. Those wishing to attend the meeting must call or e-mail Dr. Lamont by Thursday September 22, 2011, so that their name may be put on a list of expected attendees and forwarded to the security officers at the Administration on Aging. Space is limited to 40 participants.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: The Advisory Council will hear presentations and provide feedback on inventories of Federal activities to address Alzheimer's disease and related dementias, gaps that can be addressed, and opportunities for collaboration. The Advisory Council is specifically charged with discussing and making recommendations to the Secretary on priorities for a national plan to address Alzheimer's disease and related dementias.

Procedure and Agenda: This meeting is open to the public. Representatives of HHS will present the inventories of Federal activities related to Alzheimer's disease and related dementias to the Advisory Council. The representatives will also identify gaps and opportunities in these areas. After each presentation, the Advisory Council will openly discuss the inventory and the findings. Interested persons may observe the discussion, but the Advisory Council will not hear public comments during this time. The Advisory Council will allow an open public session for any attendee to address issues specific to the inventories or topics that should be addressed by a national plan.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: September 8, 2011.

Sherry Glied,

Assistant Secretary for Planning and Evaluation.

[FR Doc. 2011–23465 Filed 9–9–11; 11:15 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–11–0666]

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

National Healthcare Safety Network (NHSN) (OMB No. 0920–0666) exp. 05/31/2014—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Healthcare Safety Network (NHSN) is a system designed to accumulate, exchange, and integrate relevant information and resources among private and public stakeholders to support local and national efforts to protect patients and promote healthcare safety. Specifically, the data is used to determine the magnitude of various healthcare-associated adverse events and trends in the rates of these events among patients and healthcare workers with similar risks. The data will be used to detect changes in the epidemiology of

adverse events resulting from new and current medical therapies and changing risks. The NHSN previously consisted of four components: Patient Safety, Healthcare Personnel Safety, Biovigilance, and eSurveillance. In addition, a fifth component, Long Term Care Facilities (LTCF) is included in this revision. In general, the data reported under the Patient Safety Component protocols are used to (1) determine the magnitude of the healthcare-associated adverse events under study, trends in the rates of events, in the distribution of pathogens, and in the adherence to prevention practices, and (2) to detect changes in the epidemiology of adverse events resulting from new medical therapies and changing patient risks. Additionally, reported data will be used to describe the epidemiology of antimicrobial use and resistance and to understand the relationship of antimicrobial therapy to this growing problem. Under the Healthcare Personnel Safety Component protocols, data on events—both positive and adverse—are used to determine (1) the magnitude of adverse events in healthcare personnel and (2) compliance with immunization and sharps injuries safety guidelines. Under the Biovigilance Component, data on adverse reactions and incidents associated with blood transfusions are used to provide national estimates of adverse reactions and incidents. The Long-Term Care Facility (LTCF) Component will be used to more specifically and appropriately capture data from the residents of skilled nursing facilities. In order to facilitate this reporting, seven LTCF forms were created by using forms from the Patient Safety Component as a base, with modifications to specifically address the nuances of LTC residents.

This revision submission includes the remaining three LTCF Component forms needed to facilitate healthcare-associated infection (HAI) surveillance in this setting, for which no standardized reporting methodology or mechanism currently exists. The three submitted LTCF forms along with the four previously approved LTCF forms will complete the LTCF Component. The scope of NHSN dialysis surveillance is being expanded to include all outpatient dialysis centers, so that the existing Dialysis Annual Survey can be used to facilitate prevention objectives set forth in the HHS HAI tier 2 Action Plan and to assess national practices in all Medicare-certified dialysis centers if CMS re-establishes this survey method (as expected). In addition, two new annual facility surveys will be added for Long-term Acute Care Hospitals (LTAC) and Rehabilitation Hospitals (REHAB). A CMS ruling states that these specific hospital types must begin reporting HAI surveillance. Therefore, in order to accurately capture data relevant to those specific facility types, separate annual facility surveys were created. Also within the Patient Safety Component, a new form will be added, Streamlined Ventilator-Associated Pneumonia, to provide a streamlined, objective definition via which NHSN users may detect and report cases of ventilator-associated pneumonia in adult patients only. Finally there are many updates, clarifications, and data collection revisions proposed in this submission.

The previously approved NSHN package included 48 individual collection forms; the current revision request includes six new forms for a total of 54 forms. The reporting burden will increase by 64,050 hours, for a total of 3,978,175 hours.

Healthcare institutions that participate in NHSN voluntarily report their data to CDC using a Web browser based technology for data entry and data management. Data are collected by trained surveillance personnel using written standardized protocols. Participating institutions must have a computer capable of supporting an Internet service provider (ISP) and access to an ISP. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form number and name	Type of respondents	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
57.100: NHSN Registration Form	Registered Nurse (Infection Preventionist).	6,000	1	5/60	500
57.101: Facility Contact Information	Registered Nurse (Infection Preventionist).	6,000	1	10/60	1,000
57.103: Patient Safety Component—Annual Facility Survey.	Registered Nurse (Infection Preventionist).	6,000	1	30/60	3,000
57.104: Patient Safety Component—Outpatient Dialysis Center Practices Survey.	Registered Nurse (Infection Preventionist).	5,500	1	1	5,500
57.105: Group Contact Information	Registered Nurse (Infection Preventionist).	6,000	1	5/60	500
57.106: Patient Safety Monthly Reporting Plan.	Registered Nurse (Infection Preventionist).	6,000	9	35/60	31,500
57.108: Primary Bloodstream Infection (BSI).	Registered Nurse (Infection Preventionist).	6,000	36	33/60	118,800
57.109: Dialysis Event	Staff RN	5,500	75	16/60	110,000
57.111: Pneumonia (PNEU)	Registered Nurse (Infection Preventionist).	6,000	72	32/60	230,400
57.112: Streamlined Ventilator-Associated Pneumonia.	Registered Nurse (Infection Preventionist).	6,000	144	25/60	360,000
57.114: Urinary Tract Infection (UTI)	Registered Nurse (Infection Preventionist).	6,000	27	32/60	86,400
57.116: Denominators for Neonatal Intensive Care Unit (NICU).	Staff RN	6,000	9	3	162,000
57.117: Denominators for Specialty Care Area (SCA).	Staff RN	6,000	9	5	270,000
57.118: Denominators for Intensive Care Unit (ICU)/Other locations (not NICU or SCA).	Staff RN	6,000	18	5	540,000

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Form number and name	Type of respondents	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
57.119: Denominator for Outpatient Dialysis.	Staff RN	5,500	12	6/60	6,600
57.120: Surgical Site Infection (SSI)	Registered Nurse (Infection Preventionist).	6,000	36	32/60	115,200
57.121: Denominator for Procedure	Staff RN	6,000	540	8/60	432,000
57.123: Antimicrobial Use and Resistance (AUR)—Microbiology Data Electronic Upload Specification Tables.	Laboratory Technician	6,000	12	5/60	6,000
57.124: Antimicrobial Use and Resistance (AUR)—Pharmacy Data Electronic Upload Specification Tables.	Pharmacy Technician	6,000	12	5/60	6,000
57.125: Central Line Insertion Practices Adherence Monitoring.	Registered Nurse (Infection Preventionist).	1,000	100	5/60	8,333
57.126: MDRO or CDI Infection Form	Registered Nurse (Infection Preventionist).	6,000	72	32/60	230,400
57.127: MDRO and CDI Prevention Process and Outcome Measures Monthly Monitoring.	Registered Nurse (Infection Preventionist).	6,000	24	10/60	24,000
57.128: Laboratory-identified MDRO or CDI Event.	Registered Nurse (Infection Preventionist).	6,000	240	15/60	360,000
57.130: Vaccination Monthly Monitoring Form—Summary Method.	Registered Nurse (Infection Preventionist).	6,000	5	14	420,000
57.131: Vaccination Monthly Monitoring Form—Patient-Level Method.	Registered Nurse (Infection Preventionist).	2,000	5	2	20,000
57.133: Patient Vaccination	Registered Nurse (Infection Preventionist).	2,000	250	10/60	83,333
57.137: Patient Safety Component—Annual Facility Survey for LTCF.	Registered Nurse (Infection Preventionist).	250	1	25/60	104
57.138: Laboratory-identified MDRO or CDI Event for LTCF.	Registered Nurse (Infection Preventionist).	250	8	15/60	500
57.139: MDRO and CDI Prevention Process Measures Monthly Monitoring for LTCF.	Registered Nurse (Infection Preventionist).	250	3	5/60	63
57.140: Urinary Tract Infection (UTI) for LTCF.	Registered Nurse (Infection Preventionist).	250	9	30/60	1,125
57.141: Monthly Reporting Plan for LTCF.	Registered Nurse (Infection Preventionist).	250	12	5/60	250
57.142: Denominators for LTCF Locations.	Registered Nurse (Infection Preventionist).	250	12	3	9,000
57.143: Prevention Process Measures Monthly Monitoring for LTCF.	Registered Nurse (Infection Preventionist).	250	12	5/60	250
57.150: LTAC Annual Survey	Registered Nurse (Infection Preventionist).	400	1	30/60	200
57.151: Rehab Annual Survey	Registered Nurse (Infection Preventionist).	1,000	1	25/60	417
57.200: Healthcare Personnel Safety Component Annual Facility Survey.	Occupational Health RN/Specialist	6,000	1	8	48,000
57.202: Healthcare Worker Survey	Occupational Health RN/Specialist	600	100	10/60	10,000
57.203: Healthcare Personnel Safety Monthly Reporting Plan.	Occupational Health RN/Specialist	600	9	10/60	900
57.204: Healthcare Worker Demographic Data.	Occupational Health RN/Specialist	600	200	20/60	40,000
57.205: Exposure to Blood/Body Fluids.	Occupational Health RN/Specialist	600	50	1	30,000
57.206: Healthcare Worker Prophylaxis/Treatment.	Occupational Health RN/Specialist	600	10	15/60	1,500
57.207: Follow-Up Laboratory Testing.	Laboratory Technician	600	100	15/60	15,000
57.208: Healthcare Worker Vaccination History.	Occupational Health RN/Specialist	600	300	10/60	30,000
57.209: Healthcare Worker Influenza Vaccination.	Occupational Health RN/Specialist	600	500	10/60	50,000
57.210: Healthcare Worker Prophylaxis/Treatment—Influenza.	Occupational Health RN/Specialist	600	50	10/60	5,000
57.211: Pre-season Survey on Influenza Vaccination Programs for Healthcare Personnel.	Occupational Health RN/Specialist	600	1	10/60	100

ESTIMATE OF ANNUALIZED BURDEN HOURS—Continued

Form number and name	Type of respondents	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total burden (in hours)
57.212: Post-season Survey on Influenza Vaccination Programs for Healthcare Personnel.	Occupational Health RN/Specialist ..	600	1	10/60	100
57.213: Healthcare Personnel Influenza Vaccination Monthly Summary.	Occupational Health RN/Specialist ..	6,000	6	2	72,000
57.300: Hemovigilance Module Annual Survey.	Medical/Clinical Laboratory Technologist.	500	1	2	1,000
57.301: Hemovigilance Module Monthly Reporting Plan.	Medical/Clinical Laboratory Technologist.	500	12	2/60	200
57.302: Hemovigilance Module Monthly Incident Summary.	Medical/Clinical Laboratory Technologist.	500	12	2	12,000
57.303: Hemovigilance Module Monthly Reporting Denominators.	Medical/Clinical Laboratory Technologist.	500	12	30/60	3,000
57.304: Hemovigilance Adverse Reaction.	Medical/Clinical Laboratory Technologist.	500	120	10/60	10,000
57.305: Hemovigilance Incident	Medical/Clinical Laboratory Technologist.	500	72	10/60	6,000

Total Est Annual Burden Hours: 3,978,175

Dated: September 6, 2011.

Daniel Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–23302 Filed 9–12–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Emerging Infections Programs, Funding Opportunity Announcement (FOA), CK12–1202, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., November 9, 2011 (Closed).

Place: Holiday Inn Decatur Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030, Telephone: (404) 371–0204.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Emerging Infections Programs, FOA CK12–1202.''

Contact Person for More Information: Amy Yang, Ph.D., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 498–2733.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 31, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–23300 Filed 9–12–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Family Violence Prevention and Services: Grants to States; Native American Tribes and Alaskan Native Villages; and State Domestic Violence Coalitions.

OMB No.: 0970–0280.

Description: The Family Violence Prevention and Services Act (FVPSA), 42 U.S.C. 10401 *et seq.,* authorizes the Department of Health and Human Services to award grants to States, Territories, Tribes or Tribal Organizations, and State Domestic Violence Coalitions for family violence prevention and intervention activities. The proposed information collection activities will be used to make grant award decisions and to monitor grant performance.

Respondents: State Agencies and Territories Administering FVPSA Grants; Tribal Governments and Tribal Organizations; and State Domestic Violence Coalitions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Grant Application	53	1	10	530
Tribal Grant Application	200	1	5	1,000
State Domestic Violence Coalition Application	56	1	10	560
State and Territory FVPSA Grant Performance Progress Report	57	1	10	570
Tribal FVPSA Grant Performance Progress Report	200	1	15	3,000

Estimated Total Annual Burden Hours: 5,660.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7285, *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV, Attn:* Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–23276 Filed 9–12–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3335–EM; Docket ID FEMA–2011–0001]

Maryland; Amendment No. 2 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 Maryland (FEMA–3335–EM), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* September 5, 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 September 5, 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. 2011–23354 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3339–EM; Docket ID FEMA–2011–0001]

Pennsylvania; 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 Commonwealth of Pennsylvania (FEMA–3339–EM), dated August 29, 2011, and related determinations.

DATES: *Effective Date:* August 30, 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 an emergency declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared an emergency by the President in his declaration of August 29, 2011.

The counties of Bucks, Chester, Delaware, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Sullivan, Wayne, and Wyoming for emergency protective measures (Category B), including direct federal assistance, under the Public Assistance program (already designated for emergency protective measures [Category B], limited to direct federal assistance, under the Public Assistance 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. 2011–23353 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 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: The notice of a major disaster declaration for the State of North Carolina is hereby amended 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 August 31, 2011.

Brunswick, Chowan, Columbus, Duplin, Edgecombe, Jones, Martin, Nash, Onslow, Pender, and Wilson Counties for Public Assistance.

Beaufort, Carteret, Craven, Dare, Halifax, Hyde, Lenoir, Pamlico, and Tyrrell Counties

for Public Assistance (already designated for Individual 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. 2011–23324 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; 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 North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 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 disaster is closed effective September 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. 2011–23327 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 4, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina 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 August 31, 2011.

Gates, Hertford, Johnston, Northampton, and Vance Counties for Individual Assistance.

Bertie, Brunswick, Camden, Chowan, Duplin, Edgecombe, Martin, New Hanover, Pasquotank, and Perquimans 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. 2011–23331 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4008–DR; Docket ID FEMA–2011–0001]

Kentucky; Amendment No. 2 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 Commonwealth of Kentucky (FEMA–4008–DR), dated July 25, 2011, and related determinations.

DATES: *Effective Date:* September 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: The notice of a major disaster declaration for the Commonwealth of Kentucky 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 July 25, 2011.

Bell, Knox, and Perry 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. 2011–23333 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4017–DR; Docket ID FEMA–2011–0001

Puerto Rico; 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 Commonwealth of Puerto Rico (FEMA–4017–DR), dated August 27, 2011, and related determinations.

DATES: *Effective Date:* September 3, 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 Commonwealth of Puerto Rico 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 August 27, 2011.

Arroyo, Cidra, Coamo, Humacao, Jayuya, Patillas and Ponce Municipalities for Individual Assistance.

Aguas Buenas, Comerío, Juncos, and Orocovis Municipalities for Individual Assistance (already designated for Public Assistance).

Adjuntas, Aguada, Aibonito, Añasco, Arecibo, Arroyo, Barranquitas, Bayamón, Cataño, Ciales, Cidra, Coamo, Corozal, Culebra, Fajardo, Guayama, Guynabo, Gurabo, Humacao, Jayuya, Juana Díaz, Las Piedras, Maricao, Maunabo, Naranjito, Rincón, Río Grande, Sabana Grande, Salinas, San Lorenzo, Santa Isabel, Trujillo Alto, Vieques, Yabucoa and Yauco Municipalities for Public Assistance.

Caguas and Canóvanas Municipalities for Public Assistance (already designated for Individual 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. 2011–23335 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4012–DR; Docket ID FEMA–2011–0001]

Missouri; 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 State of Missouri (FEMA–4012–DR), dated August 12, 2011, and related determinations.

DATES: *Effective Date:* August 31, 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, Michael L. Karl, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Elizabeth Turner 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. 2011–23334 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4006–DR; Docket ID FEMA–2011–0001]

New Hampshire; 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 State of New Hampshire (FEMA–4006–DR), dated July 22, 2011, and related determinations.

DATES: *Effective Date:* August 30, 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, Albert Lewis, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Craig A. Gilbert 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. 2011–23332 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 3, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina 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 August 31, 2011.

Greene and Warren Counties for Individual Assistance.

Jones, Nash, and Wilson Counties for Individual Assistance (already designated for Public Assistance).

Bertie, Camden, Greene, New Hanover, Pasquotank, Perquimans and Wayne Counties for Public Assistance.

Currituck and Pitt Counties for Public Assistance (already designated for Individual 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. 2011–23330 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 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: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the Public 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 August 31, 2011.

Halifax and Lenoir Counties for Individual 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. 2011–23323 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4019–DR; Docket ID FEMA–2011–0001]

North Carolina; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4019–DR), dated August 31, 2011, and related determinations.

DATES: *Effective Date:* September 2, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina 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 August 31, 2011.

Currituck, Pitt, and Washington Counties for Individual Assistance.

Onslow County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050; Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–23326 Filed 9–12–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal—State Class III Gaming Compact.

SUMMARY: This notice publishes an approval of the gaming compact between the Flandreau Santee Sioux Tribe and the State of South Dakota.

DATES: *Effective Date:* September 13, 2011.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. This Compact increases the number of gaming devices for which the Tribe is authorized to operate from 250 to 500.

Dated: August 31, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–23389 Filed 9–12–11; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000: HAG11–0343]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management Oregon/Washington State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian, Oregon

T. 30 S., R. 2 W., accepted August 18, 2011.
T. 20 S., R. 6 W., accepted August 18, 2011.
T. 18 S., R. 12 W., accepted August 18, 2011.
T. 16 S., R. 1 W., accepted August 29, 2011.
T. 19 S., R. 8 W., accepted August 29, 2011.
T. 13 S.,R. 6 W., accepted August 30, 2011.
T. 3 S., R. 3 E., accepted August 30, 2011.

ADDRESSES: A copy of the plats may be obtained from the Land Office at the Bureau of Land Management, Oregon/Washington State Office, 333 SW. 1st Avenue, Portland, Oregon 97204, upon required payment. A person or party who wishes to protest against a survey must file a notice that they wish to protest (at the above address) with the Oregon/Washington State Director, Bureau of Land Management, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 333 SW. 1st Avenue, Portland, Oregon 97204. 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: 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.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2011–23303 Filed 9–12–11; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[[LLCAD00000.L91310000.EI0000]

Notice of Intent to Prepare an Environmental Document and Proposed Plan Amendment for the West Mojave (WEMO) Plan, Motorized Vehicle Access Element, Inyo, Kern and Los Angeles and San Bernardino Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the *National Environmental Policy Act of 1969,* as amended (NEPA), and the *Federal Land Policy and Management Act of 1976,* as amended (FLPMA), the Bureau of Land Management (BLM) California Desert District (CDD) intends to prepare an environmental document to amend the West Mojave (WEMO) area plan. By this Notice, the BLM is announcing the beginning of the scoping process to solicit public comments.

DATES: This notice initiates the public scoping process for the environmental document and proposed plan amendment. Comments on issues may be submitted in writing until October 13, 2011. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through the local news media, newspapers, and the BLM Web site at: *http://www.blm.gov/ca/st/en/fo/cdd.html.* In order to be fully considered in the environmental document, all scoping comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the environmental document.

ADDRESSES: The public may submit comments on planning criteria and related issues, by any of the following methods:

- *E-mail: cawemopa@blm.gov.*
- *Web site: http://www.blm.gov/ca/st/en/fo/cdd/west_mojave_wemo.*
- *Fax:* (951) 697–5299.
- *Mail:* BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, ATTN: Alan Stein, Moreno Valley, CA 92553–9046.

Documents relevant to this proposal may be examined at the California Desert District Office or Web site (address above), or the BLM's California State Office, 2800 Cottage Way, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Alan Stein, telephone (951) 697–5382; address Bureau of Land Management, California Desert District Office, 22835 Calle San Juan de Los Lagos, ATTN: Alan Stein, Moreno Valley, CA 92553–9046; e-mail *cawemopa@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: The California Desert Conservation Area (CDCA) Plan of 1980 addressed public-land resources and resources use within 25-million acres of land in southern California. The 1980 CDCA Plan included 12 plan elements, including a Motorized Vehicle Element. The Motorized Vehicle Access Element of the CDCA Plan addressed both access and vehicular use of public lands in southern California, and identified management guidelines and objectives. The CDCA Plan of 1980 has been amended numerous times since it was adopted in 1982. The CDCA Plan contains language that has been judicially determined to restrict motorized routes to those that existed in 1980.

In 2006, the BLM approved a comprehensive amendment to the West Mojave area of the CDCA Plan. In a 2006 Western Mojave Record of Decision (WEMO ROD) the BLM amended the CDCA Plan and modified its motorized vehicle management decisions, including off-highway vehicle (OHV) route designation, on more than 3 million acres of public land within the CDCA. The 2006 WEMO ROD approved the designation of 5,098 miles of motorized vehicle routes without specifically changing the language of the 1980 CDCA plan.

A lawsuit was filed challenging the WEMO ROD's route designation process. In January 2011, a court order remanded the 2006 WEMO ROD to the BLM and, in part, directed the BLM to amend the CDCA Plan and reconsider route designation throughout the WEMO area. By court order, the BLM must issue a revised decision by March 31, 2014.

A plan amendment is necessary to update language in the Motorized Vehicle Access Element of the CDCA Plan. The plan amendment, and associated environmental documents, will address two components, among others: (1) Alternatives for amending the Motorized Vehicle Access Element of the CDCA Plan for the WEMO area; and (2) Alternative processes for designating travel routes within the sub-regional areas of the WEMO plan area.

The main purpose of the scoping process is to solicit public comments on the following:

1. Identification of those portions of the WEMO plan that should be revised to reflect current management policy regarding motorized vehicle access;
2. Identification of the process and decision criteria that should be used to designate routes in the sub-regional areas of the WEMO plan area;
3. Identification of motorized vehicle use issues and concerns within each sub-regional area of the WEMO plan area;
4. Identification of the best science and technology available to identify and establish viable route networks in the sub-regional areas of the WEMO plan area; and
5. Whether the BLM should analyze an amendment to the WEMO plan as it relates, primarily, to motorized vehicle use separately or in conjunction with sub-regional route designation, and alternatives to route designation.

The proposed planning effort would allow the BLM to revise portions of the Motorized Vehicle Element of the CDCA Plan to more clearly describe how motorized vehicle use will be managed in the CDCA according to current BLM policy. A primary objective of the proposed action for this plan amendment is to replace the following CDCA Plan language: ''at the minimum, use will be restricted to existing routes of travel,'' with language that reflects current BLM policy, such as restricting motorized vehicle use to designated routes. Other language from the CDCA Plan may be modified to reduce confusion and clearly state to the public where motorized vehicle use is appropriate and where it is inappropriate.

Further, subsequently, concurrently, or in a combination of both, additional environmental analysis would address current route designation within the WEMO sub-regional areas. This analysis would result in new decisions for each sub-regional area within the WEMO plan area that would either retain or modify, in whole or in part, current route designations. New route designation decisions would be issued in accordance with the route designation criteria in 43 CFR 8342.1, and in consideration of other applicable laws, regulations, and policies.

The public scoping process for this action will also determine relevant issues, impacts, and possible alternatives that could influence the scope of the environmental analysis, and guide the entire process from plan decision-making to route designation review in order to comply with the court order.

The BLM has identified the following preliminary issues of concern: Special status species, vegetation communities (including unique plant assemblages), special area designations, air quality in previously designated open areas, cultural resources, soils, springs and seeps, fringe-toed lizard habitat, and cumulative effects.

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. The scoping process will help determine whether the BLM prepares an environmental assessment or an environmental impact statement (EIS), based on the anticipated level of impacts. In the event the BLM elects to prepare an EIS, this notice satisfies the requirement in 40 CFR 1501.7 to publish a Notice of Intent to prepare an EIS.

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* (NHPA) (16 U.S.C. 470(f)), as provided for in 36 CFR 800.2(d)(3). Tribal consultations will be conducted in accordance with policy, and tribal concerns including impacts on Indian trust assets, if any, will be given due consideration. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this proposed plan amendment or implementation decisions, are invited to participate in the scoping process, and the whole of the public involvement process.

Preliminary planning criteria include the following:

1. The plan amendment will comply with FLPMA, NEPA, and all other applicable laws, regulations, and policies.
2. For program-specific guidance for decisions at the land use planning level, the process will follow the BLM's policies in the Land Use Planning Handbook, H–1601–1 and Manual Section 1626, Travel and Transportation Management.
3. Public participation and collaboration will be an integral part of the planning process.
4. The BLM will strive to make decisions in the plan compatible with

the existing plans and policies of adjacent local, State, and Federal agencies and local American Indian tribes, as long as the decisions are consistent with the purposes, policies, and programs of Federal law and regulations applicable to public lands.

5. The plan amendment will incorporate, where applicable and appropriate, management decisions brought forward from existing planning documents.

6. The BLM will work collaboratively with cooperating agencies and all other interested groups, agencies, and individuals.

7. GIS and metadata information will meet Federal Geographic Data Committee standards, as required by Executive Order 12906. All other applicable BLM data standards will also be followed.

8. The planning process will provide for ongoing consultation with American Indian tribes and strategies for protecting recognized traditional uses, e.g., gathering of traditionally used plant materials.

9. The plan amendment will focus on developing language for the WEMO area that conforms to the goals of the Motorized Vehicle Access Element of the CDCA Plan as described in the 1982 Plan Amendment #3.

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 available any time. While you can ask the BLM in your comment to withhold your personal identifying information from public release, the BLM cannot guarantee that we will be able to do so.

Thomas Pogacnik,

Deputy State Director, Natural Resources.

[FR Doc. 2011–23320 Filed 9–12–11; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Maxwell Museum of Anthropology, University of New Mexico has completed an inventory of human remains, in consultation with the appropriate Indian tribe, and has determined that there is a cultural affiliation between the human remains and a present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Maxwell Museum of Anthropology, University of New Mexico. Repatriation of the human remains to the Indian tribe stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Maxwell Museum of Anthropology, University of New Mexico at the address below by October 13, 2011.

ADDRESSES: Heather Edgar, Curator of Human Osteology, Maxwell Museum of Anthropology, University of New Mexico, MSC01 1050, 1 University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–4415.

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 in the possession of Maxwell Museum of Anthropology, University of New Mexico, Albuquerque, NM. The human remains were removed from Sandoval County, NM.

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. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Maxwell Museum of Anthropology, University of New Mexico professional staff in consultation with representatives of the Pueblo of Jemez, New Mexico.

History and Description of the Remains

Between the 1930s and 1940s, human remains representing a minimum of 189 individuals were removed from the Unshagi site (LA 123), Sandoval County, NM, during excavations by University of New Mexico field schools. The human remains were accessioned by the museum between 1973 and 1975. No known individuals were identified. No associated funerary objects are present.

Between the 1930s and 1940s, human remains representing a minimum of 78 individuals were removed from the Guisewa site (LA 679), Sandoval County, NM, during excavations by University of New Mexico field schools. The human remains were accessioned by the museum between 1973 and 1975. No known individuals were identified. No associated funerary objects are present.

Between the 1930s and 1940s, human remains representing a minimum of 65 individuals were removed from the Nonishagi site (LA 541), Sandoval County, NM, during excavations by University of New Mexico field schools. The human remains were accessioned by the museum between 1973 and 1975. No known individuals were identified. No associated funerary objects are present.

At unknown dates, human remains representing a minimum of 84 individuals were removed from various sites located in the area of ''Jemez.'' No known individuals were identified. No associated funerary objects are present.

The human remains are identified as ancestral Jemez because they came from Puebloan sites of the upper Jemez River drainage. Populations that inhabited these sites are linked by Native oral tradition, Euro-American records, and archeological evidence to members of the present-day Pueblo of Jemez, New Mexico.

Determinations Made by the Maxwell Museum of Anthropology, University of New Mexico

Officials of the Maxwell Museum of Anthropology, University of New Mexico have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of at least 416 individuals of Native American ancestry.
- 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 the Pueblo of Jemez, New Mexico.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Heather Edgar, Curator of Human Osteology, Maxwell Museum of Anthropology, University of New Mexico, MSC01 1050, 1 University of New Mexico, Albuquerque, NM 87131, telephone (505) 277–4415, before October 13, 2011. Repatriation of the human remains to the Pueblo of Jemez, New Mexico, may proceed after that

date if no additional claimants come forward.

The Maxwell Museum of Anthropology, University of New Mexico is responsible for notifying the Pueblo of Jemez, New Mexico, that this notice has been published.

Dated: September 7, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–23290 Filed 9–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: The University of Maine, Hudson Museum, Orono, ME

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Maine, Hudson Museum has completed an inventory of human remains and an associated funerary object, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary object and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object may contact The University of Maine, Hudson Museum. Repatriation of the human remains and associated funerary object to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary object should contact The University of Maine, Hudson Museum at the address below by October 13, 2011.

ADDRESSES: Susan M. Smith, Registrar, Hudson Museum, The University of Maine, 5746 Collins Center for the Arts, Orono, ME 04469–5746, telephone (207) 581–1902.

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 an associated funerary object in the possession of The University of Maine, Hudson Museum, Orono, ME. The human remains and associated funerary object were removed from Coolidge, Pinal County, AZ.

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 was made by The University of Maine, Hudson Museum professional staff and a forensic anthropologist in consultation with representatives of the Gila River Indian Community of the Gila River Indian Reservation, Arizona (on behalf of themselves and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona); and the Hopi Tribe of Arizona. The Zuni Tribe of the Zuni Reservation, New Mexico, was also contacted, but did not consult on the human remains described in this notice.

History and description of the remains

Sometime during 1929 to 1937, human remains representing a minimum of one individual were removed from the grounds of the Vah-Ki-Inn, Coolidge, Pinal County, AZ. Subsequently, the human remains came into the possession of Mr. Walter C. Smith who built and owned the inn from 1929 to 1940. In 1937, Mr. and Mrs. William C. Wells of Orono, ME, acquired the human remains from Mr. Smith. Sometime before 1994, Mr. and Mrs. Wells donated the human remains to the museum (HM1291.1). No known individual was identified. The one associated funerary object is a ceramic burial vessel (HM1291.2).

The human remains are a cremation. Burial practices, the associated funerary object, and geographical location, support a Hohokam cultural determination. This burial has been identified as being associated with the Hohokam Casa Grande Ruins Complex and is Preclassic (A.D. 800–1100).

A relationship of shared group identity can be reasonably traced between the Hohokam culture, which dates from about A.D. 300 to A.D. 1450, and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; and Tohono O'odham Nation of Arizona. These four Indian tribes are one cultural group known as the O'odham (anthropologically known as the Pima and Papago). The Pee Posh (anthropologically known as the Maricopa) are a separate and distinct culture that is present in two of the four tribes. The four tribes are separated by political boundaries designated through the adoption/assignment of reservations by the Federal Government, and not by any cultural differences. The O'odham people commonly refer to ancestors as ''the Huhugam.'' The term ''Huhugam'' refers to all of the ancestors from the first of the O'odham people to walk the earth to those who have perished during modern times. The term ''Hohokam'' is an English adaptation of the word Huhugam, and has become known in the larger society as an archeological culture. The term Huhugam is often mistaken for the word Hohokam, although the terms do not have the same meaning and are not interchangeable. The four Federally-recognized O'odham Indian tribes claim cultural affiliation to the Hohokam archeological cultures, as well as to all others present in their aboriginal claims area during the prehistory of what is now known as Arizona and Mexico. These affiliations include several other archeological cultures, including but not limited to: The Archaic, Paleo-Indian, Salado, Patayan, and Sinagua. A written report, ''*The Four Southern Tribes and the Hohokam of the Phoenix Basin,*'' given to the Hudson Museum by the Gila River Indian Community, provides a preponderance of evidence—archeological, linguistic, oral tradition, ethnographical, kinship, and biological—for a relationship of shared group identity between the Hohokam culture and the present-day O'odham.

Linguistic evidence indicates that all of the O'odham speak different dialects of the same Uto-Aztecan language. O'odham communities were historically recorded as living in the Gila River area by Jesuit missionaries in 1687. In the 1700s, when written records about the O'odham began, they occupied at least seven rancherias. At the time of European contact, the O'odham, who occupied land previously inhabited by the Hohokam, mirrored the Hohokam in many ways. The Hohokam were desert agriculturalists who developed an elaborate system of irrigation canals to irrigate their crops. At European contact, it was documented that the O'odham were also desert agriculturalists who utilized irrigation

canals and rivers. Based on scientific evidence, scholars view the complex irrigation systems of the O'odham and the Hohokam as evidence for a cultural continuity between the two that involved the ability to control mass labor in order to construct and maintain these canals. The Hohokam had a distinct settlement pattern that consisted of small farmsteads scattered throughout the landscape. The O'odham practiced this same type of settlement pattern. There was general architecture through the Hohokam Period to the historic O'odham Period that exhibited a trend from quadrangular to round structures through time. In addition, archeological and historical evidence shows that runoff farming was very common throughout the Southwest for over a millennium, until the early 20th century (Cordell, 1984). It was practiced by farmers of all the Pueblos and their ancestors as well as the Tohono O'odham and other tribes, including the Hopi and Zuni. Therefore, a relationship of shared group identity can also reasonably be traced between the Hohokam, and the Hopi and Zuni tribes.

According to Jesse Walter Fewkes, American anthropologist and archeologist, O'odham oral tradition tells us that some of the people occupying the Hohokam area migrated northward and later built pueblos in the Little Colorado Valley. The descendants of these people in due course joined the Hopi and Zuni people, with whom, according to legends, they still live. These migrations occurred in prehistoric times, and vague legends still survive among both Zuni and Hopi regarding the life of some of their clans in the south. These migration legends are supported by archeological evidence.

According to the Tumacacori National Historical Park, the Hopi Tribe of Arizona considers all of Arizona to be within traditional Hopi lands, or within those areas where Hopi clans migrated in the past. Some of the Hopi accounts promote the viewpoint of those who left for the northern pueblos (Courlander 1982, Fewkes 1920, Nequatewa 1936). There are very strong parallels between the O'odham and Hopi stories of this period in late prehistory, including not just the role of a great water serpent and a flood, but also the sacrifice of children in the flood, commemorated among the O'odham as the Children's Shrine near Santa Rosa. Resolution H–70–94 signed on May 23, 1994, by the Hopi Tribal Council declares formal cultural affinity and affiliation with the Hohokam and Salado cultural groups. According to, ''*Yep Hisat Hoopoq'yaqam Yeesiwa (Hopi Ancestors Were Once Here): Hopi Cultural Affiliation With the Ancient Hohokam of Southern Arizona,*'' a report by T. J. Ferguson, Leigh J. Kuwanwisiwma, Micah Loma'omvaya, Patrick Lyons, Greg Schachner, and Laurie Webster, the Hopi people trace their historical relationship with ancestral Hoopoq'yaqam groups who resided in the Hohokam area, using traditional history and geography, kinship, archeological materials, and on-going religious and cultural practices. This information is embedded in the traditional knowledge, religious practices and esoteric rites that the Hopi inherited from their ancestors. Corroborating evidence of a historical relationship with the Hohokam comes from ethnographic and archeological studies. Ceramic iconography, ritual artifacts and textiles constitute distinct patterns of material culture manufacture and distribution that link Hohokam and Hopi groups. According to oral tradition, Hopi clan migration supports a shared group identity with Hohokam and Salado. Modern-day ritual pilgrimage practices support that oral tradition. According to the notes of archeologist Harold S. Colton, a Hopi shrine is located near the mountain peaks in the vicinity of Phoenix. Cremation was practiced by at least one clan that migrated from the south to present-day Hopi territory.

Architectural evidence also supports a shared group identity. Hopi style kivas have been found near Safford, in the southeast corner of Arizona. Similar underground rooms are found among ruins in the Southwest, signifying ritual or cultural use by the ancient peoples of the region, including the Ancient Pueblo People and the Hohokam. Kivas first appeared about A.D. 750; these rooms are generally believed to have been used for religious and other communal purposes. Today, the Hopi and other descendants still use kivas for ceremonial, religious and other special purposes.

The ''*Zuni Policy Statement Regarding the Protection and Treatment of Human Remains and Associated Funerary Objects,*'' (November 1992), which was sent to museums in the 1990s, states that the Zuni people are culturally affiliated to earlier groups, including Hohokam and Salado. On July 11, 1995, the Zuni Tribe issued a ''*Statement of Cultural Affiliation With Prehistoric and Historic Cultures.*'' In the statement, the Zuni Tribe declared that it has a relationship of shared group identity with Hohokam and Salado culture based on oral teachings and traditions, ethno historic documentation, historic documentation, archeological documentation, and other evidence. Zuni oral tradition supports a relationship of shared group identity between the Zuni and the Hohokam and Salado. The Phoenix Basin is a part of the Zuni migration histories. Medicine societies and Kiva groups have migration histories that place them in the Phoenix Basin. Archeological evidence suggests that the structure of religious organization among the Classic Period Hohokam may have been similar to the directional priesthoods of the historic O'odham and also of the people of the Zuni Tribe (Teague 1984b).

In addition, results of a study comparing more than 60 genetic markers show a relatively close relationship between modern O'odham and the Zuni Tribe (Cavalli-Sforza 1994; *The Four Southern Tribes and the Hohokam of the Phoenix Basin*).

Determinations Made by The University of Maine, Hudson Museum

Officials of The University of Maine, Hudson Museum have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described above represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the one object described above is 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 object and the Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico (hereinafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact Susan M. Smith, Registrar, Hudson Museum, The University of Maine, 5746 Collins Center for the Arts, Orono, ME 04469–5746, telephone (207) 581–1902, before October 13, 2011. Repatriation of the human remains and associated funerary object to The Tribes may proceed after that date if no additional claimants come forward.

The Hudson Museum is responsible for notifying The Tribes that this notice has been published.

Dated: September 7, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–23293 Filed 9–12–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF INTERIOR

National Park Service

[1700–SZM]

Notice of October 3, 2011, Meeting for Acadia National Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets the date of October 3, 2011, meeting of the Acadia National Park Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Monday, October 3, 2011, at 1 p.m. (Eastern).

Location: The meeting will be held at the Schoodic Research and Education Center, Acadia National Park, Winter Harbor, Maine 04693.

Agenda: The October 3, 2011, Commission meeting will consist of the following:

1. Committee reports:

—Land Conservation
—Park Use
—Science and Education
—Historic

2. Old Business
3. Superintendent's Report
4. Chairman's Report
5. Public Comments

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288–3338.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. 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.

Dated: August 15, 2011.

Sheridan Steele,

Superintendent, Acadia National Park.

[FR Doc. 2011–23361 Filed 9–12–11; 8:45 am]

BILLING CODE 4310–2N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–JHCBLAC–0829–8304; ACCOUNT #: 1715–685]

Meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission

AGENCY: National Heritage Corridor Commission, John H. Chafee Blackstone River Valley, National Park Service, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will conduct a meeting on September 30, 2011. Members of the public may attend the meeting in person in The Museum of Work and Culture, Market Square, 42 South Main Street, Woonsocket, RI 02895.

During this meeting the Commission will convene for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

DATES: The Commission meeting will be held on September 30, 2011 from 9 a.m. to 12 p.m., Easter Daylight Time, inclusive.

Location: The Commission meeting will be conducted at the Museum of Work and Culture, Market Square, 42 South Main Street, Woonsocket, RI 02895. Telephone (401) 769–9675.

FOR FURTHER INFORMATION CONTACT: For information concerning the John H. Chafee Blackstone River Valley National Heritage Corridor Commission or to request to address the Commission, contact Jan H. Reitsma, Executive Director, John H. Chafee Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895. Tel.: (401) 762–0250. E-mail: *Jan_reitsma@nps.gov.*

SUPPLEMENTARY INFORMATION: The Commission meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. It is anticipated that about thirty people will be able to attend the session in addition to the Commission members. Opportunities for oral comment will be limited to no more than 3 minutes per speaker and no more than 15 minutes in total. The Board's Chairman will determine how time for oral comments will be allotted. Anyone may file with the Commission a written statement concerning matters to be discussed. Such requests should be made prior to the meeting. Before including your address, telephone 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.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting in the John H. Chafee Blackstone River Valley National Heritage Corridor Commission Office at One Depot Square, Woonsocket, RI 02895.

Dated: September 6, 2011.

Jan H. Reitsma,

Executive Director, BRVNHCC.

[FR Doc. 2011–23374 Filed 9–12–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF JUSTICE

Membership of the Senior Executive Service Standing Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's standing members of the Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its 2011 Senior Executive Service (SES) Standing Performance Review Boards (PRBs). The purpose of a PRB is to provide fair and impartial review of SES performance appraisals, bonus

recommendations and pay adjustments. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses and/or pay adjustments to be awarded.

FOR FURTHER INFORMATION CONTACT: Rod Markham, Director, Human Resources, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–4350.

Lee J. Lofthus,

Assistant Attorney General for Administration.

2011 FEDERAL REGISTER

Name	Position title
Office of the Attorney General—OAG	
GRINDLER, GARY	CHIEF OF STAFF.
DELERY, STUART	COUNSELOR TO THE ATTORNEY GENERAL.
MORAN, MOLLY	COUNSELOR TO THE ATTORNEY GENERAL.
RICHARDSON, MARGARET	DEPUTY CHIEF OF STAFF AND COUNSELOR.
Office of the Deputy Attorney General—ODAG	
GOLDBERG, STUART	PRINCIPAL ASSOCIATE DEPUTY ATTORNEY GENERAL.
MARGOLIS, DAVID	ASSOCIATE DEPUTY ATTORNEY GENERAL.
BAKER, JAMES	ASSOCIATE DEPUTY ATTORNEY GENERAL.
BURROWS, CHARLOTTE	ASSOCIATE DEPUTY ATTORNEY GENERAL.
REICH, STEVEN	ASSOCIATE DEPUTY ATTORNEY GENERAL.
SCHOOLS, SCOTT N	ASSOCIATE DEPUTY ATTORNEY GENERAL.
WEINER, ROBERT N	ASSOCIATE DEPUTY ATTORNEY GENERAL.
LIBIN, NANCY	CHIEF PRIVACY AND CIVIL LIBERTIES OFFICER.
OHLSON, KEVIN A	CHIEF, PROFESSIONAL MISCONDUCT REVIEW UNIT.
Office of the Associate Attorney General—OASG	
TAYLOR, ELIZABETH GORDON	PRINCIPAL DEPUTY ASSOCIATE ATTORNEY GENERAL.
CHUN, A. MARISA	DEPUTY ASSOCIATE ATTORNEY GENERAL.
GREENFELD, HELAINE ANN	DEPUTY ASSOCIATE ATTORNEY GENERAL.
HIRSCH, SAMUEL	DEPUTY ASSOCIATE ATTORNEY GENERAL.
MASON, KAROL V	DEPUTY ASSOCIATE ATTORNEY GENERAL.
CHILDRESS, MARK	SENIOR COUNSELOR FOR ACCESS TO JUSTICE.
Office of the Solicitor General—OSG	
DREEBEN, MICHAEL R	DEPUTY SOLICITOR GENERAL.
KNEEDLER, EDWIN S	DEPUTY SOLICITOR GENERAL.
STEWART, MALCOLM L	DEPUTY SOLICITOR GENERAL.
Antitrust Division—ATR	
POZEN, SHARIS	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
WAYLAND, JOSEPH F	DEPUTY ASSISTANT ATTORNEY GENERAL.
HAMMOND, SCOTT D	DEPUTY ASSISTANT ATTORNEY GENERAL.
FORREST, KATHERINE B	DEPUTY ASSISTANT ATTORNEY GENERAL.
O'SULLIVAN, CATHERINE G	CHIEF, APPELLATE SECTION.
POTTER, ROBERT A	CHIEF, LEGAL POLICY SECTION.
KURSH, GAIL	DEPUTY CHIEF, LEGAL POLICY SECTION.
ARMINGTON, ELIZABETH J	ECONOMIST ADVISOR.
BRINK, PATRICIA A	ATTORNEY ADVISOR.
CONNOLLY, ROBERT E	CHIEF, PHILADELPHIA FIELD OFFICE.
CURRIE, DUNCAN S	CHIEF, DALLAS FIELD OFFICE.
DAVIS, NEZIDA S	CHIEF, ATLANTA FIELD OFFICE.
FAMILANT, NORMAN	CHIEF, ECONOMIC LITIGATION SECTION.
GIORDANO, RALPH T	SENIOR COUNSEL FOR CRIMINAL ENFORCEMENT.
HAND, EDWARD T	CHIEF, FOREIGN COMMERCE SECTION.
HEYER, KENNETH	CHIEF, COMPETITION POLICY SECTION.
KIMMELMAN, EUGENE I	CHIEF COUNSEL FOR COMPETITION POLICY AND INTERGOVERNMENTAL RELATIONS.
KING, THOMAS D	EXECUTIVE OFFICER.
KRAMER II, J. ROBERT	DIRECTOR OF OPERATIONS.
MAJURE, WILLIAM ROBERT	DIRECTOR OF ECONOMICS.
MCEVOY, DEIRDRE A	CHIEF, NEW YORK FIELD OFFICE.
PETRIZZI, MARIBETH	CHIEF, LITIGATION II SECTION.
PHELAN, LISA M	CHIEF, NATIONAL CRIMINAL ENFORCEMENT SECTION.
PRICE JR., MARVIN N	CHIEF, CHICAGO FIELD OFFICE.
READ, JOHN R	CHIEF, LITIGATION III SECTION.
SIEGEL, MARC	DIRECTOR OF CRIMINAL ENFORCEMENT.
SOVEN, JOSHUA H	CHIEF, LITIGATION I SECTION.
TERZAKEN III, JOHN F	ATTORNEY ADVISOR.

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Name	Position title
TIERNEY, JAMES J	CHIEF, NETWORKS AND TECHNOLOGY ENFORCEMENT SECTION.
WARREN, PHILLIP H	CHIEF, SAN FRANCISCO FIELD OFFICE.
WATSON, SCOTT M	CHIEF, CLEVELAND FIELD OFFICE.
WERDEN, GREGORY J	ECONOMIST ADVISOR.
Bureau of Alcohol, Tobacco, Firearms, and Explosives—ATF	
MELSON, KENNETH	DEPUTY DIRECTOR.
CHAIT, MARK R	ASSISTANT DIRECTOR, FIELD OPERATIONS.
BOXLER, MICHAEL	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS (PROGRAMS).
CZARNOPYS, GREGORY P	DEPUTY ASSISTANT DIRECTOR, FORENSIC SERVICES.
FICARETTA, TERESA G	DEPUTY ASSISTANT DIRECTOR, ENFORCEMENT PROGRAM AND SERVICES.
FORD, WILFRED L	ASSISTANT DIRECTOR, OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION.
HERBERT, ARTHUR W	ASSISTANT DIRECTOR, ENFORCEMENT PROGRAM AND SERVICES.
HOLGATE, HENRY R	ASSISTANT DIRECTOR, SCIENCE AND TECHNOLOGY/CIO.
MARTIN, STEPHEN K	DEPUTY ASSISTANT DIRECTOR, OFFICE OF STRATEGIC INTELLIGENCE AND INFORMATION.
MCCABE III, HARRY L	DEPUTY ASSISTANT DIRECTOR, INDUSTRY OPERATIONS.
MCDERMOND, JAMES E	ASSISTANT DIRECTOR, OFFICE OF PUBLIC AND GOVERNMENTAL AFFAIRS.
MCMAHON JR., WILLIAM G	DEPUTY ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY AND SECURITY OPERATIONS.
MICHALIC, VIVIAN B	ASSISTANT DIRECTOR, MANAGEMENT AND CHIEF FINANCIAL OFFICER.
POTTER, MARK W	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS–WEST.
STINNETT, MELANIE S	ASSISTANT DIRECTOR, OFFICE OF PROFESSIONAL RESPONSIBILITY AND SECURITY OPERATIONS.
STUCKO, AUDREY M	DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCES AND PROFESSIONAL DEVELOPMENT.
TORRES, JULIE	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS–EAST.
TURK, RONALD B	DEPUTY ASSISTANT DIRECTOR, FIELD OPERATIONS–CENTRAL.
ANDERSON, GLENN N	SPECIAL AGENT IN CHARGE, NASHVILLE.
BARRERA, HUGO J	SPECIAL AGENT IN CHARGE, MIAMI.
BRANDON, THOMAS E	SPECIAL AGENT IN CHARGE, DETROIT.
BROWNING, ROBERT J	SPECIAL AGENT IN CHARGE, COLUMBUS.
CHAMPION, ROBERT R	SPECIAL AGENT IN CHARGE, DALLAS.
CRENSHAW, KELVIN N	SPECIAL AGENT IN CHARGE, SEATTLE.
DURHAM, PHILLIP M	SPECIAL AGENT IN CHARGE, NEW ORLEANS.
GANT, GREGORY K	SPECIAL AGENT IN CHARGE, ATLANTA.
GLEYSTEEN, MICHAEL P	SPECIAL AGENT IN CHARGE, KANSAS CITY.
GRAHAM, ZEBEDEE T	SPECIAL AGENT IN CHARGE, CHARLOTTE.
HERKINS, STEPHEN C	SPECIAL AGENT IN CHARGE, SAN FRANCISCO.
HOOVER, WILLIAM J	SPECIAL AGENT IN CHARGE, WASHINGTON D.C.
HORACE, MATTHEW W	SPECIAL AGENT IN CHARGE, NEWARK.
LOOS, ELEANER R	ASSOCIATE CHIEF COUNSEL, LITIGATION.
NEWELL, WILLIAM D	COUNTRY ATTACHE FOR MEXICO.
O'BRIEN, VIRGINIA T	SPECIAL AGENT IN CHARGE, TAMPA.
RICHARDSON, MARVIN G	SPECIAL AGENT IN CHARGE, DENVER.
RIEHL, JOSEPH M	DEPUTY DIRECTOR, TEDAC.
RUBENSTEIN, STEPHEN R	CHIEF COUNSEL.
STOOP, THERESA R	SPECIAL AGENT IN CHARGE, BALTIMORE.
THOMAS, GUY N	SPECIAL AGENT IN CHARGE, BOSTON.
TORRES, JOHN A	SPECIAL AGENT IN CHARGE, LOS ANGELES.
TRAVER, ANDREW L	SPECIAL AGENT IN CHARGE, CHICAGO.
VIDO, PAUL J	SPECIAL AGENT IN CHARGE, LOUISVILLE.
WEBB, JAMES D	SPECIAL AGENT IN CHARGE, HOUSTON.
ZAPOR, BERNARD J	SPECIAL AGENT IN CHARGE, ST PAUL.
Bureau of Prisons—BOP	
DALIUS JR., WILLIAM F	ASSISTANT DIRECTOR, ADMINISTRATION DIVISION.
WHITE, KIM M	ASSISTANT DIRECTOR, HUMAN RESOURCES MANAGEMENT DIVISION.
GARRETT, JUDITH	SENIOR DEPUTY ASSISTANT DIRECTOR, INFORMATION, POLICY AND PUBLIC AFFAIRS DIVISION.
GROSS, BRADLEY T	SENIOR DEPUTY ASSISTANT DIRECTOR, ADMINISTRATION DIVISION.

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Name	Position title
HOLLEMBAEK, STEPHANIE	SENIOR DEPUTY ASSISTANT DIRECTOR, HEALTH SERVICES DIVISION.
JOSLIN, DANIEL M	SENIOR DEPUTY ASSISTANT DIRECTOR, HUMAN RESOURCE MANAGEMENT DIVISION.
HYLE, KENNETH SENIOR	DEPUTY GENERAL COUNSEL, OGC.
KANE, THOMAS R	ASSISTANT DIRECTOR, INFORMATION, POLICY, AND PUBLIC AFFAIRS DIVISION.
KENNEY, KATHLEEN M	ASSISTANT DIRECTOR, OFFICE OF GENERAL COUNSEL.
EICHENLAUB, LOUIS C	REGIONAL DIRECTOR, MIDDLE ATLANTIC REGION.
KENDALL, PAUL F	SENIOR COUNSEL, OGC.
LAIRD, PAUL A	ASSISTANT DIRECTOR, INDUSTRIES, EDUCATION AND VOCATIONAL TRAINING DIVISION.
MARBERRY, HELEN J	ASSISTANT DIRECTOR, PROGRAM REVIEW DIVISION.
MITCHELL, MARY M	SENIOR DEPUTY ASSISTANT DIRECTOR, CORRECTIONAL PROGRAMS DIVISION.
SAMUELS JR., CHARLES E	ASSISTANT DIRECTOR CORRECTIONAL PROGRAMS DIVISION.
SIBAL, PHILIP	SENIOR DEPUTY ASSISTANT DIRECTOR, INDUSTRIES, EDUCATION AND VOCATIONAL TRAINING DIVISION.
BEAUCLAIR, THOMAS J	SENIOR DEPUTY DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS.
APKER JR., LIONEL C	COMPLEX WARDEN–USP, FCC, TUSCON, AZ.
THIGPEN SR., MORRIS L	DIRECTOR, NATIONAL INSTITUTE OF CORRECTIONS.
ATKINSON, KENNETH R	WARDEN, FCI, EDGEFIELD, SC.
AUGUSTINE, PAIGE A	WARDEN, FCI MARIANNA, FL.
BABCOCK, MIKE H	WARDEN, FCI, HERLONG, CA.
BERKEBILE, DAVID	WARDEN, USP, BIG SANDY, KY.
BILLINGSLEY, TERRY L	WARDEN, FCI, OTISVILLE, NY.
BLEDSOE, BRYAN A	WARDEN, USP, LEWISBURG, PA.
CARAWAY, JOHN	WARDEN, FCI, CUMBERLAND, MD.
CASTILLO, JUAN D	WARDEN, USMCFP, SPRINGFIELD, MO.
COPENHAVER, PAUL J	WARDEN, FCI, MENDOTA, CA.
CROSS JR., JAMES	WARDEN, FCI, GREENVILLE, IL.
DANIELS, CHARLES A	WARDEN–USP, FCC, FLORENCE, CO.
DAVIS, BLAKE R	COMPLEX WARDEN–ADX, FCC, FLORENCE, CO.
DEBOO, KUMA J	WARDEN, FCI, GILMER, WV.
DREW, DARLENE	WARDEN, FCI, BENNETTSVILLE, SC.
DREW, DARRYL	COMPLEX WARDEN–USP2, FCC, COLEMAN, FL.
FOX, JOHN B	COMPLEX WARDEN–USP2, FCC, BEAUMONT, TX.
GRONDOLSKY, JEFF F	WARDEN, FMC, DEVENS, MA.
HASTINGS, SUZANNE R	WARDEN, MCC, NEW YORK, NY.
HAYNES, ANTHONY	WARDEN, FCI, JESUP, GA.
HICKEY, DEBORAH A	WARDEN, FMC, LEXINGTON, KY.
HOGSTEN, KAREN F	WARDEN, FCI, MANCHESTER, KY.
HOLLINGSWORTH, LISA W	WARDEN, USP, LEAVENWORTH, KS.
HOLT, RAYMOND E	REGIONAL DIRECTOR, SOUTHEAST REGION.
HOLT, RONNIE R	WARDEN, USP, CANAAN, PA.
HUFFORD, HOWARD L	WARDEN, FCI, SCHUYLKILL, PA.
IVES, RICHARD B	WARDEN, USP, MCCREARY, KY.
JETT, BRIAN R	WARDEN, FMC, ROCHESTER, MN.
JOHNS, TRACY W	WARDEN–FCI2+LSCI, FCC, BUTNER, NC.
KASTNER, PAUL A	WARDEN, FTC, OKLAHOMA CITY, OK.
KEFFER, JOSEPH	WARDEN, FMC, CARSWELL, TX.
KELLER, JEFFERY A	WARDEN, USP, ATLANTA, GA.
LEDEZMA, HECTOR A	WARDEN, FCI, EL RENO, OK.
LOCKETT, CHARLES L	COMPLEX WARDEN–USP, FCC, TERRE HAUTE, IN.
LONGLEY, ARCHELAUS	WARDEN, FCI, MCKEAN, PA.
MALDONADO JR., GERARDO	REGIONAL DIRECTOR, SOUTH CENTRAL REGION.
MARTINEZ, JERRY C	WARDEN, MDC, GUAYNABO, PUERTO RICO.
MARTINEZ, RICARDO	WARDEN, FCC, ALLENWOOD, PA.
MCFADDEN, ROBERT E	REGIONAL DIRECTOR, WESTERN REGION.
MCGREW, LINDA T	WARDEN, FDC, MIAMI, FL.
NALLEY, MICHAEL K	REGIONAL DIRECTOR, NORTH CENTRAL REGION.
NORWOOD, JOSEPH L	REGIONAL DIRECTOR, NORTHEAST REGION.
O'BRIEN, TERENCE T	WARDEN, USP, HAZELTON, WV.
OUTLAW, TIMOTHY C	COMPLEX WARDEN, FCC, FORREST CITY, AR.
OWEN, JOHN R	WARDEN, FCI, WILLAIMSBURG, SC.
PEARSON, BRUCE A	COMPLEX WARDEN, FCC, YAZOO CITY, MS.
QUINTANA, FRANCISCO J	COMPLEX WARDEN, FCC, VICTORVILLE, CA.
RATHMAN, JOHN T	WARDEN, FCI, TALLADEGA, AL.
REVELL, SARA M	COMPLEX WARDEN-FMC, FCC, BUTNER, NC.
RIOS JR., HECTOR	WARDEN, USP, ATWATER, CA.
RIOS, RICARDO	WARDEN, FCI, PEKIN, IL.

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Name	Position title
RIVERA, MILDRED	WARDEN, FCI, ESTILL, SC.
ROY, KEITH	WARDEN, FCI, THREE RIVERS, TX.
SANDERS, LINDA L	COMPLEX WARDEN, FCC, LOMPOC, CA.
SCHULT, DEBORAH G	WARDEN, FCI, BERLIN, NH.
SHARTLE, JOHN T	WARDEN, FCI, FAIRTON, NJ.
SHERROD, WILLIAM	COMPLEX WARDEN-USP, FCC, POLLUCK, LA.
SMITH, DENNIS R	WARDEN, FCI, PHOENIX, AZ.
TERRELL, DUDLEY J	WARDEN, MDC, BROOKLYN, NY.
THOMAS, JEFFREY E	WARDEN, FCI, SHERIDAN, OR.
THOMAS, LINDA R	WARDEN, MDC, LOS ANGELES, CA.
WARNER, WENDY J	WARDEN, USP, MARION, IL.
WILSON, ERIC D	COMPLEX WARDEN, FCC, PETERSBURG, VA.
YOUNG JR., JOSEPH P	COMPLEX WARDEN, FCC, OAKDALE, LA.
ZICKEFOOSE, DONNA R	WARDEN, FCI, FORT DIX, NJ.
ZIEGLER, JOEL	WARDEN, FCI, BECKLEY, WV.
ZYCH, CHRISTOPHER	WARDEN, USP, LEE COUNTY, VA.
Civil Division—CIV	
BRINKMANN, BETH S	DEPUTY ASSISTANT ATTORNEY GENERAL.
GERSHENGORN, IAN H	DEPUTY ASSISTANT ATTORNEY GENERAL.
HERTZ, MICHAEL F	DEPUTY ASSISTANT ATTORNEY GENERAL.
ORRICK, WILLIAM H	DEPUTY ASSISTANT ATTORNEY GENERAL.
ANDERSON, DANIEL R	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
ZWICK, KENNETH L	DIRECTOR, OFFICE OF MANAGEMENT PROGRAMS.
BAXTER, FELIX V	BRANCH DIRECTOR.
BRANDA, JOYCE R	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
SMITH, MARY L	COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL.
COPPOLINO, ANTHONY J	SPECIAL LITIGATION COUNSEL.
DAVIDSON, JEANNE E	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
SNEE, BRYANT G	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
FARGO, JOHN J	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
FROST, PETER F	DIRECTOR, AVIATION AND ADMIRALTY SECTION.
GARREN, TIMOTHY PATRICK	DIRECTOR, CONSTITUTIONAL AND SPECIALIZED TORT LITIGATION SECTION.
GLYNN, JOHN PATRICK	DIRECTOR, ENVIRONMENTAL TORT LITIGATION SECTION.
GRANSTON, MICHAEL D	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
HAUSKEN, GARY L	SENIOR PATENT ATTORNEY.
HOLLIS, ROBERT MARK	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
HUGHES, TODD M	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
HUNT, JOSEPH H	BRANCH DIRECTOR.
GARVEY, VINCENT M	DEPUTY BRANCH DIRECTOR.
SHAPIRO, ELIZABETH J	DEPUTY BRANCH DIRECTOR.
HUSSEY, THOMAS W	SPECIAL IMMIGRATION COUNSEL.
KANTER, WILLIAM G	DEPUTY DIRECTOR, APPELLATE STAFF.
KIRSCHMAN JR., ROBERT E	DEPUTY DIRECTOR, COMMERCIAL LITIGATION BRANCH.
KLINE, DAVID J	DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, DISTRICT COURT.
KOHN, J. CHRISTOPHER	DIRECTOR, COMMERCIAL LITIGATION BRANCH.
KOPP, ROBERT E	DIRECTOR, APPELLATE STAFF.
LETTER, DOUGLAS N	APPELLATE LITIGATION COUNSEL.
LIEBER, SHEILA M	DEPUTY BRANCH DIRECTOR.
LOEB, ROBERT M	SENIOR LEVEL APELLATE COUNSEL.
MCCONNELL, DAVID M	DIRECTOR, OFFICE OF IMMIGRATION LITIGATION, APPELLATE SECTION.
MCINTOSH, SCOTT R	SENIOR LEVEL APELLATE COUNSEL.
O'MALLEY, BARBARA B	SPECIAL LITIGATION COUNSEL, AVIATION AND ADMIRALTY SECTION.
PYLES, PHYLLIS J	DIRECTOR, FEDERAL TORT CLAIMS ACT SECTION.
RICKETTS, JENNIFER D	BRANCH DIRECTOR.
ROGERS, MARK W	SENIOR TRIAL ATTORNEY, CONSTITUTIONAL SECTION.
RUDY, SUSAN K	SENIOR TRIAL ATTORNEY.
STEMPLEWICZ, JOHN	SENIOR TRIAL ATTORNEY.
STERN, MARK B	APPELLATE LITIGATION COUNSEL.
Civil Rights Division—CRT	
AUSTIN, ROY	DEPUTY ASSISTANT ATTORNEY GENERAL.
FERNANDES, JULIE A	DEPUTY ASSISTANT ATTORNEY GENERAL.
KING, LORETTA	DEPUTY ASSISTANT ATTORNEY GENERAL.
RODRIGUEZ, LEON	DEPUTY ASSISTANT ATTORNEY GENERAL.
BALDWIN, KATHERINE A	DEPUTY SPECIAL COUNSEL FOR IMMIGRATION-RELATED UNFAIR EMPLOYMENT PRACTICES.

2011 FEDERAL REGISTER—Continued

Name	Position title
BHARGAVA, ANURIMA	CHIEF, EDUCATIONAL OPPORTUNITIES SECTION.
BROWN-CUTLAR, SHANETTA Y	COUNSEL TO THE SPECIAL LITIGATION SECTION CHIEF.
FLYNN, DIANA KATHERINE	CHIEF, APPELLATE SECTION.
GINSBURG, JESSICA A	COUNSEL TO THE ASSISTANT ATTORNEY GENERAL.
GREENE, IRVA D	EXECUTIVE OFFICER.
GROSS, MARK L	COMPLAINT ADJUDICATION OFFICER.
HERREN JR., THOMAS C	CHIEF, VOTING SECTION.
JANG, DEEANA L	CHIEF, COORDINATION AND REVIEW SECTION.
KAPPELHOFF, MARK JOHN	CHIEF, CRIMINAL SECTION.
KENNEBREW, DELORA	CHIEF, EMPLOYMENT LITIGATION SECTION.
KOWALSKI, BARRY F	SPECIAL LEGAL COUNSEL.
MOOSSY, ROBERT J	PRINCIPAL DEPUTY CHIEF, CRIMINAL SECTION.
ROSENBAUM, STEVEN H	CHIEF, HOUSING AND CIVIL ENFORCEMENT SECTION.
SAMUELS, JOCELYN	COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL.
SILVER, JESSICA D	SENIOR APPELLATE COUNSEL.
SMITH, JONATHAN M	CHIEF, SPECIAL LITIGATION SECTION.
WERTZ, REBECCA	PRINCIPAL DEPUTY CHIEF, VOTING SECTION.
Criminal Division—CRM	
RAMAN, MYTHILI	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL & CHIEF OF STAFF.
BLANCO, KENNETH A	DEPUTY ASSISTANT ATTORNEY GENERAL.
BROWN, MARY PATRICE	DEPUTY ASSISTANT ATTORNEY GENERAL.
WEINSTEIN, JASON	DEPUTY ASSISTANT ATTORNEY GENERAL.
SWARTZ, BRUCE CARLTON	DEPUTY ASSISTANT ATTORNEY GENERAL.
AINSWORTH, PETER J	SENIOR DEPUTY CHIEF, PUBLIC INTEGRITY SECTION.
ALEXANDRE, CARL	DIRECTOR, OPDAT.
CALVERY, JENNIFER	CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
CARROLL, OVIE	DIRECTOR, CYBERCRIME LABORATORY, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
CARWILE, P. KEVIN	CHIEF, CAPITAL CASE UNIT.
DUBOSE, MICHAEL M	CHIEF, COMPUTER CRIME, AND INTELLECTUAL PROPERTY SECTION.
FELTON, KATHLEEN A	DEPUTY CHIEF, APPELLATE SECTION.
GLAZER, SIDNEY	SPECIAL COUNSEL FOR APPEALS.
GRIFFEY, MARGARET P	SENIOR COUNSEL, OFFICE OF INTERNATIONAL AFFAIRS.
HULSER, RAYMOND	DEPUTY CHIEF, PUBLIC INTEGRITY SECTION.
JONES, JOSEPH M	SENIOR COUNSEL FOR INTERNATIONAL DEVELOPMENT AND TRAINING.
KING, DAMON A	SENIOR LITIGATION COUNSEL, CHILD EXPLOITATION AND OBSCENITY SECTION.
LYNCH JR., JOHN T	DEPUTY CHIEF, COMPUTER CRIME AND INTELLECTUAL PROPERTY SECTION.
MASCHINO, KARL J	EXECUTIVE OFFICER.
MCHENRY, TERESA L	CHIEF, HUMAN RIGHTS AND SPECIAL PROSECUTIONS SECTION.
MCINERNEY, DENIS J	CHIEF, FRAUD SECTION.
MORRIS, BRENDA K	SENIOR LITIGATION COUNSEL.
O'BRIEN, PAUL M	DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
OHR, BRUCE G	CHIEF, ORGANIZED CRIME AND RACKETEERING SECTION.
OOSTERBAAN, ANDREW	CHIEF, CHILD EXPLOITATION AND OBSCENITY SECTION.
PAINTER, CHRISTOPHER M	SENIOR COUNSEL FOR CYBERCRIME.
POPE, AMY	COUNSELOR TO THE ASSISTANT ATTORNEY GENERAL.
RAABE, WAYNE C	DEPUTY CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
RAMASWAMY, JAIKUMAR	DEPUTY CHIEF, ASSET FORFEITURE AND MONEY LAUNDERING SECTION.
ROBINSON, STEWART C	DEPUTY DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
ROSENBAUM, ELI M	DIRECTOR, HUMAN RIGHTS ENFORCEMENT STRATEGY AND POLICY.
SMITH, JOHN "JACK" L	CHIEF, PUBLIC INTEGRITY SECTION.
STEMLER, PATTY MERKAMP	CHIEF, APPELLATE SECTION.
TREVILLIAN IV, ROBERT C	DIRECTOR, INTERNATIONAL CRIMINAL INVESTIGATIVE TRAINING ASSISTANCE PROGRAM.
WARLOW, MARY ELLEN	DIRECTOR, OFFICE OF INTERNATIONAL AFFAIRS.
WARREN, MARY LEE	SENIOR LITIGATION COUNSEL.
WEBB, JANET D	DEPUTY DIRECTOR, OFFICE OF ENFORCEMENT OPERATIONS.
WELCH II, WILLIAM M	SENIOR LITIGATION COUNSEL.
WROBLEWSKI, JONATHAN J	DIRECTOR, OFFICE OF POLICY AND LEGISLATION.
WYATT, ARTHUR G	CHIEF, NARCOTIC AND DANGEROUS DRUG SECTION.
Environmental and Natural Resources Division—ENRD	
DREHER, ROBERT E	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.

2011 FEDERAL REGISTER—Continued

Name	Position title
SHENKMAN, ETHAN	DEPUTY ASSISTANT ATTORNEY GENERAL.
WILLIAMS, JEAN E	DEPUTY ASSISTANT ATTORNEY GENERAL (ENVIRONMENTAL CRIMES AND WILDLIFE AND MARINE RESOURCES SECTIONS).
ALEXANDER, S. CRAIG	CHIEF, INDIAN RESOURCES SECTION.
BARSKY, SETH	CHIEF, WILDLIFE AND MARINE RESOURCES.
CLARK II, TOM C	DEPUTY CHIEF, NATURAL RESOURCES SECTION.
COLLIER, ANDREW	EXECUTIVE OFFICER.
DISHEROON, FRED R	SENIOR LITIGATION COUNSEL ATTORNEY EXAMINER.
FISHEROW, W. BENJAMIN	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
GELBER, BRUCE S	CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
GOLDFRANK, ANDREW M	CHIEF, LAND ACQUISITION SECTION.
GRISHAW, LETITIA J	CHIEF, ENVIRONMENTAL DEFENSE SECTION.
HOANG, ANTHONY P	SENIOR LITIGATION COUNSEL.
KILBOURNE, JAMES C	CHIEF, APPELLATE SECTION.
MAHAN, ELLEN M	DEPUTY CHIEF, ENVIRONMENTAL ENFORCEMENT SECTION.
MERGEN, ANDREW	DEPUTY CHIEF, APPELLATE SECTION.
MITCHELL, STACEY H	CHIEF, ENVIRONMENTAL CRIMES SECTION.
RUSSELL, LISA L	CHIEF, NATURAL RESOURCES SECTION.
STEWART, HOWARD P	SENIOR LITIGATION COUNSEL.
TENENBAUM, ALAN S	SENIOR LITIGATION COUNSEL.
VADEN, CHRISTOPHER S	DEPUTY CHIEF, ENVIRONMENTAL DEFENSE SECTION.
WARDZINSKI, KAREN M	CHIEF, LAW AND POLICY SECTION.
Executive Office for Immigration Review—EOIR	
OSUNA, JUAN P	DIRECTOR.
ADKINS-BLANCH, CHARLES K	ATTORNEY EXAMINER.
COLE, PATRICIA A	ATTORNEY EXAMINER.
CREPPY, MICHAEL	ATTORNEY EXAMINER.
ESPENOZA, CECELIA MARIE	SENIOR ASSOCIATE GENERAL COUNSEL.
FILPPU, LAURI S	ATTORNEY EXAMINER.
GRANT, EDWARD R	ATTORNEY EXAMINER.
GREER, ANNE J	ATTORNEY EXAMINER.
GUENDELSBERGER, JOHN W	ATTORNEY EXAMINER.
HOLMES, DAVID B	ATTORNEY EXAMINER.
MALPHRUS, GARRY D	ATTORNEY EXAMINER.
MILLER, NEIL P	ATTORNEY EXAMINER.
MULLANE, HUGH G	ATTORNEY EXAMINER.
NASCA, PAULA N	ASSOCIATE DIRECTOR.
NEAL, DAVID	VICE CHAIRMAN, BOARD OF IMMIGRATION APPEALS.
O'LEARY, BRIAN M	CHIEF IMMIGRATION JUDGE.
PAULEY, ROGER ANDREW	ATTORNEY EXAMINER.
SCHMIDT, PAUL W	SENIOR IMMIGRATION JUDGE.
STUTMAN, ROBIN M	GENERAL COUNSEL.
WENDTLAND, LINDA S	ATTORNEY EXAMINER.
Executive Office for Organized Crime Drug Enforcement Task Forces—OCDETF	
DINAN, JAMES H	EXECUTIVE DIRECTOR.
PADDEN, THOMAS W	DEPUTY DIRECTOR, OCDETF.
Executive Office for U.S. Attorneys—EOUSA	
JARRETT, HOWARD MARSHALL	DIRECTOR.
BELL, SUZANNE L	DEPUTY DIRECTOR.
GUGULIS, KATHERINE C	DEPUTY DIRECTOR ADMINISTRATION.
BEVELS, LISA A	CHIEF FINANCIAL OFFICER.
FLESHMAN, JAMES MARK	CHIEF INFORMATION OFFICER.
GIBSON, WAYNE	CHIEF OF PLANNING, EVALUATION AND PERFORMANCE.
MACKLIN, JAMES	GENERAL COUNSEL.
SMITH, DAVID L	COUNSEL FOR LEGAL INITIATIVES.
SUDDES, PAUL	PROJECT MANAGER—PALMETTO PROJECT.
VILLEGAS, DANIEL A	COUNSEL, LEGAL PROGAMS AND POLICY.
WISH, JUDITH	SPECIAL COUNSEL TO THE PRINCIPAL DEPUTY DIRECTOR.
WONG, NORMAN Y	COUNSEL TO THE DIRECTOR.
Executive Office for U.S. Trustees—EOUST	
WHITE III, CLIFFORD J	DIRECTOR.
CREWSON, PHILIP E	DEPUTY DIRECTOR MANAGEMENT.
ELLIOTT, RAMONA D	DEPUTY DIRECTOR GENERAL COUNSEL.
REDMILES, MARK A	DEPUTY DIRECTOR FIELD OPERATIONS.

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Name	Position title
Justice Management Division—JMD	
LOFTHUS, LEE J	ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION.
SANTANGELO, MARI BARR	DEPUTY ASSISTANT ATTORNEY GENERAL FOR HUMAN RESOURCES AND ADMINISTRATION (CHCO).
ALLEN, MICHAEL H	DEPUTY ASSISTANT ATTORNEY GENERAL FOR POLICY, MANAGEMENT, AND PLANNING, AND CHIEF OF STAFF.
LAURIA-SULLENS, JOLENE A	DEPUTY ASSISTANT ATTORNEY GENERAL/CONTROLLER.
ALVAREZ, CHRISTOPHER C	DEPUTY DIRECTOR (AUDITING), FINANCE STAFF.
ATSATT, MARILYNN B	DEPUTY DIRECTOR, BUDGET STAFF, PROGRAMS AND PERFORMANCE.
BEASLEY, ROGER	DIRECTOR, OPERATIONS SERVICES STAFF.
CLAREY, KATHRYN L	SPECIAL ADVISOR FOR FINANCIAL MANAGEMENT INFORMATION TECHNOLOGY.
DEELEY, KEVIN	DEPUTY CHIEF INFORMATION OFFICER FOR IT SECURITY.
DEFALAISE, LOUIS	DIRECTOR, OFFICE OF ATTORNEY RECRUITMENT AND MANAGEMENT.
DUNLAP, JAMES L	DIRECTOR, SECURITY AND EMERGENCY PLANNING STAFF.
FELDT, DENNIS G	DIRECTOR, LIBRARY STAFF.
HAMILTON, EDWARD A	DIRECTOR, FACILITIES AND ADMINISTRATIVE SERVICES STAFF.
HOLTGREWE, KENT L	DIRECTOR, IT POLICY AND PLANNING STAFF.
JOHNSTON, JAMES W	DIRECTOR, PROCUREMENT SERVICES STAFF.
JORDAN, WYEVETRA	APPROPRIATION LIAISON OFFICER.
MORGAN, MELINDA B	DIRECTOR, FINANCE STAFF.
MURRAY, JOHN W	DIRECTOR, ENTERPRISE SOLUTIONS STAFF.
NORRIS, J. TREVOR	DEPUTY DIRECTOR, HUMAN RESOURCES.
O'BRIEN, HOLLEY	DIRECTOR, DEBT COLLECTION MANAGEMENT STAFF.
OLDS, CANDACE A	DIRECTOR, ASSET FORFEITURE MANAGEMENT STAFF.
O'LEARY, KARIN	DIRECTOR, BUDGET STAFF.
OLSON, ERIC R	DEPUTY, CHIEF INFORMATION OFFICER FOR E–GOVERNMENT SERVICES STAFF.
RODGERS, JANICE M	DIRECTOR, DEPARTMENTAL ETHICS OFFICE.
TOSCANO JR., RICHARD A	DIRECTOR, EQUAL EMPLOYMENT OPPORTUNITY STAFF.
National Drug Intelligence Center—NDIC	
WALTHER, MICHAEL F	DIRECTOR.
TOMLINSON, TONY	DEPUTY DIRECTOR.
National Security Division—NSD	
WIEGMANN, JOHN B	DEPUTY ASSISTANT ATTORNEY GENERAL (MANAGEMENT AND SPECIAL PROJECTS).
GAUHAR, TASHINA	DEPUTY ASSISTANT ATTORNEY GENERAL.
HINNEN, TODD	DEPUTY ASSISTANT ATTORNEY GENERAL.
TOSCAS, GEORGE Z	DEPUTY ASSISTANT ATTORNEY GENERAL (COUNTER-ESPIONAGE-COUNTERTERRORISM).
BRADLEY, MARK A	SPECIAL COUNSEL FOR OVERSIGHT SECTION.
DION, JOHN J	CHIEF, COUNTERESPIONAGE SECTION.
DUNNE, STEVEN M	CHIEF, APPELLATE UNIT.
EVANS, STUART	DEPUTY CHIEF, OPERATIONS SECTION.
KAYE, JANICE A	ETHICS OFFICER.
KEEGAN, MICHAEL	DEPUTY CHIEF, COUNTERTERRORISM SECTION.
KENNEDY, J. LIONEL	SPECIAL COUNSEL FOR NATIONAL SECURITY.
MULLANEY, MICHAEL J	CHIEF, COUNTERTERRORISM SECTION.
O'CONNOR, KEVIN	CHIEF, OVERSIGHT SECTION.
PELAK, STEVEN W	DEPUTY CHIEF, COUNTERESPIONAGE SECTION.
SANZ-REXACH, GABRIEL	CHIEF, OPERATIONS SECTION.
WALTER, SHERYL L	EXECUTIVE OFFICER.
Office of Community Oriented Policing Services—COPS	
MELEKIAN, BERNARD K	DIRECTOR.
EDERHEIMER, JOSHUA A	PRINCIPAL DEPUTY DIRECTOR.
Office of Dispute Resolution—ODR	
JACOBS, JOANNA	SENIOR COUNSEL FOR ALTERNATIVE DISPUTE RESOLUTION.
Office of Information Policy—OIP	
PUSTAY, MELANIE ANN	DIRECTOR.

2011 FEDERAL REGISTER—Continued

Name	Position title
Office of the Inspector General—OIG	
SCHNEDAR, CYNTHIA A	DEPUTY INSPECTOR GENERAL.
BEAUDET, RAYMOND J	ASSISTANT INSPECTOR GENERAL FOR AUDIT.
BLIER, WILLIAM M	SENIOR COUNSELOR TO THE INSPECTOR GENERAL.
DORSETT, GEORGE L	DEPUTY ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS.
FORTINE OCHOA, CAROL	ASSISTANT INSPECTOR GENERAL FOR OVERSIGHT AND REVIEW.
GULLEDGE, MICHAEL D	ASSISTANT INSPECTOR GENERAL FOR EVALUATION AND INSPECTIONS.
MARSKE, CARYN A	DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT.
MCLAUGHLIN, THOMAS F	ASSISTANT INSPECTOR GENERAL INVESTIGATIONS.
PETERS, GREGORY T	ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT AND PLANNING.
ROBINSON, GAIL A	GENERAL COUNSEL.
Office of Intergovernmental and Public Liaison—OIPL	
ROBERSON, PORTIA L	DIRECTOR.
Office of Justice Programs—OJP	
LEARY, MARY LOU	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
AYERS, NANCY LYNN	DEPUTY ADMINISTRATOR FOR POLICY, OJJDP.
BURCH II, JAMES H	DEPUTY DIRECTOR, POLICY AND MANAGEMENT, BUREAU OF JUSTICE ASSISTANCE.
FROST, JOYE	DEPUTY DIRECTOR, OFFICE FOR VICTIMS OF CRIME.
GARRY, EILEEN M	DEPUTY DIRECTOR FOR PLANNING, BUREAU OF JUSTICE ASSISTANCE.
GREENFELD, LAWRENCE A	DEPUTY DIRECTOR, PROGRAMS, BUREAU OF JUSTICE ASSISTANCE.
GREENHOUSE, DENNIS E	DIRECTOR, COMMUNITY CAPACITY DEVELOPMENT OFFICE.
HANES, MELODEE	COUNSELOR TO THE ADMINISTRATOR, OJJDP.
FEUCHT, THOMAS E	EXECUTIVE SCIENCE ADVISOR, NATIONAL INSTITUTE OF JUSTICE.
HENNEBERG, MAUREEN A	DIRECTOR, OFFICE OF AUDIT, ASSESSMENT, AND MANAGEMENT.
IWANOW, WALTER	CHIEF INFORMATION OFFICER.
MADAN, RAFAEL A	GENERAL COUNSEL.
MERKLE, PHILLIP	DIRECTOR, OFFICE OF ADMINISTRATION.
ROBERTS, MARILYN M	DEPUTY ADMINISTRATOR FOR PROGRAMS, OJJDP.
SABOL, WILLIAM	DEPUTY DIRECTOR, BUREAU OF JUSTICE STATISTICS.
SCRIVNER, ELLEN M	DEPUTY DIRECTOR, NATIONAL INSTITUTE OF JUSTICE.
BALDWIN, LINDA	SMART COORDINATOR.
BENDA, BONNIE LEIGH	CHIEF FINANCIAL OFFICER.
BECK, ALLEN J	SENIOR STATISTICIAN.
Office of Legal Counsel—OLC	
KRASS, CAROLINE DIANE	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
KOFFSKY, DANIEL L	DEPUTY ASSISTANT ATTORNEY GENERAL.
POWELL, HAYWOOD J	DEPUTY ASSISTANT ATTORNEY GENERAL.
RODRIGUEZ, CRISTINA	DEPUTY ASSISTANT ATTORNEY GENERAL.
BIES, JOHN	DEPUTY ASSISTANT ATTORNEY GENERAL.
THOMPSON, KARL R	DEPUTY ASSISTANT ATTORNEY GENERAL.
COLBORN, PAUL P	SPECIAL COUNSEL.
HART, ROSEMARY A	SPECIAL COUNSEL.
SINGDAHLSEN, JEFFREY P	SENIOR COUNSEL.
Office of Legal Policy—OLP	
HARRIS, PAMELA	PRINCIPAL DEPUTY ASSISTANT ATTORNEY GENERAL.
JONES, KEVIN ROBERT	DEPUTY ASSISTANT ATTORNEY GENERAL.
THIEMANN, ROBYN L	DEPUTY ASSISTANT ATTORNEY GENERAL.
TYRANGIEL, ELANA	DEPUTY ASSISTANT ATTORNEY GENERAL.
ZUBRENSKY, MICHAEL	DEPUTY ASSISTANT ATTORNEY GENERAL.
KARP, DAVID J	SENIOR COUNSEL.
Office of Legislative Affairs—OLA	
AGRAST, MARK D	DEPUTY ASSISTANT ATTORNEY GENERAL.
APPELBAUM, JUDITH C	DEPUTY ASSISTANT ATTORNEY GENERAL.

2011 FEDERAL REGISTER—Continued

Name	Position title
BURTON, M. FAITH	SPECIAL COUNSEL.
Office of Professional Responsibility—OPR	
ASHTON, ROBIN	COUNSEL FOR PROFESSIONAL RESPONSIBILITY.
WEINSHEIMER, G. BRADLEY	DEPUTY COUNSEL ON PROFESSIONAL RESPONSIBILITY.
Office of Public Affairs—PAO	
SCHMALER, TRACY	DIRECTOR.
Office of the Federal Detention Trustee—OFDT	
PEARSON, MICHAEL A	FEDERAL DETENTION TRUSTEE.
MUSEL, DAVID F	DIRECTOR, JPATS.
VARGO, BRUCE E	SENIOR ADVISOR (DEPUTY).
Office of the Pardon Attorney—OPA	
RODGERS, RONALD L	PARDON ATTORNEY.
Office on Violence Against Women—OVW	
HANSON, BEATRICE	PRINCIPAL DEPUTY DIRECTOR.
Professional Responsibility Advisory Office—PRAO	
DUNSTON, JERRI U	DIRECTOR.
Tax Division—TAX	
DICICCO, JOHN	DEPUTY ASSISTANT ATTORNEY GENERAL.
CIMINO, RONALD ALLEN	DEPUTY ASSISTANT ATTORNEY GENERAL.
YOUNG, JOSEPH E	EXECUTIVE OFFICER.
BALLWEG, MITCHELL J	CHIEF, CRIMINAL ENFORCEMENT SECTION, WESTERN REGION.
CIHLAR, FRANK P	CHIEF, CRIMINAL APPEALS AND TAX ENFORCEMENT POLICY SECTION.
DONOHUE, DENNIS M	SENIOR LITIGATION COUNSEL.
DOWNING, KEVIN M	SENIOR TRIAL ATTORNEY.
FRAHM, STEVEN I	CHIEF, CLAIMS COURT SECTION.
GIBSON, STUART D	SENIOR TRIAL ATTORNEY.
HAGLEY, JUDITH	SENIOR TRIAL ATTORNEY.
HARTT III, GROVER	SENIOR TRIAL ATTORNEY.
HEALD, SETH G	CHIEF, CIVIL TRIAL SECTION, CENTRAL REGION.
HUBBERT, DAVID A	CHIEF, CIVIL TRIAL SECTION, EASTERN REGION.
HYTKEN, LOUISE P	CHIEF, CIVIL TRIAL SECTION, SOUTHWESTERN REGION.
JOHNSON, CORY	SENIOR TRIAL ATTORNEY.
KEARNS, MICHAEL J	CHIEF, CIVIL TRIAL SECTION, SOUTHERN REGION.
KOVACEV, ROBERT	SENIOR TRIAL ATTORNEY.
LINDQUIST III, JOHN A	SENIOR TRIAL ATTORNEY.
MELAND, DEBORAH	CHIEF, OFFICE OF REVIEW.
MULLARKEY, DANIEL P	CHIEF, CIVIL TRIAL SECTION, NORTHERN REGION.
PAGUNI, ROSEMARY E	CHIEF, CRIMINAL ENFORCEMENT SECTION, NORTHERN REGION.
ROTHENBERG, GILBERT S	CHIEF, APPELLATE SECTION.
SALAD, BRUCE M	CHIEF, CRIMINAL ENFORCEMENT SECTION, SOUTHERN REGION.
SAWYER, THOMAS	SENIOR TRIAL ATTORNEY.
SERGI, JOSEPH A	SENIOR TRIAL ATTORNEY.
SHATZ, EILEEN M	SPECIAL LITIGATION COUNSEL.
SMITH, COREY J	SENIOR TRIAL ATTORNEY.
STEHLIK, NOREENE C	SENIOR TRIAL ATTORNEY.
SULLIVAN, JOHN	SENIOR TRIAL ATTORNEY.
WARD, RICHARD	CHIEF, CIVIL TRIAL SECTION WESTERN REGION.
U.S. Marshals Service—USMS	
DUDLEY, CHARLES C	DEPUTY DIRECTOR.
AUERBACH, GERALD	GENERAL COUNSEL.
BROWN, SHANNON B	ASSISTANT DIRECTOR, MANAGEMENT SUPPORT.
CALLAGHAN, DARLA KAY	ASSISTANT DIRECTOR, HUMAN RESOURCES.
DAVIS, LISA M	ASSISTANT DIRECTOR, INFORMATION TECHNOLOGY.
FALLON, WILLIAM T	ASSISTANT DIRECTOR, TRAINING.
JONES, SYLVESTER E	ASSISTANT DIRECTOR, WITNESS SECURITY.
MERTENS, STEVEN M	ASSOCIATE DIRECTOR, ADMINISTRATION.

2011 FEDERAL REGISTER—Continued

Name	Position title
MORALES, EBEN	ASSISTANT DIRECTOR, ASSET FORFEITURE.
PROUT, MICHAEL J	ASSISTANT DIRECTOR, OFFICE OF INSPECTION.
ROLSTAD, SCOTT C	ASSISTANT DIRECTOR FOR JUSTICE PRISONER AND ALIEN TRANSPORTATION SYSTEM.
SNELSON, WILLIAM D	ASSISTANT DIRECTOR, TACTICAL OPERATIONS.
EARP, THOMAS M	ASSOCIATE DIRECTOR, OPERATIONS.
DOLAN, EDWARD	SPECIAL ASSISTANT FOR FINANCIAL SYSTEMS.

[FR Doc. 2011–23394 Filed 9–12–11; 8:45 am]

BILLING CODE 4410–NW–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OCR) Docket No. 1567]

Hearings of the Review Panel on Prison Rape

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of hearing.

SUMMARY: The Office of Justice Programs (OJP) announces that the Review Panel on Prison Rape (Panel) will hold hearings in Washington, DC on September 15–16, 2011. The hearing times and location are noted below. The purpose of the hearings is to assist the Bureau of Justice Statistics (BJS) in identifying common characteristics of victims and perpetrators of sexual victimization in U.S. jails, and the common characteristics of jails with the highest and lowest incidence of rape, respectively, based on an anonymous survey by the BJS of inmates in a representative sample of U.S. jails. On August 26, 2010, the BJS issued the report *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008–09.* The report provides a listing of jails grouped according to the prevalence of reported sexual victimization, and formed the basis of the Panel's decision about which facilities would be the subject of testimony.

DATES: The following facilities and individuals have been invited to testify:

1. Thursday, September 15, 2011, 8:30 a.m. to 5:30 p.m.: Bureau of Justice Statistics; Cynthia Totten, Wesley Ware, Elizabeth Cumming—advocates; Jennifer Sumner—UC Irvine; Orleans Parish (LA) Prison—facility with a high prevalence of sexual victimization; Clallam County (WA) Corrections Facility—facility with a high prevalence of sexual victimization; Miami-Dade (FL) Pre-Trial Detention Center—facility with a high prevalence of sexual victimization.

2. Friday, September 16, 2011, 8:30 a.m. 2:30 p.m.: American Jail Association; Arthur Wallenstein—Montgomery County (MD) Department of Correction and Rehabilitation; Russell Robinson—UC Berkeley Boalt Hall Law School; David L. Moss Criminal Justice Center (Tulsa, OK)—facility with a low prevalence of sexual victimization; Hinds County (MS) Work Center—facility with a low prevalence of sexual victimization.

ADDRESSES: The hearings will take place at the Office of Justice Programs Building, Main Conference Room, Third Floor, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Joseph Swiderski, Designated Federal Official for the Panel, at *Joseph.Swiderski@usdoj.gov* or (202) 514–8615. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Panel, which was established pursuant to the Prison Rape Elimination Act of 2003, Public Law 108–79, 117 Stat. 972 (codified as amended at 42 U.S.C. 15601–15609 (2006)), will hold its next hearings to carry out the review functions specified at 42 U.S.C. § 15603(b)(3)(A). Testimony from the hearings will assist the Panel in carrying out its statutory obligations. The witness list is subject to amendment; please refer to the Review Panel on Prison Rape Web site at *http://www.ojp.usdoj.gov/reivewpanel.htm* for any updates regarding the hearing schedule. Space is limited at the hearing location. Members of the public who wish to attend the hearing in Washington, DC must present government-issued photo identification upon entrance to OJP. Special needs requests should be made to Joseph Swiderski, Designated Federal Official for the Panel, at *Joseph.Swiderski@usdoj.gov* or (202) 514–8615 [**Note:** This is not a toll-free number], at least one week before the hearings.

Michael Alston,

Office of Justice Programs.

[FR Doc. 2011–23296 Filed 9–12–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application Number D–11603–07]

Withdrawal of the Notice of Proposed Exemption Involving Chrysler Group LLC (Chrysler Group) and Daimler AG (Daimler)

In the **Federal Register** dated September 16, 2010, (75 FR 56575), the Department of Labor (the Department) published a notice of pendency (the Notice) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974, as amended, and from certain taxes imposed by the Internal Revenue Code of 1986, as amended. The Notice concerned an application filed on behalf of Chrysler Group, located in Auburn Hills, Michigan, and Daimler, located in Stuttgart, Germany, (collectively, the Applicants) for transactions relating to and including the contribution of notes issued by Daimler to certain employee benefit plans sponsored by the Chrysler Group.

By e-mails dated December 3, 2010 and July 27, 2011 from Chrysler Group and Daimler, respectively, the Applicants requested that the application for exemption be withdrawn. Accordingly, the Department has determined to withdraw the above-cited Notice.

FOR FURTHER INFORMATION CONTACT: Chris Motta of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Dated: September 6, 2011.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2011–23111 Filed 9–12–11; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Notice and Request For Comments: LSC Elimination of the West Virginia Migrant Service Area Beginning January 1, 2012

AGENCY: Legal Services Corporation.

ACTION: Notice and Request for Comments.

SUMMARY: The Legal Services Corporation will eliminate the West Virginia migrant service area, *i.e.,* MWV effective January 1, 2012, because any eligible migrant population in West Virginia can be more effectively and efficiently served through the basic field-general grant.

DATES: Written comments must be received on or before October 13, 2011.

ADDRESSES: Written comments may be submitted by mail or e-mail to Reginald J. Haley, Office of Program Performance, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; or *haleyr@lsc.gov*.

FOR FURTHER INFORMATION CONTACT: Reginald J. Haley, Office of Program Performance, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; or by e-mail at *haleyr@lsc.gov*.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation's (LSC) mission is to promote equal access to justice and to provide for high-quality civil legal assistance to low-income persons. Pursuant to its statutory authority, LSC designates service areas in U.S. states, territories, possessions, and the District of Columbia for which it provides grants to legal aid programs to provide free civil legal services, primarily through ''basic field-general'' grants based on poverty population.

In some regions, LSC designates migrant service areas for grants that are designed to specifically serve the legal needs of eligible migrant farmworker populations. The funding for a migrant service area is taken out of the funding for the basic field-general service area also covering those populations based on the estimated number of eligible migrant farmworkers.

For many years LSC has designated a migrant service area in West Virginia. LSC has been informed that the eligible migrant population in West Virginia is not sufficient in numbers to maintain a separate migrant service area in the state. LSC has reviewed this matter and determined that, based on the available information; it would be more effective and efficient to serve the legal needs of the eligible migrant population in West Virginia through the basic field-general grant rather than providing a separate migrant grant.

LSC provides grants through a competitive bidding process, which is regulated by 45 CFR part 1634. In 2010, LSC implemented a competitive grants process for 2011 calendar year funding that included, inter alia, the West Virginia migrant service area. LSC determines the term of grants after applications have been received. For 2011, LSC awarded a one-year migrant grant for Legal Aid of West Virginia that is effective January 1, 2011, through December 31, 2011. Accordingly, LSC announced the availability of 2012 funding for the West Virginia migrant service area in the **Federal Register** on March 30, 2011 (76 FR 17711). One competitive grant application was received, and it was from the current grantee for the migrant service area, which is Legal Aid of West Virginia. As noted above, the eligible migrant population in West Virginia is not sufficient in numbers to maintain a separate migrant service area in the state. As a result, LSC intends to eliminate the West Virginia migrant service area beginning January 1, 2012. Funding for the eligible migrant population of West Virginia will be restored to the state's basic field-general grant. LSC expects that Legal Aid of West Virginia will continue to provide services to the eligible migrant populations as part of their basic field general grant, which is effective January 1, 2011 through December 31, 2013.

LSC invites public comment on this decision. Interested parties may submit comments to LSC within a period of thirty (30) days from the date of publication of this notice. More information about LSC can be found at LSC's *Web site: http://www.lsc.gov*.

Dated: September 6, 2011.

Victor M. Fortuno,

Vice President and General Counsel, Legal Services Corporation.

[FR Doc. 2011–23186 Filed 9–12–11; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Operations & Regulations Committee of the LSC Board of Directors

TIME AND DATE: The Legal Services Corporation (''LSC'' or ''Corporation'') Board of Directors (''Board'') Operations & Regulations Committee (''Committee'') will meet telephonically on September 16, 2011 at 1 p.m., Eastern Time.

LOCATION: Legal Services Corporation, F. William McCalpin Conference Center, 3333 K Street, NW., Washington, DC, 20007.

STATUS OF MEETING: Open.

Public Observation: Members of the public who wish to listen to the proceedings may do so by following the telephone call-in directions given below, but are asked to keep their telephones muted to eliminate background noises. From time to time the Chairman may solicit comments from the public.

Call-In Directions for Open Session(s)

♦ Call toll-free number: 1–(866) 451–4981;

♦ When prompted, enter the following numeric pass code: 5907707348;

♦ When connected to the call, please ''*MUTE*'' your telephone immediately.

MATTERS TO BE CONSIDERED:

Operations & Regulations Committee

Agenda

Open Session

1. Approval of agenda.
2. Consider public comments received in response to the solicitation published in the **Federal Register** at 76 FR 48,904 (Aug. 9, 2011) regarding management's recommendation to propose to the White House and Congress statutory changes concerning replacement of decennial census poverty data in the statutory formula for per capita distribution of basic field funds because the 2010 census did not collect poverty data, phasing in the first redistribution over two years, and redistributing funds triennially thereafter.
3. Consider Management's final recommendation, in light of those comments, and adopt a recommendation to make to the Board on the issue.
4. Other Business.
5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent

by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals that need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: September 8, 2011.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. 2011–23520 Filed 9–9–11; 4:15 pm]

BILLING CODE 7050–01–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2011–6 CRB DD 2010]

Distribution of 2010 DART Sound Recordings Fund Royalties

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice soliciting comments on motion for partial distribution.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion for partial distribution in connection with 2010 DART Sound Recordings Fund royalties.

DATES: Comments are due on or before October 13, 2011.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue, SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE,. Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue, SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or e-mail at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On August 23, 2011, the Alliance of Artists and Recording Companies (''AARC''), on behalf of itself and claimants with which it has reached settlements (the ''Settling Claimants'') filed with the Judges a *Notice of Settlement and Request for Partial Distribution of the 2010 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties* (''Notice and Request''). In the Notice and Request, AARC states that the Settling Claimants have reached a settlement among themselves concerning distribution of the 2010 DART Sound Recordings Fund Royalties. With respect to the Featured Recording Artists Subfund, AARC represents that it has reached settlements with 215 of the 217 other claimants for that subfund and that the nonsettling claimants have ''de minimis record sales of 2,163 and 13, respectively, in a universe of over one billion claimants' sound recordings sold in 2010.'' *Notice and Request* at 2. With respect to the Copyright Owners Subfund, AARC represents that it has reached settlements with 218 of the 225 other claimants. AARC represents that the nonsettling claimants have combined sales of 3,010 ''in a universe of over one billion claimants' sound recordings sold in 2010.'' *Notice and Request* at 2. AARC requests a partial distribution of 98% from each of the subfunds pursuant to Section 801(b)(3)(C) of the Copyright Act. Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 98% of the 2010 DART Sound Recordings Royalty funds (both subfunds) to the Settling Claimants. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Notice and Request is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: September 7, 2011.

James Scott Sledge,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2011–23287 Filed 9–12–11; 8:45 am]

BILLING CODE 1410–72–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0206]

Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment request, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by October 13, 2011. A request for a hearing must be filed by November 14, 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 is necessary to respond to this notice must request document access by September 23, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0206 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–2011–0206. 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, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

• *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–2011–0206.

Background

Pursuant to Section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or

fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at 1–301–415–1677, 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 NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with 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 NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: April 28, 2011, as supplemented June 23, 2011.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information. The proposed amendment will increase the rated thermal power (RTP) level from 2900 megawatts thermal (MWt) to 2948 MWt, and make technical specification changes as necessary to support operation at the uprated power level. The proposed change is an increase in RTF of approximately 1.66 percent. The proposed uprate is characterized as a measurement uncertainty recapture using the Cameron Leading Edge Flow Meter CheckPlus System to improve plant calorimetric heat balance measurement accuracy.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will increase the Shearon Harris Nuclear Power Plant, Unit No. 1 (HNP) rated thermal power (RTP) from 2900 megawatts thermal (MWt) to 2948 MWt. Nuclear steam supply system and balance-of-plant systems, components and analyses that could be affected by the proposed change in RTP were evaluated using revised design parameters. The evaluations determined that these structures, systems and components are capable of performing their design function at the proposed uprated RTP of 2948 MWt. An evaluation of the accident analyses demonstrated that the applicable analysis acceptance criteria are still met with the proposed changes. Power level is an input assumption to equipment design and accident analyses, but it is not a transient or accident initiator. Accident initiators are not affected by the power uprate, and plant safety barrier challenges are not created by the proposed changes.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed change in RTP does not affect release paths, frequency of release, or the analyzed source term for any accidents previously evaluated in the HNP Final Safety Analysis Report. Structures, systems and components required to mitigate transients are capable of performing their design functions with the proposed changes, and are thus acceptable. Analyses performed to assess the effects of mass and energy releases remain valid. The source term used to assess radiological consequences was reviewed and determined to bound operation at the proposed power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of any proposed changes. The ultrasonic flow meter has been analyzed, and system failures will not adversely affect any safety-related system or any structures, systems or components required for transient mitigation. Structures, systems and components previously required for transient mitigation are still capable of fulfilling their intended design functions. The proposed changes have no significant adverse affect [effect] on any safety-related structures, systems or components and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Plant operation at a RTP of 2948 MWt does not create any new accident initiators or precursors. Credible malfunctions are bounded by the current accident analyses of record or recent evaluations demonstrating that applicable criteria are still met with the proposed changes.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant pressure boundary, and containment barriers. Core analyses demonstrate that power uprate implementation will continue to meet the current nuclear design basis. Impacts to components associated with the reactor coolant system pressure boundary structural integrity, and factors such as pressure-temperature limits, vessel fluence, and pressurized thermal shock were evaluated and determined to be acceptable at the uprate power level.

Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions following power uprate implementation. The current HNP safety analyses, including the design basis radiological accident dose calculations, bound the power uprate.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Douglas A. Broaddus.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation; Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

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 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 *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); 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.

[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.

Dated at Rockville, Maryland, this 7th day of September 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information 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. 2011–23313 Filed 9–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of September 5, 12, 19, 26, and October 3, 10, 17, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of September 5, 2011

Friday, September 9, 2011

11:30 a.m. Affirmation Session (Public Meeting) (Tentative)

a. Petitions Requesting Relief Related to the March 11, 2011, Earthquake and Tsunami Events in Fukushima, Japan (Tentative)

b. *Nuclear Innovation North America LLC* (South Texas Project, Units 3 and 4), Staff Petition for Review of LBP–11–7 (Tentative)

c. *U.S. Department of Energy* (High-Level Waste Repository), Review of LBP–10–11, Docket No. 63–001–HLW (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 12, 2011

Wednesday, September 14, 2011

9 a.m. Briefing on the Japan Near Term Task Force Report—Short-Term Actions (Public Meeting) (Contact: Rob Taylor, 301–415–3172)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 19, 2011—Tentative

There are no meetings scheduled for the week of September 19, 2011.

Week of September 26, 2011—Tentative

Tuesday, September 27, 2011

9 a.m. Mandatory Hearing—Southern Nuclear Operating Co., *et al.*; Combined Licenses for Vogtle Electric Generating Plant, Units 3 and 4, and Limited Work Authorizations (Public Meeting) (Contact: Rochelle Bavol, 301–415–1651)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 3, 2011—Tentative

Thursday, October 6, 2011

9 a.m. Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301–415–0202)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 10, 2011—Tentative

Tuesday, October 11, 2011

9 a.m. Briefing on the Japan Near Term Task Force Report—Prioritization of Recommendations (Public Meeting) (Contact: Rob Taylor, 301–415–3172)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, October 12, 2011

9 a.m. Mandatory Hearing—South Carolina Electric & Gas Company and South Carolina Public Service Authority (Also Referred to As Santee Cooper); Combined Licenses for Virgil C. Summer Nuclear Station, Units 2 and 3 (Public Meeting) (Contact: Rochelle Bavol, 301–415–1651)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 17, 2011—Tentative

Tuesday, October 18, 2011

9 a.m. Briefing on Browns Ferry Unit 1 (Public Meeting) (Contact: Eugene Guthrie, 404–997–4662)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

By a vote of 5–0 on September 8, 2011, the Commission determined pursuant to U.S.C. 552b(e) and '9.107(a) of the Commission's rules that the above referenced Affirmation item ''c''—*U.S. Department of Energy* (High-Level Waste Repository), Review of LBP–10–11, Docket No. 63–001–HLW (Tentative) be held on September 9, 2011, with less than one week notice to the public.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, *TDD:* 301–415–2100, or by e-mail at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

September 8, 2011.

Rochelle Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–23487 Filed 9–9–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Export Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E–Filing rule promulgated in August 2007, 72 FR 49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at HEARINGDOCKET@NRC.GOV, or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications

The information concerning this application to amend an export license follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant date of application date received application No. docket No.	Desscription of material			
	Material type	Total quantity	End use	Recipient country
Duratek Services, Inc., August 17, 2011, August 18, 2011, XW010/02, 11005620.	Class A radioactive waste in the form of radioactively contaminated materials including metals, dry activity material (such as wood, paper, and plastic) and liquids (such as aqueous and organic based fluids).	Radionuclide reallocation: Amend to: (1) Reduce the total activity of C–14, Am-241 and Fe-55 by 25.35 TBq. (2) Increase the total activity of H–3 by 22.20 TBq.	Non-conforming materials (imported under IW017) that cannot be processed will be returned to Canada for disposition.	Canada.

Dated this 6th day of September 2011 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. 2011–23366 Filed 9–12–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request for a License To Import Radioactive Waste

Pursuant to 10 CFR 110.70 (b) ''Public Notice of Receipt of an Application,'' please take notice that the Nuclear Regulatory Commission (NRC) has received the following request to amend an import license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within thirty days after publication of this notice in the **Federal Register.** Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

A request for a hearing or petition for leave to intervene may be filed with the NRC electronically in accordance with NRC's E-Filing rule promulgated in August 2007, 72 FR49139 (Aug. 28, 2007). Information about filing electronically is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* To ensure timely electronic filing, at least 5 (five) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request a digital ID certificate and allow for the creation of an electronic docket.

In addition to a request for hearing or petition for leave to intervene, written comments, in accordance with 10 CFR 110.81, should be submitted within thirty (30) days after publication of this notice in the **Federal Register** to Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications.

The information concerning this application to amend an import license follows.

NRC IMPORT LICENSE APPLICATION

[description of material]

Name of applicant, date of application, date received, application No., docket No.	Material type	Total quantity	End use	Country from
Duratek Services, Inc., August 17, 2011, August 18, 2011, IW017/02, 11005621.	Class A radioactive waste in the form of radioactively contaminated materials including metals, dry activity material (such as wood, paper, and plastic) and liquids (such as aqueous and organic based fluids).	Radionuclide reallocation: Amend to: (1) Reduce the total activity of C–14, Am-241 and Fe-55 by 25.35 TBq. (2) Increase the total activity of H–3 by 22.20 TBq.	For recycle and beneficial reuse to the greatest possible extent, which may or may not require decontamination. Some materials to be incinerated and/or used in Duratek operations. Non-conforming materials that cannot be processed will be returned to Monserco (in Canada) for disposition under XW010.	Canada.

Dated this 6th day of September 2011 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Scott Moore,

Deputy Director, Office of International Programs.

[FR Doc. 2011–23358 Filed 9–12–11; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Amerex Group, Inc., AmeriChip International, Inc., Amish Naturals, Inc., Banker's Store Inc. (The), Champion Parts, Inc., and Gray Peaks, Inc., Order of Suspension of Trading

September 9, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amerex Group, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AmeriChip International, Inc. because it has not filed any periodic reports since the period ended August 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Amish Naturals, Inc. because it has not filed any periodic reports since the period ended December 28, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Banker's Store Inc. (The) because it has not filed any periodic reports since the period ended February 28, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Champion Parts, Inc. because it has not filed any periodic reports since the period ended July 1, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Gray Peaks, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

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 companies. 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 companies is suspended for the period from 9:30 a.m. EDT on September 9, 2011, through 11:59 p.m. EDT on September 22, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–23476 Filed 9–9–11; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7582]

Culturally Significant Objects Imported for Exhibition Determinations: ''Tombs, Temples and Warriors: China's Imperial Legacy''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Tombs, Temples and Warriors: China's Imperial Legacy,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Bowers Museum, Santa Ana, California, from on or about October 1, 2011, until on or about March 4, 2012, at the Houston Museum of Natural Sciences, Houston, Texas, from on or about April 1, 2012 until on or about September 3, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Kevin M. Gleeson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 571–345–3006). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 7, 2011.

Lee Satterfield,

Principal Deputy Assistant Secretary, Acting Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–23532 Filed 9–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7580]

Culturally Significant Objects Imported for Exhibition Determinations: ''Adapting the Eye: An Archive of the British in India, 1770–1830''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Adapting the Eye: An Archive of the British in India, 1770–1830,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, Connecticut, from on or about October 11, 2011, until on or about December 31, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 1, 2011.

Lee A. Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–23355 Filed 9–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7581]

Culturally Significant Objects Imported for Exhibition Determinations: ''Picasso's Drawings, 1890–1921: Reinventing Tradition''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Picasso's Drawings, 1890–1921: Reinventing Tradition,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Frick Collection, New York, New York, from on or about October 4, 2011, until on or about January 8, 2012, at the National Gallery of Art, Washington, DC from on or about February 5, 2012 to on or about May 6, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Kevin M. Gleeson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 571–345–3006). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 7, 2011.

Lee Satterfield,

Principal Deputy Assistant Secretary, Acting Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–23365 Filed 9–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7579]

Culturally Significant Objects Imported for Exhibition Determinations: ''Antico: The Golden Age of Renaissance Bronzes''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Antico: The Golden Age of Renaissance Bronzes,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about November 6, 2011, until on or about April 8, 2012, the Frick Collection, New York, New York, from on or about May 1, 2012, until on or about July 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: September 2, 2011.

Lee A. Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–23360 Filed 9–12–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. Louis County, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for improvements to the corridor generally following the existing pathway created by Missouri Bottom Road, Aubuchon Road, and Charbonier Road between Earth City Expressway and Howdershell/Shackelford Road in northwestern St. Louis County, Missouri. These roads lie within the floodplain of the Missouri River. The hydrological conditions of the area create a situation where short-term flood-related closures occur along this pathway. The occurrence and length of closures are often difficult to predict; the detours caused by the closures are often lengthy.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy J. Casey, Program Development Team Leader, FHWA Division Office, 3220 West Edgewood, Suite H, Jefferson City, MO 65109, Telephone: (573) 636–7104; or Mr. David Nichols, Chief Engineer, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586. Questions may also be directed to the Local Public Agency sponsor by contacting Mr. Adam Spector, Transportation Studies Project Manager, St. Louis County Department of Highways and Traffic, 121 S. Meramec Avenue, Clayton, Missouri 63105, Telephone: (314) 615–8594.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT) and St Louis County Department of Highways and Traffic (County), will prepare an EIS for a proposed roadway project in St. Louis County, Missouri. A location study will run concurrently with the preparation of the EIS and will provide definitive alternatives for evaluation in the EIS. The EIS will fully analyze the issues, problems, and potential social and environmental impacts associated with improving transportation within this portion of St. Louis County. The goals of the proposed action are to: (1) Eliminate flood-related detours between Charbonier Road and Earth City Expressway, (2) address capacity needs in northwestern St. Louis County, (3) enhance safety along roadways in northwestern St. Louis County, and (4) provide access to the economic opportunities in northwestern St. Louis County. The project study area is generally bounded by the Missouri River on the north and west, Route 370 on the south, and Howdershell/Shackelford Road on the east.

Alternatives under consideration include (1) taking no action; (2) reconstruction/improvements along the existing alignment; and (3) new alignments.

To date, preliminary information has been issued to local officials. As part of the project scoping process, an interagency coordination meeting will be held with appropriate federal, state, and local agencies having jurisdiction or having specific expertise with respect to any environmental impacts associated with the proposed improvements. Agencies with jurisdiction by law will be asked to become cooperating agencies. Other agencies with interest in the project will be invited to become participating agencies. In addition, informational meetings with the public and community representatives will be held to solicit input on the project and reasonable range of alternatives. A location public hearing will be held to present the findings of the Draft EIS (DEIS). Public notice will be given announcing the time and place of all public meetings and the hearing. The DEIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or MoDOT, or the St. Louis County Department of Highways and Traffic at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: September 7, 2011.

Peggy J. Casey,

Program Development Team Leader, Jefferson City.

[FR Doc. 2011–23301 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on State Loop 375 From Interstate Highway 10 to the Franklin Mountains State Park in Texas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, upgrades to Texas State Loop 375 from Interstate Highway 10 to 0.479 Mile East of the Tom Mays Unit of the Franklin Mountains State Park Entrance (Loop 375 Transmountain West Project), in El Paso County in the State of Texas. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA 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 March 12, 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: Mr. Gregory Punske, District Engineer, Federal Highway Administration, 300 East 8th Street, Rm. 826, Austin, Texas 78701; telephone: 512–536–5960, fax: 512–536–5990 e-mail: *gregory.punske@dot.gov*. The FHWA Texas Division Office's normal business hours are 8 a.m. to 5 p.m. (central time). You may also contact Ms. Julia M. Brown, P.E., Interim District Engineer, Texas Department of Transportation, El Paso District, 13301 Gateway Blvd. West, El Paso, Texas, 79928–5410; telephone: (915) 790–4203.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following highway project in the State of Texas: Upgrades to Texas State Loop 375 from Interstate Highway 10 (IH–10) to 0.479 Mile East of the Tom Mays Unit of the Franklin Mountains State Park Entrance (Loop 375 Transmountain West Project) in El Paso County. The proposed improvements include widening the roadway to a four-lane divided freeway with two-lane frontage roads in each direction, grade-separated intersections at Northwestern Drive, Resler Drive, future Plexxar Road, and future Paseo Del Norte Road, and two direct connector ramps from Texas State Loop 375 westbound to IH–10 eastbound and from IH–10 westbound to Texas State Loop 375 eastbound. At approximately 0.5 mile east of the future Paseo del Norte Road, the roadway would transition to a four-lane divided section that matches the existing configuration of Loop 375 just east of the entrance to the Tom Mays Unit of the Franklin Mountains State Park. The project will require approximately 41.2 acres of additional right of way and would not result in residential or commercial displacements, with the exception of the relocation of two business signs.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (Final EA) for the project, approved on February 11, 2011, in the FHWA Finding of No Significant Impact (FONSI) issued on August 17, 2011, and in other documents in the FHWA administrative record. The Final EA, FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the Texas Department of Transportation at the addresses provided above. The Final EA, EA Errata, FONSI and Public Hearing Summary are available online at *http://www.txdot.gov/project_information/projects/el_paso/loop_375_west.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. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.
4. Wildlife: Endangered Species Act [16 USC 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. Wetlands and Water Resources: Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF), 16 U.S.C. 4601–4604; Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j)(6); Rivers and Harbors Act of 1899, 33 U.S.C. 401–406; Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287; Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128.
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1)

Issued on: September 6, 2011.

Janice W. Brown,

Division Administrator, Austin, Texas.

[FR Doc. 2011–23223 Filed 9–12–11; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue, Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on September 1, 2011.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
	Modification to Special Permits		
14167–M	Trinityrail, Dallas, TX	4	10–31–2011
14741–M	Weatherford International, Fort Worth, TX	4	10–31–2011
8826–M	Phoenix Air Group, Inc., Cartersville, GA	4	10–31–2011
8815–M	Florex Explosives, Inc., Crystal River, FL	4	10–31–2011
12561–M	Rhodia, Inc., Cranbury, NJ	4	10–31–2011
14763–M	Weatherford International, Fort Worth, TX	4	10–31–2011
14909–M	Lake Clark Air, Inc., Port Alsworth, AK	4	10–31–2011
14860–M	Alaska Airlines, Seattle, WA	4	10–31–2011
10656–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
11406–M	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
12629–M	TEA Technologies, Inc., Amarillo, TX	4	11–30–2011
10898–M	Hydac Corporation, Bethlehem, PA	3	11–30–2011
11670–M	Schlumberger Oilfield UK Plc, Dyce, Aberdeen Scotland, Ab	3	11–30–2011
10922–M	FIBA Technologies, Inc., Millbury, MA	4	10–31–2011
14193–M	Honeywell International, Inc., Morristown, NJ	4	11–30–2011
13336–M	Renaissance Industries, Inc. Sharpsville Operations M–1102, Sharpsville, PA	4	10–31–2011
8723–M	Maine Drilling & Blasting, Auburn, NH	4	11–30–2011
12929–M	Matheson Tr-Gas, Inc., Basking Ridge, NJ	4	11–30–2011
14584–M	WavesinSolids LLC, State College, PA	4	11–30–2011
13997–M	Maritime Helicopters, Homer, AK	4	11–30–2011
7765–M	Carleton Technologies, Inc., Orchard Park, NY	4	11–30–2011
13199–M	Carrier Corporation, Houston, TX	4	11–30–2011
13736–M	ConocoPhillips, Anchorage, AK	4	10–31–2011
	New Special Permit Application		
14813–N	Organ Recovery Systems, Des Plaines, IL	4	10–31–2011
14872–N	Arkema, Inc., King of Prussia, PA	4	11–30–2011
14929–N	Alaska Island Air, Inc., Togiak, AK	4	11–30–2011
14951–N	Lincoln Composites, Lincoln, NE	1	10–31–2011
14972–N	Air Products and Chemicals, Allentown, PA	4	10–31–2011
15053–N	Department of Defense, Scott Air Force Base, IL	4	11–30–2011
15080–N	Alaska Airlines, Seattle, WA	1	11–30–2011
15199–N	Polskie Linie Lotnicze Lot S.A., dba LOT Polish Airlines	4	10–31–2011
15220–N	GasCon (Pty) Ltd, Cape Town	4	11–30–2011
15229–N	Linde Gas North America LLC, NEW PROVIDENCE, NJ	4	11–30–2011
15233–N	ExpressJet Airlines, Inc., Houston, TX	4	11–30–2011
15241–N	Alaska Central Express Inc., Anchorage, AK	4	11–30–2011
15243–N	Katmai Air, LLC, Anchorage, AK	4	11–30–2011
15257–N	GFS Chemicals, Columbus, Ohio	4	11–30–2011
15258–N	Air Products and Chemicals, Inc., Tamaqua, PA	4	11–30–2011
15263–N	Alaska Central Express, Anchorage, AK	4	11–30–2011
15266–N	3AL Testing Corp., Denver, CO	4	11–30–2011
15274–N	Coastal Helicopters, Juneau, AK	4	11–30–2011
15282–N	Lockheed Martin Space Systems Company, Denver, CO	4	11–30–2011
15338–N	Middle Fork Aviation, Challis, ID	4	10–31–2011
14839–N	Matheson Tr-Gas, Inc., Basking Ridge, NJ	3	11–30–2011
	Party to Special Permits Application		
10457–P	Thatcher Company of Nevada, Henderson, NV	4	11–30–2011
9623–P	Austin Star Detonator Company (ASD), Brownsville, TX	4	11–30–2011
10880–P	Austin Star Detonator Company (ASD), Brownsville, TX	4	11–30–2011
10880–P	Southwest Energy LLC, Tucson, AZ	4	11–30–2011
7887–P	WES & T LLC, Tucson, AZ	4	11–30–2011

Application No.	Applicant	Reason for delay	Estimated date of completion
11396–P	United Oil Recovery, Inc., (Former Grantee United Industrial Services), Meriden, CT	4	11–30–2011
8971–P	Chemical Cutter Technology Ltd., Co., DBA Daniel OilField Tools, Houston, TX	4	11–30–2011
7887–P	GEM of Rancho Cordova, LLC, dba PSC Environmental Services UNDER TERMINATION 1DEC, Cordova, CA.	4	11–30–2011
8445–P	GEM of Rancho Cordova, LLC dba PSC Environmental Services, Cordova, CA	4	11–30–2011
11396–P	GEM of Rancho Cordova, LLC, dba PSC Environmental Services, Cordova, CA	4	11–30–2011
11984–P	GEM of Rancho Cordova, LLC, dba PSC Environmental Services, Cordova, CA	4	11–30–2011
11396–P	Advanced Waste Solutions, Inc., LOCKPORT, NY	4	11–30–2011
13548–P	Energy Battery Group, Atlanta, GA	4	11–30–2011
13548–P	Battery Service Inc., Charlotte, NC	4	11–30–2011
13548–P	American Battery Corporation, Escondido, CA	4	11–30–2011
13548–P	Art's Electric Inc., Longview, WA	4	11–30–2011
13548–P	C. C. Battery Co., Inc., Corpus Christi, TX	4	11–30–2011
13548–P	Jefferson Battery Co., Inc., Jefferson, LA	4	11–30–2011
13548–P	Stovall Batteries, Athens, AL	4	11–30–2011
13548–P	Battery Wholesale, Toledo, OH	4	11–30–2011
13548–P	East Penn LLC, Corydon, IA	4	11–30–2011
11579–P	McCallum Rock Drilling Inc., Chehalis, WA	4	11–30–2011
12134–P	Riceland Foods, Inc., Stuttgart, AR	4	11–30–2011
7887–P	Cesaroni Technology Inc., Sarasota, FL	4	11–30–2011
11396–P	SeaWorld Parks & Entertainment LLC, d/b/a Busch Gardens, Williamsburg, Williamsburg, VA.	4	11–30–2011
11396–P	SeaWorld Parks & Entertainment LLC, d/b/a Water Country USA, Williamsburg, VA	4	11–30–2011
11396–P	Sea World LLC, d/b/a, SeaWorld, San Diego, San Diego, CA	4	11–30–2011
10048–P	Chemical Analytics, Inc., Romulus, MI	4	11–30–2011
11396–P	CGL Transport, LLC, Albuquerque, NM	4	11–30–2011
11396–P	Aeroframe Services, Lake Charles, LA	4	11–30–2011
8723–P	Maxam US, LLC, Salt Lake City, UT	4	11–30–2011
7835–P	CGL Transport, LLC, Albuquerque, NM	4	11–30–2011
12412–P	C.E.O. Performance Chemicals, LLC, DBA: ChemStation Texas Gulf Coast, Houston, TX	4	11–30–2011
11055–P	Stericycle Specialty Waste Solutions Inc., Blain, MN	4	11–30–2011
7835–P	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
11396–P	Sea World Parks & Entertainment LLC, d/b/a Busch Gardens, Tampa, Tampa, FL	4	11–30–2011
11043–P	Double Barrel Environmental, Riverside, CA	4	11–30–2011
11396–P	Sea World of Florida LLC, d/b/a Sea World, Orlando, Orlando, FL	4	11–30–2011
11396–P	Sea World of Florida LLC, d/b/a Aquatica, Orlando, FL	4	11–30–2011
11396–P	Sea World of Florida LLC, d/b/a Discovery Cove, Orlando, FL	4	11–30–2011
14282–P	The Allen Company, Inc., Lexington, KY	4	11–30–2011
10751–P	The Allen Company, Inc., Lexington, KY	4	11–30–2011
8196–P	International Equipment Leasing, AVENEL, NJ	4	11–30–2011
11156–P	Pepin-Ireco, Inc., Ishpeming, MI	4	11–30–2011
12412–P	ChemStation of Kansas City, Grain Valley, MO	4	11–30–2011
12905–P	Gumderson, LLC, Portland, OR	4	11–30–2011
8723–P	SLT Express Way Inc., Flendale, AZ	4	11–30–2011
7616–P	Iowa Northern Railway, GREENE, IA	4	11–30–2011
7887–P	Barmes HazMat, Inc., Pacoima, CA	4	11–30–2011
10880–P	WESCO, Midvale, UT	4	11–30–2011
7887–P	PSC Industrial Outsourcing, LP dba Philip West Industrial Services, Long Beach, CA	4	11–30–2011
8445–P	PSC Industrial Outsourcing LP, dba Philip West Industrial Services, Long Beach, CA	4	11–30–2011
11396–P	PSC Industrial Outsourcing LP, dba Philip West Industrial Services, Long Beach, CA	4	11–30–2011
11396–P	Nexeo Solutions LLC, Dublin, OH	4	11–30–2011
11296–P	Nexeo Solutions LLC, Dublin, OH	4	11–30–2011
11624–P	Nexeo Solutions LLC, Dublin, OH	4	11–30–2011
8445–P	Burlington Environmental, LLC, Tacoma, WA	4	11–30–2011
11043–P	Burlington Environmental LLC, Tacoma, WA	4	11–30–2011
11984–P	Burlington Environmental, LLC, Tacoma, WA	4	11–30–2011
11396–P	Burlington Environmental, LLC, Tacoma, WA	4	11–30–2011
8445–P	Rho Chem, LLC, Inglewood, CA	4	11–30–2011
14447–P	Agrium Advanced Technologies (U.S.), Inc., Reese, MI	4	11–30–2011
11296–P	Waste Management National Services, Inc., Oak Park, IL	4	11–30–2011
	Renewal Special Permits Applications		
12443–R	Thatcher Company of Nevada, Henderson, NV	4	11–30–2011
11043–R	Environmental Products & Services, Inc., Syracuse, NY	4	11–30–2011
8445–R	Environmental Products & Services, Inc., Syracuse, NY	4	11–30–2011
14482–R	Classic Helicopters Limited, L.C., Woods Cross, UT	4	11–30–2011
11318–R	W.R. Grace Grace-Conn, Columbia, MD	4	11–30–2011
11396–R	Veolia ES Technical Solutions, L.L.C., Flanders, NJ	4	11–30–2011
11759–R	E.I. duPont de Neumours & Company, Inc., Wilmington, DE	4	11–30–2011
6691–R	Praxair, Inc., Danbury, CT	4	11–30–2011
11396–R	MP Environmental Services, Inc., Bakersfield, CA	4	11–30–2011
12905–R	American Railcar Leasing, St. Charles, MO	4	11–30–2011

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12905–R	Union Tank Car Company, Alexandria, VA	4	11–30–2011
11396–R	Clean Harbors Environmental Services, Inc., Norwell, MA	4	11–30–2011
11396–R	Thunderbird Trucking, LLC, East Chicago, IN	4	11–30–2011
11043–R	Thunderbird Trucking, LLC, East Chicago, IN	4	11–30–2011
8445–R	Thunderbird Trucking, LLC, East Chicago, IL	4	11–30–2011
11749–R	Occidental Chemical Corporation, Dallas, TX	4	11–30–2011
12905–R	American Railcar Industries, St. Charles, MO	4	11–30–2011
12905–R	GATX Rail Corporation, Chicago, IL	4	11–30–2011
12905–R	G. E. Capital Rail Services, Chicago, IL	4	11–30–2011
12905–R	Procor Limited, Oakville, ON	4	11–30–2011
12905–R	Trinity Industries, Inc., Dallas, TX	4	11–30–2011
11406–R	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
8723–R	Nelson Brothers Mining Services, LLC, Birmingham, AL	4	11–30–2011
7891–R	Aldrich Chemical Company Inc., Milwaukee, WI	4	11–30–2011
11749–R	Union Tank Car Company, East Chicago, IN	4	11–30–2011
6293–R	Dyno Nobel, Inc., Salt Lake City, UT	4	11–30–2011
11396–R	Coal City Cob Co., Inc., Waxahachie, TX	4	11–30–2011
14175–R	Industrial Welding and Tool Supply, Ltd., Oklahoma City, OK	4	11–30–2011
10656–R	Conference of Radiation Control Program Directors, Inc., Frankfort, KY	4	11–30–2011
7835–R	Air Products & Chemicals, Inc., Allentown, PA	4	11–30–2011
14385–R	Union Pacific Railroad Company, Omaha, NE	4	11–30–2011
11502–R	Fed/Ex Express, Memphis, TN	4	11–30–2011
8697–R	TEMSCO Helicopters, Inc., Ketchikan, AK	4	11–30–2011
7887–R	Quest Aerospace, Inc., Pagosa Springs, CO	4	11–30–2011
11396–R	Rinchem Company, Inc., Albuquerque, NM	4	11–30–2011
7835–R	Robbie D. Wood Inc., Dolomite, AL	4	11–30–2011
11396–R	Robbie D. Wood, Inc., Dolomite, AL	4	11–30–2011
12283–R	Interstate Battery of Alaska, Anchorage, AK	4	11–30–2011
11502–R	UPS, Inc., Atlanta, GA	4	11–30–2011
4884–R	Airgas, Inc., Cheyenne, WY	4	11–30–2011
7835–R	GTS-Welco, Praxair Joint Venture (Former Grantee GT & S, Inc.), Morrisville, PA	4	11–30–2011
7835–R	Matheson Tr-Gas, Inc., Basking Ridge, NJ	4	11–30–2011
9157–R	Matheson Tr-Gas, Basking Ridge, NJ	4	11–30–2011
7835–R	Praxair Distribution Inc., Danbury, CT	4	11–30–2011
7835–R	Praxair, Inc., Danbury, CT	4	11–30–2011
7835–R	ABCO Welding & Industrial Supply, Inc., Waterford, CT	4	11–30–2011
7835–R	Airgas, Inc., Cheyenne, WY.	4	11–30–2011
12726–R	Fed/Ex Express Corporation, Memphis, TN	4	11–30–2011
11043–R	Department of Defense, Scott Air Force Base, IL	4	11–30–2011
11396–R	Department of Defense, Scott Air Force Base, IL	4	11–30–2011
6971–R	Chem Service, Inc., West Chester, PA	4	11–30–2011
11660–R	Olsen Tuckpointing Company, Barrington, IL	4	11–30–2011
7835–R	Rinchem Company, Inc., Albuquerque, NM	4	11–30–2011
7835–R	Air Liquide America L.P., Houston, TX	4	11–30–2011
9778–R	Baker Atlas, Houston, TX	4	11–30–2011
11984–R	Heritage Transport, LLC, Indianapolis, IN	4	11–30–2011
10709–R	Nalco Company, Naperville, IL	4	11–30–2011
7835–R	General Air Service & Supply, Denver, CO	4	11–30–2011
7835–R	SET Environmental, Inc., Wheeling, IL	4	11–30–2011
14691–R	FedEx Express, Memphis, TN	4	11–30–2011
5112–R	U.S. Department of Defense, SCOTT AIR FORCE BASE, IL	4	11–30–2011
7887–R	EQ Industrial Services, Inc., Ypsilanti, MI	4	11–30–2011
7835–R	Air Liquide America Speciality Gases LLC, Plumsteadville, PA	4	11–30–2011
2709–R	U.S. Dept. of Defense (MSDDC), Scott AFB, IL	4	11–30–2011
10709–R	Schlumberger Technologies Corporation, Sugar Land, TX	4	11–30–2011
11055–R	Disposal Consultant Services, Inc., Piscataway, NJ	4	11–30–2011
14754–R	Sierra Chemical Company, Sparks, NV	4	11–30–2011
11984–R	American Airlines, Inc., Tulsa, OK	4	11–30–2011
2787–R	Raytheon Company, Andover, MA	4	11–30–2011
7887–R	Republic Environmental Systems (Pennsylvania), LLC, Hatfield, PA	4	11–30–2011
11866–R	Horizon Lines, LLC, Jacksonville, FL	4	11–30–2011
4850–R	Owen Oil Tools LP, Godley, TX	4	11–30–2011
11396–R	A & D Environmental Services, Inc., Archdale, NC	4	11–30–2011
11043–R	A & D Environmental Services, Inc., Archdale, NC	4	11–30–2011
11043–R	Disposal Consultant Services, Inc., Piscataway, NJ	4	11–30–2011
7835–R	Disposal Consultant Services, Inc., Piscataway, NJ	4	11–30–2011
9929–R	Alliant Techsystems Inc., Propulsion & Controls (Former Grantee ATK Elkton), Elkton, MD	4	11–30–2011
11396–R	Chemtron Corp., Avon, OH	4	11–30–2011
11903–R	Comptank Corporation, Bothwell, ON	4	11–30–2011
14741–R	Weatherford International, Fort Worth, TX	4	11–30–2011
4850–R	Schlumberger Technology Corporation, Sugar Land, TX	4	11–30–2011
8307–R	Sandia National Laboratories, Albuquerque, NM	4	11–30–2011
11043–R	Hazardous Waste Transportation Services, Inc., Santa Fe Springs, CA	4	11–30–2011

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11396–R	Hazardous Waste Transportation Services, Inc., Santa Fe Springs, CA	4	11–30–2011
11396–R	A & D Environmental Services (SC), LLC (Former Grantee: Nu Way Environmental Services, LLC), Lexington, SC.	4	11–30–2011
12412–R	Weas Engineering, Inc., Westfield, IN	4	11–30–2011
3004–R	Air Products & Chemicals, Inc., Allentown, PA	4	11–30–2011
6443–R	Marsulex Sulfides, Fort Saskatchewan, AB	4	11–30–2011
8915–R	Praxair, Inc., Danbury, CT	4	11–30–2011
9623–R	Orica USA Inc., Watkins, CO	4	11–30–2011
10045–R	FedEx Express, Memphis, TN	4	11–30–2011
11227–R	Schlumberger Well Services, a Division of Schlumberger Technology Corporation, Sugar Land, TX.	4	11–30–2011
12412–R	ChemStation of Minneapolis, Eagan, MN	4	11–30–2011
4850–R	Ensign-Bickford Aerospace & Defense Company, Simsbury, CT	4	11–30–2011
4850–R	Honeywell International, Inc., Morristown, NJ	4	11–30–2011
11227–R	Baker Hughes Oilfield Operations, Inc, dba Baker Atlas (Former Grantee: Baker Hughes), Houston, TX.	4	11–30–2011
9166–R	Hawk Leasing, Corp., Ardmore, OK	4	11–30–2011
11110–R	United Parcel Services Company, Louisville, KY	4	11–30–2011
4850–R	Halliburton Energy Services, Inc., Duncan, OK	4	11–30–2011
6691–R	nexAir, LLC, Memphis, TN	4	11–30–2011
14755–R	Tanner Industries Inc., SOUTHAMPTON, PA	4	11–30–2011
3004–R	Air Liquide America L.P., Houston, TX	4	11–30–2011
3004–R	Praxair Inc., Danbury, CT	4	11–30–2011
3004–R	Praxair Distribution, Inc., Danbury, CT	4	11–30–2011
4850–R	Department of Defense, Scott AFB, IL	4	11–30–2011
7972–R	E.I. Du Pont de Nemours & Company, WILMINGTON, DE	4	11–30–2011
8445–R	Precision Industrial Maintenance, Inc., Schenectady, NY	4	11–30–2011
11043–R	Freehold Cartage, Inc., Freehold, NJ	4	11–30–2011
11043–R	North State Environmental, So. San Francisco, CA	4	11–30–2011
12283–R	Federal Aviation Administration, Alaskan Region (FAA), Anchorage, AK	4	11–30–2011
10672–R	Burlington Packaging, Inc., Brooklyn, NY	4	11–30–2011
8445–R	Heritage Transport, LLC, Indianapolis, IN	4	11–30–2011
9735–R	Hapag-Lloyd (America) Inc., Piscataway, NJ	4	11–30–2011
11396–R	AET Environmental, Inc., Denver, CO	4	11–30–2011
11043–R	Clean Earth of North Jersey, Inc., South Kearny, NJ	4	11–30–2011
9623–R	Alaska Pacific Powder Company, Anchorage, AK	4	11–30–2011
14791–R	Heliqwest International Inc., Montrose, CO	4	11–30–2011
10985–R	Domtar A.W. Corp., Ashdown, AR	4	11–30–2011
11073–R	E.I. du Pont de Nemours & Company, Wilmington, DE	4	11–30–2011
8445–R	AET Environmental, Inc., DENVER, CO	4	11–30–2011
970–R	Voltaix, Inc., North Branch, NJ	4	11–30–2011
7835–R	Roberts Oxygen Company, Inc., Gaithersburg, MD	4	11–30–2011
12335–R	Baker Hughes Oilfield Operations, Inc., dba Baker Atlas Division, Houston, TX	4	11–30–2011
6691–R	ABCO Welding & Industrial Supply, Inc. (Show Cause Letter), Waterford, CT	4	11–30–2011
10048–R	Maine LabPack, South Portland, ME	4	11–30–2011
11043–R	Maine LabPack, South Portland, ME	4	11–30–2011
7887–R	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
8445–R	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
11396–R	Stericycle Specialty Waste Solutions Inc., Blaine, MN	4	11–30–2011
7954–R	Matheson Tri Gas, Inc., Basking Ridge, NJ	4	11–30–2011
8445–R	SET Environmental, Inc., Wheeling, IL	4	11–30–2011
8445–R	Clean Harbors Environmental Services, Inc., Norwell, MA	4	11–30–2011
9623–R	Austin Powder Company, Cleveland, OH	4	11–30–2011
9551–R	Kalitta Air, LLC, Ypsilanti, MI		11–30–2011
11043–R	SET Environmental, Inc., Wheeling, IL	4	11–30–2011
13161–R	Honeywell International Inc., Morristown, NJ	4	11–30–2011
4850–R	Accurate Energetic Systems, LLC MC, EWEN, TN	4	11–30–2011
11043–R	AET Environmental, Inc., DENVER, CO	4	11–30–2011
12095–R	Clean Harbors, Environmental Services, Inc., Norwell, MA	4	11–30–2011
6691–R	Matheson Tr-Gas, Inc. 9, (Show Cause Letters), Basking Ridge, NJ	4	11–30–2011
7594–R	Bromine Compounds, Ltd., Beer Sheva, UT	4	11–30–2011
9623–R	Buckley Powder Company, Englewood, CO	4	11–30–2011
11348–R	BASF Corporation, Florham Park, NJ	4	11–30–2011
7887–R	Photo Waste Recycling Co., Inc., San Rafael, CA	4	11–30–2011
7887–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
11043–R	Veolia ES Technical Solutions, L.L.C., Flanders, NJ	4	11–30–2011
7887–R	Northland Environmental, LLC, Providence, RI	4	11–30–2011
11396–R	Northland Environmental, LLC, Providence, RI	4	11–30–2011
12283–R	AT&T Alascom, Anchorage, AK	4	11–30–2011
7887–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	11–30–2011
11396–R	21st Century Environmental, Management, LLC of RI, Providence, RI	4	11–30–2011
11396–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
11296–R	Environmental Waste Services, Inc., Elburn, IL	4	11–30–2011

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11043–R	Stericycle Specialty, Waste Solution Inc., Blaine, MN	4	11–30–2011
11296–R	Bay West, Inc., St. Paul, MN	4	11–30–2011
13078–R	E.I. duPont de Nemours & Co., Wilmington, DE	4	11–30–2011
8156–R	Gas Dynamics, a division of the Argus Group. Inc., Chesterfield, MI	4	11–30–2011
11396–R	Responsive Environmental Solutions Inc., New Braunfels, TX	4	11–30–2011
7887–R	Chemical Pollution Control, LLC of New York, Bay Shore, NY	4	11–30–2011
8445–R	Chemical Analytics, Inc., Romulus, MI	4	11–30–2011
11043–R	Chemical Analytics, Inc. (CAI), Romulus, MI	4	11–30–2011
6805–R	Praxair Distribution, Southeast, LLC, Tequesta, FL	4	11–30–2011
6691–R	Praxair Distribution Southeast, LLC, Tequesta, FL	4	11–30–2011
12412–R	American Development, Corporation, Fayetteville, TN	4	11–30–2011
970–R	BASF Corporation, Florham, NJ	4	11–30–2011
7073–R	Afton Chemical Corporation, Richmond, VA	4	11–30–2011
7073–R	Ethyl Corporation, Richmond, VA	4	11–30–2011
8445–R	University of Vermont, Burlington, VT	4	11–30–2011
11043–R	Safety-Kleen EnviroSystems Company of Puerto Rico, Inc., Manati, PR	4	11–30–2011
11043–R	Safety-Kleen Systems, Inc., Plano, TX	4	11–30–2011
12905–R	Texana Tank Car & Mfg., Ltd., Nash, TX	4	11–30–2011
11043–R	Bay West, Inc., St. Paul, MN	4	11–30–2011
7616–R	B&H Rail Corporation (BH), The, Lakeville, NY	4	11–30–2011
11984–R	American Eagle Airlines, Inc., DFW Airport, TX	4	11–30–2011
7954–R	Solvay Fluorides, LLC, Houston, TX	4	11–30–2011
7954–R	Solvay Fluor Korea Co., Ltd., Uliju-Kun, Ulsan Korea	4	11–30–2011
10880–R	Buckley Powder Company, Englewood, CO	4	11–30–2011
11396–R	Haz Mat Trans, Inc., San Bernardino, CA	4	11–30–2011
970–R	U.S. Department of Defense, Scott AFB, IL	4	11–30–2011
8445–R	Northland Environmental, LLC, Providence, RI	4	11–30–2011
8445–R	21st Century Environmental, Management, LLC of RI, Providence, RI	4	11–30–2011
8757–R	Milton Roy Company, Ivyland, PA	4	11–30–2011
6805–R	Air Liquide America LP, Houston, TX	4	11–30–2011
7835–R	Air Liquide Healthcare America Corporation, Houston, TX	4	11–30–2011
8445–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
6691–R	Linde Gas Puerto Rico Inc, NEW PROVIDENCE, NJ	4	11–30–2011
6691–R	Linde Gas North America LLC, NEW PROVIDENCE, NJ	4	11–30–2011
11043–R	HazMat Environmental Group, Inc., Buffalo, NY	4	11–30–2011
11043–R	EQ Industrial Services, Inc., Ypsilanti, MI	4	11–30–2011
11043–R	Northland Environmental, LLC, Providence, RI	4	11–30–2011
11043–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	11–30–2011
11043–R	Bed Rock, Inc., dba Tri-State Motor Transit Co., Joplin, MO	4	11–30–2011
11396–R	Advanced Waste Carriers, Inc., West Allis, WI	4	11–30–2011
11984–R	21st Century Environmental Management, LLC of RI, Providence, RI	4	11–30–2011
11984–R	Northland Environmental, LLC (Northland), Providence, RI	4	11–30–2011
11984–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
12095–R	Lyondell Basell Industeries (former Grantee Lyondell Chemical), Houston, TX	4	11–30–2011
12412–R	DistTech Inc., dba DistTec, North Canton, OH	4	11–30–2011
12412–R	Chemi-Green Solutions LLC, dba ChemStation of Oregon, Wilsonville, OR	4	11–30–2011
10650–R	Loveland Products, Inc., Billings, MT	4	11–30–2011
10880–R	Hilltop Energy, Inc., Mineral City, OH	4	11–30–2011
15073–R	Utility Aviation, Inc., Loveland, CO	4	11–30–2011
5022–R	U.S. Department of Defense, Scott AFB, IL	4	11–30–2011
8228–R	U.S. Department of Defense, Scott AFB, IL	4	11–30–2011
5022–R	Aerojet Corporation, Culpeper, VA	4	11–30–2011
5022–R	ATK Launch Systems Inc., Brigham City, UT	4	11–30–2011
10458–R	Chemtrade Logistics Inc., Toronto, ON	4	11–30–2011
11373–R	Specialty Chemical Company LLC, Cleveland, TN	4	11–30–2011
11396–R	Wal-Mart Stores East, LP (“Wal-Mart-LP”), Bentonville, AR	4	11–30–2011
11396–R	Wal-Mart Stores, Inc., Bentonville, AR	4	11–30–2011
11432–R	Baker Hughes Oilfield, Operations, Inc. (DBA Baker Atlas), Houston, TX	4	11–30–2011
5022–R	ATK ABL, Rocket Center, WV	4	11–30–2011
8228–R	U.S. Department of Homeland Security, Transportation Security Laboratory (TSL), Atlantic City, NJ.	4	11–30–2011
8995–R	BASF Corporation, Florham Park, NJ	4	11–30–2011
12014–R	Trane Company, The, Charlotte, NC	4	11–30–2011
12325–R	Air Liquide America L.P., Houston, TX	4	11–30–2011
12412–R	FMC Corporation, Philadelphia, PA	4	11–30–2011
13219–R	Solvay Chemicals, Inc., Houston, TX	4	11–30–2011
8228–R	Central Intelligence Agency (CIA), Washington, DC	4	11–30–2011
8445–R	Philip Reclamation Services, Houston, LLC, Houston, TX	4	11–30–2011
8995–R	Flexible Products Company of Marietta, GA, a wholly owned subsidiary of The Dow Chemical Company, Philadelphia, PA.	4	11–30–2011
10880–R	Dyno Nobel, Inc., Salt Lake City, UT	4	11–30–2011
11043–R	Allworth, LLC, Birmingham, AL	4	11–30–2011
11043–R	Republic Environmental Systems, Pa. LLC, Hatfield, PA	4	11–30–2011

Application No.	Applicant	Reason for delay	Estimated date of completion
11043–R	Chemical Pollution Control of FL, LLC, Deerfield Beach, FL	4	11–30–2011
11043–R	Rho-Chem, LLC, Phoenix, AZ	4	11–30–2011
11043–R	Philip Reclamation Services, Houston, LLC, Houston, TX	4	11–30–2011
11043–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	11–30–2011
11373–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	11–30–2011
11396–R	Allworth, LLC, Birmingham, AL	4	11–30–2011
11396–R	Republic Environmental Systems (Pennsylvania), LLC, Hatfield, PA	4	11–30–2011
11984–R	Allworth, LLC, Birmingham, AL	4	11–30–2011
11984–R	Republic Environmental Systems (Pennsylvania) LLC, Hatfield, PA	4	11–30–2011
13020–R	Bristol Bay Contractors, Inc., King Salmon, AK	4	11–30–2011
13192–R	A & D Environmental Services (SC), LLC, Lexington, SC	4	11–30–2011
14193–R	Honeywell International, Inc., Morristown, NJ	4	11–30–2011
8445–R	Advanced Waste Carriers, Inc., West Allis, WI	4	11–30–2011
9275–R	Tommy Bahama Group, Inc., dba TBG, Inc., Auburn, WA	4	11–30–2011
11043–R	Advanced Waste Carriers, Inc., West Allis, WI	4	11–30–2011
11043–R	Solvent Recovery, LLC, Kansas City, MO	4	11–30–2011
11215–R	Orbital Sciences Corporation, Mojave, CA	4	11–30–2011
11396–R	Solvent Recovery, LLC, Kansas City, MO	4	11–30–2011
14823–R	FedEx Ground Package, System, Inc., Moon Township, PA	4	11–30–2011
11043–R	Robbie D. Wood, Inc., Dolomite, AL	4	11–30–2011
2709–R	Aerojet Corporation, Culpeper, VA	4	11–30–2011
11966–R	FMC Corporation, Philadelphia, PA	4	11–30–2011
12325–R	Kraton Polymers, U.S. LLC, Belpre, OH	4	11–30–2011
8915–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
13163–R	Pacific Bio-Material, Management, Inc., dba Pacific Scientific Transport, Fresno, CA	4	11–30–2011
7887–R	PSC Recovery Systems, LLC, Dallas, TX	4	11–30–2011
8445–R	PSC Recovery Systems, LLC, Dallas, TX	4	11–30–2011
11043–R	PSC Recovery Systems, LLC, Dallas, TX	4	11–30–2011
11984–R	PSC Recovery Systems. LLC, Dallas, TX	4	11–30–2011
3004–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
8156–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
8228–R	U.S. Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Washington, DC.	4	11–30–2011
6805–R	Air Liquide America Specialty Gases LLC, Plumsteadville, PA	4	11–30–2011
8723–R	Western Explosive Systems Company DBA WESCO, Midvale, UT	4	11–30–2011
14175–R	Dressel Welding Supply, Inc., Lancaster, PA	4	11–30–2011
8156–R	Airgas, Inc., Cheyenne, WY	4	11–30–2011
11967–R	Brenntag Mid-South, Inc., Henderson, KY	4	11–30–2011
6670–R	Linde Gas North America LLC, Murray Hill, NJ	4	11–30–2011
8915–R	Linde Gas North America LLC, Murray Hill, NJ	4	11–30–2011
11759–R	3M, Saint Paul, MN	4	11–30–2011
11043–R	Barnes HazMat, Inc., Pacoima, CA	4	11–30–2011
5022–R	Custom Analytical Engineering Systems, Inc., Flintstone, MD	4	11–30–2011
11043–R	Haz Mat Services, Inc., Anaheim, CA	4	11–30–2011
11396–R	Haz Mat Services, Inc., Anaheim, CA	4	11–30–2011
10880–R	Austin Powder Company, Cleveland, OH	4	11–30–2011
12858–R	Union Carbide, North Seadrift, TX	4	11–30–2011
12858–R	The Dow Chemical Company, Philadelphia, PA	4	11–30–2011
12744–R	AFL Network Services, Inc., Duncan, SC	4	11–30–2011
10457–R	Thatcher Transportation, Inc., Salt Lake City, UT	4	11–30–2011

[FR Doc. 2011–22942 Filed 9–12–11; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Financial Access Activities; Comment Request.

AGENCY: Department of the Treasury.

ACTION: Notice and request for public comment.

SUMMARY: This notice invites comments from the public regarding how the Treasury's Office of Financial Education and Financial Access (OFEFA) can design, implement and administer certain financial access activities authorized in section 1204 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act), to expand access to mainstream financial institutions. Section 1204 authorizes Treasury to establish a multi-year program of grants, cooperative agreements, financial agency agreements and similar projects and undertakings, subject to availability of funding.

DATES: All comments and submissions must be received by November 14, 2011.

ADDRESSES: Comments may be sent by mail to: Louisa Quittman, Office of Financial Education and Financial Access, U.S. Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220 or by e-mail to: *ofe@treasury.gov*, by facsimile to (202) 622–6243. Please note this is not a toll free number. In general, OFEFA will make all comments and materials submitted 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 Treasury 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. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Information about OFEFA can be found at *http://www.ustreas.gov/offices/domestic-finance/financial-institution/fin-education*. You may also contact Louisa Quittman, Director of Community Programs, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, Washington, DC 20220 at (202) 622–5770 or *ofe@treasury.gov*.

SUPPLEMENTARY INFORMATION: Section 1204 of Title XII of the Act authorizes the Secretary of the Treasury to establish a multi-year program of grants, cooperative agreements, financial agency agreements, and similar contracts or undertakings to promote initiatives designed to: (1) Enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution that are appropriate to meet the financial needs of such individuals and (2) improve access to the provision of such accounts, on reasonable terms, for low- and moderate-income individuals. Section 1204 also authorizes, subject to regulations prescribed by Treasury, recipients of such grants or cooperative agreements to provide low- and moderate-income individuals with small-dollar value loans and financial education and counseling relating to conducting transactions in and managing accounts.[1]

The Treasury expects to develop and implement activities to enable eligible entities to develop and provide account products and services that are appropriate and accessible for low- and moderate- income individuals who are not fully incorporated into the financial mainstream.

OFEFA invites comments and suggestions on potential activities, particularly those activities that may not require additional appropriations. OFEFA is particularly interested in comments in the following areas:

(1) Program Focus

Section 1204(a) of the Act states that the Secretary is authorized to establish a multi-year program of grants, cooperative agreements, financial agency agreements, or similar contracts or undertakings to promote initiatives designed to: (1) Enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution that are appropriate to meet the financial need of such individuals; and (2) improve access to the provision of accounts, on reasonable terms, for low- and moderate-income individuals. The Treasury welcomes comments on issues related to the purpose and intent of the section 1204 program, particularly with respect to the following questions:

(a) What types of program initiatives should the Treasury promote to enable low- and moderate-income individuals to establish accounts in federally insured depository institutions?

(b) How should the Treasury evaluate whether an account in a federally insured depository institution is ''appropriate'' to meet the financial needs of low- and moderate-income individuals? What account features and terms are ''reasonable'' to meet the financial needs of low- and moderate-income individuals in an appropriate manner?

(c) What level of financial access should be the desired outcome of such initiatives? What other measures of success of the initiatives should be considered?

(d) How can the Treasury enable, enhance and assist local, regional, and state start-up collaborations that incorporate low- and moderate- income individuals into the financial mainstream? How can existing collaborations be supported to expand or improve their financial access efforts? How could meaningful innovations be fostered by these collaborations?

(e) How could the Treasury best encourage high-quality financial education and counseling relating to conducting transactions in and managing accounts?

(f) What could be done to promote innovation within the development of sustainable financial services and products related to accounts? Are there opportunities for innovation in account products, services, delivery channels, or other areas that could be effectively addressed through the use of prizes, awards, and competitions? If so, what prizes or awards would be necessary to help promote account innovations?

(2) General Comments

The Treasury is interested in comments on how it can encourage activities that enable low- and moderate-income individuals to establish one or more accounts in a federally insured depository institution and to improve access to the provision of such accounts. Additionally, we are interested in comments regarding other ways (in addition to the provision of accounts in federally insured depository institutions) for the Treasury to consider helping individuals obtain access to accounts with appropriate consumer protections and federal deposit insurance. Lastly, we are interested in comments on what should be done to support innovative approaches to the delivery of financial education and counseling to increase the financial capability of individuals and families more broadly?

Dated: August 30, 2011.

Rebecca Ewing,

Acting Executive Secretary.

[FR Doc. 2011–23235 Filed 9–12–11; 8:45 am]

BILLING CODE 4810–25–P

[1] 12 U.S.C. 5623.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Fiduciary Activities.''

DATES: You should submit written comments by October 13, 2011.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0140, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy the comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0140, by mail to U.S. Office of

Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Ira L. Mills or Mary H. Gottlieb, OCC Clearance Officers, (202) 874–6055 or (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law, Public Law 111–203, 124 Stat. 1376 (2010) (Dodd-Frank Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act transferred the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the OCC, on July 21, 2011. The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date. As part of that transfer, the OCC has made a non-substantive change to this collection of information to merge OTS's information collection regarding Fiduciary Activities (OMB Control Nos. 1550–0037; 1557–0262) with this collection of information. OCC is now seeking a renewal for the merged collection.

Title: Fiduciary Activities.

OMB Control No.: 1557–0140 (which includes former OMB Control Nos. 1550–0037 and 1557–0262).

Description:

Pursuant to 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. Under 12 U.S.C. 1464(n), the OTS regulated the fiduciary activities of federal savings associations. 12 CFR parts 9 and 150 contain the regulations that national banks and federal savings associations (institutions), respectively must follow when conducting fiduciary activities.

12 CFR parts 9 and 150 require institutions with fiduciary powers to retain all fiduciary records relating to an account for a period of three years after termination of the account or of related litigation. They also require institutions to note results of fiduciary activities annually in the minutes of the board of directors. Both of these requirements are needed to ensure the safety and soundness in fiduciary activities. Additionally, to ensure that the OCC has current information on which institutions have fiduciary powers, parts 9 and 150 require institutions to file a certified copy of a board resolution in order to surrender fiduciary powers.

To ensure adequate disclosure of the operational aspects of collective investment funds, parts 9 and 150 require that an institution operate a collective investment fund pursuant to a written plan. The written plan is the basic operating document of a collective investment fund, and serves as the primary disclosure document to fund participants. As such, it is analogous to the prospectus prepared by a registered investment company pursuant to SEC requirements. It contains provisions as to the manner in which an institution will operate the fund and addresses such matters as investment powers and policies, terms, and conditions governing the admission and withdrawal of participants, the basis and method of valuation, and the basis upon which the fund may be terminated. The primary regulatory purpose of the plan is to define the operational parameters of a collective investment fund, not to solicit information.

To ensure that information on the performance of a collective investment fund is available to current and prospective fund participants, parts 9 and 150 require an institution to prepare an annual financial report on each fund and to notify participants of its availability. The annual financial report for a collective investment fund is a basic disclosure document for fund participants. The requirement is analogous to that of registered investment companies under SEC supervision. The annual financial report contains, among other things, a list of fund investments with cost and market values of each; a statement showing purchases and sales since the previous report, with any profit or loss; income and disbursements for the year; and investments in default.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 605.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 83,529 hours.

On April 18, 2011, the OCC published notice of intent to renew this collection. 76 FR 21799. No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Dated: September 7, 2011.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2011–23285 Filed 9–12–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Privacy Act of 1974; Systems of Records

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of alterations to three Office of the Comptroller of the Currency Privacy Act systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury and the Office of the Comptroller of the Currency (OCC) give notice of alterations to the Privacy Act systems of records entitled ''CC .210—Bank Securities Dealers System,'' ''CC .220—Section 914 Tracking System;'' and ''CC .600—Consumer Complaint and Inquiry Information System.''

DATES: *Effective Date:* Comments must be received no later than October 13, 2011. The alterations to the systems of records will be effective October 24, 2011 unless the OCC receives comments that would result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Roger Mahach, Chief Information Security and Privacy Officer, (202) 649–5830. 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Pursuant to section 313 of Title III of the Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203–July 21, 2010 (the Act), the Office of Thrift Supervision (OTS) was abolished.

On July 21, 2011, the transfer date under section 1062 of the Act, and pursuant to section 312 of the Act, the OTS was integrated into the OCC, and all functions of the OTS and the Director of the OTS related to Federal savings associations (and not otherwise transferred to another agency pursuant to the Act) were transferred to the OCC and the Comptroller of the Currency, including all rulemaking authority of the OTS and the Director of the OTS, respectively, relating to savings associations.

Also pursuant to section 312 of the Act, the OCC and the Comptroller succeed in all powers, authorities, rights and duties that were vested in the OTS and the Director of the OTS on the day before the transfer date relating to the functions transferred. Thus, the OCC, a bureau of the Treasury Department, is charged with assuring the safety and soundness of, and compliance with laws and regulations, fair access to financial services, and fair treatment of customers by, the institutions, including national banks and Federal savings associations, and other persons subject to its jurisdiction. *See* 12 U.S.C. (as amended by section 324 of the Act).

Thus, as of July 21, 2011, the OCC is responsible for the supervision of both national banks and Federal savings associations. Accordingly, to reflect the integration of the OTS into the OCC, the OCC is adding a category of individuals (those individuals related to Federal savings associations) to the following systems of records, which previously covered individuals related to national banks: Treasury/CC .210—Bank Securities Dealers System; Treasury/CC .220—Section 914 Tracking System; Treasury/CC .600—Consumer Complaint and Inquiry System. The OCC is also making conforming changes, as necessary, under ''Purposes,'' ''Authority for Maintenance of the System,'' and ''Routine Uses'' of the systems of records notices as necessary to capture the new category of individuals.

Additionally, the OCC is making other changes to the Treasury/CC .220—''Section 914 Tracking System'' system of records, apart from the changes being made to reflect the integration of the OTS into the OCC. The OCC is renaming the system to more accurately reflect the information contained in the system. The system will no longer be called Treasury/CC .220—''Section 914 Tracking System'' and will instead be called Treasury/CC .220—''Notices of Proposed Changes in Employees, Officers and Directors Tracking System.'' The OCC is also adding new categories of individuals to the system, beyond the new category described above. The system currently includes individuals who file notices pursuant to 12 CFR 5.51. However, the OCC has the authority under other laws and regulations (i.e. 12 CFR 5.20 and 12 U.S.C. 1818(b)) to require the entities it supervises to file notices of changes in employees, officers and directors. Thus, the OCC is broadening the categories of individuals covered by the system so that the OCC may track notices filed under each relevant authority, which will allow the OCC to better carry out its statutory and regulatory responsibilities. In addition, two routine uses for the system will also be altered to conform to the appropriate new categories of individuals.

The System notices were last published in their entirety in the **Federal Register,** July 18, 2008 (Volume 73, Number 139) pp. 41402–41414.

As required by 5 U.S.C. 552a(r) of the Privacy Act, the report of altered systems of records has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For the reasons set forth in this preamble, the Department proposes to alter systems of records entitled ''CC .210—Bank Securities Dealers System,'' ''CC .220—Section 914 Tracking System;'' and ''CC .600—Consumer Complaint and Inquiry Information System'' as follows:

TREASURY/CC .210

SYSTEM NAME:

Bank Securities Dealers System

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

Description of changes: Add ''Federal savings association'' after ''national bank,'' and remove ''District of Columbia Bank'' and add in its place ''District of Columbia savings association.'' Add ''or savings association'' between ''* * * of any such bank'' and ''in the capacity of.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

* * * * *

Description of changes: Add ''(as amended)'' after ''12 U.S.C. 1;'' add ''1464'' after ''481'' and before ''1818.''

* * * * *

PURPOSE:

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Description of changes: Add ''Federal savings association'' after ''national banks'' and remove ''District of Columbia banks'' and add in its place ''District of Columbia savings associations.''

* * * * *

TREASURY/CC .220

SYSTEM NAME:

Description of changes: Remove the title ''Section 914 Tracking system'' and in its place add ''Notices of Proposed Changes in Employees, Officers and Directors Tracking System.''

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of changes: Remove current entry and in its place add the following: ''Individuals covered by this system are those who are named in notices filed: (1) under 12 CFR 5.51 as proposed directors or senior executive officers of a national bank, or federal branches of foreign banks (Section 5.51 entities) when the entities:

(a) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(b) Are subject to cease and desist orders, consent orders, or formal written agreements, unless otherwise informed in writing by the OCC;

(c) Have been determined, in writing, by the OCC to be in ''troubled condition'';

(d) Are not in compliance with minimum capital requirements prescribed under 12 CFR Part 3; or

(e) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan, that such notices are appropriate. (2) under 12 CFR 5.20(g)(2) as proposed officers or directors of national banks (Section 5.20(g)(2) entities) for a two-year period from the date they commence business. (3) under 12 CFR 163, Subpart H (previously 12 CFR 563, Subpart H) as proposed directors or senior executive officers of Federal savings associations (Part 163, Subpart H entities) when the entities:

(a) Are not in compliance with minimum capital requirements prescribed under 12 CFR 167 (previously 12 CFR 567);

(b) Have a composite rating of 4 or 5 under the Uniform Financial Institutions Rating System;

(c) Are subject to capital directives, cease and desist orders, consent orders, formal written agreements, or prompt corrective action directives relating to

the safety and soundness or financial viability of the Federal savings association, unless otherwise informed in writing by the OCC;

(d) Have been determined in writing by the OCC to be in ''troubled condition;'' or

(e) Have been advised by the OCC, in connection with its review of an entity's capital restoration plan required by 12 U.S.C. 1831o, that such notice is required. (4) pursuant to 12 U.S.C. 1818(b) as proposed employees of national banks, Federal savings associations or any other entity subject to the OCC's jurisdiction (1818(b) entities), other than employees covered by 12 CFR 5.51 or 12 CFR 163, Subpart H, when required to do so pursuant to 12 U.S.C. 1818(b).''

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

Description of changes: Remove ''pursuant to 5 CFR 5.51.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

* * * * *

Description of changes: Add ''(as amended)'' after ''12 U.S.C. 1;'' add ''1464'' after ''481'' and before ''1817(j).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

a. Description of changes: Routine use 1) is amended by removing ''An OCC-regulated entity'' and in its place adding ''A Section 5.51 entity, a Section 5.20(g) entity, a Part 163, Subpart H entity, or a Section 1818(b) entity.'' Routine use (1) is further amended by removing the words ''pursuant to 12 CFR 5.51'' after the words ''filed by that entity'' and is revised to read as follows:

''A Section 5.51 entity, a Section 5.20(g) entity, a Part 163, Subpart H entity, or a Section 1818(b) entity in connection with review and action on a notice filed by that entity;''

b. Description of changes: Routine use (2) is amended by removing ''12 CFR 5.51'' and in its place add ''any authority cited herein'' and is revised to read as follows: ''Third parties to the extent necessary to obtain information that is pertinent to the OCC's review and action on a notice received under any authority cited herein;''

* * * * *

SYSTEM MANAGER ADDRESS:

* * * * *

Description of changes: Remove ''Director'' and in its place add ''Deputy Comptroller.''

* * * * *

TREASURY/CC .600

SYSTEM NAME:

Consumer Complaint and Inquiry System

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of changes: Add ''Federal savings associations,'' after the words ''about national banks'' and remove ''District of Columbia banks'' and in its place add ''District of Columbia savings associations.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

* * * * *

Description of changes: Add ''(as amended)'' after ''12 U.S.C. 1;'' add ''1464'' after ''481'' and before ''and 1820.''

* * * * *

Dated: August 30, 2011.

Veronica Marco,

Acting Deputy Assistant Secretary for Privacy, Transparency, and Records.

[FR Doc. 2011–23397 Filed 9–12–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0710]

Agency Information Collection Activity (VSO Access to VHA Electronic Health Records) Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0710'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0710.''

SUPPLEMENTARY INFORMATION:

Title: VSO Access to VHA Electronic Health Records, VA Form 10–0400.

OMB Control Number: 2900–0710.

Type of Review: Extension of a currently approved collection.

Abstract: VSO's complete VA Form 10–0400 to request authorization to access VA VistA database. VA will use the data collected to establish an account for VSO's who were granted power of attorney by veterans who have medical information recorded in VHA electronic health records system.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 8, 2011, at page 40454.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 400 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 12,000.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–23349 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0119]

Agency Information Collection (Report of Treatment in Hospital) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0119'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0119.''

SUPPLEMENTARY INFORMATION:

Title: Report of Treatment in Hospital, VA FL 29–551.

OMB Control Number: 2900–0119.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 29–551 is used to collect information from hospitals where a claimant was treated. VA uses the data to determine the insured's eligibility for disability insurance benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 1, 2011, at pages 38743–38744.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,055 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,277.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–23352 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VA Form 10–0515]

Proposed Information Collection (Spinal Cord Injury Patient Care Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to assess veteran's perception of satisfaction with VA rehabilitation and health care.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 14, 2011.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *cynthia.harvey-pryor@va.gov.* Please refer to ''OMB Control No. 2900–New (VA Form 10–0515)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Spinal Cord Injury Patient Care Survey, VA Form 10–0515.

OMB Control Number: OMB Control No. 2900–New.

Type of Review: New Collection.

Abstract: Information collected on VA Form 10–0515 will be used to determine spinal cord patients' satisfaction with VA rehabilitation and health care system.

Affected Public: Individuals or households.

Estimated Annual Burden: 33.

Frequency of Response: One time.

Estimated Average Burden Per Respondents: 10 minutes.

Estimated Annual Responses: 600.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–23346 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Proposed Information Collection (Claim for Disability Insurance Benefits, Government Life Insurance) Activity: Comment Request.

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 14, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Claim for Disability Insurance Benefits, Government Life Insurance, VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: Policyholder's complete VA Form 29–357 to file a claim for disability insurance on National Service Life Insurance and United States Government Life Insurance policies. The information collected is used to determine the policyholder's eligibility for disability insurance benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden per Respondent: 1 hour and 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,100.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–23347 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0618]

Agency Information Collection (Application by Insured Terminally Ill Person for Accelerated Benefit (38 CFR 9.14(e)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0618'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0618.''

SUPPLEMENTARY INFORMATION:

Title: Application by Insured Terminally Ill Person for Accelerated Benefit (38 CFR 9.14(e).

OMB Control Number: 2900–0618.

Type of Review: Extension of a currently approved collection.

Abstract: An insured person who is terminally ill may request a portion of the face value of his or her Servicemembers' Group Life Insurance (SGLI) or Veterans' Group Life Insurance (VGLI) prior to death. If the insured would like to receive a portion of the SGLI or VGLI he or she must submit a Servicemembers' and Veterans' Group Life Insurance Accelerated Benefits Option application. The application must include a medical prognosis by a physician stating the life expectancy of the insured person and a statement by the insured on the amount of accelerated benefit he or she choose to receive. The application is obtainable by writing to the Office of Servicemembers' Group Life Insurance ABO Claim Processing, 290 West Mt. Pleasant Avenue, Livingston, NJ 07039, or calling 1800–419–1473 or downloading the application via the internet at *http://www.insurance.va.gov.*

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 1, 2011, at page 38744.

Affected Public: Individuals or households.

Estimated Annual Burden: 40 hours.

Estimated Average Burden per Respondent: 12 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 200.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–23348 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0635]

Agency Information Collection (Suspension of Monthly Check) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0635'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0635.''

SUPPLEMENTARY INFORMATION:

Title: Suspension of Monthly Check, VA Form 29–0759.

OMB Control Number: 2900–0635.

Type of Review: Extension of a currently approved collection.

Abstract: When a beneficiary's monthly insurance check is not cash within one year from the issued date, the Department of Treasury returns the funds to VA. VA Form 29–0759 is used to advise the beneficiary that his or her monthly insurance checks have been suspended and to request the beneficiary to provide a current address or if desired a banking institution for direct deposit for monthly checks.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 1, 2011, at page 38745.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,200.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–23350 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0716]

Agency Information Collection (Complaint of Employment Discrimination) Activity Under OMB Review

AGENCY: Office of Human Resources and Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Office of Human Resources and Administration (OHR&A), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 13, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0716'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0716.''

SUPPLEMENTARY INFORMATION:

Title: Complaint of Employment Discrimination, VA Form 4939.

OMB Control Number: 2900–0716.

Type of Review: Existing of a currently approved collection.

Abstract: VA employees, former employees and applicants for employment who believe they were denied employment based on race, color, religion, gender, national origin, age, physical or mental disability and/or reprisal for prior Equal Employment Opportunity activity complete VA Form 4939 to file complaint of discrimination.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 1, 2011, at page 38743.

Affected Public: Individuals or households.

Estimated Annual Burden: 200 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 419.

Dated: September 8, 2011.

By direction of the Secretary.

Denise McLamb,

Enterprise Records Service.

[FR Doc. 2011–23351 Filed 9–12–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Federal Reserve System

12 CFR Parts 207, 215, 223, *et al.*

Availability of Information, Public Observation of Meetings, Procedure, Practice for Hearings, and Post-Employment Restrictions for Senior Examiners; Savings and Loan Holding Companies; Interim Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 215, 223, 228, 238, 239, 261, 261b, 262, 263, and 264a

[Regulations G, O, W, BB, LL, MM; Docket No. R- 1429]

RIN 7100 AD–80

Availability of Information, Public Observation of Meetings, Procedure, Practice for Hearings, and Post-Employment Restrictions for Senior Examiners; Savings and Loan Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is publishing an interim final rule with a request for public comment that sets forth regulations for savings and loan holding companies (''SLHCs''). On July 21, 2011, the responsibility for supervision and regulation of SLHCs transferred from the Office of Thrift Supervision (''OTS'') to the Board pursuant to section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). This interim final rule provides for the corresponding transfer from the OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs. Technical changes to other regulations have also been made to account for the transfer of authority over SLHCs to the Board.

DATES: This interim final rule is effective September 13, 2011. Comments must be received by November 1, 2011.

ADDRESSES: You may submit comments, identified by Docket No. R–1429 and RIN No. 7100 AD 80, by using any of the methods below. Please submit your comments using only one method.

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@*federalreserve.gov. Include docket number in the subject line of the message.
- *Facsimile:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Street, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: *Regulation LL:* Amanda K. Allexon, Senior Counsel, (202) 452–3818, or Paul F. Hannah, Counsel, (202) 452–2810, Legal Division; *Regulation MM:* C. Tate Wilson, Attorney, (202) 452–3696, Christine E. Graham, Senior Attorney, (202) 452–3005, Legal Division; Both Regulations: Kevin Bertsch, Associate Director, (202) 452–5265, Kirk Odegard, Assistant Director, (202) 530–6225, or Mike Sexton, Assistant Director, (202) 452–3009, Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave., NW., Washington, DC 20551. *All other regulatory amendments:* Amanda K. Allexon, Senior Counsel, (202) 452–3818, or Paul F. Hannah, Counsel, (202) 452–2810, Legal Division. For the hearing impaired *only,* Telecommunication Device for the Deaf (TDD), (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Title III of the Dodd-Frank Act transferred from OTS to the Board the responsibility for supervision of SLHCs and their non-depository subsidiaries. The Dodd-Frank Act also transferred supervisory functions related to Federal savings associations and state savings associations to the Office of the Comptroller of the Currency (''OCC'') and the Federal Deposit Insurance Corporation (''FDIC''), respectively.

Specifically, section 312 of the Dodd-Frank Act provides that all functions of the OTS and the Director of the OTS (including rulemaking authority and authority to issue orders) with respect to the supervision of SLHCs and their non-depository subsidiaries transfer to the Board on July 21, 2011.[1] Section 316 of the Dodd-Frank Act provides that all orders, resolutions, determinations, agreements, and regulations, interpretive rules, other interpretations, guidelines, and other advisory materials issued, made, prescribed, or allowed to become effective by the OTS on or before the transfer date with respect to SLHCs and their non-depository subsidiaries will remain in effect and shall be enforceable until modified, terminated, set aside, or superseded in accordance with applicable law by the Board, by any court of competent jurisdiction, or by operation of law. The Dodd-Frank Act includes parallel provisions applicable to the OCC and the FDIC with respect to Federal savings associations and state savings associations, respectively.

Given the extensive transfer of authority to multiple agencies, section 316 of the Dodd-Frank Act required the Board, OCC, and FDIC to identify and publish in the **Federal Register** separate lists of the current OTS regulations that each agency will continue to enforce after the transfer date.[2] On July 21, 2011, the Board issued a notice of intent pursuant to this requirement. The notice of intent outlines all OTS regulations applicable to SLHCs and their non-depository subsidiaries that the Board has currently identified that it intends to enforce after the transfer date. The notice of intent also advised that the Board would issue an interim final rule to effectuate the transition of OTS regulations to the Board.

II. Overview of Interim Final Rule

The interim final rule has three components: (1) New Regulation LL (Part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (Part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to current Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board.

The Board is seeking comment on all aspects of this interim final rule. The Board requests specific comment with respect to whether all regulations relating to the supervision of SLHCs are included in this rulemaking. Alternatively, does this rulemaking carry over regulatory provisions that currently do not apply to SLHCs or their non-depository subsidiaries?

Regulation LL. In drafting new Regulation LL, the Board has sought to collect all current OTS regulations applicable to SLHCs (other than regulations pertaining uniquely to SLHCs in mutual form) and transfer them into a single part of Chapter 2 of Title 12 for ease of locating. Generally,

[1] 12 U.S.C. 5412. Section 312 also transfers to the Board all rulemaking authority under section 11 of the Home Owners' Loan Act relating to transactions with affiliates and extensions of credit to insiders and section 5(q) relating to tying arrangements. 12 U.S.C. 1461 *et seq.*

[2] 12 U.S.C. 5414(c).

the structure of the new Regulation LL closely follows that of the Board's Regulation Y, which houses regulations directly related to bank holding companies (''BHCs''), in order to provide an overall structure to rules that were previously found in disparate locations.[3] In many instances, this process has involved copying the current OTS regulations into the new Regulation LL with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. In other situations, where the requirements or criteria found in the OTS rules were the same as those found in the Board's rules, Regulation LL attempts to conform the language and format used in the rule to that used by the Board.

The Board also made several substantive changes to the OTS regulations as they were incorporated into Regulation LL. Additionally, the Board added or modified regulations to reflect substantive changes introduced by the Dodd-Frank Act. These modifications are discussed separately below.

Application Processing

Throughout the new regulations, the Board has replaced the OTS procedures with respect to the processing of applications and filings for those of the Board to the extent possible. These changes do not alter the thresholds for filing an application or notice, or the standards for the Board's review of an application, but are intended to promote uniformity and consistency in the Board's processing of applications across the range of institutions. The Board will carryover the OTS applications forms, with technical changes, for the time being. SLHCs can find all application and notice forms on the Board's public Web site. This Web site also contains general information about the most common filings, publication requirements, and the Board's electronic application submission system.[4]

Among other things, migration to the Board's procedures for applications processing includes elimination of requirements in OTS rules for prefiling meetings and submission of draft business plans, and formal procedures for determining an application to be complete. The Board's application processing procedures contemplate both the collection and review of submitted information within specified time periods. Because an application to the Board in most instances is acted on within the standard 30 to 60 day processing periods, the Board expects that following the Board's applications procedures will result in applications processing that is at least as expeditious as processing under the OTS procedures.

Control Determinations

Regulation LL modifies the regulations previously used by the OTS for purposes of determining when a company or natural person acquires control of a savings association or SLHC under the Home Owner's Loan Act (''HOLA'')[5] or the Change in Bank Control Act (''CBCA'').[6] In light of the similarity between the statutes governing BHCs and SLHCs, the Board has decided to use its established rules and processes with respect to control determinations under HOLA and the CBCA to ensure consistency between equivalent statutes administered by the same agency.

The definition of control found in HOLA is virtually identical to that found in the Bank Holding Company Act (''BHC Act'').[7] Specifically, both statutes have a similar three-prong test for determining when a company controls a bank or savings association. A company[8] has control over either a bank or savings association if the company:

(1) Directly or indirectly or acting in concert with one or more persons, owns, controls, or has the power to vote 25 percent or more of the voting securities of a company;

(2) Controls in any manner the election of a majority of the board;

(3) Directly or indirectly exercises a controlling influence over management or policies, after reasonable notice and opportunity for hearing.

Because of this similarity, Regulation LL includes provisions interpreting the definition of control under HOLA in the same manner as that term is interpreted under the BHC Act, adopts procedures for reviewing control determination that are identical for SLHCs and BHCs, and conforms the filing requirements under the CBCA for SLHCs to those for BHCs. As a result, OTS regulations relating to control determinations and rebuttals under HOLA, including the rebuttable control factors and process in section 574.4, the certification of ownership in section 574.5, and the rebuttal agreement in section 574.100, are not included in the proposed regulation.

Beginning on the date of approval of this interim final rule, the Board will review investments and relationships with SLHCs by companies using the current practices and policies applicable to BHCs to the extent possible. Overall, the indicia of control used by the Board under the BHC Act to determine whether a company has a controlling influence over the management or policies of a banking organization (which for Board purposes, will now include savings associations and SLHCs) are similar to the control factors found in OTS regulations.[9] However, the OTS rules weigh these factors somewhat differently and use a different review process designed to be more mechanical.

First, the Board does not limit its review of companies with the potential to have a controlling influence to the two largest shareholders. The Board reviews all investors based on all of the facts and circumstances to determine if a controlling influence is present.

Second, the Board does not have a separate application process for rebutting control under the BHC Act and Regulation LL does not include such a process. Under OTS rules, investors that triggered a control factor in section 574.4 could submit an application to the OTS requesting a determination that they have successfully rebutted control under HOLA. This application resulted in a rebuttal agreement between the investor and the OTS in the form found in section 574.100.

Board practice is to consider potential control relationships for all investors in connection with applications submitted under section 3 of the BHC Act.[10] Accordingly, the Board intends to review potential control relationships for all investors in connection with applications submitted to the Board under section 10(e) or 10(o) of HOLA.[11] In situations where investors believe no application is required, the Board

[3] 12 CFR part 225 (Regulation Y).

[4] *See* Application Filing Information at *http://www.federalreserve.gov/generalinfo/applications/afi/*.

[5] 12 U.S.C. 1461 *et seq.*

[6] 12 U.S.C. 1817(j).

[7] 12 U.S.C. 1841(a) and 1467a(a)(2).

[8] Unlike the BHC Act, HOLA's definition of control applies to persons, not just companies. Additionally, an acquirer will be deemed to control a company under HOLA if they have contributed more than 25 percent of the capital of the company. 12 U.S.C. 1467a(a)(2)(B).

[9] The Board discussed these indicia in a 2008 policy statement on noncontrolling equity investments. *See http://www.federalreserve.gov/newsevents/press/bcreg/2020080922c.htm.* The policy statement outlines in greater detail the Board's views on certain indicia of control, such as the size of the voting and total equity investment, director and officer interlocks, business relationships, and actions (whether or not they are based in contract) that may influence or interfere with the major policies and operations of the banking organization.

[10] 12 U.S.C. 1842.

[11] 12 U.S.C. 1467a(e) and 1467a(o).

encourages investors to consult with staff at the appropriate Reserve Bank or the Board to determine what type of review is appropriate to confirm that the Board concurs that no BHC Act or HOLA filing is necessary. As with OTS practice, the Board often obtains a series of commitments from investors seeking non-control determinations.

The CBCA applies a somewhat different definition of control to the acquisition of both banks and savings associations and their holding companies by individuals or companies. The CBCA applies only to acquisitions of control of a holding company through the purchase or other disposition of the company's voting stock, and an acquiror is deemed to control the company if the acquiror would have the power, directly or indirectly, to direct the management or policies of an insured bank or to vote 25 percent or more of any class of voting securities of an insured bank.[12]

A significant difference between OTS and Board regulations relating to the CBCA is the ability to use passivity commitments or rebuttal agreements to avoid filing a CBCA notice. Unlike the OTS, the Board does not allow investors to avoid required filings under the CBCA. The CBCA requires only a notice and background review by the Board and, unlike the BHC Act or HOLA, does not impose any ongoing activity restrictions or other requirements on the filer. For example, the Board may determine that a company does not have control for purposes of the BHC Act (or in the future, for purposes of HOLA) and rely on passivity commitments to support its determination, but that company would continue to be required to file a notice under the CBCA if the size of the investment triggers a filing under that Act.

The Board does not anticipate revisiting ownership structures previously approved by the OTS. The Board would apply its rules only to new investments and would only reconsider the particular structures of past investments approved by the OTS if the company proposes a material transaction, such as an additional expansionary investment, significant recapitalization, or significant modification of business plan.

Financial Holding Company Activities

Section 606(b) of the Dodd-Frank Act amends HOLA by inserting a new requirement that conditions the ability of SLHCs that are not exempt from HOLA's restrictions on activities (''Covered SLHCs'') to engage in certain activities.[13] Pursuant to this new requirement, a Covered SLHC may engage in activities that are permissible only for a financial holding company under section 4(k) of the BHC Act (''4(k) Activities'') if the Covered SLHC meets all of the criteria to qualify as a financial holding company, and complies with all of the requirements applicable to a financial holding company as if the Covered SLHC was a bank holding company.[14]

Section 4(l) of the BHC Act, as amended by section 606(a) of the Dodd-Frank Act, provides for the following requirements for an institution to qualify as a financial holding company: (1) All depository institution subsidiaries and the holding company itself must be well-managed and well-capitalized; (2) the holding company must file an election to engage in activities available only to financial holding companies and certify that it meets the above requirements; and (3) all depository institution subsidiaries must have a CRA rating of ''satisfactory'' or better.[15] Under section 606(b), these new conditions on the ability of Covered SLHCs to engage in 4(k) Activities took effect on the transfer date.

Prior to the Dodd-Frank Act, the authority for SLHCs to engage in 4(k) Activities was based on subparagraphs 10(c)(9)(A) and (B) of HOLA, which were added to the statute by the Gramm-Leach-Bliley Act of 1999.[16] These provisions provide that, after May 4, 1999, no new or existing SLHC could conduct activities except for (i) those listed in subsection 10(c)(1)(C) or 10(c)(2) of HOLA [17] or (ii) 4(k) Activities. The OTS interpreted this reference to 4(k) Activities to be an affirmative grant of authority to all Covered SLHCs to engage in 4(k) Activities. Because there was no specific statutory requirement to do otherwise, the OTS permitted Covered SLHCs to engage in 4(k) Activities without having to satisfy any of the financial holding company-related criteria in the BHC Act.[18] As a result, the OTS imposed only limited filing requirements on Covered SLHCs with respect to 4(k) Activities.[19]

In light of Section 606(b) of the Dodd-Frank Act, the Board believes that subsection 10(c)(2)(H) is the only grant of authority in HOLA for Covered SLHCs to engage in 4(k) Activities.[20] Specifically, subparagraphs 10(c)(9)(A) and (B) do not grant separate authority to engage in 4(k) Activities without having to comply with the standards applicable to financial holding companies. As a result, the Board has concluded that the statute requires Covered SLHCs that wish to engage in 4(k) Activities after the transfer date to file a declaration with the Board to elect to be treated as a financial holding company and a certification that the financial holding company criteria are satisfied for the purpose of engaging in 4(k) Activities.

Accordingly, in subpart G of Regulation LL, the Board has adopted regulations outlining the processes under which a Covered SLHC may elect to be treated as a financial holding company. These regulations are similar to those found in the Board's Regulation Y for BHCs. Subpart G also establishes a process under which Covered SLHCs currently engaged in 4(k) Activities may come into conformance with these new requirements.

After the transfer date, HOLA will continue to permit SLHCs to engage in activities other than those implicated by section 606(b) of the Dodd-Frank Act. In particular, Covered SLHCs conducting certain 4(k) Activities may not be subject to financial holding company requirements if the activities are permissible pursuant to HOLA provisions other than those impacted by section 606(b).

Section 4(c)(8) and 4(k)(4)(F) Activities

Sections 4(c)(8) and 4(k)(4)(F) of the BHC Act permit BHCs and financial holding companies, respectively, to conduct activities the Board has determined by rule or order to be ''closely related to banking'' (''section 4(c)(8) Activities'').[21] HOLA also

[12] 12 U.S.C. 1817(j)(1) and (j)(8)(B).

[13] 12 U.S.C. 1467a(c)(2)(H). HOLA provides an exemption from activities restrictions for certain SLHCs that only controlled, or were in the process of acquiring, one savings association at the time the Gramm-Leach-Bliley Act of 1999 was passed and that meet certain other criteria. Subsections 10(c)(3) and 10(c)(9)(C) of HOLA operate together to establish this exemption. Section 606(b) does not modify the operative provisions of either of these subsections and therefore should not be interpreted to modify the exemption. *See* 12 U.S.C. 1467a(c)(3); 12 U.S.C. 1467a(c)(9).

[14] *Id.*

[15] 12 U.S.C. 1843(l).

[16] 12 U.S.C. 1467a(c)(9)(A)–(B).

[17] 12 U.S.C. 1467(a)(c)(1)(C)–(2).

[18] *See* Notice of Proposed Rulemaking, Authority for Certain Savings and Loan Holding Companies to Engage in Financial Activities, 66 **Federal Register** 56488 (November 8, 2001).

[19] Prior to the transfer date, in order to engage in 4(k) Activities, SLHCs generally were not required to make any pre- or post-notice filings with the OTS. *See Id.*

[20] In this context, subparagraphs 10(c)(9)(A) and (B) of HOLA now should be read to act as limitations on the activities that an entity that acquires and holds savings associations may engage in.

[21] 12 U.S.C. 1843(c)(8) and 4(k)(4)(F).

permits all SLHCs to conduct these activities.[22] Under OTS practice, the OTS has not required a filing to engage in section 4(c)(8) Activities.[23] After the transfer date, Covered SLHCs that only conduct section 4(c)(8) Activities will not need to submit the declaration described above. However, any SLHC that begins a new section 4(c)(8) Activity after the transfer date and has not made a declaration and submitted the appropriate post-notice will need to comply with relevant filing requirements in subpart F of this rule.

Insurance Agency Activities

HOLA also allows SLHCs to engage in insurance and escrow activities (''insurance agency activities'').[24] These activities fall within the scope of 4(k) Activities. However, because HOLA provides an explicit grant of authority to conduct insurance agency activities, the restrictions on 4(k) Activities will not apply to Covered SLHCs with respect to insurance agency activities. Accordingly, after the transfer date, Covered SLHCs do not have to submit a declaration and adhere to the financial holding company limitations in order to engage exclusively in this set of activities.

''1987 List'' Activities

Additionally, HOLA permits SLHCs to engage in activities that multiple SLHCs were authorized, by regulation, to directly engage in on March 5, 1987.[25] The OTS identified the activities that satisfy this section of HOLA in their regulations (''1987 List'').[26] Some of the activities on the 1987 List, such as real estate development, are not permissible for BHCs or financial holding companies. The Dodd-Frank Act does not modify or condition the ability of SLHCs to engage in these activities. Therefore, the activities identified by the OTS on the 1987 List remain permissible for Covered SLHCs, subject to the requirements in subpart F of Regulation LL. After the transfer date, Covered SLHCs do not have to submit a declaration and adhere to the financial holding company limitations in order to engage exclusively in this set of activities.

Dividends by Subsidiary Savings Associations

Section 10(f) of HOLA provides that a subsidiary savings association of an SLHC must file a notice at least 30 days prior to declaring a dividend.[27] Prior to July 21, 2011, these notices were filed with the OTS. However, section 369(8)(K) of the Dodd-Frank Act provides that such notices are to be filed with the Board after the transfer date.

Subpart K of the interim final rule implements section 10(f) of HOLA. This subpart is substantially similar to portions of the OTS capital distribution regulation, which governed dividends by subsidiary savings associations of SLHCs as well as other savings association capital distributions. Subpart K of the interim final rule includes only the portions of the OTS capital distribution regulation that implement section 10(f) of HOLA.

In processing notices pursuant to subpart K, the Board will work closely with the regulator(s) of a savings association that submits a dividend notice. The Board expects for example that on receiving a dividend notice pursuant to subpart K, a copy of the notice will immediately be sent to the savings association's regulator(s) with a request for comment.

Regulation MM. Regulation MM organizes the current OTS regulations specific to SLHCs in mutual form (''MHCs'') and their subsidiary holding companies into a single part of the Board's regulations.[28] Previously, regulations governing MHCs were largely found in parts 575 and 563b of the OTS rules. In many cases, Regulation MM mirrors the current OTS rules with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board.[29]

Regulation MM also reflects several substantive changes to OTS regulations. Some of the changes are necessary to take into account statutory changes made by the Dodd-Frank Act, and others are intended to promote consistent treatment of BHCs and SLHCs. The substantive changes are discussed below.

Application Processing

As discussed above, throughout the new regulations, the Board has replaced the OTS procedures with respect to the processing of applications and filings with those of the Board to the extent possible. In general, the Board has conformed the processing period for applications and forms filed by MHCs, subsidiary holding companies of MHCs, and any other entities that are required to make a filing pursuant to Regulation MM with the standard processing periods currently applicable to BHCs. The Board's changes do not alter the thresholds for filing an application or notice or the regulatory standards of review of any filing. The changes are intended to promote uniformity and consistency in the Board's processing of applications across the range of filings to the Board.

The Board is aware that certain conversion applications filed by MHCs with the OTS pursuant to part 563b were processed by the OTS according to a special six-to-eight week review period, notwithstanding the application of the processing periods previously found in subpart E of part 516. The Board understands this special review period was developed because the review period in part 516 made it highly unlikely an applicant would receive approval of a conversion application prior to the relevant financial statements' stale date under applicable federal securities law.

The Board will process applications filed by MHCs to convert to stock form under the procedures set forth in section 238.14 in Regulation LL. The Board's standard 30- or 60-day processing periods are generally consistent with past OTS practice of processing conversion applications within six-to-eight weeks.[30] However, section 238.14 allows the Board to extend the processing period for a specified period, and the Board may determine to extend the review period of a conversion application beyond 60 calendar days.

[22] 12 U.S.C. 1467a(c)(2)(F)(i) (permitting activities listed in Section 4(c) of the BHC Act); 12 U.S.C. 1467a(c)(9) (permitting activities listed in Section 4(k) of the BHC Act).

[23] OTS has taken this view because Section 4(c)(8) Activities are a subset of 4(k) Activities, for which no OTS filing has been required.

[24] 12 U.S.C. 1467a(c)(2)(B).

[25] 12 U.S.C. 1467a(c)(2)(F)(2).

[26] 12 CFR 584.2–1, which can now be found in section 238.53 of the Board's rules.

[27] 12 U.S.C. 1467a(f).

[28] The definition of ''mutual holding company'' in section 10(o)(10)(A) of HOLA defines an MHC to be ''a corporation organized as a holding company under [section 10(o)].'' Thus, the provisions of Regulation MM do not apply to an MHC that is not organized under section 10(o) of HOLA. MHCs that own a bank (that have not elected to be treated as a saving association pursuant to section 10(l) of HOLA) remain subject to the BHC Act and related regulations.

[29] The Board notes that, in many cases, the former OTS regulations applied directly to savings associations and were indirectly applied to MHCs and their subsidiary holding companies by cross reference. After the transfer date, the Board is the primary federal regulator of SLHCs (including MHCs and their subsidiary holding companies) and the FDIC and OCC are the primary federal regulators of savings associations. As a result, the Board has transferred the provisions that applied indirectly to MHCs through cross references into Regulation MM and revised them as necessary to apply directly to MHCs and their subsidiary holding companies.

[30] Section 239.55 applies the processing period from section 238.14 in Regulation LL to conversion applications. This processing period is consistent with the processing period that has been applied to past conversion applications submitted by BHCs in mutual form applying to convert to stock form.

Waiver of Dividends

Section 625 of the Dodd-Frank Act amended section 10(o) of HOLA to set forth the conditions under which an MHC may waive its right to receive dividends declared by a subsidiary of the MHC. Dividend waivers are permissible if:

(1) No insider of the MHC, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the MHC holds any share of the stock in the class of stock to which the waiver would apply, or

(2) The MHC gives written notice to the Board of its intent to waive its right to receive dividends (''Dividend Waiver Notice'') not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.[31]

With respect to dividend waivers under (2) above, the Dodd-Frank Act's amendment to section 10(o) of HOLA distinguishes between those MHCs that waived dividends prior to December 1, 2009 (''Grandfathered MHCs'') and those that did not (''non-Grandfathered MHCs'').

For Grandfathered MHCs, new section 10(o)(11) of HOLA provides that the Board may not object to a waiver of dividends if: (1) The waiver would not be detrimental to the safe and sound operation of the savings association; and (2) the MHC's board of directors expressly determines that a waiver of dividends by the MHC is consistent with the fiduciary duties of the board of directors to the MHC's mutual members. The Grandfathered MHC must provide the Dividend Waiver Notice to the Board and include a copy of the resolution of the MHC's board of directors, in such form and substance as the Board may determine, which concludes that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC.[32]

Section 239.8(d) of Regulation MM implements the statutory framework for dividend waivers. To address the concern with respect to the inherent conflict of interest created by the waiver of dividends, section 239.8(d)(3) requires that the resolution of the MHC's board of directors contain certain elements designed to disclose and mitigate this conflict of interest. First, the board resolution must describe the conflict of interest that exists because of an MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends. Second, the resolution must contain an affirmation that a majority of the mutual members eligible to vote have, within the 12 months prior to the declaration date of the dividend, voted to approve the waiver of dividends. Any proxy statement used in connection with the member vote must include disclosure of any MHC director's ownership of stock in the subsidiary. The Board requests comment concerning the substance of the board resolution and whether any additional provisions should be required to ensure that the fiduciary duties of the directors have been satisfied.

HOLA is silent with respect to the standards the Board should consider when reviewing a Dividend Waiver Notice filed by non-Grandfathered MHCs, and does not limit the Board's ability to deny such waivers. Consistent with the view that dividend waiver requests raise inherent conflict of interest issues, section 239.8(d)(4) would apply to non-Grandfathered MHCs all requirements applicable to Grandfathered MHCs' requests to waive dividends and would impose additional conditions that must be satisfied by non-Grandfathered MHCs before the Board will approve a request to waive dividends. These conditions are designed to highlight for the mutual members the conflict of interest inherent in dividend waivers where MHC directors own shares of the subsidiary issuing dividends. The conditions also are designed to employ certain accounting practices to ensure that the mutual members' financial interests in the MHC are protected in the event the MHC converts to stock form or is forced to liquidate.

Specifically, non-Grandfathered MHCs must submit a copy of the non-Grandfathered MHC's board resolution pursuant to paragraph 239.8(d)(2) and must also satisfy each of the conditions provided in paragraph 239.8(d)(4).

Non-Grandfathered MHCs need only satisfy one of the two conditions provided in paragraph 239.8(d)(4)(v). Paragraph 239.8(d)(4)(v)(A) requires a majority of the board of directors of the non-Grandfathered MHC to approve the waiver of dividends. Any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, must abstain from the board vote. Regardless of the number of director abstentions, a majority of the entire board of directors must approve the waiver of dividends– not just a majority of the directors who vote. For example, if a non-Grandfathered MHC's board of directors has a total of nine members and four directors must abstain from the vote, all five voting directors must approve the waiver of dividends.

If unable to comply with the procedures described above, Non-Grandfathered MHCs may instead comply with subparagraph 239.8(d)(4)(v)(B) under which each officer or director of the MHC or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives their rights to dividends. The Board notes that for the purpose of subparagraph 239.8(d)(4)(v)(B) the tax-qualified or non-tax-qualified employee stock benefit plans in which an officer or director of the MHC or its affiliates may participate that hold any share of the stock in the class of stock to which the waiver would apply may include plans other than those offered or sponsored by the MHC or its affiliates.

Non-Grandfathered MHCs should include in the Dividend Waiver Notice submitted to the Board pursuant to paragraph 239.8(d)(1)(ii) a description of the non-Grandfathered MHC's compliance with each of the requirements listed in paragraph 239.8(d)(4). Each of the requirements in paragraph 239.8(d)(4) should be addressed individually in the Dividend Waiver Notice.

The Board requests comment on whether the conditions sufficiently address concerns regarding the inherent conflict of interest with dividend waivers. The Board also requests comment with respect to the conditions that require specific accounting of waived dividends.

Offering Circulars, Forms of Proxy, and Proxy Statements

The Board has revised the process for review of offering circulars, forms of proxy, and proxy statements used in connection with MHC transactions. Under part 563b of the OTS regulations, the OTS declared effective offering circulars and approved forms of proxy and proxy statements. MHCs and their subsidiary holding companies were not permitted to conduct a securities offering or solicit proxies until the OTS declared effective or approved these documents, as relevant.

The Board will continue to require MHCs and their subsidiary holding

[31] 12 U.S.C. 1467a(o)(11)(B).

[32] 12 U.S.C. 1467a(o)(11)(C).

companies to file offering circulars on Form OC and proxy statements on Form PS in the context of an application to the Board. The Board will closely review these documents in its review of an application as a whole and may comment on the adequacy, completeness, or accuracy of information in any of these documents. However, consistent with the Board's current practice with respect to bank holding companies and state member banks, the Board will not declare offering circulars effective and will not approve proxies or proxy statements. The Board may require an applicant make certain changes to any offering circular, form of proxy, or proxy statement.

MHCs and subsidiary holding companies of MHCs must continue to abide by all applicable federal and state securities laws, rules, and regulations. For instance, the Board expects that all securities offering documents and proxy materials provided in the context of a securities offering will be governed by regulations and policies of the Securities and Exchange Commission (''SEC''), a state securities regulator as relevant, and the Board. For forms of proxy and proxy statements provided to mutual members and not filed with the SEC, the Board requires that all documents comply with all applicable Board regulations and policies.

The Board requests comment regarding its review of offering circulars, forms of proxy, and proxy statements. The Board requests specific comment on whether there are circumstances in which an MHC or subsidiary holding company's offering circular would not be reviewed or declared effective by the SEC or approved by a state securities regulator. The Board also requests comment on whether it should continue to require MHCs and subsidiary holding companies of MHCs to file proxy statements on Form PS for proxies sent to shareholders, or if the Board should require only that MHCs and their subsidiary holding companies file proxy statements that conform to state and federal securities laws, rules, and regulations.

The Board also requests specific comment on whether MHCs or subsidiary holding companies should be allowed to submit securities materials on the appropriate SEC forms, as opposed to on Form PS or Form OC, if the securities materials are subject to SEC review.

Stock Repurchases

The Board has extended the prior notice period for stock repurchases by a resulting stock holding company within the first year of conversion from mutual to stock form. Under the interim final rule, a resulting stock holding company will be required to provide 30 days prior notice to the Board before engaging in a stock repurchase, which can be extended by the Board for an additional 60 days. Under section 563b.515 of the OTS regulations, resulting stock holding companies were required to provide a 10-day prior notice.

In addition, the Board expects that stock repurchases within a short period of time after conversion would generally constitute a material change from the business plan considered in connection with the conversion. In this case, the resulting stock holding company would be required to obtain prior approval from the Board before the material change to the business plan could be considered effective.

Technical Amendments. The Board has made technical amendments to Board rules to facilitate supervision of SLHCs. These amendments include revisions to the interagency rules implementing requirements relating to the Community Reinvestment Act, as well as the procedural and administrative rules of the Board including those relating to the Freedom of Information Act. In general, the amendments add SLHCs to the institutions covered by the rule and create mirrored provisions to accommodate transactions under HOLA.

In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Dodd Frank Act,[33] which transfers to the Board all rulemaking authority under section 11 of HOLA relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders.[34] These amendments include revisions to parts 215 (Insider Transactions)[35] and part 223 (Transactions with Affiliates)[36] of Board regulations.

III. Section-by-Section Analysis.

Regulation LL

1. Subpart A General Provisions

A. 238.1 Authority, Purpose and Scope

This section sets forth the authority, purpose, and scope for the interim final rule.

B. 238.2 Definitions

This section combines definitions from parts 574 and 583 of the OTS regulations in one location. Several definitions that were not used in the text of the rules were eliminated or moved to locations that correspond with placement in Regulation Y. Other definitions were modified or changed to those used in Regulation Y.

Specifically, the definition of ''bank holding company,'' ''person,'' ''shareholder,'' ''stock,'' ''voting securities'' (including voting and nonvoting shares) were modified to reflect the definitions in Regulation Y. The definition of ''savings association'' was modified to eliminate the inclusion of SLHCs within the definition. The definition of ''savings and loan holding company'' was modified to reflect two new exceptions to HOLA included in the Dodd-Frank Act. Section 10(a)(1)(D) of HOLA, as amended by section 604 of the Dodd-Frank Act, now excludes from the definition of ''savings and loan holding company'' a company that controls a savings association that functions solely in a trust or fiduciary capacity as provided in section 2(c)(2)(D) of the BHC Act, as well as a company, described in section 10(c)(9)(C) of HOLA that would be a SLHC solely by virtue of such company's control of an intermediate holding company established under section 10A of HOLA.

This section also includes definitions of ''well managed'' and ''well capitalized'' for SLHCs. ''Well managed'' takes the meaning provided in section 225.2(s) of Regulation Y for BHCs, except that it clarifies that a ''satisfactory rating for management'' may mean either a management or risk-management rating, whichever rating is given. The definition of well-capitalized for SLHCs differs from the similar standard for BHCs because SLHCs are not currently subject to regulatory capital requirements. Instead, a SLHC will be considered well-capitalized if (i) all of its subsidiary savings associations and other subsidiary depository institutions are well capitalized, and (iii) the SLHC is not subject to any outstanding formal administrative order or enforcement actions relating to capital.

As discussed in the Board's Notice of Intent issued on April 15, 2011, the Board, together with the other Federal banking agencies, is reviewing consolidated capital requirements for all depository institutions and their holding companies pursuant to section 171 of the Dodd-Frank Act and the Basel Committee on Banking Supervision's ''Basel III: A global regulatory framework for more resilient banks and banking systems'' report (''Basel III''). It is expected that the Basel III notice of proposed rulemaking also would

[33] 12 U.S.C. 5412.

[34] 12 U.S.C. 1468.

[35] 12 CFR part 215 (Regulation O).

[36] 12 CFR part 223 (Regulation W).

address any proposed application of Basel III-based requirements to SLHCs. When the rule-making process is complete, this definition will be changed to be more closely aligned to the definition of well-capitalized for BHCs.

C. 238.3 Administration

Section 238.3 includes two paragraphs that clarify some administrative processes of the Board that are specifically relevant to the provisions in these regulations. Paragraph (a) specifies that the Board has delegated certain functions to designated Board members and officers as well as the Federal Reserve Banks. These delegations can be found in parts 262 and 265 of the Board's rules, and in Board orders. In connection with the issuance of this interim final rule, the Board has approved an order extending to SLHCs many of the delegations in part 265 and in previous Board orders that are currently applicable to BHCs.

In administering this regulation, the Board often relies on appropriate Reserve Banks to take certain actions, including on applications. Paragraph (b) clarifies the factors used in determining the appropriate Reserve Bank for a particular SLHC or for companies and individuals filing under the CBCA. If the standard delegation could impede the ability of the Federal Reserve to perform its functions under law, would not result in an efficient allocation of supervisory resources, or would not otherwise be appropriate, the Board may designate another appropriate Reserve Bank.

D. 238.4 Records, Reports, and Inspections

This section combines provisions that apply to SLHCs from sections 562.1, 562.2, and 584.1 of the OTS rules which establish basic records and reporting requirements. Minor changes have been made to these provisions to reflect similar provisions in Regulation Y.

All reports required by the Board can be found on the Board's public Web site.[37] As discussed in the Board's Notice of Intent issued on February 3, 2011, the Board anticipates transitioning SLHCs to the Board's reporting forms. The Board has considered the comments received on that Notice and will be issuing a revised proposal for comment shortly. Until such time as that proposal is finalized, SLHCs must still submit all current reports on the schedule prescribed by the OTS. As noted above, the Board will carryover the OTS applications forms, with technical changes, for the time being.

This section also includes the registration and deregistration process provided for in HOLA. This interim final rule expands the deregistration process to include situations where a company no longer qualifies as a SLHC, in addition to when a company no longer controls a savings association. This change is to accommodate exemptions added to the definition of ''savings and loan holding company'' by the Dodd-Frank Act that are discussed in detail above.

E. 238.5 Audit of Savings Association Holding Companies

This section contains the provisions of section 562.4 of the OTS rules. These provisions require an independent audit for safety and soundness purposes for SLHCs that control a savings association(s) with aggregate consolidated assets of $500 million or more.

F. 238.6 Penalties for Violations

Section 238.6 of Regulation LL puts SLHCs on notice that section 10 of HOLA provides for criminal and civil penalties for violations by any company or individual of HOLA or any regulation or order issued under it, as well as for making a false entry in any book, report, or statement of an SLHC. This section also specifies that the Board may institute a cease-and-desist order for any violation of HOLA, the CBCA or this regulation. The Board has provisions for BHCs in section 225.6 of Regulation Y.

G. 238.7 Tying Restriction Exception

Section 312(b)(2) of the Dodd-Frank Act[38] gives the Board rule-writing authority with respect to section 5(q) of HOLA, which contains tying restrictions for savings associations.[39] This section of the interim final rule contains the provisions previously found in section 563.36 of the OTS rules. Although the requirements for savings associations are comparable to those applicable to banks under the Board's Regulation Y, this section also applies these restrictions reciprocally to SLHCs. BHCs are not subject to equivalent restrictions under current Board rules. In the future, the Board will evaluate if these rules should be conformed. Additionally, following the transfer date, the Board has authority under section 5(q) to grant exceptions to these restrictions, after consultation with the OCC and the FDIC, so long as any exception conforms to section 106 of the Bank Holding Company Amendments of 1970.[40]

H. 238.8 Safe and Sound Operations

This section of the interim final rule states that a SLHC must serve as a source of financial and managerial strength to its subsidiary savings associations and may not conduct its operations in an unsafe and unsound manner. Although these are long standing prudential standards applied by the Board, section 38A of the Federal Deposit Insurance Act (''FDI Act''), as amended by section 616(d) of the Dodd-Frank Act, now requires all SLHCs to serve as a source of strength to their subsidiary depository institutions.[41]

Additionally, this section of the interim final rule specifies that if the Board believes that an activity of the SLHC or a nonbank subsidiary constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary savings association and is inconsistent with the principles of sound banking, the purposes of HOLA or other applicable statutes, the Board may require the SLHC to terminate the activity or divest control of the nonbanking subsidiary. This obligation is established in section 10(g)(5) of HOLA[42] and BHCs are subject to equivalent obligations under the BHC Act and Regulation Y.

2. Subpart B Acquisitions of Savings Association Securities or Assets

A. 238.11 Transactions Requiring Board Approval

This section specifies certain acquisition transactions involving savings associations and SLHCs that require the prior approval of the Board under section 10(e) of HOLA.[43] These prior approval requirements were previously found in section 574.3(a) and section 584.4 of the OTS regulations. As discussed above, although OTS regulations integrated the concepts of prior approval under HOLA and the CBCA with respect to companies, the prior approval requirements found in subpart B only relate to the requirements of HOLA.

B. 238.12 Transactions Not Requiring Board Approval

Section 238.12 of Regulation LL outlines certain acquisition transactions involving savings associations or SLHCs that do not require the prior approval of the Board. These exclusions from prior notice requirements were previously

[37] *See* Reporting Forms at: *http://www.federalreserve.gov/reportforms/default.cfm.*

[38] 12 U.S.C. 5412.

[39] 12 U.S.C. 1464.

[40] 12 U.S.C. 1972(1).

[41] 12 U.S.C. 1831o–1.

[42] 12 U.S.C. 1467a(g)(5).

[43] 12 U.S.C. 1467a(e).

found at sections 574.4(c) and 584.4(c) of the OTS rules and only include minor modifications. Because there is a separate regulatory provision relating to CBCA, this section does not include the exceptions from prior notice for CBCA filings that were also included in section 574.4(c). Those provisions can now be found in subpart D.

Section 10(e) of HOLA requires SLHCs to request prior approval to acquire a savings association through merger. The Bank Merger Act [44] also requires savings associations to seek prior approval to acquire another savings association by merger. As a result, when a savings association owned by a SLHC acquired another savings association by merger, the OTS required both the SLHC and the savings association to submit requests for prior approval under the appropriate statute. This requirement did not lead to unnecessary duplication because the same agency and staff processed both requests concurrently. However, now that SLHCs and savings associations will be regulated and supervised by separate agencies, the Board has considered whether SLHCs should be required to submit an application under HOLA for certain merger and reorganization transactions. The Board has determined that SLHCs should be provided exceptions similar to those provided to BHCs in Regulation Y. As a result, paragraph (d) sets forth regulations governing the conditions under which certain transactions subject to the Bank Merger Act and internal corporate reorganizations would not require the Board's approval under section 238.11 of subpart B.

Paragraph (d) of this section is intended to reduce regulatory burden in certain circumstances by eliminating the requirement to file an application if the core of the proposal is a merger subject to the Bank Merger Act. The Board recognizes that, in such circumstances, no regulatory purpose would be served by requiring an application to provide essentially the same information for a minor part of the proposal. The Board retains jurisdiction over these transactions, however, because it recognizes that a proposal may have an effect on financial, managerial, and other resources of the parent holding company, which would not be reviewed by the primary regulator of the transaction under the Bank Merger Act. Alternatively, a proposal may raise other issues regarding factors over which the Board has primary or exclusive jurisdiction under HOLA. Accordingly, paragraph (d) provides that the Board or Reserve Bank may inform the holding company that an application is required if the proposal presents issues unique to the Board's jurisdiction. Paragraph (d) also makes clear that transactions involving holding companies organized in mutual form, subsidiary holding companies of SLHCs organized in mutual form, or depository institutions organized in mutual form do not qualify for waivers of the Board's approval requirements under section 238.11 of subpart B.

Additionally, paragraph (d) of this section provides an exemption for certain transactions performed in the United States that constitute an internal corporate reorganization by an SLHC. The transaction must be solely a reorganization involving holding companies and insured depository institutions that both, preceding and following the transaction, are lawfully controlled by the same top-tier holding company. In addition, the companies and insured depository institutions must not have acquired additional voting securities, and they must have complied with the other requirements in paragraph (d) of this section.

Paragraph (d) of this section is substantially similar to section 225.12 of subpart B of the Board's Regulation Y. References to SLHCs have generally been substituted for references to BHCs, and references to savings associations have generally been substituted for references to banks. In addition, consistent with the overall approach taken in this interim final rule, the Board has substituted its procedures for those of the OTS with respect to filing and informational requirements. The Board also will process requests submitted pursuant to this section in the same manner as it processes requests submitted under section 225.12 of Regulation Y.

C. 238.13 Prohibited Acquisitions

This section of the interim final rule contains provisions from sections 584.8(d) and 584.9 of the OTS rules, which prohibit certain types of transactions by an SLHC related to uninsured savings associations and mutual savings associations. The remaining provisions of section 584.9 have been integrated into Regulation LL at other locations.

D. 238.14 Procedural Requirements

As discussed above, the Board has replaced OTS processing requirements for applications and notices with those currently used by the Board for similar transactions. As a result, section 238.13 of the interim final rule replaces part 516 and section 574.6 of the OTS rules. The requirements in this section are similar to those found in sections 225.15 and 225.16 of the Board's Regulation Y with respect to applications submitted by BHCs.

Paragraph (a) of this section indicates that applications required under section 238.11 must be filed with the appropriate Reserve Bank on the designated form. As noted above, investors can find all application and notice forms on the Board's public Web site, as well as additional information about the applications process and the Board's electronic application submission system.[45]

Paragraph (b) of this section notes that applicants may request confidential treatment for portions of their application under the Board's Freedom of Information Act regulations found at part 261.

Paragraph (c) specifies the public notice requirements for applications required under this subpart. Generally, the newspaper publication requirement is the same as that previously found in the OTS rules. However, the Board also publishes notices of proposed acquisitions in the **Federal Register** and provides interested persons the opportunity to comment on the proposal for a period no longer than 30 days. This paragraph also permits advance publication as well as waiver or shortening of these notice requirements in the case of a failure or if the Board determines that an emergency exists that requires expeditious action.

Paragraph (d) outlines the Board's rules with regard to public comment, including determining when a comment is timely, when a comment is of substance, and when the comment period may be extended.

Paragraph (e) specifies that the Board may order a formal or informal hearing or other proceeding on an application and that any requests for a hearing must comply with the requirements of part 262 of the Board's rules.

Paragraph (f) of this section requires the Reserve Bank to accept applications submitted under this subpart for processing within 7 calendar days of filing. Substantially incomplete applications will be returned. The paragraph also indicates that a copy of each application will be sent to the Board and the primary bank supervisor for the savings association to be acquired.

Paragraph (g) outlines the processing timeline for applications submitted under this subpart. Except as otherwise

[44] 12 U.S.C. 1828.

[45] *See* Application Filing Information at *http://www.federalreserve.gov/generalinfo/applications/afi/*.

provided, Reserve Banks may act on applications under delegated authority not earlier than the third business day following the close of the public comment period, and not later than the fifth business day following the close of the public comment period or the 30th day after the acceptance of the application. The Board must act on an application within 60 calendar days after the acceptance of the application unless the Board extends the processing time for a specified period and states the reasons for the extension. Both the Board and the Reserve Bank may request additional information throughout the processing period if necessary. An application will be deemed approved if the Board fails to act on an application within 91 calendar days after the submission to the Board of the complete record. This paragraph defines when the Board considers a record on an application to be complete. Finally, this paragraph creates an expedited process for certain reorganizations.

E. 238.15 Factors Considered in Acting on Applications

This section includes the factors that the Board will use to review applications submitted under this subpart. To the extent that the factors for review under section 10(e) of HOLA are the same as those found in section 3 of the BHC Act, the language in this section has been conformed to that found in Regulation Y. This section does preserve the presumptive disqualifier related to the integrity and financial factors that were found in section 574.7 of the OTS rules.

3. Subpart C Control Proceedings

As discussed in detail above, Regulation LL modifies the regulations previously used by the OTS for purposes of determining when a company or natural person acquires control of a savings association or SLHC under HOLA. The OTS regulations relating to control determinations and rebuttals under HOLA, including the rebuttable control factors and process in section 574.4, the certification of ownership in section 574.5, and the rebuttal agreement in 574.100, will not be enforced by the Board. In its place, Regulation LL adopts provisions equivalent to those found in subpart D of Regulation Y. These provisions establish the process under which the Board may issue a preliminary determination of control and the presumptions the Board will use in any such proceeding.

4. Subpart D Change in Bank Control

Consistent with its views expressed above, the Board has concluded that it is appropriate to use its own rules and processes with respect to application of the CBCA to ensure consistency between equivalent statutes administered by the same agency. As a result, Regulation LL conforms OTS regulations relating to control determinations and rebuttals under the CBCA with those currently found in Regulation Y and that are applicable to BHCs and state member banks.

Accordingly, subpart D of the interim final rule is substantially similar to the current subpart B of Regulation Y with technical and conforming changes. For example, references to BHCs and state member banks have been replaced where appropriate with references to SLHCs. In addition, section 238.32(a)(4) and (5), the exemptions have been modified to refer to the appropriate provisions of HOLA.

5. Subpart E Qualified Stock Issuances

Sections 10(a)(4) and (o) of HOLA pertain to certain issuances of new voting shares to an unaffiliated SLHC by an undercapitalized savings association or by its parent SLHC.[46] The statute provides that the acquiring SLHC will not be deemed to control the issuer so long as the acquirer will not after the acquisition own or control more than 15 percent of the issuer, certain other conditions are met, and the appropriate federal banking agency for the acquiring SLHC approves the acquisition.

The OTS implementing regulation with respect to qualified stock issuances is located at part 574.8. Subpart E of the Regulation LL interim final rule is substantially similar to 574.8, with appropriate adjustments to reflect the transfer of supervisory authority for SLHCs from OTS to the Board, and the use of Board applications processing procedures instead of OTS applications processing procedures.

6. Subpart F Savings and Loan Holding Company Activities and Acquisitions

This subpart of this interim final rule contains provisions that were previously found at section 584.2 through 584.2–2 of the OTS regulation, which outline the nonbanking activities permissible for SLHCs and require prior approval in order to engage in these activities in certain situations. Regulation LL makes appropriate adjustments to reflect the transfer of supervisory authority for SLHCs from OTS to the Board as well as the use of Board applications processing procedures. Additionally, the Board will note that, in the near future, the Board may propose modifying these application and notice processes in order to better align them with those required by BHCs in order to engage in identical nonbanking activities.

7. Subpart G Financial Holding Company Activities

As discussed separately above, section 606(b) of the Dodd-Frank Act amends HOLA to require SLHCs that wish to engage in financial holding company activities to be well-capitalized and well-managed at both the holding company and savings association level.[47] Additionally, HOLA, as amended, requires SLHCs seeking to engage in financial holding company activities to otherwise comply with other financial holding company obligations, such as providing a notice to the Board after commencing a financial holding company activity or consummating an acquisition of a company engaged in 4(k) Activities. Subpart G of the interim final rule implements these requirements. Subpart G does not apply to SLHCs described in section 10(c)(9)(C) of HOLA.[48]

A. 238.64 Election Required

This section of the interim rule specifies that SLHCs seeking to engage in 4(k) Activities must file an election to be treated as a financial holding company and have that election be deemed effective by the Federal Reserve. No Covered SLHC may commence a 4(k) Activity or consummate the acquisition of shares of a company engaged in 4(k) Activities unless it has filed an effective election to be treated as a financial holding company. This section also explains that if a Covered SLHC engages only in activities otherwise permissible under HOLA, no election is required.

B. 238.65 Election Procedures

This section outlines the process that an SLHC should follow to make an effective election, including the content of the declaration. This section rule specifies that the declaration should contain the following:

- A statement that the Covered SLHC elects to be treated as a financial holding company in order to engage in activities permissible for a financial holding company;
- The name and head office address of the Covered SLHC and of each

[46] 12 U.S.C. 1467a(a)(4) and 1467a(o).

[47] 12 U.S.C. 1467a(c)(2).

[48] 12 U.S.C. 1467a(c)(9)(C). These SLHCs are referred to as ''grandfathered unitary savings and loan holding companies.''

depository institution controlled by the Covered SLHC;

- A certification that the Covered SLHC and each depository institution controlled by the Covered SLHC is well capitalized as of the date the Covered SLHC submits its declaration;
- A certification that the Covered SLHC and each depository institution controlled by the Covered SLHC are well managed as of the date the Covered SLHC submits its declaration.

An election filed by a Covered SLHC to be treated as a financial holding company is effective on the 31st calendar day after the date that a complete declaration is filed with the appropriate Reserve Bank, unless the Board notifies the SLHC prior to that time that the election is ineffective. The Board or the appropriate Reserve Bank may notify an SLHC that its election is effective prior to the 31st day after the date that a complete declaration is filed with the appropriate Reserve Bank. Such notification must be in writing. An election by a SLHC shall not be effective if, during the 31 day period, the Board finds that, as of the date the declaration was filed with the appropriate Reserve Bank: (i) any insured depository institution controlled by the SLHC (except institutions excluded under paragraph (d) of section 238.65, including under certain circumstances savings associations acquired during the 12-month period preceding the filing of the election) has not achieved at least a rating of ''satisfactory record of meeting community credit needs'' under the Community Reinvestment Act at the savings association's most recent examination; or (ii) the SLHC or any depository institution controlled by the SLHC is not both well capitalized and well managed.

Special Rules for the OTS Transfer Date

This section also contains special rules applicable to SLHCs that are engaged in 4(k) Activities on the transfer date. Prior to the Dodd-Frank Act, Covered SLHCs were not required to file with the OTS to engage in 4(k) Activities. However, given that the amendment to HOLA establishing these additional requirements was effective on the transfer date, the Board expects all Covered SLHCs wishing to continue 4(k) Activities to provide a declaration as described above, along with a description of the 4(k) Activities conducted by the SLHC, to the Board by December 31, 2011. These elections will be effective on the 61st day after the date a complete declaration and description of 4(k) Activities is filed with the appropriate Reserve Bank, unless the Board notifies the SLHC prior to that time that the election is ineffective.

This section also creates a special process for those Covered SLHCs engaged in 4(k) Activities on the transfer date that are not able to file a declaration that can be declared effective. These Covered SLHCs are required to file an alternate declaration with the Board by December 31, 2011 that includes (i) a list of the 4(k) Activities they engage in, (ii) a description of why the SLHC cannot file a declaration that can be declared effective, and (iii) a description of how the Covered SLHC will achieve compliance prior to June 30, 2012.

Covered SLHCs that are not able to file a declaration that can be declared effective are subject to the same notice, remediation agreement, divestiture and other provisions that apply to financial holding companies that fail to meet the requirements of section 4(l) of the BHC Act. These rules are stated in section 4(m) of the BHC Act and the Board's implementing regulations, and are referred to below. However, in exercising its discretion under these processes, the Board will take into account the fact that previously Covered SLHCs were not subject to the new requirements implemented pursuant to section 606(b) of the Dodd-Frank Act and this rule. The Board intends to review the individual circumstances of Covered SLHCs and apply reasonable deadlines in light of those circumstances.

C. 238.66 Ongoing Requirements

This section outlines the ongoing obligations of a Covered SLHC that has made an effective election and the consequences of failing to meet the applicable requirements. In general, a Covered SLHC that has made an effective election to be treated as a financial holding company is subject to the requirements applicable to a financial holding company under sections 4(l) and 4(m) of the BHC Act and the regulations thereunder and section 804(c) of the Community Reinvestment Act of 1977 [49] as if the Covered SLHC was a BHC. The language in this section imposes the notice, approval and other requirements of Regulation Y to these Covered SLHCs, specifically the provisions of sections 225.83 through 225.89. Certain provisions, as discussed below, will also be applied to Covered SLHCs themselves as a result of section 606(a) of the Dodd-Frank Act.

Notification Requirements

In general, a SLHC that has made an effective election to be treated as a financial holding company may conduct the activities listed in section 225.86 of Regulation Y subject to the notice, approval, and any other requirements described in sections 225.85 through 225.89 of Regulation Y. Section 225.83(a) of the Board's existing regulations provides that the Board will notify a financial holding company if the Board finds that the company controls any depository institution that is not well capitalized or well managed. After the transfer date, consistent with section 606(a) of the Dodd-Frank Act, the Board intends to also notify a financial holding company if the Board finds that the company itself is not well capitalized or well managed. Similarly, after the transfer date, the Board intends to notify Covered SLHCs if their depository institutions or the Covered SLHC itself is not well capitalized or well managed.

In addition, in recognition of the fact that a company may know that one of its depository institution subsidiaries has ceased to be well capitalized or well managed before its regulators will have access to such data, the Board's current regulations provide that a financial holding company must notify the Board in writing within 15 calendar days of becoming aware that any depository institution controlled by the company has ceased to be well capitalized or well managed.[50] Consistent with section 606(a) of the Dodd-Frank Act, the Board intends to require that a Covered SLHC must also provide such notification when the company has ceased to be well capitalized or well managed. Accordingly, for Covered SLHCs that file the declaration described above and thereafter cease to meet the well-capitalized and well-managed requirements of section 4(l), the Board intends to apply a similar 15-day notice requirement in a rule.

Remediation Requirements

Pursuant to section 4(m) of the BHC Act and the Board's existing regulations for BHCs, within 45 days (plus any additional time that the Board may grant) after receiving a notice of noncompliance from the Board, a company must execute an agreement with the Board to comply with applicable capital and management requirements.[51] Until the Board determines that all deficiencies have been corrected, a company may not engage in any additional activity or

[49] 12 U.S.C. 2903(c).

[50] 12 CFR 225.83(b)(1).

[51] 12 U.S.C. 1843(m)(2); 12 CFR 225.83(c).

acquire control or shares of any company under section 4(k) of the BHC Act without prior approval from the Board.[52] If the conditions giving rise to a notice of noncompliance are not corrected within 180 days (or such longer period permitted by the Board), the Board may order the company to divest its subsidiary depository institutions.[53] A company may comply by instead ceasing to engage in activities that are permissible only for financial holding companies.[54]

As required by section 606(b) of the Dodd-Frank Act, the Board intends to apply these processes analogously to Covered SLHCs. After the transfer date, consistent with section 606(a) of the Dodd-Frank Act, the Board further intends that a financial holding company or a Covered SLHC that itself fails to remain well capitalized or well managed will also be subject to these analogous remedial measures.

8. Subpart H Notice of Change of Director or Senior Executive Officer

Subpart H sets forth regulations governing the filing of notices with respect to the service of individuals as directors or senior executive officers of SLHCs in troubled condition. These regulations implement section 32 of the FDI Act.[55]

Subpart H of the interim final rule is substantially similar to subpart H of part 563, the OTS regulation implementing section 32. References to the Board or Reserve Bank have been substituted for references in the OTS regulations to OTS. In addition, consistent with the overall approach taken in this interim final rule, the Board has substituted its procedures for those of the OTS with respect to the filing and informational requirements.

Subpart H of the interim final rule also provides for appeals and for informal hearings to be requested in the event of disapproval of a notice. These provisions are modeled on the appeals and hearing provisions of the Board's regulations implementing the section 32 requirements with respect to BHCs and state member banks.[56] The OTS regulation does not provide for hearings or appeals.

9. Subpart I Prohibited Service at Savings and Loan Holding Companies

Subpart I of the interim final rule sets forth regulations to implement section 19 of the FDI Act[57] with respect to SLHCs. Section 19 prohibits persons who have been convicted of certain criminal offenses or who have agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with an SLHC. Section 19 also permits the Board to provide exemptions, by regulation or order, from the application of the prohibition. Subpart I is substantially similar to the existing OTS prohibited service regulations[58] except that references to the Board or Reserve Bank have been substituted for references in the OTS.

10. Subpart J Management Official Interlocks

Subpart J sets forth regulations restricting management officials from serving simultaneously with two nonaffiliated depository organizations where the management interlock would likely have an anti-competitive effect unless the service is permitted by statute or an exemption applies. These regulations implement the Depository Institution Management Interlocks Act (''Interlocks Act'').[59]

Subpart J of the interim final rule is substantially similar to subpart F of part 563, the OTS regulation implementing the Interlocks Act but makes appropriate adjustments to reflect the transfer of supervisory authority for SLHCs from OTS to the Board.

11. Subpart K Dividends by Subsidiary Savings Associations

Section 10(f) of HOLA provides that a subsidiary savings association of an SLHC must file a notice at least 30 days prior to declaring a dividend.[60] Prior to July 21, 2011, these notices were filed with the OTS. However, section 369(8)(K) of the Dodd-Frank Act provides that such notices are to be filed with the Board after the transfer date.

Subpart K of the interim final rule implements section 10(f) of HOLA. This subpart is substantially similar to portions of the OTS capital distribution regulation, which governed dividends by subsidiary savings associations of SLHCs as well as other savings association capital distributions. Subpart K of the interim final rule includes only the portions of the OTS capital distribution regulation that implement section 10(f) of HOLA. Consistent with the general approach of the interim final rule, subpart K substitutes references to OTS with references to the Board, and Board procedures for OTS procedures.

12. Subpart L Investigative Proceedings and Formal Examination Proceedings

This section contains the provisions previously found in part 512 of the OTS regulations relating to investigative and formal examination proceedings. The Board does not have similar rules but has followed similar practices for some time. In the future, the Board will consider extending these rules to BHCs and other supervised entities.

The following chart summarizes where particular parts and sections of the OTS rules have been placed within Regulation LL.

COMPARISON CHART

Regulation LL	Previous location in OTS regulations
Subpart A—General Provisions	
238.1—Authority, purpose and scope	
238.2—Definitions	§ 574.2, part 583.
238.3—Administration	
238.4—Records, reports, and inspections	§§ 562.1, 562.2, 584.1.
238.5—Audit of savings association holding companies	§ 562.4.
238.6—Penalties for violations	
238.7—Tying restriction exception	§ 563.36.
238.8—Safe and sound operations	

[52] 12 CFR 225.83(d).

[53] 12 CFR 225.83(e)(1).

[54] 12 CFR 225.83(e)(2)

[55] 12 U.S.C. 1831i.

[56] 12 CFR 225.73(d) and (e).

[57] 12 U.S.C. 1829.

[58] 12 CFR part 585.

[59] 12 U.S.C. 3201 *et seq.*

[60] 12 U.S.C. 1467(f).

COMPARISON CHART—Continued

Regulation LL	Previous location in OTS regulations
Subpart B—Acquisitions of Savings Association Securities or Assets	
238.11—Transactions requiring Board approval	§§ 574.3(a), 584.4.
238.12—Transactions not requiring Board approval	§§ 574.3(c), 584.4(c).
238.13—Prohibited acquisitions	§§ 584.8(d), 584.9.
238.14—Procedural requirements	§§ 516, 574.6.
238.15—Factors considered in acting on acquisition proposals	§ 547.7.
Subpart C—Control Proceedings	
238.21—Control proceedings	§ 574.4.
Subpart D—Change in Bank Control	
238.31—Transactions requiring prior notice	§ 574.3(a)–(b).
238.32—Transactions not requiring prior notice	§ 574.3(c)–(d).
238.33—Procedures for filing, processing, publishing, and acting on notices	§§ 516, 574.6.
Subpart E—Qualified Stock Issuances	
238.41—Qualified stock issuances by undercapitalized savings associations or holding companies	§ 547.8.
Subpart F—Savings and Loan Holding Company Activities and Acquisitions	
238.51—Prohibited activities	§ 584.2.
238.52—Exempt savings and loan holding companies and grandfathered activities	§ 584.2a.
238.53—Prescribed services and activities of savings and loan holding companies	§ 584.2–1.
238.54—Permissible bank holding company activities of savings and loan holding companies	§ 584.2–2.
Subpart G—Financial Holding Company Activities	
238.61—Scope	
238.62—Definitions	
238.63—Requirements to engage in financial holding company activities	
238.64—Election required	
238.65—Election procedures	
238.66—Ongoing requirements	
Subpart H—Notice of Change of Director or Senior Executive Officer	
238.71—Purpose	§ 563.550.
238.72—Definitions	§ 563.555.
238.73—Prior notice requirements	§ 563.560.
238.74—Filing and processing procedures	§§ 563.565, 563.570, 563.575.
238.75—Standards for review	§ 563.580.
238.76—Waiting period	§ 563.585.
238.77—Waiver of prior notice requirement	§ 563.590.
Subpart I—Prohibited Service at Savings and Loan Holding Companies	
238.81—Purpose	§ 585.10.
238.82—Definitions	§ 585.20.
238.83—Prohibited actions	§ 585.30.
238.84—Covered convictions or agreements to enter into pre-trial diversions or similar programs	§ 585.40.
238.85—Adjudications and offenses not covered	§ 585.50.
238.86—Exemptions	§ 585.100.
238.87—Filing procedures	§ 585.110.
238.88—Factors for review	§ 585.120.
238.89—Board action	§ 585.130.
Subpart J—Management Official Interlocks	
238.91—Authority, purpose, and scope	§ 563f.1.
238.92—Definitions	§ 563f.2.
238.93—Prohibitions	§ 563f.3.
238.94—Interlocking relationships permitted by statute	§ 563f.4.
238.95—Small market share exemption	§ 563f.5.
238.96—General exemption	§ 563f.6.
238.97—Change in circumstances	§ 563f.7.
238.98—Enforcement	§ 563f.8.
238.99—Interlocking relationships permitted pursuant to Federal Deposit Insurance Act	§ 563f.9.

COMPARISON CHART—Continued

Regulation LL	Previous location in OTS regulations
Subpart K—Dividends by Subsidiary Savings Associations	
238.101—Purpose	§ 563.140.
238.102—Definitions	§ 563.141.
238.103—Filing requirement	§§ 563.143, 563.144, 563.145.
238.104—Board action and criteria for review	§ 563.146.
Subpart L—Investigative Proceedings and Formal Examination Proceedings	
238.111—Scope of part	§ 512.1.
238.112—Definitions	§ 512.2.
238.113—Confidentiality of proceedings	§ 512.3.
238.114—Transcripts	§ 512.4.
238.115—Rights of Witnesses	§ 512.5.
238.116—Obstruction of proceedings	§ 512.6.
238.117—Subpoenas	§ 512.7.

Regulation MM Mutual Holding Companies

1. Subpart A General Provisions

A. 239.1 Authority, Purpose and Scope

This section sets forth the authority, purpose and scope of the interim final rule.

B. 239.2 Definitions

This section combines needed definitions from parts 563b, 574, 575, and 583 of OTS regulations in one location. The Board has modified certain definitions to cross reference like definitions in Regulation LL and has revised the style and format of section 239.2 to conform to the Board's Regulation Y.[61]

For instance, in Regulation LL, the Board has conformed the rules relating to control determinations and rebuttals in the CBCA and the rules relating to control determinations and rebuttals under HOLA to the rules found in Regulation Y for the CBCA and the BHC Act, respectively. As a result, for purposes of Regulation MM the Board has defined ''acting in concert'' and ''control'' by reference to those terms in Regulation LL. In addition, in Regulation LL the Board modified the definition of ''savings and loan holding company'' to reflect two new exceptions to HOLA added by the Dodd-Frank Act; in Regulation MM, the Board defined that term by cross reference to the definition in Regulation LL.

As in Regulation LL, the definition of ''person'' was modified to reflect the definition in Regulation Y, and the definition of ''savings association'' was modified to eliminate the inclusion of SLHCs within the definition.

[61] 12 CFR part 225.

2. Subpart B Mutual Holding Companies

Subpart B contains many of the regulatory requirements specific to MHCs, including provisions concerning a mutual savings association reorganizing to mutual holding company form, mutual member membership rights, operating restrictions, procedural requirements, charters, bylaws, and voluntary dissolution.[62] Many of the sections in this subpart were taken directly from the OTS regulations in 12 CFR Part 575 and modified as necessary to reflect changes in nomenclature and other non-substantive changes. Substantive changes are described below.

A. 239.3 Mutual Holding Company Reorganizations

This section sets forth the process by which a mutual savings association may reorganize to become a holding company. These provisions were previously contained in section 575.3 of the OTS regulations and have been modified to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

As discussed above, the Board has generally replaced OTS processing requirements for applications and notices with those currently used by the Board for similar transactions. These revised processing requirements are found in section 238.14 of Regulation LL. In order to align the processing of reorganization notices with other notices filed by SLHCs, section 239.3 provides that reorganization notices will be processed in accordance with the procedural requirements set forth in section 238.14. As noted above, the Board will carryover the OTS applications forms, with technical changes, for the time being. All application and notice forms can be found on the Board's public Web site.

[62] 12 CFR part 239, subpart B. As noted elsewhere, Regulation MM does not apply to bank holding companies in mutual form.

In addition, in light of the fact that the Board is not the primary federal supervisor of savings associations, paragraph (b) of section 239.3 provides that the appropriate Reserve Bank will furnish notice and a copy of the reorganization notice to the primary federal supervisor of the mutual savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

B. 239.4 Grounds for Disapproval of Reorganizations

This section sets forth the grounds under which the Board will disapprove of reorganizations. These provisions were previously found at section 575.4 of the OTS regulations and have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

Similar to section 575.4 of the OTS regulations, section 239.4 provides that the Board will disapprove a reorganization to capitalize an MHC in an amount in excess of a nominal amount if the relevant savings association would fail to be ''adequately capitalized.'' Section 239.4 clarifies that, for the purpose of considering an application to reorganize to holding company form, ''adequately capitalized'' will be calculated under the regulatory capital requirements applicable to the savings association.

C. 239.5 Membership Rights

This section sets forth the minimum rights of members of MHCs that were previously found in section 575.5 of OTS regulations.

D. 239.6 Contents of Reorganization Plan

This section sets forth the required contents of a mutual savings association's plan to reorganize to an MHC structure. These provisions were contained in section 575.6 of the OTS regulations and have been revised to delete unnecessary provisions specific to savings associations.

E. 239.7 Acquisition and Disposition of Savings Associations, Savings and Loan Holding Companies, and Other Corporations by Mutual Holding Companies

This section governs the acquisition and disposal of savings associations, SLHCs, and other corporations by MHCs. It contains the provisions of section 575.10 of the OTS regulations and has been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

F. 239.8 Operating Restrictions

This section establishes limitations on activities and transactions by MHCs. These provisions were found in section 575.11 of OTS regulations and have been revised as discussed below.

Paragraph (a) sets forth the activities restrictions applicable to MHCs and is updated to cross reference the procedural requirements of subparts F and G of Regulation LL relating to activities restrictions for SLHCs.

The Board revised the dividend waiver provision in paragraph (d) to implement an amendment to HOLA made by the Dodd-Frank Act, new section 10(o)(11). Section 10(o)(11)(B) of HOLA states that an MHC may waive the right to receive a dividend declared by a subsidiary of the MHC if (1) no insider of the MHC, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the MHC holds any share of the stock in the class of stock to which the waiver would apply, or (2) the MHC gives written notice to the Board of the MHC's intent to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.[63] Section 10(o)(11)(D) provides that the Board may not object to a waiver of dividends under section 10(o)(11)(B) by an MHC if (1) the waiver would not be detrimental to the safe and sound operation of the savings association, (2) the MHC's board of directors expressly determines that a waiver of the dividend by the MHC is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC, and (3) the MHC has waived dividends from a subsidiary prior to December 1, 2009. MHCs that meet all of these conditions may waive their right to receive dividends from a subsidiary after providing the Dividend Waiver Notice to the Board. The Dividend Waiver Notice must include a copy of the resolution of the MHC's board of directors, in such form and substance as the Board may determine, together with any supporting materials relied upon by the MHC's board of directors, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC.[64]

Paragraph (d)(1) sets forth the statutory standard in section 10(o)(11)(B) of HOLA. It provides that an MHC may waive the right to receive any dividend declared by a subsidiary of the MHC, if (i) no insider of the MHC, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the MHC holds any share of the stock in the class of stock to which the waiver would apply; or (ii) the MHC gives written notice to the Board of the intent of the MHC to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

Paragraph (d)(2) sets forth the requirements for the form and substance of notice of waiver and resolution of the MHC's board of directors to be provided under paragraph (d)(1)(ii), above. Under paragraph (d)(2), the notice of waiver must include a copy of the resolution of the board of directors of the MHC together with any supporting materials relied upon by the board of directors of the MHC, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC. The resolution must include:

- A description of the conflict of interest that exists because of an MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as waiver by the directors of their right to receive dividends;
- A finding by the MHC's board of directors that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;
- If the MHC has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the MHC, or is subject to any other loan agreement, an affirmation that the MHC is able to meet the terms of the loan agreement; and
- An affirmation that a majority of the mutual members of the MHC eligible to vote have, within the 12 months prior to the declaration date of the dividend by the subsidiary of the MHC, approved a waiver of dividends by the MHC, and any proxy statement used in connection with the member vote contained—
  - A detailed description of the proposed waiver of dividends by the MHC and the reasons the board of directors requested the waiver of dividends;
  - The disclosure of any MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and
  - A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given.

Paragraph (d)(3) implements the statutory conditions under which the Board may not object to a dividend waiver filed by a Grandfathered MHC. It provides that the Board may not object to a waiver of dividends under paragraph (d)(1)(ii) if:

- The waiver would not be detrimental to the safe and sound operation of the savings association;
- The board of directors of the MHC expressly determines that a waiver of the dividend by the MHC is consistent with the fiduciary duties of the board of directors to the mutual members of the MHC; and
- The MHC has, prior to December 1, 2009—
  - Reorganized into an MHC under section 10(o) of HOLA;
  - Issued minority stock either from its subsidiary stock holding company or its subsidiary stock savings association; and
  - Waived dividends it had a right to receive from the subsidiary stock savings association.

In addition to the Dividend Waiver Notice, Grandfathered MHCs must file a copy of the board resolution concluding that the proposed dividend waiver is consistent with the MHC board's fiduciary duties to the mutual members.

[63] 12 U.S.C. 1467a(o)(11)(B).

[64] 12 U.S.C. 1467a(o)(11)(C).

The required form and substance of the board resolution is discussed in more detail above.

Paragraph (d)(4) sets forth the conditions the Board will consider when it reviews a dividend waiver notice filed under paragraph (d)(1)(ii) by a non-Grandfathered MHC. An MHC must satisfy each condition provided in paragraph (d)(4). The conditions are:

- The savings association currently operates in a manner consistent with the safe and sound operation of a savings association, and the waiver is not detrimental to the safe and sound operation of the savings association;
- If the MHC has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the MHC, or is subject to any other loan agreement, an affirmation that the MHC is able to meet the terms of the loan agreement;
- Within the 12 months prior to the declaration date of the dividend by the subsidiary of the MHC, a majority of the mutual members of the MHC has approved the waiver of dividends by the MHC. Any proxy statement used in connection with the member vote must contain—
  - A detailed description of the proposed waiver of dividends by the MHC and the reasons the board of directors requested the waiver of dividends;
  - The disclosure of any MHC director's ownership of stock in the subsidiary declaring dividends and any actions the MHC and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and
  - A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given;
- The board of directors of the MHC expressly determines that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;
- A majority of the entire board of directors of the MHC approves the waiver of dividends and any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, has abstained from the board vote; or each officer or director of the MHC or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives the right to receive any dividend declared by a subsidiary of the MHC;
- The Board does not object to the amount of dividends declared by a subsidiary of the MHC. In reviewing whether a declaration by a subsidiary of the MHC is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;
- The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for purposes of calculating any future dividend payments;
- The MHC appropriately accounts for all waived dividends in a manner that permits the Board to consider the waived dividends in evaluating the proposed exchange ratio in the event of a full conversion of the MHC to stock form; and
- The MHC complies with such other conditions as the Board may require to prevent conflicts of interest or actions detrimental to the safe and sound operation of the savings association.

Paragraph (d)(5) provides that the Board will consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form pursuant to subpart E of Regulation MM. However, consistent with section 10(o)(11)(E)(ii) of HOLA, paragraph (d)(5) clarifies that in the case of a savings association that has reorganized into an MHC, has issued minority stock from a subsidiary stock holding company or a subsidiary stock savings association of the MHC, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the Board will not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

Paragraph (f), which concerns compliance with community reinvestment requirements, has been revised to cross reference the Board's Regulation BB. The interim final rule revises Regulation BB to apply to SLHCs.

The Board has stricken the OTS requirement that MHCs provide 10-day after-the-fact notice of pledges of stock of subsidiary savings association or subsidiary holding companies. While the Board recognizes that stock pledges may pose safety and soundness concerns, the Board believes these concerns are adequately addressed through the regular supervisory process.

G. 239.9 Conversion or Liquidation of Mutual Holding Companies

This section governs the conversion or liquidation of MHCs. These procedures were previously contained in section 575.12 of the OTS regulations and have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

H. 239.10 Procedural Requirements

This section provides certain procedural requirements applicable to MHCs. It contains provisions previously found in section 575.13 and has been revised to reflect the Board's revised procedures for reviewing forms of proxy and proxy statements and to applications procedures.

As discussed above, whereas the OTS previously reviewed and approved forms of proxy and proxy statements before they could be used, the Board will review these materials in connection with transactions but will not authorize or approve them.

Paragraph (a) provides that sections 239.56 and 239.57(a)–(d) and (f)–(h) will apply to all solicitations of proxies by any person in connection with any membership vote required by this part. In addition, proxy materials required by Regulation MM must be in the form specified by the Board and contain information specified in section 239.57(b) and (d) (sections setting forth the requirements for proxy materials with respect to conversions of MHCs to stock form), to the extent such information is relevant to the action that members are being asked to approve, with any additions, deletions, and other modifications as are required under Regulation MM with respect to that action.

In order to align the processing of notices and applications filed by MHCs and subsidiary holding companies under part 239 with other notices filed by SLHCs, paragraph (f) provides that the rules of section 238.14 governing disclosure of any notice, application submitted under this section, or public comment submitted under paragraph (c), will be the same as set forth in section 238.14.

The provisions of this section have also been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

I. 239.11 Subsidiary Holding Companies

This section provides for the formation of and requirements for stock issuances by subsidiary holding

companies of MHCs. It contains certain provisions from section 575.14, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. The provisions of section 575.14 concerning the model charter, charter amendments, bylaws, and annual reports and books and records are found in sections 239.21, 239.22, 239.23, and 239.30, respectively.

J. 239.12 Communication Between Members of a Mutual Holding Company

This section sets forth the rights of mutual members to communicate with one another and sets forth the procedures for communication. These provisions were contained in section 544.8 (previously incorporated by reference by section 575.9) and have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

K. 239.13 Charters

This section sets forth the requirements for MHC charters. It contains the provisions from section 575.9 concerning charters, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. The model charter previously set forth in section 575.9(a)(1) is now in Appendix A.

L. 239.14 Charter Amendments

This section contains provisions governing amendments to MHC charters. It contains the provisions from section 544.2 governing MHC charter amendments (previously incorporated by reference by section 575.9(a)(2)), as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

M. 239.15 Bylaws

This section sets forth the requirements for MHC bylaws. It contains the provisions of section 544.5 governing MHC bylaws (previously incorporated by reference by section 575.9(a)(4)), as revised to delete unnecessary provisions specific to savings associations. The Board deleted the prior reference in the OTS regulations to the model bylaws for mutual savings associations in the OTS Applications Processing Handbook and instead inserted the model MHC bylaws in Appendix C. The model MHC bylaws have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

N. 239.16 Voluntary Dissolution

This section sets forth the processes for the dissolution of an MHC or a subsidiary holding company. It contains the provisions of section 546.4 providing for voluntary dissolution, previously incorporated by reference by section 575.12(c), and has been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. Specifically, the section does not incorporate the provisions of paragraph (a) of section 546.4 of the OTS regulations, providing that the plan of dissolution may provide for appointment of the FDIC as receiver, because this provision was specific to savings associations.

3. Subpart C Subsidiary Holding Companies

In organizing Regulation MM, the Board placed most of the regulatory requirements applicable to subsidiary holding companies of MHCs in one subpart, subpart C.[65] Except as noted below, these provisions are substantively the same as those that applied to subsidiary holding companies of MHCs under OTS regulations. The provisions have been revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.

A. 239.20 Scope

The Board added this section in order to clarify that this subpart applies only to subsidiary holding companies of MHCs.

B. 239.21 Charters

This section sets forth the required elements of a subsidiary holding company's charter. These provisions were contained in section 575.14(c)(1) and (3) of the OTS regulations, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority. In order to streamline the regulatory text, the Board moved the model charter previously set forth in section 575.14(c)(1) to Appendix B.

C. 239.22 Charter Amendments

This section contains the provisions governing amendments to subsidiary holding company charters that were contained in section 552.4 (previously incorporated by reference by section 575.14(c)(2)).

[65] Certain requirements are found in section 239.11, described above.

D. 239.23 Bylaws

This section sets forth requirements for a subsidiary holding company's bylaws that were contained in section 552.5 (previously incorporated by reference by section 575.14(c)(4)). In addition, to streamline the rule text, the Board deleted the prior reference in the OTS regulations to the model bylaws for federal savings associations contained in the OTS Applications Processing Handbook and instead inserted the model subsidiary holding company bylaws in Appendix D, as revised to delete unnecessary provisions specific to savings associations.

E. 239.24 Issuances of Stock by Subsidiary Holding Companies of Mutual Holding Companies

This section contains requirements for the issuances of stock by subsidiary holding companies. These provisions were previously contained in section 575.7.

F. 239.25 Contents of Stock Issuance Plans

This section sets forth the required contents of stock issuance plans. These provisions were previously contained in section 575.8.

G. 239.26 Shareholders

This section governs the procedures for shareholder meetings. It contains provisions of section 552.6 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6, among others).

H. 239.27 Board of Directors

This section sets forth the requirements for the constitution and meetings of a subsidiary holding company's board of directors. These provisions were contained in section 552.6–1 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6–1, among others).

I. 239.28 Officers

This section sets forth the requirements for a subsidiary holding company's officers. These provisions were contained in section 552.6–2 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6–2, among others).

J. 239.29 Certificates for Shares and Their Transfer

This section sets forth the requirements for share certificates and transfer procedures. These provisions were contained in section 552.6–3 (section 575.14(c)(4) incorporated by reference the requirements of section 552.5, which in turn required that the bylaws comply with section 552.6–3, among others).

K. 239.30 Annual Reports; Books And Records

This section contains the requirements for annual reports and books and records of a subsidiary holding company. These provisions were contained in section 552.10 and 552.11 (previously incorporated by reference by section 575.14(c)(5)).

L. 239.31 Indemnification; Employment Contracts

This section clarifies that regulations governing indemnification of directors, officers, and employees, and restrictions on employment contracts set forth in sections 239.40 and 239.41 (discussed below) apply to subsidiary holding companies of MHCs.

4. Subpart D Indemnification; Employment Contracts

Subpart D contains provisions concerning indemnification of directors, officers, and employees of MHCs and their subsidiary holding companies, and restrictions on employment contracts.[66]

A. 239.40 Indemnification of Directors, Officers and Employees

Section 239.40 contains provisions of section 545.121, which previously applied to MHCs and their subsidiary holding companies through a cross reference in section 575.11(f). These provisions have been revised to reflect nomenclature changes and the change in supervisory authority.

B. 239.41 Employment Contracts

Section 239.41 contains provisions of section 563.39, which previously applied to MHCs and their subsidiary holding companies through a cross reference in section 575.11(g). Paragraph (b)(5) provides a specific requirement for employment contracts. Under this section, unless prior written approval is secured from the Board, each employment contract between an MHC or subsidiary holding company and its officers or other employees must provide that all obligations of the MHC or subsidiary holding company under the contract shall terminate if the MHC or subsidiary holding company is subject to bankruptcy proceedings under title 11 of the United States Code but vested rights of the contracting parties shall not be affected.

5. Subpart E Conversions From Mutual to Stock Form

Subpart E contains provisions concerning the conversion of an MHC to stock form.[67] The Board based subpart E on part 563b of OTS regulations. Part 563b governed the conversion of mutual savings associations to stock form. By cross reference, section 575.12 of the OTS regulations applied part 563b to MHC conversions to stock form. Subpart E revises the provisions of part 563b such that they now apply to MHCs directly. The Board also revised the general format of subpart E to be consistent with the format of other Board regulations.

A. 239.50 Purpose and Scope

This section sets forth the purpose and scope of subpart E of the interim final rule.

B. 239.51 Acquiring Another Insured Stock Depository Institution as Part of a Conversion

This section provides that an MHC may acquire another insured depository institution as part of a conversion, as previously provided in section 563b.25. The acquisition must also comply with the rules governing acquisitions of savings association securities set forth in subpart B of Regulation LL.

C. 239.52 Definitions

This section contains many of the definitions previously found in section 563b.25 of the OTS regulations. The Board defined several terms in section 239.2 that were previously defined in section 563b.25 and has therefore included fewer definitions in subpart E as a result. In addition, the Board added the term ''resulting stock holding company'' to describe the stock holding company that is issuing stock in connection with the conversion of an MHC.

D. 239.53 Prior to Conversion

This section imposes certain pre-filing requirements on MHCs. Paragraph (a), previously section 563b.100, concerns pre-filing meetings between an MHC's board of directors and the Reserve Bank or Board. The Board revised this provision to make these pre-filing meetings voluntary, instead of mandatory. The Board does, however, encourage pre-filing communication—which may include a pre-filing meeting—between an MHC, its board of directors, and the appropriate Reserve Bank to discuss the contemplated conversion, including the MHC board of directors' overall strategic plan and plans for the use of the offering proceeds.

Paragraphs (b) through (e) of this section contain the provisions of sections 563b.105, 563b.110, 563b.115, and 563b.120 of the OTS regulations, as revised to reflect the change in supervisory authority.

E. 239.54 Plan of Conversion

This section sets forth the necessary requirements and procedure for a plan of conversion. It contains the provisions of sections 563b.125, 563b.130, 563b.135, and 563b.140 of the OTS regulations.

F. 239.55 Filing Requirements

This section contains the filing requirements previously set forth in sections 563b.150, 563b.155, 563b.160, 563b.165, 563b.180, 563b.185, 563b.200, and 563b.205 of the OTS regulations.

As noted above, the Board has replaced OTS processing requirements for applications and notices with those currently used by the Board for similar transactions. Thus, paragraph (f) provides the applicant must publish public notice of the application in accordance with section 238.14. Commenters must submit comments on the application in accordance with the procedures in that section.

In addition, paragraph (c) provides that the appropriate Reserve Bank will furnish notice and a copy of the application to the primary federal supervisor of any subsidiary savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

G. 239.56 Vote by Members

This section contains the provisions governing the member vote on a plan of conversion. These provisions were contained in sections 563b.225, 563b.230, 563b.235, and 563b.240 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority. As noted below, section 239.57 provides that the Board will review forms of proxy and proxy statements in its review of the conversion application, but it will not approve these materials. Section 239.56 reflects this change.

[66] 12 CFR part 239, subpart D.

[67] 12 CFR part 239, subpart E.

H. 239.57 Proxy Solicitation

This section contains provisions governing the content and solicitation of proxies. These provisions were previously found in sections 563.250, 563.255, 563b.260, 563b.265, 563b.270, 563b.275, 563b.280, 563b.285, 563b.290, and 563b.295 of the OTS regulations.

Consistent with the Board's current practice with respect to bank holding company and state member bank filings, section 239.57 provides that the Board will review proxy materials in its review of a conversion application as a whole and may require changes to ensure that the disclosure is adequate, complete, and accurate. However, section 239.57 does not continue past OTS practice of approving forms of proxy and proxy statements. As a result, in paragraph (d) the Board revised the requirement from section 563b.270 that the MHC mail proxy solicitation material to its members within ten days after OTS authorizes the solicitation to require distribution no later than ten days after the Board approves the conversion.

I. 239.58 Offering Circular

This section contains the offering circular requirements related to an MHC's conversion to stock form. These provisions were contained in 563b.300, 563b.305, and 563b.310 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority.

As discussed above, the Board will continue to require MHCs and their subsidiary holding companies to file offering circulars with the Board on Form OC in connection with applications, and will require that MHCs and their subsidiary holding companies continue to abide by all applicable federal and state securities laws, rules, and regulations. The Board will not, however, declare effective offering circulars used by MHCs in conversions to stock form or by subsidiary holding companies of MHCs in initial or subsequent issuances of stock, or in any other context. As a result, in paragraph (b) the Board has revised the requirement from section 563b.305 that the MHC distribute the offering circular within ten days after OTS declared it effective to require distribution no later than ten days after the Board approves the conversion.

J. 239.59 Offers and Sales of Stock

This section contains provisions governing the offering, pricing, purchase limitations, and timing restrictions of an offering of stock in connection with a conversion. These provisions were contained in sections 563b.320, 563b.325, 563b.330, 563b.335, 563b.340, 563b.345, 563b.350, 563b.360, 563b.365, 563b.370, 563b.375, 563b.380, 563b.385, 563b.390, and 563b.395 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority. Because the Board is not declaring offering circulars effective, the section provides that the offer may commence after the Board approves the conversion, subject to compliance with SEC requirements.

K. 239.60 Completion of the Offering

This section governs the time period for an offering under a conversion. It contains provisions of sections 563b.400 and 563b.405 of the OTS regulations.

L. 239.61 Completion of the Conversion

This section sets forth requirements for the execution of the conversion and the voting and liquidation rights following conversion. It contains provisions of sections 563b.420, 563b.425, 563b.435, 563b.440, and 563b.445 of the OTS regulations.

M. 239.62 Liquidation Accounts

This section governs the creation and maintenance of a liquidation account by a resulting stock company. It contains provisions of sections 563b.450, 563b.455, 563b.460, 563b.465, 563b.470, 563b.475, and 563b.480 of the OTS regulations.

N. 239.63 Post-conversion

This section contains provisions of sections 563b.420, 563b.425, 563b.435, 563b.440, and 563b.445 of the OTS regulations. As discussed above, the Board has extended the prior notice period for stock repurchases by the resulting stock holding company within the first year of conversion from requiring 10 days prior notice to requiring 30 days prior notice, which can be extended by the Board for an additional 60 days. The Board believes that particular scrutiny of stock repurchases is warranted because of the potential for conflicts of interest that could arise when directors, management, and other insiders of the resulting stock holding company also are or may become shareholders of that resulting stock holding company.

O. 239.64 Contributions to Charitable Organizations

This section governs the formation of and donation to charitable organizations in connection with a conversion. It contains provisions of sections 563.15, 563b.550, 563b.555, 563b.560, 563b.565, 563b.570, and 563b.575 of the OTS regulations, as revised to reflect nomenclature changes and the change in supervisory authority.

P. 239.65 Voluntary Supervisory Conversions

This section governs supervisory conversions by MHCs. It contains provisions of sections 563b.600, 563b.605, 563b.610, 563b.625, 563b.650, 563b.660, 563b.680, and 563b.690 of the OTS regulations.

Paragraph (d) clarifies that an MHC may be eligible for a voluntary supervisory conversion based on either the MHC or subsidiary savings association's capital levels. These capital levels are measured based on the regulatory capital requirements applicable to the relevant institution.

Q. 239.66 Board Review of the Voluntary Supervisory Conversion Application

This section governs review by the Board of a voluntary supervisory conversion application. These provisions were contained in sections 563b.670 and 563b.675 of the OTS regulations and have been revised to reflect nomenclature changes and the change in supervisory authority. Paragraph (b) clarifies that the Board may condition approval of a voluntary supervisory conversion on actions to be taken by either the MHC or the resulting stock holding company.

Comparison Chart

The following chart summarizes where particular parts and sections of the OTS rules have been placed within Regulation MM.

Regulation MM	Previous location in OTS regulations
SUBPART A—General Provisions	
239.1—Authority, Purpose and Scope	§ 575.1
239.2—Definitions	§§ 563b, 574, 575, and 583

Regulation MM	Previous location in OTS regulations
SUBPART B—Mutual Holding Companies	
239.3—Mutual holding company reorganizations	§ 575.3
239.4—Grounds for disapproval of reorganizations	§ 575.4
239.5—Membership rights	§ 575.5
239.6—Contents of Reorganization Plan	§ 575.6
239.7—Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.	§ 575.10
239.8—Operating restrictions	§ 575.11
239.9—Conversion or liquidation of mutual holding companies	§ 575.12
239.10—Procedural requirements	§ 575.13
239.11—Subsidiary holding companies	§ 575.14
239.12—Communication between members of a mutual holding company	§ 575.9
239.13—Charters	§ 575.9
239.14—Charter amendments	§ 575.9
239.15—Bylaws	§ 575.9
239.16—Voluntary dissolution	§ 575.12(c)
SUBPART C—Subsidiary Holding Companies	
239.20—Scope	
239.21—Charters	§ 575.14(c)(1), (3)
239.22—Charter amendments	§ 575.14(c)(2)
239.23—Bylaws	§ 575.14(c)(4)
239.24—Issuances of stock by subsidiary holding companies of mutual holding companies	§ 575.7
239.25—Contents of Stock Issuance Plans	§ 575.8
239.26—Shareholders	§ 575.14(c)(4)
239.27—Board of directors	§ 575.14(c)(4)
239.28—Officers	§ 575.14(c)(4)
239.29—Certificates for shares and their transfer	§ 575.14(c)(4)
239.30—Annual reports; books and records	§ 575.14(c)(5)
239.31—Indemnification; employment contracts	
SUBPART D—Indemnification; Employment Contracts	
239.40—Indemnification of directors, officers and employees	§ 575.11(f)
239.41—Employment contracts	§ 575.11(g)
SUBPART E—Conversions from Mutual to Stock Form—§ 575.12	
239.50—Purpose and scope	§ 575.12 (§ 563b.5)
239.51—Acquiring another insured stock depository institution as part of a conversion	§ 575.12 (§ 563b.20)
239.52—Definitions	§ 575.12 (§ 563b.25)
239.53—Prior to conversion.	
239.54—Plan of conversion	§ 575.12 (§§ 563b.125, 563b.130, 563b.135, 563b.140)
239.55—Filing requirements	§ 575.12 (§§ 563b.150, 563b.155, 563b.160, 563b.165, 563b.180, 563b.185, 563b.200, 563b.205)
239.56—Vote by members	§ 575.12 (§§ 563b.225, 563b.230, 563b.235, 563b.240)
239.57—Proxy solicitation	§ 575.12 (§§ 563.250, 563.255, 563b.260, 563b.265, 563b.270, 563b.275, 563b.280, 563b.285, 563b.290, 563b.295)
239.58—Offering circular	§ 575.12 (§§ 563b.300, 563b.305, 563b.310)
239.59—Offers and sales of stock	§ 575.12 (§§ 563b.320, 563b.325, 563b.330, 563b.335, 563b.340, 563b.345, 563b.350, 563b.360, 563b.365, 563b.370, 563b.375, 563b.380, 563b.385, 563b.390, 563b.395)
239.60—Completion of the offering	§ 575.12 (§§ 563b.400, 563b.405)
239.61—Completion of the conversion	§ 575.12 (§§ 563b.420, 563b.425, 563b.435, 563b.440, 563b.445)
239.62—Liquidation account	§ 575.12 (§§ 563b.450, 563b.455, 563b.460, 563b.465, 563b.470, 563b.475, 563b.480)
239.63—Post-conversion	§ 575.12 (§§ 563b.500, 563b.505, 563b.510, 563b.515, 563b.520, 563b.525, 563b.530)

Regulation MM	Previous location in OTS regulations
239.64—Contributions to charitable organizations	§ 575.12 (§§ 563.15, 563b.550, 563b.555, 563b.560, 563b.565, 563b.570, 563b.575)
239.65—Voluntary supervisory conversions	§ 575.12 (§§ 563b.600, 563b.605, 563b.610, 563b.625, 563b.650, 563b.660, 563b.680, 563b.690)
239.66—Board review of the voluntary supervisory conversion application	§ 575.12 (§§ 563b.670, 563b.675)

Technical Amendments

The Board has made a number of technical amendments to Board rules to facilitate supervision of SLHCs. These amendments include revisions to the interagency rules implementing the Community Reinvestment Act, including Regulation G[68] and Regulation BB.[69] Previously, these requirements were located in parts 533 and 563e of the OTS regulations. These technical changes also include revisions to the Board procedural rules, including part 261 (Availability of Information), 261B (Public Observation of Meetings), part 262 (Rules of Procedure), part 263 (Rules of Practice for Hearings), and part 264A (Post-Employment Restrictions for Senior Examiners). In general, these amendments add SLHCs to the types of institutions covered by the rule and create mirrored provisions to accommodate transactions under HOLA.

In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the Dodd-Frank Act,[70] which transfers to the Board all rulemaking authority under section 11 of HOLA relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders.[71] These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

With respect to transactions with affiliates, the Board has added a new subpart I to the Board's Regulation W.[72] Savings associations have been subject to most of the provisions of Regulation W pursuant to section 563.41 of OTS regulations. New subpart I contains the provisions of section 563.41, other than paragraphs (c)(3) and (4), and is revised to reflect nomenclature changes. The Board has decided not to adopt the recordkeeping and notice requirements previously set forth in section 563.41(c)(3) and (4). When adopting amendments to Regulation W, the Board considered, and decided against, imposing recordkeeping requirements on institutions subject to Regulation W. At that time, the Board concluded, and continues to believe, that the primary supervisors of the insured depository institutions are the appropriate authorities to determine the recordkeeping requirements of their institutions. The Board also believes that the requirement for a savings association under section 563.41(b)(4) to provide notice to its primary supervisory in certain circumstances does not need to be incorporated into Regulation W because the OCC may require such notice in its general capacity as the primary supervisor of the institution.

With respect to extensions of credit to executive officers, directors, and principal shareholders, the Board has revised Regulation O to extend to savings associations all provisions applicable to state member banks.[73] Section 563.43 of the OTS regulations previously extended all of the provisions of Regulation O to savings associations.

IV. Request for Comments

The Board is seeking comment on all aspects of this interim final rule. The Board requests specific comment with respect to whether all regulations relating to the supervision of SLHCs are included in this rulemaking. Alternatively, does this rulemaking carry over regulatory provisions that currently do not apply to SLHCs or their non-depository subsidiaries?

V. Legal Authority

Rulemaking Authority

As noted, the Dodd-Frank Act explicitly provides for transfer of rulemaking authority for SLHCs from OTS to the Board effective July 21.[74] The Dodd-Frank Act also amends other statutes effective July 21, so as to provide the Board with rulemaking authority over SLHCs pursuant to HOLA,[75] the CBCA,[76] section 32 of the FDI Act (requiring notices by troubled institutions prior to appointment of a director or senior executive officer),[77] the Interlocks Act[78] and section 19 of the FDI Act (preventing service at SLHCs of individuals convicted of crimes of dishonesty).[79] The Board is issuing this interim final rule pursuant to this authority.

Authority To Issue Interim Final Rule Without Notice and Comment

The Administrative Procedures Act (''APA''), 5 U.S.C. 551 *et seq.,* generally requires public notice before promulgation of regulations.[80] The APA provides an exception for this requirement, however, when there is good cause because notice and public procedure is impracticable.[81] The Board finds that for this interim rule there is ''good cause'' to conclude that providing notice and an opportunity to comment would be impracticable and, therefore, is not required.

Because the authority to supervise SLHCs was transferred by operation of law effective on July 21, 2011, the Board has concluded that adopting this rule on an interim basis effective immediately, and subject to change as a result of comments received, would allow efficient and effective supervision and regulation of SLHCs immediately while also allowing the public an opportunity to comment.

Specifically, the OTS regulations often integrate requirements for savings associations with those of SLHCs. The Board does not believe that SLHCs should be obligated to independently determine which regulations remain applicable after transfer. The OTS regulations also contain references to the OTS as recipient of and decision maker with respect to SLHC applications. Absent immediate modification of these rules, the Board

[68] 12 CFR part 207 (Disclosure and Reporting of CRA-Related Amendments).

[69] 12 CFR part 228 (Community Reinvestment).

[70] 12 U.S.C. 5412.

[71] 12 U.S.C. 1468.

[72] 12 CFR part 223 (Transactions Between Member Banks and Their Affiliates).

[73] 12 CFR part 215 (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks).

[74] 12 U.S.C. 5412(b)(1)(A)(ii).

[75] 12 U.S.C. 1461 *et seq.*

[76] 12 U.S.C. 1817(j)(13).

[77] 12 U.S.C. 1831i.

[78] 12 U.S.C. 3207.

[79] 12 U.S.C. 1829(a).

[80] 5 U.S.C. 553(b).

[81] 5 U.S.C. 553(b)(B).

would lack procedures to receive and process applications and therefore would be unable to fully carry out this important portion of its supervisory responsibilities. Additionally, the Board must take immediate action to amend a number of its own administrative regulations to ensure the SLHCs and transactions under HOLA are appropriately accommodated.

In order to effectuate the Dodd-Frank Act, prevent a disruption of agency business, and ensure that SLHCs are aware of their obligations, and the expectations of the Board as the new supervisory authority, the Board is issuing this interim final rule. The Board is seeking comment from interested parties before final rules are issued.

VI. Regulatory Flexibility Act

In accordance with section 4 of the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* the Board is publishing an initial regulatory flexibility analysis for the interim final rule. The RFA generally requires an agency to assess the impact a rule is expected to have on small entities.[82] The RFA requires an agency either to provide a regulatory flexibility analysis or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Based on this analysis and for the reasons stated below, the Board believes that this final rule will not have a significant economic impact on a substantial number of small entities. The Board recognizes that the final rule will affect some small business entities; however the Board does not expect that the final rule will have a significant economic impact on them, particularly in light of the information already required to be collected or disclosed under HOLA. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requesting public comment on the effect of the interim final rule on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

A. Reasons for the Interim Final Rule

Title III of the Dodd-Frank Act transfers from OTS to the Board the responsibility for supervision of SLHCs and their non-depository subsidiaries. Specifically, section 312 of the Dodd-Frank Act provides that all functions of the OTS and the Director of the OTS (including rulemaking authority and authority to issue orders) with respect to the supervision of SLHCs and their non-depository subsidiaries transferred to the Board on July 21, 2011.[83] The interim final rule is the mechanism for the corresponding transfer from OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs.

B. Statement of Objectives and Legal Basis

The **SUPPLEMENTARY INFORMATION** sets forth the objectives and the legal basis for the interim final rule. In summary, this interim final rule is the mechanism for the transfer from the OTS to the Board of the regulations necessary for the Board to administer the statutes governing SLHCs.

C. Description of Small Entities to Which the Final Rule Applies

The interim final rule would apply to any SLHC and its non-depository subsidiaries. The Board can identify through data from the National Information Center the approximate numbers of small SLHCs that would be subject to the interim final rule. Based on March 2011 data, approximately 124 small SLHCs would be subject to the interim final rule.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The reporting and recordkeeping requirements of the interim final rule are described in the **SUPPLEMENTARY INFORMATION**.

The interim final rule is composed of new Regulation LL and new Regulation MM, into which the Board has sought to collect all current OTS regulations applicable to, respectively, SLHCs and SLHCs in mutual form and transfer them into a single part of Chapter 2 of Title 12 for ease of locating. The interim final rule also makes technical amendments to current Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from OTS to the Board. In light of the information already required to be collected or disclosed under HOLA, the Board does not expect that the costs associated with this interim final rule will place a significant burden on small entities.

E. Identification of Duplicative, Overlapping, or Conflicting Federal Regulations

The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the interim final rule.

F. Significant Alternatives to the Interim Final Rule

As noted above, the interim final rule implements the statutory requirements of the Dodd-Frank Act. The Board has implemented these requirements to minimize burden while retaining benefits and protections to the banking system. The Board welcomes comment on any significant alternatives that would minimize the impact of the interim final rule on small entities.

The Board also welcomes further information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the interim final rule to small business. The Board will carefully review any comments received on these issues during the public comment period.

VII. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (''PRA'') of 1995 (44 U.S.C. 3501–3521), the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The Board reviewed the interim final rule under the authority delegated to the Board by OMB. In addition, as permitted by the PRA, the Board also proposes to extend for three years the current information collections listed below.

Regulation LL

Title of Information Collections

- Savings and Loan Holding Company Registration Statement (H(b)(10)),
- Savings Association Holding Company Report (H–(e) series),
- Interagency Bank Merger Act Application (FR 2070),
- Interagency Notice of Change in Control (FR 2081a),
- Notification by a Bank Holding Company to Acquire a Nonbank Company and/or Engage in Nonbanking Activities (FR Y–4),
- Filings Related to the Gramm-Leach-Bliley Act (FR 4010),
- Application to Become a Bank Holding Company and/or Acquire an Additional Bank or Bank Holding Company (FR Y–3),

[82] Under standards the U.S. Small Business Administration sets, an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[83] 12 U.S.C. 5412.

• Notice for Prior Approval to Become a Bank Holding Company (FR Y–3N),
• Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b),
• Prohibited Service at Savings and Loan Holding Companies,
• Interagency Biographical or Financial Report (FR 2081c), and
• Notice or Application for Capital Distribution (OTS 1583).

Frequency of Response: Event-generated.

Affected Public: Savings and loan holding companies (''SLHCs'') and individuals

Abstract: The information collection requirements are found in sections 238.4, 238.11, 238.12, 238.14, 238.31, 238.33, 238.53, 238.54, 238.65, 238.73, 238.74, 238.86, 238.96, and 238.103 of the interim final rule. These requirements would implement regulations related to Section 312 of the Dodd-Frank Act, which transfered supervision of SLHCs from the OTS to the Board on July 21, 2011.

Section 238.4 sets forth the requirements for SLHCs to register with the Federal Reserve. The Federal Reserve will collect these data using the former OTS reporting form H(b)(10) (former OMB No. 1550–0020, current OMB No. 7100–0337). Sections 238.11 and 238.14 set forth the requirements for SLHCs to seek prior approval to form a holding company, acquire a subsidiary savings association, acquire control of a savings association or savings and loan holding company securities, acquire bank assets, merge SLHCs, and acquire control of an SLHC by certain individuals. The Federal Reserve will collect these data using former OTS reporting form H–(e) series (former OMB No. 1550–0015, current OMB No. 7100–0336) and Federal Reserve reporting form FR 2081a (OMB No. 7100–0134). Section 238.12 sets forth requirements for SLHCs involved in savings association mergers and internal corporate reorganizations to file information under the Bank Merger Act. The Federal Reserve will collect these data using Federal Reserve reporting form FR 2070 (OMB No. 7100–0171). Sections 238.31 and 238.33 set forth requirements for SLHCs to provide prior notice for changes in control of an SLHC. The Federal Reserve will collect these data using Federal Reserve reporting form FR 2081a (OMB No. 7100–0134). Sections 238.53 and 238.54 set forth requirements for SLHCs to engage in or acquire a company engaged in certain services or activities. The Federal Reserve will collect these data using Federal Reserve reporting form FR Y–4 (OMB No. 7100–0121). Section 238.65 sets forth requirements for SLHCs electing to be treated as a financial holding company, SLHCs that do not meet the requirements to be financial holding company engaging in financial holding company activities, and companies requesting to be treated as a financial holding company as part of an application to become an SLHC. The Federal Reserve will collect these data under the Federal Reserve's FR 4010 information collection, which is filed in a letter format (OMB No. 7100–0292), and the Federal Reserve's FR Y–3/3N reporting form (OMB No. 7100–0121). Sections 238.73 and 238.74 set forth requirements for SLHCs to provide prior notice to the Federal Reserve before adding or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer. The Federal Reserve will collect these data under the Federal Reserve's reporting form FR 2081b (OMB No. 7100–0134). Section 238.86 sets forth requirements for exemptions from prohibited services by individuals at SLHCs. The Federal Reserve will collect these data under a former OTS information collection that is filed in a letter format (former OMB No. 1550–0117, current OMB No. 7100–0338). Section 238.96 sets forth requirements for an SLHC to apply for an exemption to a management interlock. The Federal Reserve will collect these data under Federal Reserve reporting forms FR 2070, FR 2081c, FR Y–3/3N (OMB Nos. 7100–0171, 7100–0134, and 7100–0121). Section 238.103 sets forth filing requirements for subsidiary savings associations of SLHCs regarding dividend declarations. The Federal Reserve will collect these data under former OTS reporting form 1583 (former OMB No. 1550–0059, current OMB No. 7100–0339).

Estimated Burden

The hourly burden estimates associated with each information collection described above are not expected to change materially as the information to be collected is substantively similar to that which is currently being collected from SLHCs and those managing these entities. There are approximately 427 SLHCs as of June 30, 2011. For the existing Federal Reserve information collections mentioned above, the Federal Reserve will increase the respondent counts as appropriate to include SLHCs. For additional information on the current burden associated with any of these information collections, please see OMB's public Web site at: *http://www.reginfo.gov/public/do/PRAMain.* For copies of the current reporting forms, please see the Federal Reserve's public Web site at *http://www.federalreserve.gov/reportforms/default.cfm.*

Regulation MM

Title of Information Collections

• Mutual Holding Company Reorganization (MHC–1; OTS 1522),
• Minority Stock Issuance by a Savings Association Subsidiary of a Mutual Holding Company (MHC–2; OTS 1523),
• Mutual to Stock Applications (OTS Forms 1680, 1681, 1682, 1683),
• Holding Company Applications/Information Filing (H–(e) series),
• Interagency Notice of Change in Director or Senior Executive Officer (FR 2081b), and
• Interagency Biographical or Financial Report (FR 2081c).

Frequency of Response: Event-generated.

Affected Public: Mutual holding companies (MHCs) and individuals

Abstract: The information collection requirements are found in sections 239.1, 239.3, 239.4, 239.6 through 239.8, 239.10, 239.11, 239.15, 239.16, 239.22 through 239.25, 239.40, 239.50, 239.53 through 239.55, 239.57 through 239.60, and 239.63 through 239.65 of the interim final rule. These requirements would implement regulations related to section 312 of the Dodd-Frank Act, which transfers supervision of MHCs from the OTS to the Board on July 21, 2011.

Sections 239.1, 239.3, 239.4, 239.6 through 239.8, 239.10, 239.24, 239.25, and 239.63 sets forth the requirements for MHCs to reorganize and for subsidiary holding companies of MHCs to issue minority stock. The Federal Reserve will collect these data using former OTS reporting forms 1522 and 1523 (former OMB No. 1550–0072; current OMB No. 7100–0340). Sections 239.8, 239.10, 239.15, 239.57 through 239.60, and 239.63 through 239.65 set forth the requirements for materials related to proxy statements, meetings, bylaws, offering circulars, selling conversion shares of MHCs, conflicts of interest of directors, and voluntary supervision conversions. The Federal Reserve will collect these data using former OTS reporting forms 1680 through 1683 (formerly OMB No. 1550–0014, current OMB No. 7100–0335). Section 239.11 sets forth requirements for MHCs with respect to communicating with members. MHCs would provide this information using a letter. Section 239.16 sets forth

requirements for MHCs to propose dissolution. MHCs would provide this information in a letter format. Section 239.22 and 239.23 sets forth requirements for MHC charter and bylaw amendments.

This information would be submitted in a letter format. Section 239.40 sets forth requirements for MHCs to notify the Board about their intent to indemnify directors, officers, and employees. The Federal Reserve will collect these data using Federal Reserve reporting form FR 2081b (OMB No. 7100–0134). Section 239.50 sets forth requirements for MHCs to convert from the mutual to the stock form of ownership. The Federal Reserve will collect these data using former OTS reporting form H-(e) series (formerly OMB No. 1550–0015, current OMB No. 7100–0336) and Federal Reserve reporting form FR 2081c (OMB No. 7100–0134). Sections 239.53 through 239.55 set forth requirements for MHCs to provide a business plan prior to conversion from mutual to stock form, make certain certifications regarding the business plan, and notify its members and the public of the plan. The Federal Reserve will collect these data under Federal Reserve reporting form FR 2081c (OMB No. 7100–0134). Section 239.65 requires a plan of voluntary supervisory conversion and related application. The Federal Reserve will use former OTS reporting forms H-(e)1–S (formerly OMB No. 1550–0015, current OMB No. 7100–0336) to collect these data.

Estimated Burden

The hourly burden estimates associated with each information collection described above is not expected to change materially as the information to be collected is substantively similar to that which is currently being collected from MHCs and those managing these entities. There are approximately 100 MHCs as of June 30, 2011. For the existing Federal Reserve information collections mentioned above, the Federal Reserve will increase the respondent counts as appropriate to include MHCs. For additional information on the current burden associated with any of these information collections, please see OMB's public Web site at: *http://www.reginfo.gov/public/do/PRAMain.* For copies of the current reporting forms, please see the Federal Reserve's public Web site at *http://www.federalreserve.gov/reportforms/default.cfm.*

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

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

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act of 1999 requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[84] The Board invites comment on whether the interim final rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

List of Subjects

12 CFR Part 207

Banks, Banking, Community development, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

12 CFR Part 223

Banks, Banking, Federal Reserve System.

12 CFR Part 228

Banks, banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 238

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

12 CFR Part 239

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

12 CFR Part 261

Confidential business information, Federal Reserve System, Freedom of information.

12 CFR Part 261b

Sunshine Act.

12 CFR Part 262

Administrative practice and procedure, Banks, banking, Federal Reserve System.

12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal Access to Justice, Lawyers, Penalties.

12 CFR Part 264a

Conflicts of interest.

For the reasons stated in the preamble, the Board amends 12 CFR chapter II as follows:

PART 207—DISCLOSURE AND REPORTING OF CRA–RELATED AGREEMENTS (REGULATION G)

■ 1. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1831y.

■ 2. In § 207.1:

■ A. Redesignate paragraphs (b)(3) and (b)(4) as paragraphs (b)(4) and (b)(5) respectively;

■ B. Add new paragraph (b)(3); and

■ C. Revise newly redesignated paragraphs (b)(4) and (b)(5). The additions and revisions read as follows:

§ 207.1 Purpose and scope of this part.

(b)* * *

(3) Savings and loan holding companies;

(4) Affiliates of bank holding companies and savings and loan holding companies, other than banks, savings associations and subsidiaries of banks and savings associations; and

(5) Nongovernmental entities or persons that enter into covered agreements with any company listed in paragraph (b)(1) through (4) of this section.

* * * * *

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

■ 3. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 375a(10), 375b(9) and (10), 1468, 1817(k), 5412; and Pub. L. 102–242, 105 Stat. 2236 (1991).

[84] 12 U.S.C. 4809.

■ 4. In § 215.1, revise paragraph (a) to read as follows:

§ 215.1 Authority, purpose and scope.

(a) *Authority.* This part is issued pursuant to sections 11(a), 22(g), and 22(h) of the Federal Reserve Act (12 U.S.C. 248(a), 375a, and 375b), 12 U.S.C. 1817(k), section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236 (1991)), section 11 of the Home Owners' Loan Act (12 U.S.C. 1468), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

* * * * *

■ 5. In § 215.9, revise paragraph (a)(1) to read as follows:

§ 215.9 Disclosure of credit from member banks to executive officers and principal shareholders.

(a) * * *

(1) *Principal shareholder of a member bank* means any person other than an insured bank, or a foreign bank as defined in 12 U.S.C. 3101(7), that, directly or indirectly, owns, controls, or has power to vote more than 10 percent of any class of voting securities of the member bank. The term includes a person that controls a principal shareholder (*e.g.,* a person that controls a bank holding company). Shares of a bank (including a foreign bank), bank holding company, savings and loan holding company or other company owned or controlled by a member of an individual's immediate family are presumed to be owned or controlled by the individual for the purposes of determining principal shareholder status.

* * * * *

■ 6. Section 215.12 is added to read as follows:

§ 215.12 Application to savings associations.

The requirements of this part apply to savings associations, as defined in 12 CFR 238.2(l) (including any subsidiary of a savings association), in the same manner and to the same extent as if the savings association were a member bank; provided that a savings association's unimpaired capital and unimpaired surplus will be determined under regulatory capital rules applicable to that savings association.

PART 223—TRANSACTIONS BETWEEN MEMBER BANKS AND THEIR AFFILIATES (REGULATION W)

■ 7. The authority citation for part 223 is revised to read as follows:

Authority: 12 U.S.C. 371c(b)(1)(E), (b)(2)(A), and (f), 371c–1(e), 1828(j), 1468(a), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

■ 8. In § 223.1, revise paragraph (a) to read as follows:

§ 223.1 Authority, purpose and scope.

(a) *Authority.* The Board of Governors of the Federal Reserve System (Board) has issued this part (Regulation W) under the authority of sections 23A(f) and 23B(e) of the Federal Reserve Act (FRA) (12 U.S.C. 371c(f), 371c–1(e)) section 11 of the Home Owners' Loan Act (12 U.S.C. 1468), and section 312(b)(2)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412).

* * * * *

■ 9. Add Subpart I to read as follows:

Subpart I—Savings Associations—Transactions with Affiliates

§ 223.72 Transactions with affiliates.

(a) *Scope.* (1) This subpart implements section 11(a) of the Home Owners' Loan Act (12 U.S.C. 1468(a)). Section 11(a) applies sections 23A and 23B of the FRA (12 U.S.C. 371c and 371c1) to every savings association in the same manner and to the same extent as if the association were a member bank; prohibits certain types of transactions with affiliates; and authorizes the Board to impose additional restrictions on a savings association's transactions with affiliates.

(2) For the purposes of this subpart, ''savings association'' is defined at section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and also includes any savings bank or any cooperative bank that is a savings association under 12 U.S.C. 1467a(l). A non-affiliate subsidiary of a savings association is treated as part of the savings association. For purposes of this subpart, a ''non-affiliate subsidiary'' is a subsidiary of a savings association other than a subsidiary described at 12 CFR 223.2(b)(1)(i), and (b)(1)(iii) through (v).

(b) *Sections 23A and 23B of the FRA.* A savings association must comply with sections 23A and 23B of the Federal Reserve Act and this part as if it were a member bank, except as described in the following chart.

Provision of Regulation W	Application
(1) 12 CFR 223.2(a)(8)—''Affiliate'' includes a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(2) 12 CFR 223.2(a)(12)—Determination that ''affiliate'' includes other types of companies.	Read to include the following statement: ''Affiliate also includes any company that the Board determines, by order or regulation, to present a risk to the safety and soundness of the savings association.''
(3) 12 CFR 223.2(b)(1)(ii)—''Affiliate'' includes a subsidiary that is a financial subsidiary.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(4) 12 CFR 223.3(d)—Definition of ''capital stock and surplus.''	''Capital stock and surplus'' for a savings association has the same meaning as under the regulatory capital requirements applicable to that savings association.
(5) 12 CFR 223.3(h)(1)—Section 23A covered transactions include an extension of credit to the affiliate.	Read to incorporate paragraph (c)(1) of this section, which prohibits loans or extensions of credit to an affiliate, unless the affiliate is engaged only in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in Regulation LL at 12 CFR 238.54.
(6) 12 CFR 223.3(h)(2)—Section 23A covered transactions include a purchase of or investment in securities issued by an affiliate.	Read to incorporate paragraph (c)(2) of this section, which prohibits purchases and investments in securities issued by an affiliate, other than with respect to shares of a subsidiary.
(7) 12 CFR 223.3(k)—Definition of ''depository institution.''	Read to include the following statement: ''For the purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the depository institution.''
(8) 12 CFR 223.3(p)—Definition of ''financial subsidiary.''	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(9) 12 CFR 223.3(w)—Definition of ''member bank.''	Read to include the following statement: ''Member bank also includes a savings association. For purposes of this definition, a non-affiliate subsidiary of a savings association is treated as part of the savings association.''
(10) 12 CFR 223.3(aa)—Definition of ''operating subsidiary.''	Does not apply.

Provision of Regulation W	Application
(11) 12 CFR 223.31—Application of section 23A to an acquisition of an affiliate that becomes an operating subsidiary.	Read to refer to ''a non-affiliate subsidiary'' instead of ''operating subsidiary.''
(12) 12 CFR 223.32—Rules that apply to financial subsidiaries of a bank.	Does not apply. Savings association subsidiaries do not meet the statutory definition of financial subsidiary.
(13) 12 CFR 223.42(f)(2)—Exemption for purchasing certain marketable securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(14) 12 CFR 223.42(g)(2)—Exemption for purchasing municipal securities.	Read to refer to ''Thrift Financial Report'' instead of ''Call Report.'' References to ''state member bank'' are unchanged.
(15) 12 CFR 223.61—Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.	Does not apply to savings associations or their subsidiaries.

(c) *Additional prohibitions and restrictions.* A savings association must comply with the additional prohibitions and restrictions in this paragraph (c). Except as described in paragraph (b) of this section, the definitions in this part apply to these additional prohibitions and restrictions.

(1) *Loans and extensions of credit.* (i) A savings association may not make a loan or other extension of credit to an affiliate, unless the affiliate is solely engaged in the activities described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 238.54 of Regulation LL (12 CFR 238.54). A loan or extension of credit to a third party is not prohibited merely because proceeds of the transaction are used for the benefit of, or are transferred to, an affiliate.

(ii) If the Board determines that a particular transaction is, in substance, a loan or extension of credit to an affiliate that is engaged in activities other than those described at 12 U.S.C. 1467a(c)(2)(F)(i), as defined in § 238.54 of Regulation LL (12 CFR 238.54), or the Board has other supervisory concerns concerning the transaction, the Board may inform the savings association that the transaction is prohibited under this paragraph (c)(1), and require the savings association to divest the loan, unwind the transaction, or take other appropriate action.

(2) *Purchases or investments in securities.* A savings association may not purchase or invest in securities issued by any affiliate other than with respect to shares of a subsidiary. For the purposes of this paragraph (c)(2), subsidiary includes a bank and a savings association.

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 10. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3106a(1), 3108(a), 3310, 3331–3351, and 3906–3909, 5101 *et seq.,* 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

■ 11. In § 228.11:

■ A. Revise paragraphs (a)(2), (a)(3)(iii), and (a)(3)(iv); and

■ B. Add paragraph (a)(3)(v) to read as follows:

§ 228.11 Authority, purposes, and scope.

(a) * * *

(2) To conduct examinations of bank holding companies and their subsidiaries (12 U.S.C. 1844) and savings and loan holding companies and their subsidiaries (12 U.S.C. 1467a); and

(3) * * *

(iii) Formations of, acquisitions of banks by, and mergers of, bank holding companies (12 U.S.C. 1842);

(iv) The acquisition of savings associations by bank holding companies (12 U.S.C. 1843); and

(v) Formations of, acquisitions of savings associations by, conversions of, and mergers of, savings and loan holding companies (12 U.S.C. 1467a).

* * * * *

■ 12. In § 228.29:

■ A. Revise paragraphs (a)(2)(ii) and (a)(2)(iii);

■ B. Add paragraphs (a)(2)(iv) and (a)(2)(v); and

■ C. Revise paragraphs (c) and (d).

The additions and revisions read as follows:

§ 228.29 Effect of CRA performance on applications.

(a) * * *

(2) * * *

(ii) To acquire ownership or control of shares or all or substantially all of the assets of a bank, to cause a bank to become a subsidiary of a bank holding company, or to merge or consolidate a bank holding company with any other bank holding company in a transaction that requires approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842);

(iii) To own, control or operate a savings association in a transaction that requires approval under section 4 of the Bank Holding Company Act (12 U.S.C. 1843);

(iv) To become a savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a); and

(v) To acquire ownership or control of shares or all or substantially all of the assets of a savings association, to cause a savings association to become a subsidiary of a savings and loan holding company, or to merge or consolidate a savings and loan holding company with any other savings and loan holding company in a transaction that requires approval under section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

* * * * *

(c) *Denial or conditional approval of application.* A bank or savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(d) *Definitions.* For purposes of paragraphs (a)(2)(i), (ii), and (iii) of this section, ''bank,'' ''bank holding company,'' ''subsidiary,'' and ''savings association'' have the meanings given to those terms in section 2 of the Bank Holding Company Act (12 U.S.C. 1841). For purposes of paragraphs (a)(2)(iv) and (v) of this section, ''savings and loan holding company'' and ''subsidiary'' has the meaning given to that term in section 10 of the Home Owners' Loan Act (12 U.S.C. 1467a).

■ 13. Add new part 238 to read as follows:

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

Subpart A—General Provisions

Sec.
238.1 Authority, purpose and scope.
238.2 Definitions.

238.3 Administration.
238.4 Records, reports, and inspections.
238.5 Audit of savings association holding companies.
238.6 Penalties for violations.
238.7 Tying restriction exception.
238.8 Safe and sound operations.

Subpart B—Acquisitions of Savings Association Securities or Assets

Sec.
238.11 Transactions requiring Board approval.
238.12 Transactions not requiring Board approval.
238.13 Prohibited acquisitions.
238.14 Procedural requirements.
238.15 Factors considered in acting on applications.

Subpart C—Control Proceedings

Sec.
238.21 Control proceedings.

Subpart D—Change in Bank Control

Sec.
238.31 Transactions requiring prior notice.
238.32 Transactions not requiring prior notice.
238.33 Procedures for filing, processing, publishing, and acting on notices.

Subpart E—Qualified Stock Issuances

Sec.
238.41 Qualified stock issuances by undercapitalized savings associations or holding companies.

Subpart F—Savings and Loan Holding Company Activities and Acquisitions

Sec.
238.51 Prohibited activities.
238.52 Exempt savings and loan holding companies and grandfathered activities.
238.53 Prescribed services and activities of savings and loan holding companies.
238.54 Permissible bank holding company activities of savings and loan holding companies.

Subpart G—Financial Holding Company Activities

Sec.
238.61 Scope.
238.62 Definitions.
238.63 Requirements to engage in financial holding company activities.
238.64 Election required.
238.65 Election procedures.
238.66 Ongoing requirements.

Subpart H—Notice of Change of Director or Senior Executive Officer

Sec.
238.71 Purpose.
238.72 Definitions.
238.73 Prior notice requirement.
238.74 Filing and processing procedures.
238.75 Standards for review.
238.76 Waiting period.
238.77 Waiver of prior notice requirement.

Subpart I—Prohibited Service at Savings and Loan Holding Companies

Sec.
238.81 Purpose.
238.82 Definitions.
238.83 Prohibited actions.
238.84 Covered convictions or agreements to enter into pre-trial diversions or similar programs.
238.85 Adjudications and offenses not covered.
238.86 Exemptions.
238.87 Filing procedures.
238.88 Factors for review.
238.89 Board action.
239.90 Hearings.

Subpart J—Management Official Interlocks

Sec.
238.91 Authority, purpose, and scope.
238.92 Definitions.
238.93 Prohibitions.
238.94 Interlocking relationships permitted by statute.
238.95 Small market share exemption.
238.96 General exemption.
238.97 Change in circumstances.
238.98 Enforcement.
238.99 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.

Subpart K—Dividends by Subsidiary Savings Associations

Sec.
238.101 Authority and purpose.
238.102 Definitions.
238.103 Filing requirement.
238.104 Board action and criteria for review.

Subpart L—Investigative Proceedings and Formal Examination Proceedings

Sec.
238.111 Scope.
238.112 Definitions.
238.113 Confidentiality of proceedings.
238.114 Transcripts.
238.115 Rights of witnesses.
238.116 Obstruction of the proceedings.
238.117 Subpoenas.

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78 *l.*

Subpart A—General Provisions

§ 238.1 Authority, purpose and scope.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (*Board*) under section 10(g) of the Home Owners' Loan Act (*HOLA*); section 7(j)(13) of the Federal Deposit Insurance Act, as amended by the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(13)) (*Bank Control Act*); sections 8(b), 19 and 32 of the Federal Deposit Insurance Act (12 U.S.C. 1818(b), 1829, and 1831i); and section 914 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 1831i) and the Depository Institution Management Interlocks Act (12 U.S.C. 3201 *et seq.*).

(b) *Purpose.* The principal purposes of this part are to:

(1) Regulate the acquisition of control of savings associations by companies and individuals;

(2) Define and regulate the activities in which savings and loan holding companies may engage;

(3) Set forth the procedures for securing approval for these transactions and activities; and

(4) Set forth the procedures under which directors and executive officers may be appointed or employed by savings and loan holding companies in certain circumstances.

§ 238.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) *Affiliate* means any person or company which controls, is controlled by or is under common control with a person, savings association or company.

(b) *Bank* means any national bank, state bank, state-chartered savings bank, cooperative bank, or industrial bank, the deposits of which are insured by the Deposit Insurance Fund.

(c) *Bank holding company* has the meaning found in the Board's Regulation Y (12 CFR 225.2(c)).

(d) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (o) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

(i) The United States or any State,

(ii) An officer of the United States or any State in his or her official capacity, or

(iii) An instrumentality of the United States or any State.

(e) A person shall be deemed to have *control* of:

(1) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(2) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to

vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

(3) A trust if the person is a trustee thereof; or

(4) A savings association or any other company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.

(f) *Director* means any director of a corporation or any individual who performs similar functions in respect of any company, including a trustee under a trust.

(g) *Management official* means any president, chief executive officer, chief operating officer, vice president, director, partner, or trustee, or any other person who performs or has a representative or nominee performing similar policymaking functions, including executive officers of principal business units or divisions or subsidiaries who perform policymaking functions, for a savings association or a company, whether or not incorporated.

(h) *Multiple savings and loan holding company* means any savings and loan holding company which directly or indirectly controls two or more savings associations.

(i) *Officer* means the chairman of the board, president, vice president, treasurer, secretary, or comptroller of any company, or any other person who participates in its major policy decisions.

(j) *Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(k) *Qualified thrift lender* means a financial institution that meets the appropriate qualified thrift lender test set forth in 12 U.S.C. 1467a(m).

(l) *Savings Association* means a Federal savings and loan association or a Federal savings bank chartered under section 5 of the Home Owners' Loan Act, a building and loan, savings and loan or homestead association or a cooperative bank (other than a cooperative bank described in 12 U.S.C. 1813(a)(2)) the deposits of which are insured by the Federal Deposit Insurance Corporation, and any corporation (other than a bank) the deposits of which are insured by the Federal Deposit Insurance Corporation that the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation jointly determine to be operating in substantially the same manner as a savings association, and shall include any savings bank or any cooperative bank which is deemed by the Office of the Comptroller of the Currency to be a savings association under 12 U.S.C. 1467a(1).

(m) *Savings and loan holding company* means any company (including a savings association) that directly or indirectly controls a savings association, but does not include:

(1) Any company by virtue of its ownership or control of voting stock of a savings association acquired in connection with the underwriting of securities if such stock is held only for such period of time (not exceeding 120 days unless extended by the Board) as will permit the sale thereof on a reasonable basis;

(2) Any trust (other than a pension, profit-sharing, stockholders', voting, or business trust) which controls a savings association if such trust by its terms must terminate within 25 years or not later than 21 years and 10 months after the death of individuals living on the effective date of the trust, and:

(i) Was in existence and in control of a savings association on June 26, 1967, or

(ii) Is a testamentary trust;

(3) A bank holding company that is registered under, and subject to, the Bank Holding Company Act of 1956, or any company directly or indirectly controlled by such company (other than a savings association);

(4) A company that controls a savings association that functions solely in a trust or fiduciary capacity as provided in section 2(c)(2)(D) of the Bank Holding Company Act; or

(5) A company described in section 10(c)(9)(C) of HOLA solely by virtue of such company's control of an intermediate holding company established under section 10A of the Home Owners' Loan Act.

(n) *Shareholder*—(1) *Controlling shareholder* means a person that owns or control, directly or indirectly, more than 25 percent of any class of voting securities of a savings association or other company.

(2) *Principal shareholder* means a person that owns or controls, directly or indirectly, 10 percent or more of any class of voting securities of a savings association or other company, or any person that the Board determines has the power, directly or indirectly, to exercise a controlling influence over the management or policies of a savings association or other company.

(o) *Stock* means common or preferred stock, general or limited partnership shares or interests, or similar interests.

(p) *Subsidiary* means any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a savings association, or a subsidiary of such service corporation.

(q) *Uninsured institution* means any financial institution the deposits of which are not insured by the Federal Deposit Insurance Corporation.

(r)(1) *Voting securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or to select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

(3) *Class of voting shares.* Shares of stock issued by a single issuer are deemed to be the same class of voting shares, regardless of differences in dividend rights or liquidation preference, if the shares are voted together as a single class on all matters for which the shares have voting rights other than matters described in paragraph (r)(2)(i) of this section that affect solely the rights or preferences of the shares.

(s) *Well capitalized.*

(1) A savings and loan holding company is well capitalized if:

(i) Each of the savings and loan holding company's depository institutions is well capitalized; and

(ii) The savings and loan holding company is not subject to any written agreement, order, capital directive, or prompt corrective action directive issued by the Board to meet and maintain a specific capital level for any capital measure.

(2) In the case of a savings association, ''well capitalized'' takes the meaning provided in § 225.2(r)(2) of this chapter.

(t) *Well managed.* The term ''well managed'' takes the meaning provided in § 225.2(s) of this chapter except that a ''satisfactory rating for management'' refers to a management rating, if such rating is given, or otherwise a risk-management rating, if such rating is given.

(u) *Depository institution.* For purposes of this part, the term ''depository institution'' has the same meaning as in section 3(c) of Federal Deposit Insurance Act (12 U.S.C. 1813(c)).

§ 238.3 Administration.

(a) *Delegation of authority.* Designated Board members and officers and the Federal Reserve Banks are authorized by the Board to exercise various functions prescribed in this regulation, in the Board's Rules Regarding Delegation of Authority (12 CFR part 265), the Board's Rules of Procedure (12 CFR part 262), and in Board orders.

(b) *Appropriate Federal Reserve Bank.* In administering this regulation, unless a different Federal Reserve Bank is designated by the Board, the appropriate Federal Reserve Bank is as follows:

(1) For a savings and loan holding company (or a company applying to become a savings and loan holding company): the Reserve Bank of the Federal Reserve district in which the company's banking operations are principally conducted, as measured by total domestic deposits in its subsidiary savings association on the date it became (or will become) a savings and loan holding company;

(2) For an individual or company submitting a notice under subpart D of this part: The Reserve Bank of the Federal Reserve district in which the banking operations of the savings and loan holding company to be acquired are principally conducted, as measured by total domestic deposits on the date the notice is filed.

§ 238.4 Records, reports, and inspections.

(a) *Records.* Each savings and loan holding company shall maintain such books and records as may be prescribed by the Board. Each savings and loan holding company and its non-depository affiliates shall maintain accurate and complete records of all business transactions. Such records shall support and be readily reconcilable to any regulatory reports submitted to the Board and financial reports prepared in accordance with GAAP.

The records shall be maintained in the United States and be readily accessible for examination and other supervisory purposes within 5 business days upon request by the Board, at a location acceptable to the Board.

(b) *Reports.* Each savings and loan holding company and each subsidiary thereof, other than a savings association, shall file with the Board such reports as may be required by the Board. Such reports shall be made under oath or otherwise, and shall be in such form and for such periods, as the Board may prescribe. Each report shall contain information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.

(c) *Registration statement*—(1) *Filing of registration statement.* Not later than 90 days after becoming a savings and loan holding company, each savings and loan holding company shall register with the Board by furnishing information in the manner and form prescribed by the Board.

(2) *Date of registration.* The date of registration of a savings and loan holding company shall be the date on which its registration statement is received by the Board.

(3) *Extension of time for registration.* For timely and good cause shown, the Board may extend the time within which a savings and loan holding company shall register.

(d) *Release from registration.* The Board may at any time, upon its own motion or upon application, release a registered savings and loan holding company from any registration theretofore made by such company, if the Board shall determine that such company no longer has control of any savings association or no longer qualifies as a savings and loan holding company.

(e) *Examinations.* Each savings and loan holding company and each subsidiary thereof shall be subject to such examinations as the Board may prescribe. The Board shall, to the extent deemed feasible, use for the purposes of this section reports filed with or examinations made by other Federal agencies or the appropriate State supervisory authority.

(f) *Appointment of agent.* The Board may require any savings and loan holding company, or persons connected therewith if it is not a corporation, to execute and file a prescribed form of irrevocable appointment of agent for service of process.

§ 238.5 Audit of savings association holding companies.

(a) *General.* The Board may require, at any time, an independent audit of the financial statements of, or the application of procedures agreed upon by the Board to a savings and loan holding company, or nondepository affiliate by qualified independent public accountants when needed for any safety and soundness reason identified by the Board.

(b) *Audits required for safety and soundness purposes.* The Board requires an independent audit for safety and soundness purposes if, as of the beginning of its fiscal year, a savings and loan holding company controls savings association subsidiary(ies) with aggregate consolidated assets of $500 million or more.

(c) *Procedures.* (1) When the Board requires an independent audit because such an audit is needed for safety and soundness purposes, the Board shall determine whether the audit was conducted and filed in a manner satisfactory to the Board.

(2) When the Board requires the application of procedures agreed upon by the Board for safety and soundness purposes, the Board shall identify the procedures to be performed. The Board shall also determine whether the agreed upon procedures were conducted and filed in a manner satisfactory to the Board.

(d) *Qualifications for independent public accountants.* The audit shall be conducted by an independent public accountant who:

(1) Is registered or licensed to practice as a public accountant, and is in good standing, under the laws of the state or other political subdivision of the United States in which the savings association's or holding company's principal office is located;

(2) Agrees in the engagement letter to provide the Board with access to and copies of any work papers, policies, and procedures relating to the services performed;

(3)(i) Is in compliance with the American Institute of Certified Public Accountants' (AICPA) Code of Professional Conduct; and

(ii) Meets the independence requirements and interpretations of the Securities and Exchange Commission and its staff; and

(4) Has received, or is enrolled in, a peer review program that meets guidelines acceptable to the Board.

(e) *Voluntary audits.* When a savings and loan holding company or nondepository affiliate obtains an independent audit voluntarily, it must be performed by an independent public accountant who satisfies the requirements of paragraphs (d)(1), (d)(2), and (d)(3)(i) of this section.

§ 238.6 Penalties for violations.

(a) *Criminal and civil penalties.* (1) Section 10 of the HOLA provides criminal penalties for willful violation, and civil penalties for violation, by any company or individual, of HOLA or any regulation or order issued under it, or for making a false entry in any book, report, or statement of a savings and loan holding company.

(2) Civil money penalty assessments for violations of HOLA shall be made in accordance with subpart C of the Board's Rules of Practice for Hearings (12 CFR part 263, subpart C). For any willful violation of the Bank Control Act or any regulation or order issued under it, the Board may assess a civil penalty as provided in 12 U.S.C. 1817(j)(15).

(b) *Cease-and-desist proceedings.* For any violation of HOLA, the Bank Control Act, this regulation, or any order or notice issued thereunder, the Board may institute a cease-and-desist proceeding in accordance with the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*).

§ 238.7 Tying restriction exception.

(a) *Safe harbor for combined-balance discounts.* A savings and loan holding company or any savings association or any affiliate of either may vary the consideration for any product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the company varying the consideration (eligible products), if:

(1) That company (if it is a savings association) or a savings association affiliate of that company (if it is not a savings association) offers deposits, and all such deposits are eligible products; and

(2) Balances in deposits count at least as much as non-deposit products toward the minimum balance.

(b) *Limitations on exception.* This exception shall terminate upon a finding by the Board that the arrangement is resulting in anti-competitive practices. The eligibility of a savings and loan holding company or savings association or affiliate of either to operate under this exception shall terminate upon a finding by the Board that its exercise of this authority is resulting in anti-competitive practices.

§ 238.8 Safe and sound operations.

(a) *Savings and loan holding company policy and operations.* (1) A savings and loan holding company shall serve as a source of financial and managerial strength to its subsidiary savings associations and shall not conduct its operations in an unsafe or unsound manner.

(2) Whenever the Board believes an activity of a savings and loan holding company or control of a nonbank subsidiary (other than a nonbank subsidiary of a savings association) constitutes a serious risk to the financial safety, soundness, or stability of a subsidiary savings association of the savings and loan holding company and is inconsistent with sound banking principles or the purposes of HOLA or the Financial Institutions Supervisory Act of 1966, as amended (12 U.S.C. 1818(b) *et seq.*), the Board may require the savings and loan holding company to terminate the activity or to terminate control of the subsidiary, as provided in section 10(g)(5) of the HOLA.

Subpart B—Acquisitions of Saving Association Securities or Assets

§ 238.11 Transactions requiring Board approval.

The following transactions require the Board's prior approval under section 10 of HOLA except as exempted under § 238.12:

(a) *Formation of savings and loan holding company.* Any action that causes a savings association or other company to become a savings and loan holding company.

(b) *Acquisition of subsidiary savings association.* Any action that causes a savings association to become a subsidiary of a savings and loan holding company.

(c) *Acquisition of control of savings association or savings and loan holding company securities.* (1) The acquisition by a savings and loan holding company of direct or indirect ownership or control of any voting securities of a savings association or savings and loan holding company, that is not a subsidiary, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the savings association or savings and loan holding company.

(2) An acquisition includes the purchase of additional securities through the exercise of preemptive rights, but does not include securities received in a stock dividend or stock split that does not alter the savings and loan holding company's proportional share of any class of voting securities.

(3) In the case of a multiple savings and loan holding company, acquisition of direct or indirect ownership or control of any voting securities of a savings association or savings and loan holding company, that is not a subsidiary, if the acquisition results in the company's control of more than 5 percent of the outstanding shares of any class of voting securities of the savings association or savings and loan holding company that is engaged in any business activity other than those specified in § 238.51 of this part.

(d) *Acquisition of savings association or savings and loan holding company assets.* The acquisition by a savings and loan holding company or by a subsidiary thereof (other than a savings association) of all or substantially all of the assets of a savings association, or savings and loan holding company.

(e) *Merger of savings and loan holding companies.* The merger or consolidation of savings and loan holding companies, and the acquisition of a savings association through a merger or consolidation.

(f) *Acquisition of control by certain individuals.* The acquisition, by a director or officer of a savings and loan holding company, or by any individual who owns, controls, or holds the power to vote (or holds proxies representing) more than 25 percent of the voting shares of such savings and loan holding company, of control of any savings association that is not a subsidiary of such savings and loan holding company.

§ 238.12 Transactions not requiring Board approval.

(a) The requirements of § 238.11(a), (b), (d), (e) and (f) do not apply to:

(1) Control of a savings association acquired by devise under the terms of a will creating a trust which is excluded from the definition of savings and loan holding company;

(2) Control of a savings association acquired in connection with a reorganization that involves solely the acquisition of control of that association by a newly formed company that is controlled by the same acquirors that controlled the savings association for the immediately preceding three years, and entails no other transactions, such as an assumption of the acquirors' debt by the newly formed company: Provided, that the acquirors have filed the designated form with the appropriate Reserve Bank and have provided all additional information

requested by the Board or Reserve Bank, and the Board nor the appropriate Reserve Bank object to the acquisition within 30 days of the filing date;

(3) Control of a savings association acquired by a bank holding company that is registered under and subject to, the Bank Holding Company Act of 1956, or any company controlled by such bank holding company;

(4) Control of a savings association acquired solely as a result of a pledge or hypothecation of stock to secure a loan contracted for in good faith or the liquidation of a loan contracted for in good faith, in either case where such loan was made in the ordinary course of the business of the lender: *Provided, further,* That acquisition of control pursuant to such pledge, hypothecation or liquidation is reported to the Board within 30 days, and *Provided, further,* That the acquiror shall not retain such control for more than one year from the date on which such control was acquired; however, the Board may, upon application by an acquiror, extend such one-year period from year to year, for an additional period of time not exceeding three years, if the Board finds such extension is warranted and would not be detrimental to the public interest;

(5) Control of a savings association acquired through a percentage increase in stock ownership following a *pro rata* stock dividend or stock split, if the proportional interests of the recipients remain substantially the same;

(6) Acquisitions of up to twenty-five percent (25%) of a class of stock by a tax-qualified employee stock benefit plan; and

(7) Acquisitions of up to 15 percent of the voting stock of any savings association by a savings and loan holding company (other than a bank holding company) in connection with a qualified stock issuance if such acquisition is approved by the Board pursuant to subpart E.

(b) The requirements of § 238.11(c) do not apply to voting shares of a savings association or of a savings and loan holding company—

(1) Held as a *bona fide* fiduciary (whether with or without the sole discretion to vote such shares);

(2) Held temporarily pursuant to an underwriting commitment in the normal course of an underwriting business;

(3) Held in an account solely for trading purposes or over which no control is held other than control of voting rights acquired in the normal course of a proxy solicitation;

(4) Acquired in securing or collecting a debt previously contracted in good faith, for two years after the date of acquisition or for such additional time (not exceeding three years) as the Board may permit if, in the Board's judgment, such an extension would not be detrimental to the public interest;

(5) Acquired under section 13(k)(1)(A)(i) of the Federal Deposit Insurance Act (or section 408(m) of the National Housing Act as in effect immediately prior to the enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(6) Held by any insurance companies as defined in section 2(a)(17) of the Investment Company Act of 1940: *Provided,* That all shares held by all insurance company affiliates of such savings association or savings and loan holding company may not, in the aggregate, exceed five percent of all outstanding shares or of the voting power of the savings association or savings and loan holding company, and such shares are not acquired or retained with a view to acquiring, exercising, or transferring control of the savings association or savings and loan holding company; and

(7) Acquired pursuant to a qualified stock issuance if such a purchase is approved pursuant to subpart E of this part.

(c) The aggregate amount of shares held under paragraph (b) of this section (other than pursuant to paragraphs (b)(1) through (4) and (b)(6)) may not exceed 15 percent of all outstanding shares or the voting power of a savings association or savings and loan holding company.

(d) *Acquisitions involving savings association mergers and internal corporate reorganizations*—The requirements of § 238.11 do not apply to:

(1) *Certain transactions subject to the Bank Merger Act.* The acquisition by a savings and loan holding company of shares of a savings association or company controlling a savings association or the merger of a company controlling a savings association with the savings and loan holding company, if the transaction is part of the merger or consolidation of the savings association with a subsidiary savings association (other than a nonoperating subsidiary savings association) of the acquiring savings and loan holding company, or is part of the purchase of substantially all of the assets of the savings association by a subsidiary savings association (other than a nonoperating subsidiary savings association) of the acquiring savings and loan holding company, and if:

(i) The savings association merger, consolidation, or asset purchase occurs simultaneously with the acquisition of the shares of the savings association or savings and loan holding company or the merger of holding companies, and the savings association is not operated by the acquiring savings and loan holding company as a separate entity other than as the survivor of the merger, consolidation, or asset purchase;

(ii) The transaction requires the prior approval of a federal supervisory agency under the Bank Merger Act (12 U.S.C. 1828(c));

(iii) The transaction does not involve the acquisition of any company that would require prior notice or approval under section 10(c) of the HOLA;

(iv) The transaction does not involve a depository institution organized in mutual form, a savings and loan holding company organized in mutual form, a subsidiary holding company of a savings and loan holding company organized in mutual form, or a bank holding company organized in mutual form;

(v) The transaction will not have a material adverse impact on the financial condition of the acquiring savings and loan holding company;

(vi) At least 10 days prior to the transaction, the acquiring savings and loan holding company has provided to the Reserve Bank written notice of the transaction that contains:

(A) A copy of the filing made to the appropriate federal banking agency under the Bank Merger Act; and

(B) A description of the holding company's involvement in the transaction, the purchase price, and the source of funding for the purchase price; and

(vii) Prior to expiration of the period provided in paragraph (d)(1)(vi) of this section, neither the Board nor the Reserve Bank has informed the savings and loan holding company that an application under § 238.11 is required.

(2) *Internal corporate reorganizations.* (i) Subject to paragraph (d)(2)(ii) of this section, any of the following transactions performed in the United States by a savings and loan holding company:

(A) The merger of holding companies that are subsidiaries of the savings and loan holding company;

(B) The formation of a subsidiary holding company; [1]

(C) The transfer of control or ownership of a subsidiary savings association or a subsidiary holding company between one subsidiary holding company and another

[1] In the case of a transaction that results in the formation or designation of a new savings and loan holding company, the new savings and loan holding company must complete the registration requirements described in section 238.11.

subsidiary holding company or the savings and loan holding company.

(ii) A transaction described in paragraph (d)(2)(i) of this section qualifies for this exception if—

(A) The transaction represents solely a corporate reorganization involving companies and insured depository institutions that, both preceding and following the transaction, are lawfully controlled and operated by the savings and loan holding company;

(B) The transaction does not involve the acquisition of additional voting shares of an insured depository institution that, prior to the transaction, was less than majority owned by the savings and loan holding company;

(C) The transaction does not involve a savings and loan holding company organized in mutual form, a subsidiary holding company of a savings and loan holding company organized in mutual form, or a bank holding company organized in mutual form; and

(D) The transaction will not have a material adverse impact on the financial condition of the holding company.

§ 238.13 Prohibited acquisitions.

(a) No savings and loan holding company may, directly or indirectly, or through one or more subsidiaries or through one or more transactions, acquire control of an uninsured institution or retain, for more than one year after the date any savings association subsidiary becomes uninsured, control of such association.

(b) *Control of mutual savings association.* No savings and loan holding company or any subsidiary thereof, or any director, officer, or employee of a savings and loan holding company or subsidiary thereof, or person owning, controlling, or holding with power to vote, or holding proxies representing, more than 25 percent of the voting shares of such holding company or subsidiary, may hold, solicit, or exercise any proxies in respect of any voting rights in a mutual savings association.

§ 238.14 Procedural requirements.

(a) *Filing application.* An application for the Board's prior approval under § 238.11 shall be governed by the provisions of this section and shall be filed with the appropriate Reserve Bank on the designated form.

(b) *Request for confidential treatment.* An applicant may request confidential treatment for portions of its application pursuant to 12 CFR 261.15.

(c) *Public notice.*—(1) *Newspaper publication*—(i) *Location of publication.* In the case of each application, the applicant shall publish a notice in a newspaper of general circulation, in the form and at the locations specified in § 262.3 of the Rules of Procedure (12 CFR 262.3) in this chapter;

(ii) *Contents of notice.* A newspaper notice under this paragraph shall provide an opportunity for interested persons to comment on the proposal for a period of at least 30 calendar days;

(iii) *Timing of publication.* Each newspaper notice published in connection with a proposal under this paragraph shall be published no more than 15 calendar days before and no later than 7 calendar days following the date that an application is filed with the appropriate Reserve Bank.

(2) **Federal Register** *Notice.* (i) *Publication by Board.* Upon receipt of an application, the Board shall promptly publish notice of the proposal in the **Federal Register** and shall provide an opportunity for interested persons to comment on the proposal for a period of no more than 30 days;

(ii) *Request for advance publication.* An applicant may request that, during the 15-day period prior to filing an application, the Board publish notice of a proposal in the **Federal Register.** A request for advance **Federal Register** Notice publication shall be made in writing to the appropriate Reserve Bank and shall contain the identifying information prescribed by the Board for **Federal Register** Notice publication.

(3) *Waiver or shortening of notice.* The Board may waive or shorten the required notice periods under this section if the Board determines that an emergency exists requiring expeditious action on the proposal, or if the Board finds that immediate action is necessary to prevent the probable failure of an insured depository institution.

(d) *Public comment*—

(1) *Timely comments.* Interested persons may submit information and comments regarding a proposal filed under this subpart. A comment shall be considered timely for purposes of this subpart if the comment, together with all supplemental information, is submitted in writing in accordance with the Board's Rules of Procedure and received by the Board or the appropriate Reserve Bank prior to the expiration of the latest public comment period provided in paragraph (c) of this section.

(2) *Extension of comment period*—

(i) *In general.* The Board may, in its discretion, extend the public comment period regarding any proposal submitted under this subpart.

(ii) *Requests in connection with obtaining application or notice.* In the event that an interested person has requested a copy of a notice or application submitted under this subpart, the Board may, in its discretion and based on the facts and circumstances, grant such person an extension of the comment period for up to 15 calendar days.

(iii) *Joint requests by interested person and applicant.* The Board will grant a joint request by an interested person and the applicant for an extension of the comment period for a reasonable period for a purpose related to the statutory factors the Board must consider under this subpart.

(3) *Substantive comment.* A comment will be considered substantive for purposes of this subpart unless it involves individual complaints, or raises frivolous, previously-considered or wholly unsubstantiated claims or irrelevant issues.

(e) *Hearings.* The Board may order a formal or informal hearing or other proceeding on the application, as provided in § 262.3(i)(2) of this chapter. Any request for a hearing (other than from the primary supervisor) shall comply with § 262.3(e) in this chapter.

(f) *Accepting application for processing.* Within 7 calendar days after the Reserve Bank receives an application under this section, the Reserve Bank shall accept it for processing as of the date the application was filed or return the application if it is substantially incomplete. Upon accepting an application, the Reserve Bank shall immediately send copies to the Board and to the primary banking supervisor of the savings association to be acquired and to the Attorney General, and shall request from the Attorney General a report on the competitive factors involved. The Reserve Bank or the Board may request additional information necessary to complete the record of an application at any time after accepting the application for processing.

(g) *Action on applications*—(1) *Action under delegated authority.* Except as provided in paragraph (g)(4) of this section, unless the Reserve Bank, upon notice to the applicant, refers the application to the Board for decision because action under delegated authority is not appropriate, the Reserve Bank shall approve an application under this section:

(i) Not earlier than the third business day following the close of the public comment period; and

(ii) Not later than the later of the fifth business day following the close of the public comment period or the 30th calendar day after the acceptance date for the application.

(2) *Board action.* The Board shall act on an application under this section that

is referred to it for decision within 60 calendar days after the acceptance date for the application, unless the Board notifies the applicant that the 60-day period is being extended for a specified period and states the reasons for the extension. The Board may, at any time, request additional information that it believes is necessary for its decision.

(3) *Approval through failure to act*—(i) *Ninety-one day rule.* An application shall be deemed approved if the Board fails to act on the application within 91 calendar days after the date of submission to the Board of the complete record on the application. For this purpose, the Board acts when it issues an order stating that the Board has approved or denied the application or notice, reflecting the votes of the members of the Board, and indicating that a statement of the reasons for the decision will follow promptly.

(ii) *Complete record.* For the purpose of computing the commencement of the 91-day period, the record is complete on the latest of:

(A) The date of receipt by the Board of an application that has been accepted by the Reserve Bank;

(B) The last day provided in any notice for receipt of comments and hearing requests on the application or notice;

(C) The date of receipt by the Board of the last relevant material regarding the application that is needed for the Board's decision, if the material is received from a source outside of the Federal Reserve System; or

(D) The date of completion of any hearing or other proceeding.

(4) *Expedited reorganization.*—(i) *In general.* The Board or the appropriate Reserve Bank shall act on an application of a reorganization that meets the requirements of § 238.15(f):

(A) Not earlier than the third business day following the close of the public comment period; and

(B) Not later than the fifth business day following the close of the public comment period, except that the Board may extend the period for action under this paragraph (g)(4) for up to 5 business days.

(ii) *Acceptance of notice in event expedited procedure not available.* In the event that the Board or the Reserve Bank determines that an application filed pursuant to 238.15(f) does not meet one or more of the requirements of § 238.15(f), paragraph (g)(4) of this section shall not apply and the Board or Reserve Bank will act on the application according to the other provisions of paragraph (g) of this section.

§ 238.15 Factors considered in acting on applications.

(a) *Generally.* The Board may not approve any application under this subpart if:

(1) The transaction would result in a monopoly or would further any combination or conspiracy to monopolize, or to attempt to monopolize, the savings and loan business in any part of the United States;

(2) The effect of the transaction may be substantially to lessen competition in any section of the country, tend to create a monopoly, or in any other manner be in restraint of trade, unless the Board finds that the transaction's anti-competitive effects are clearly outweighed by its probable effect in meeting the convenience and needs of the community;

(3) The applicant has failed to provide the Board with adequate assurances that it will make available such information on its operations or activities, and the operations or activities of any affiliate of the applicant, that the Board deems appropriate to determine and enforce compliance with HOLA and other applicable federal banking statutes, and any regulations thereunder; or

(4) In the case of an application involving a foreign banking organization, the foreign banking organization is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country, as provided in § 211.24(c)(1)(ii) of the Board's Regulation K (12 CFR 211.24(c)(1)(ii)).

(5) In the case of an application by a savings and loan holding company to acquire an insured depository institution, section 10(e)(2)(E) of HOLA prohibits the Board from approving the transaction.

(b) *Other factors.* In deciding applications under this subpart, the Board also considers the following factors with respect to the acquiror, its subsidiaries, any savings associations or banks related to the acquiror through common ownership or management, and the savings association or associations to be acquired:

(1) *Financial condition.* Their financial condition and future prospects, including whether current and projected capital positions and levels of indebtedness conform to standards and policies established by the Board.

(2) *Managerial resources.* The competence, experience, and integrity of the officers, directors, and principal shareholders of the acquiror, its subsidiaries, and the savings association and savings and loan holding companies concerned; their record of compliance with laws and regulations; and the record of the applicant and its affiliates of fulfilling any commitments to, and any conditions imposed by, the Board in connection with prior applications.

(3) *Convenience and needs of community.* In the case of an application required under § 238.11(c), (d), or (e), (or an application by a savings and loan holding company under § 238.11(b)), the convenience and needs of the communities to be served, including the record of performance under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) and regulations issued thereunder, including the Board's Regulation BB (12 CFR part 228).

(c) *Presumptive disqualifiers* —(1) *Integrity factors.* The following factors shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the managerial resources and future prospects tests of paragraph (b) of this section:

(i) During the 10-year period immediately preceding filing of the application or notice, criminal, civil or administrative judgments, consents or orders, and any indictments, formal investigations, examinations, or civil or administrative proceedings (excluding routine or customary audits, inspections and investigations) that terminated in any agreements, undertakings, consents or orders, issued against, entered into by, or involving the acquiror or affiliates of the acquiror by any federal or state court, any department, agency, or commission of the U.S. Government, any state or municipality, any Federal Home Loan Bank, any self-regulatory trade or professional organization, or any foreign government or governmental entity, which involve:

(A) Fraud, moral turpitude, dishonesty, breach of trust or fiduciary duties, organized crime or racketeering;

(B) Violation of securities or commodities laws or regulations;

(C) Violation of depository institution laws or regulations;

(D) Violation of housing authority laws or regulations; or

(E) Violation of the rules, regulations, codes of conduct or ethics of a self-regulatory trade or professional organization;

(ii) Denial, or withdrawal after receipt of formal or informal notice of an intent to deny, by the acquiror or affiliates of the acquiror, of

(A) Any application relating to the organization of a financial institution,

(B) An application to acquire any financial institution or holding

company thereof under HOLA or the Bank Holding Company Act or otherwise,

(C) A notice relating to a change in control of any of the foregoing under the CIC Act; or

(D) An application or notice under a state holding company or change in control statute;

(iii) The acquiror or affiliates of the acquiror were placed in receivership or conservatorship during the preceding 10 years, or any management official of the acquiror was a management official or director (other than an official or director serving at the request of the Board, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the former Federal Savings and Loan Insurance Corporation, or their predecessors) or principal shareholder of a company or savings association that was placed into receivership, conservatorship, or a management consignment program, or was liquidated during his or her tenure or control or within two years thereafter;

(iv) Felony conviction of the acquiror, an affiliate of the acquiror or a management official of the acquiror or an affiliate of the acquiror;

(v) Knowingly making any written or oral statement to the Board or any predecessor agency (or its delegate) in connection with an application, notice or other filing under this part that is false or misleading with respect to a material fact or omits to state a material fact with respect to information furnished or requested in connection with such an application, notice or other filing;

(vi) Acquisition and retention at the time of submission of an application or notice, of stock in the savings association by the acquiror in violation of this part or its predecessor regulations.

(2) *Financial factors.* The following shall give rise to a rebuttable presumption that an acquiror may fail to satisfy the financial-resources and future-prospects tests of paragraph (c) of this section:

(i) Liability for amounts of debt which, in the opinion of the Board, create excessive risks of default and pressure on the savings association to be acquired; or

(ii) Failure to furnish a business plan or furnishing a business plan projecting activities which are inconsistent with economical home financing.

(d) *Competitive factor.* Before approving any such acquisition, except a transaction under section 13(k) of the Federal Deposit Insurance Act, the Board shall consider any report rendered by the Attorney General within 30 days of such request under § 238.14(f) on the competitive factors involved.

(e) *Expedited reorganizations.* An application by a savings association solely for the purpose of obtaining approval for the creation of a savings and loan holding company by such savings association shall be eligible for expedited processing under § 238.14(g)(4) if it satisfies the following criteria:

(1) The holding company shall not be capitalized initially in an amount exceeding the amount the savings association is permitted to pay in dividends to its holding company as of the date of the reorganization pursuant to applicable regulations or, in the absence thereof, pursuant to the then current policy guidelines;

(2) The creation of the savings and loan holding company by the association is the sole transaction contained in the application, and there are no other transactions requiring approval incident to the creation of the holding company (other than the creation of an interim association that will disappear upon consummation of the reorganization and the merger of the savings association with such interim association to effect the reorganization), and the holding company is not also seeking any regulatory waivers, regulatory forbearances, or resolution of legal or supervisory issues;

(3) The board of directors and executive officers of the holding company are composed of persons who, at the time of acquisition, are executive officers and directors of the association;

(4) The acquisition raises no significant issues of law or policy;

(5) Prior to consummation of the reorganization transaction, the holding company shall enter into any dividend limitation, regulatory capital maintenance, or prenuptial agreement required by Board regulations, or in the absence thereof, required pursuant to policy guidelines issued by the Board; and

(f) *Conditional approvals.* The Board may impose conditions on any approval, including conditions to address competitive, financial, managerial, safety and soundness, convenience and needs, compliance or other concerns, to ensure that approval is consistent with the relevant statutory factors and other provisions of HOLA.

(g) No acquisition shall be approved by the Board pursuant to § 238.11 which would result in the formation by any company, through one or more subsidiaries or through one or more transactions, of a multiple savings and loan holding company controlling savings associations in more than one state where the acquisition causes a savings association to become an affiliate of another savings association with which it was not previously affiliated unless:

(1) Such company, or a savings association subsidiary of such company, is authorized to acquire control of a savings association subsidiary, or to operate a home or branch office, in the additional state or states pursuant to section 13(k) of the Federal Deposit Insurance Act, 12 U.S.C. 1823(k) (or section 408(m) of the National Housing Act as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989);

(2) Such company controls a savings association subsidiary which operated a home or branch office in the additional state or states as of March 5, 1987; or

(3) The statute laws of the state in which the savings association, control of which is to be acquired, is located are such that a savings association chartered by such state could be acquired by a savings association chartered by the state where the acquiring savings association or savings and loan holding company is located (or by a holding company that controls such a state chartered savings association), and such statute laws specifically authorize such an acquisition by language to that effect and not merely by implication.

Subpart C—Control Proceedings

§ 238.21 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board may issue a preliminary determination of control under the procedures set forth in this section in any case in which:

(i) Any of the presumptions of control set forth in paragraph (d) of this section is present; or

(ii) It otherwise appears that a company has the power to exercise a controlling influence over the management or policies of a savings association or other company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the controlling company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* Within 30 calendar days of issuance by the Board of a preliminary determination of control or such longer period permitted by the Board, the company against whom the determination has been made shall:

(1) Submit for the Board's approval a specific plan for the prompt termination of the control relationship;

(2) File an application under this regulation to retain the control relationship; or

(3) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(c) *Hearing and final determination.* (1) The Board shall order a formal hearing or other appropriate proceeding upon the request of a company that contests a preliminary determination that the company has the power to exercise a controlling influence over the management or policies of a savings association or other company, if the Board finds that material facts are in dispute. The Board may also in its discretion order a formal hearing or other proceeding with respect to a preliminary determination that the company controls voting securities of the savings association or other company under the presumptions in paragraph (d)(1) of this section.

(2) At a hearing or other proceeding, any applicable presumptions established by paragraph (d) of this section shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(3) After considering the submissions of the company and other evidence, including the record of any hearing or other proceeding, the Board shall issue a final order determining whether the company controls voting securities, or has the power to exercise a controlling influence over the management or policies, of the savings association or other company. If a control relationship is found, the Board may direct the company to terminate the control relationship or to file an application for the Board's approval to retain the control relationship under subpart B of this part.

(d) *Rebuttable presumptions of control.* The following rebuttable presumptions shall be used in any proceeding under this section:

(1) *Control of voting securities*— (i) *Securities convertible into voting securities.* A company that owns, controls, or holds securities that are immediately convertible, at the option of the holder or owner, into voting securities of a bank or other company, controls the voting securities.

(ii) *Option or restriction on voting securities.* A company that enters into an agreement or understanding under which the rights of a holder of voting securities of a savings association or other company are restricted in any manner controls the securities. This presumption does not apply where the agreement or understanding:

(A) Is a mutual agreement among shareholders granting to each other a right of first refusal with respect to their shares;

(B) Is incident to a *bona fide* loan transaction; or

(C) Relates to restrictions on transferability and continues only for the time necessary to obtain approval from the appropriate Federal supervisory authority with respect to acquisition by the company of the securities.

(2) *Control over company* — (i) *Management agreement.* A company that enters into any agreement or understanding with a savings association or other company (other than an investment advisory agreement), such as a management contract, under which the first company or any of its subsidiaries directs or exercises significant influence over the general management or overall operations of the savings association or other company controls the savings association or other company.

(ii) *Shares controlled by company and associated individuals.* A company that, together with its management officials or principal shareholders (including members of the immediate families of either), owns, controls, or holds with power to vote 25 percent or more of the outstanding shares of any class of voting securities of a savings association or other company controls the savings association or other company, if the first company owns, controls, or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the savings association or other company.

(iii) *Common management officials.* A company that has one or more management officials in common with a savings association or other company controls the savings association or other company, if the first company owns, controls or holds with power to vote more than 5 percent of the outstanding shares of any class of voting securities of the savings association or other company, and no other person controls as much as 5 percent of the outstanding shares of any class of voting securities of the savings association or other company.

(e) *Presumption of non-control*— (1) In any proceeding under this section, there is a presumption that any company that directly or indirectly owns, controls, or has power to vote less than 5 percent of the outstanding shares of any class of voting securities of a savings association or other company does not have control over that savings association or other company.

(2) In any proceeding under this section, or judicial proceeding under the Home Owners' Loan Act, other than a proceeding in which the Board has made a preliminary determination that a company has the power to exercise a controlling influence over the management or policies of the savings association or other company, a company may not be held to have had control over the savings association or other company at any given time, unless that company, at the time in question, directly or indirectly owned, controlled, or had power to vote 5 percent or more of the outstanding shares of any class of voting securities of the savings association or other company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

Subpart D—Change in Bank Control

§ 238.31 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the Board 60 days' written notice, as specified in § 238.33 of this subpart, before acquiring control of a savings and loan holding company, unless the acquisition is exempt under § 238.32.

(b) *Definitions.* For purposes of this subpart:

(1) *Acquisition* includes a purchase, assignment, transfer, or pledge of voting securities, or an increase in percentage ownership of a savings and loan holding company resulting from a redemption of voting securities.

(2) *Acting in concert* includes knowing participation in a joint activity or parallel action towards a common goal of acquiring control of a savings and loan holding company whether or not pursuant to an express agreement.

(3) *Immediate family* includes a person's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of any of the foregoing, and the person's spouse.

(c) *Acquisitions requiring prior notice* —(1) *Acquisition of control.* The acquisition of voting securities of a savings and loan holding company constitutes the acquisition of control

under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 25 percent or more of any class of voting securities of the institution.

(2) *Rebuttable presumption of control.* The Board presumes that an acquisition of voting securities of a savings and loan holding company constitutes the acquisition of control under the Bank Control Act, requiring prior notice to the Board, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting securities of the institution, and if:

(i) The institution has registered securities under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control, or hold the power to vote a greater percentage of that class of voting securities immediately after the transaction.[2]

(d) *Rebuttable presumption of concerted action.* The following persons shall be presumed to be acting in concert for purposes of this subpart:

(1) A company and any principal shareholder, partner, trustee, or management official of the company, if both the company and the person own voting securities of the savings and loan holding company;

(2) An individual and the individual's immediate family;

(3) Companies under common control;

(4) Persons that are parties to any agreement, contract, understanding, relationship, or other arrangement, whether written or otherwise, regarding the acquisition, voting, or transfer of control of voting securities of a savings and loan holding company, other than through a revocable proxy as described in § 238.32(a)(5) of this subpart;

(5) Persons that have made, or propose to make, a joint filing under sections 13 or 14 of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78n), and the rules promulgated thereunder by the Securities and Exchange Commission; and

(6) A person and any trust for which the person serves as trustee.

(e) *Acquisitions of loans in default.* The Board presumes an acquisition of a loan in default that is secured by voting securities of a savings and loan holding company to be an acquisition of the underlying securities for purposes of this section.

(f) *Other transactions.* Transactions other than those set forth in paragraph (c) of this section resulting in a person's control of less than 25 percent of a class of voting securities of a savings and loan holding company are not deemed by the Board to constitute control for purposes of the Bank Control Act.

(g) *Rebuttal of presumptions.* Prior notice to the Board is not required for any acquisition of voting securities under the presumption of control set forth in this section, if the Board finds that the acquisition will not result in control. The Board shall afford any person seeking to rebut a presumption in this section an opportunity to present views in writing or, if appropriate, orally before its designated representatives at an informal conference.

§ 238.32 Transactions not requiring prior notice.

(a) *Exempt transactions.* The following transactions do not require notice to the Board under this subpart:

(1) *Existing control relationships.* The acquisition of additional voting securities of a savings and loan holding company by a person who:

(i) Continuously since March 9, 1979 (or since the institution commenced business, if later), held power to vote 25 percent or more of any class of voting securities of the institution; or

(ii) Is presumed, under § 238.31(c)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting securities held does not exceed 25 percent or more of any class of voting securities of the institution or, in other cases, where the Board determines that the person has controlled the institution continuously since March 9, 1979;

(2) *Increase of previously authorized acquisitions.* Unless the Board or the Reserve Bank otherwise provides in writing, the acquisition of additional shares of a class of voting securities of a savings and loan holding company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 238.31(c)), after complying with the procedures and receiving approval to acquire voting securities of the institution under this subpart, or in connection with an application approved under section 10(e) of HOLA (12 U.S.C. 1467a(e) and § 238.11 or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(3) *Acquisitions subject to approval under HOLA or Bank Merger Act.* Any acquisition of voting securities subject to approval under section 10(e) of HOLA (12 U.S.C. 1467a(e) and § 238.11), or section 18(c) of the Federal Deposit Insurance Act (Bank Merger Act, 12 U.S.C. 1828(c));

(4) *Transactions exempt under HOLA.* Any transaction described in sections 10(a)(3)(A) or 10(e)(1)(B)(ii) of HOLA by a person described in those provisions;

(5) *Proxy solicitation.* The acquisition of the power to vote securities of a savings and loan holding company through receipt of a revocable proxy in connection with a proxy solicitation for the purposes of conducting business at a regular or special meeting of the institution, if the proxy terminates within a reasonable period after the meeting;

(6) *Stock dividends.* The receipt of voting securities of a savings and loan holding company through a stock dividend or stock split if the proportional interest of the recipient in the institution remains substantially the same; and

(7) *Acquisition of foreign banking organization.* The acquisition of voting securities of a qualifying foreign banking organization. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Bank Control Act (12 U.S.C. 1817(j) (9), (10), and (12)) and § 238.34.)

(b) *Prior notice exemption.* (1) The following acquisitions of voting securities of a savings and loan holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate Reserve Bank within 90 calendar days after the acquisition and provides any relevant information requested by the Reserve Bank:

(i) Acquisition of voting securities through inheritance;

(ii) Acquisition of voting securities as a *bona fide* gift; and

(iii) Acquisition of voting securities in satisfaction of a debt previously contracted (DPC) in good faith.

(2) The following acquisitions of voting securities of a savings and loan holding company, which would otherwise require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person does not reasonably have advance knowledge of the transaction, and provides the written notice required under § 238.33 to the appropriate

[2] If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting securities of the savings and loan holding company, each person must file prior notice to the Board.

Reserve Bank within 90 calendar days after the transaction occurs:

(i) Acquisition of voting securities resulting from a redemption of voting securities by the issuing savings and loan holding company; and

(ii) Acquisition of voting securities as a result of actions (including the sale of securities) by any third party that is not within the control of the acquiror.

(3) Nothing in paragraphs (b)(1) or (b)(2) of this section limits the authority of the Board to disapprove a notice pursuant to § 238.33(h).

§ 238.33 Procedures for filing, processing, publishing, and acting on notices.

(a) *Filing notice.* (1) A notice required under this subpart shall be filed with the appropriate Reserve Bank and shall contain all the information required by paragraph 6 of the Bank Control Act (12 U.S.C. 1817(j)(6)), or prescribed in the designated Board form.

(2) The Board may waive any of the informational requirements of the notice if the Board determines that it is in the public interest.

(3) A notificant shall notify the appropriate Reserve Bank or the Board immediately of any material changes in a notice submitted to the Reserve Bank, including changes in financial or other conditions.

(4) When the acquiring person is an individual, or group of individuals acting in concert, the requirement to provide personal financial data may be satisfied by a current statement of assets and liabilities and an income summary, as required in the designated Board form, together with a statement of any material changes since the date of the statement or summary. The Reserve Bank or the Board, nevertheless, may request additional information, if appropriate.

(b) *Acceptance of notice.* The 60-day notice period specified in § 238.31 of this subpart begins on the date of receipt of a complete notice. The Reserve Bank shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is or was complete and thereby accepted for processing. The Reserve Bank or the Board may request additional relevant information at any time after the date of acceptance.

(c) *Publication*—(1) *Newspaper Announcement.* Any person(s) filing a notice under this subpart shall publish, in a form prescribed by the Board, an announcement soliciting public comment on the proposed acquisition. The announcement shall be published in a newspaper of general circulation in the community in which the head office of the savings and loan holding company is located and in the community in which the head office of each of its subsidiary savings associations is located. The announcement shall be published no earlier than 15 calendar days before the filing of the notice with the appropriate Reserve Bank and no later than 10 calendar days after the filing date; and the publisher's affidavit of a publication shall be provided to the appropriate Reserve Bank.

(2) *Contents of newspaper announcement.* The newspaper announcement shall state:

(i) The name of each person identified in the notice as a proposed acquiror of the savings and loan holding company;

(ii) The name of the savings and loan holding company to be acquired, including the name of each of the savings and loan holding company's subsidiary savings association; and

(iii) A statement that interested persons may submit comments on the notice to the Board or the appropriate Reserve Bank for a period of 20 days, or such shorter period as may be provided, pursuant to paragraph (c)(5) of this section.

(3) **Federal Register** *Announcement.* The Board shall, upon filing of a notice under this subpart, publish announcement in the **Federal Register** of receipt of the notice. The **Federal Register** announcement shall contain the information required under paragraphs (c)(2)(i) and (c)(2)(ii) of this section and a statement that interested persons may submit comments on the proposed acquisition for a period of 15 calendar days, or such shorter period as may be provided, pursuant to paragraph (c)(5) of this section. The Board may waive publication in the **Federal Register** if the Board determines that such action is appropriate.

(4) *Delay of publication.* The Board may permit delay in the publication required under paragraphs (c)(1) and (c)(3) of this section if the Board determines, for good cause shown, that it is in the public interest to grant such delay. Requests for delay of publication may be submitted to the appropriate Reserve Bank.

(5) *Shortening or waiving notice.* The Board may shorten or waive the public comment or newspaper publication requirements of this paragraph, or act on a notice before the expiration of a public comment period, if it determines in writing that an emergency exists, or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety or soundness of the savings and loan holding company to be acquired.

(6) *Consideration of public comments.* In acting upon a notice filed under this subpart, the Board shall consider all public comments received in writing within the period specified in the newspaper or **Federal Register** announcement, whichever is later. At the Board's option, comments received after this period may, but need not, be considered.

(7) *Standing.* No person (other than the acquiring person) who submits comments or information on a notice filed under this subpart shall thereby become a party to the proceeding or acquire any standing or right to participate in the Board's consideration of the notice or to appeal or otherwise contest the notice or the Board's action regarding the notice.

(d) *Time period for Board action*— (1) *Consummation of acquisition*— (i) The notificant(s) may consummate the proposed acquisition 60 days after submission to the Reserve Bank of a complete notice under paragraph (a) of this section, unless within that period the Board disapproves the proposed acquisition or extends the 60-day period, as provided under paragraph (d)(2) of this section.

(ii) The notificant(s) may consummate the proposed transaction before the expiration of the 60-day period if the Board notifies the notificant(s) in writing of the Board's intention not to disapprove the acquisition.

(2) *Extensions of time period.* (i) The Board may extend the 60-day period in paragraph (d)(1) of this section for an additional 30 days by notifying the acquiring person(s).

(ii) The Board may further extend the period during which it may disapprove a notice for two additional periods of not more than 45 days each, if the Board determines that:

(A) Any acquiring person has not furnished all the information required under paragraph (a) of this section;

(B) Any material information submitted is substantially inaccurate;

(C) The Board is unable to complete the investigation of an acquiring person because of inadequate cooperation or delay by that person; or

(D) Additional time is needed to investigate and determine that no acquiring person has a record of failing to comply with the requirements of the Bank Secrecy Act, subchapter II of Chapter 53 of Title 31, United States Code.

(iii) If the Board extends the time period under this paragraph, it shall notify the acquiring person(s) of the reasons therefor and shall include a statement of the information, if any, deemed incomplete or inaccurate.

(e) *Advice to bank supervisory agencies.* The Reserve Bank shall send a copy of any notice to the Comptroller of the Currency and the Federal Deposit Insurance Corporation.

(f) *Investigation and report.* (1) After receiving a notice under this subpart, the Board or the appropriate Reserve Bank shall conduct an investigation of the competence, experience, integrity, and financial ability of each person by and for whom an acquisition is to be made. The Board shall also make an independent determination of the accuracy and completeness of any information required to be contained in a notice under paragraph (a) of this section. In investigating any notice accepted under this subpart, the Board or Reserve Bank may solicit information or views from any person, including any savings and loan holding company involved in the notice, and any appropriate state, federal, or foreign governmental authority.

(2) The Board or the appropriate Reserve Bank shall prepare a written report of its investigation, which shall contain, at a minimum, a summary of the results of the investigation.

(g) *Factors considered in acting on notices.* In reviewing a notice filed under this subpart, the Board shall consider the information in the record, the views and recommendations of the appropriate bank supervisor, and any other relevant information obtained during any investigation of the notice.

(h) *Disapproval and hearing*— (1) *Disapproval of notice.* The Board may disapprove an acquisition if it finds adverse effects with respect to any of the factors set forth in paragraph 7 of the Bank Control Act (12 U.S.C. 1817(j)(7)) (*i.e.,* competitive, financial, managerial, banking, or incompleteness of information).

(2) *Disapproval notification.* Within three days after its decision to issue a notice of intent to disapprove any proposed acquisition, the Board shall notify the acquiring person in writing of the reasons for the action.

(3) *Hearing.* Within 10 calendar days of receipt of the notice of the Board's intent to disapprove, the acquiring person may submit a written request for a hearing. Any hearing conducted under this paragraph shall be in accordance with the Rules of Practice for Formal Hearings (12 CFR part 263). At the conclusion of the hearing, the Board shall, by order, approve or disapprove the proposed acquisition on the basis of the record of the hearing. If the acquiring person does not request a hearing, the notice of intent to disapprove becomes final and unappealable.

Subpart E—Qualified Stock Issuances

§ 238.41 Qualified stock issuances by undercapitalized savings associations or holding companies.

(a) *Acquisitions by savings and loan holding companies.* No savings and loan holding company shall be deemed to control a savings association solely by reason of the purchase by such savings and loan holding company of shares issued by such savings association, or issued by any savings and loan holding company (other than a bank holding company) which controls such savings association, in connection with a qualified stock issuance if prior approval of such acquisition is granted by the Board under this subpart, unless the acquiring savings and loan holding company, directly or indirectly, or acting in concert with 1 or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 15 percent of the voting shares of such savings association or holding company.

(b) *Qualification.* For purposes of this section, any issuance of shares of stock shall be treated as a qualified stock issuance if the following conditions are met:

(1) The shares of stock are issued by—

(i) An undercapitalized savings association, which for purposes of this paragraph (b)(1)(i) shall mean any savings association—

(A) The assets of which exceed the liabilities of such association; and

(B) Which does not comply with one or more of the capital standards in effect under section 5(t) of HOLA; or

(ii) A savings and loan holding company which is not a bank holding company but which controls an undercapitalized savings association if, at the time of issuance, the savings and loan holding company is legally obligated to contribute the net proceeds from the issuance of such stock to the capital of an undercapitalized savings association subsidiary of such holding company.

(2) All shares of stock issued consist of previously unissued stock or treasury shares.

(3) All shares of stock issued are purchased by a savings and loan holding company that is registered, as of the date of purchase, with the Board in accordance with the provisions of section 10(b) of the HOLA and the Board's regulations promulgated thereunder.

(4) Subject to paragraph (c) of this section, the Board approves the purchase of the shares of stock by the acquiring savings and loan holding company.

(5) The entire consideration for the stock issued is paid in cash by the acquiring savings and loan holding company.

(6) At the time of the stock issuance, each savings association subsidiary of the acquiring savings and loan holding company (other than an association acquired in a transaction pursuant to section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989) has capital (after deducting any subordinated debt, intangible assets, and deferred, unamortized gains or losses) of not less than 6½ percent of the total assets of such savings association.

(7) Immediately after the stock issuance, the acquiring savings and loan holding company holds not more than 15 percent of the outstanding voting stock of the issuing undercapitalized savings association or savings and loan holding company.

(8) Not more than one of the directors of the issuing association or company is an officer, director, employee, or other representative of the acquiring company or any of its affiliates.

(9) Transactions between the savings association or savings and loan holding company that issues the shares pursuant to this section and the acquiring company and any of its affiliates shall be subject to the provisions of section 11 of HOLA and the Board's regulations promulgated thereunder.

(c) *Approval of acquisitions*—(1) *Criteria.* The Board, in deciding whether to approve or deny an application filed on the basis that it is a qualified stock issuance, shall apply the application criteria set forth in § 238.15(a), (b), and (c).

(2) *Additional capital commitments not required.* The Board shall not disapprove any application for the purchase of stock in connection with a qualified stock issuance on the grounds that the acquiring savings and loan holding company has failed to undertake to make subsequent additional capital contributions to maintain the capital of the undercapitalized savings association at or above the minimum level required by the Board or any other Federal agency having jurisdiction.

(3) *Other conditions.* The Board shall impose such conditions on any approval of an application for the purchase of stock in connection with a qualified

stock issuance as the Board determines to be appropriate, including—

(i) A requirement that any savings association subsidiary of the acquiring savings and loan holding company limit dividends paid to such holding company for such period of time as the Board may require; and

(ii) Such other conditions as the Board deems necessary or appropriate to prevent evasions of this section.

(4) *Application deemed approved if not disapproved within 90 days.* (i) An application for approval of a purchase of stock in connection with a qualified stock issuance shall be deemed to have been approved by the Board if such application has not been disapproved by the Board before the end of the 90-day period beginning on the date of submission to the Board of the complete record on the application as defined in § 238.14(g)(3)(ii).

(d) *No limitation on class of stock issued.* The shares of stock issued in connection with a qualified stock issuance may be shares of any class.

(e) *Application form.* A savings and loan holding company making application to acquire a qualified stock issuance pursuant to this subpart shall submit the appropriate form to the appropriate Reserve Bank.

Subpart F—Savings and Loan Holding Company Activities and Acquisitions

§ 238.51 Prohibited activities.

(a) *Evasion of law or regulation.* No savings and loan holding company or subsidiary thereof which is not a savings association shall, for or on behalf of a subsidiary savings association, engage in any activity or render any services for the purpose or with the effect of evading any law or regulation applicable to such savings association.

(b) *Unrelated business activity.* No savings and loan holding company or subsidiary thereof that is not a savings association shall commence any business activity at any time, or continue any business activity after the end of the two-year period beginning on the date on which such company received approval to become a savings and loan holding company that is subject to the limitations of this paragraph (b), except (in either case) the following:

(1) Furnishing or performing management services for a savings association subsidiary of such company;

(2) Conducting an insurance agency or an escrow business;

(3) Holding, managing, or liquidating assets owned by or acquired from a subsidiary savings association of such company;

(4) Holding or managing properties used or occupied by a subsidiary savings association of such company;

(5) Acting as trustee under deed of trust;

(6) Any other activity:

(i) That the Board of Governors of the Federal Reserve System has permitted for bank holding companies pursuant to regulations promulgated under section 4(c) of the Bank Holding Company Act; or

(ii) Is set forth in § 238.53, subject to the limitations therein; or

(7) (i) In the case of a savings and loan holding company, purchasing, holding, or disposing of stock acquired in connection with a qualified stock issuance if prior approval for the acquisition of such stock by such savings and loan holding company is granted by the Board pursuant to § 238.41.

(ii) Notwithstanding the provisions of this paragraph (b), any savings and loan holding company that, between March 5, 1987 and August 10, 1987, received approval pursuant to 12 U.S.C. 1730a(e), as then in effect, to acquire control of a savings association shall not continue any business activity other than those activities set forth in this paragraph (b) after August 10, 1987.

(c) *Treatment of certain holding companies.* If a director or officer of a savings and loan holding company, or an individual who owns, controls, or holds with the power to vote (or proxies representing) more than 25 percent of the voting shares of a savings and loan holding company, directly or indirectly controls more than one savings association, any savings and loan holding company controlled by such individual shall be subject to the activities limitations contained in paragraph (b) of this section, to the same extent such limitations apply to multiple savings and loan holding companies pursuant to §§ 238.51, 238.52, 238.53, and 238.54.

§ 238.52 Exempt savings and loan holding companies and grandfathered activities.

(a) *Exempt savings and loan holding companies.* (1) The following savings and loan holding companies are exempt from the limitations of § 238.51(b):

(i) Any savings and loan holding company (or subsidiary of such company) that controls only one savings association, if the savings association subsidiary of such company is a qualified thrift lender as defined in § 238.2(k).

(ii) Any savings and loan holding company (or subsidiary thereof) that controls more than one savings association if all, or all but one of the savings association subsidiaries of such company were acquired pursuant to an acquisition under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, and all of the savings association subsidiaries of such company are qualified thrift lenders as defined in § 238.2(k).

(2) Any savings and loan holding company whose subsidiary savings association(s) fails to qualify as a qualified thrift lender pursuant to 12 U.S.C. 1467a(m) may not commence, or continue, any service or activity other than those permitted under § 238.51(b) of this part, except that, the Board may allow, for good cause shown, such company (or subsidiary of such company which is not a savings association) up to 3 years to comply with the limitations set forth in § 238.51(b) of this part: *Provided,* That effective August 9, 1990, any company that controls a savings association that should have become or ceases to be a qualified thrift lender, except a savings association that requalified as a qualified thrift lender pursuant to section 10(m)(3)(D) of the Home Owners' Loan Act, shall within one year after the date on which the savings association fails to qualify as a qualified thrift lender, register as and be deemed to be a bank holding company, subject to all of the provisions of the Bank Holding Company Act, section 8 of the Federal Deposit Insurance Act, and other statutes applicable to bank holding companies in the same manner and to the same extent as if the company were a bank holding company and the savings association were a bank, as those terms are defined in the Bank Holding Company Act.

(b) *Grandfathered activities for certain savings and loan holding companies.* Notwithstanding § 238.51(b) and subject to paragraph (c) of this section, any savings and loan holding company that received approval prior to March 5, 1987 to acquire control of a savings association may engage, directly or indirectly or through any subsidiary (other than a subsidiary savings association of such company) in any activity in which it was lawfully engaged on March 5, 1987, *provided,* that:

(1) The holding company does not, after August 10, 1987, acquire control of a bank or an additional savings association, other than a savings association acquired pursuant to section

13(c) or 13(k) of the Federal Deposit Insurance Act, or section 406(f) or 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989;

(2) Any savings association subsidiary of the holding company continues to qualify as a domestic building and loan association under section 7701(a)(19) of the Internal Revenue Code of 1986 after August 10, 1987;

(3) The holding company does not engage in any business activity other than those permitted under § 238.51(b) or in which it was engaged on March 5, 1987;

(4) Any savings association subsidiary of the holding company does not increase the number of locations from which such savings association conducts business after March 5, 1987, other than an increase due to a transaction under section 13(c) or 13(k) of the Federal Deposit Insurance Act, or under section 408(m) of the National Housing Act, as in effect immediately prior to the date of enactment of the Financial Institutions Reform, Recovery and Enforcement Act of 1989; and

(5) Any savings association subsidiary of the holding company does not permit any overdraft (including an intra-day overdraft) or incur any such overdraft in its account at a Federal Reserve bank, on behalf of an affiliate, unless such overdraft results from an inadvertent computer or accounting error that is beyond the control of both the savings association subsidiary and the affiliate.

(c) *Termination by the Board of grandfathered activities.* Notwithstanding the provisions of paragraph (b) of this section, the Board may, after opportunity for hearing, terminate any activity engaged in under paragraph (b) of this section upon determination that such action is necessary:

(1) To prevent conflicts of interest;

(2) To prevent unsafe or unsound practices; or

(3) To protect the public interest.

(d) *Foreign holding company.* Any savings and loan holding company organized under the laws of a foreign country as of June 1, 1984 (including any subsidiary thereof that is not a savings association) that controlled a single savings association on August 10, 1987, shall not be subject to the restrictions set forth in § 238.51(b) with respect to any activities of such holding company that are conducted exclusively in a foreign country.

§ 238.53 Prescribed services and activities of savings and loan holding companies.

(a) *General.* For the purpose of § 238.51(b)(6)(ii), the activities set forth in paragraph (b) of this section are, and were as of March 5, 1987, permissible services and activities for savings and loan holding companies or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations. Services and activities of service corporation subsidiaries of savings and loan holding company subsidiary savings associations are prescribed by paragraph (d) of this section.

(b) *Prescribed services and activities.* Subject to the provisions of paragraph (c) of this section, a savings and loan holding company subject to restrictions on its activities pursuant to § 238.51(b), or a subsidiary thereof which is neither a savings association nor a service corporation of a subsidiary savings association, may furnish or perform the following services and engage in the following activities to the extent that it has legal power to do so:

(1) Originating, purchasing, selling and servicing any of the following:

(i) Loans, and participation interests in loans, on a prudent basis and secured by real estate, including brokerage and warehousing of such real estate loans, except that such a company or subsidiary shall not invest in a loan secured by real estate as to which a subsidiary savings association of such company has a security interest;

(ii) Manufactured home chattel paper (written evidence of both a monetary obligation and a security interest of first priority in one or more manufactured homes, and any equipment installed or to be installed therein), including brokerage and warehousing of such chattel paper;

(iii) Loans, with or without security, for the altering, repairing, improving, equipping or furnishing of any residential real estate;

(iv) Educational loans; and

(v) Consumer loans, as defined in § 160.3 of this title, *Provided,* That, no subsidiary savings association of such holding company or service corporation of such savings association shall engage directly or indirectly, in any transaction with any affiliate involving the purchase or sale, in whole or in part, of any consumer loan.

(2) Subject to the provisions of 12 U.S.C. 1468, furnishing or performing clerical accounting and internal audit services primarily for its affiliates;

(3) Subject to the provisions of 12 U.S.C. 1468, furnishing or performing the following services primarily for its affiliates, and for any savings association and service corporation subsidiary thereof, and for other multiple holding companies and affiliates thereof:

(i) Data processing;

(ii) Credit information, appraisals, construction loan inspections, and abstracting;

(iii) Development and administration of personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(iv) Research, studies, and surveys;

(v) Purchase of office supplies, furniture and equipment;

(vi) Development and operation of storage facilities for microfilm or other duplicate records; and

(vii) Advertising and other services to procure and retain both savings accounts and loans;

(4) Acquisition of unimproved real estate lots, and acquisition of other unimproved real estate for the purpose of prompt development and subdivision, for:

(i) Construction of improvements,

(ii) Resale to others for such construction, or

(iii) Use as mobile home sites;

(5) Development, subdivision and construction of improvements on real estate acquired pursuant to paragraph (b)(4) of this section, for sale or rental;

(6) Acquisition of improved real estate and mobile homes to be held for rental;

(7) Acquisition of improved real estate for remodeling, rehabilitation, modernization, renovation, or demolition and rebuilding for sale or for rental;

(8) Maintenance and management of improved real estate;

(9) Underwriting or reinsuring contract of credit life or credit health and accident insurance in connection with extensions of credit by the savings and loan holding company or any of its subsidiaries, or extensions of credit by any savings association or service corporation subsidiary thereof, or any other savings and loan holding company or subsidiary thereof;

(10) Preparation of State and Federal tax returns for accountholders of or borrowers from (including immediate family members of such accountholders or borrowers but not including an accountholder or borrower which is a corporation operated for profit) an affiliated savings association;

(11) Purchase and sale of gold coins minted and issued by the United States Treasury pursuant to Public Law 99–185, 99 Stat. 1177 (1985), and activities reasonably incident thereto; and

(12) Any services or activities approved by order of the former Federal

Savings and Loan Insurance Corporation prior to March 5, 1987, pursuant to its authority under section 408(c)(2)(F) of the National Housing Act, as in effect at the time.

(c) *Procedures for commencing services or activities.* A notice to engage in or acquire a company engaged in a service or activity prescribed by paragraph (b) of this section (other than purchase or sale of a government debt security) shall be filed by a savings and loan holding company (including a company seeking to become a savings and loan holding company) with the appropriate Reserve Bank in accordance with this paragraph and the Board's Rules of Procedure (12 CFR 262.3).

(1) *Engaging de novo in services or activities.* A savings and loan holding company seeking to commence or to engage de novo in a service or activity pursuant to this section, either directly or through a subsidiary, shall file a notice containing a description of the activities to be conducted and the identity of the company that will conduct the activity.

(2) *Acquiring company engaged in services or activities.* A savings and loan holding company seeking to acquire or control voting securities or assets of a company engaged in a service or activity pursuant to this section, shall file a notice containing the following:

(i) A description of the proposal, including a description of each proposed service or activity;

(ii) The identity of any entity involved in the proposal, and, if the notificant proposes to conduct the service or activity through an existing subsidiary, a description of the existing activities of the subsidiary;

(iii) If the savings and loan holding company has consolidated assets of $150 million or more:

(A) Parent company and consolidated pro forma balance sheets for the acquiring savings and loan holding company as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction;

(B) Consolidated pro forma risk-based capital and leverage ratio calculations for the acquiring savings and loan holding company as of the most recent quarter; and

(C) A description of the purchase price and the terms and sources of funding for the transaction;

(iv) If the savings and loan holding company has consolidated assets of less than $150 million:

(A) A pro forma parent-only balance sheet as of the most recent quarter showing credit and debit adjustments that reflect the proposed transaction; and

(B) A description of the purchase price and the terms and sources of funding for the transaction and, if the transaction is debt funded, one-year income statement and cash flow projections for the parent company, and the sources and schedule for retiring any debt incurred in the transaction;

(v) For each insured depository institution whose Tier 1 capital, total capital, total assets or risk-weighted assets change as a result of the transaction, the total risk-weighted assets, total assets, Tier 1 capital and total capital of the institution on a pro forma basis; and

(vi) A description of the management expertise, internal controls and risk management systems that will be utilized in the conduct of the proposed service or activity; and

(vii) A copy of the purchase agreements, and balance sheet and income statements for the most recent quarter and year-end for any company to be acquired.

(d) *Notice provided to Board.* The Reserve Bank shall immediately send to the Board a copy of any notice received under paragraphs (c)(1) or (c)(2) of this section.

(e) *Notice to public*—(1) the Reserve Bank shall notify the Board for publication in the **Federal Register** immediately upon receipt by the Reserve Bank of:

(i) A notice under paragraph (c) of this section or

(ii) A written request that notice of a proposal under paragraph (c) of this section be published in the **Federal Register**. Such a request may request that **Federal Register** publication occur up to 15 calendar days prior to submission of a notice under this subpart.

(2) The **Federal Register** notice published under this paragraph (e) shall invite public comment on the proposal, generally for a period of 15 days.

(f) *Action on notices*—(1) Reserve Bank action—(i) In general. Within 30 calendar days after receipt by the Reserve Bank of a notice filed pursuant to paragraphs (c)(1) or (c)(2) of this section, the Reserve Banks shall:

(A) Approve the notice; or

(B) Refer the notice to the Board for decision because action under delegated authority is not appropriate.

(ii) *Return of incomplete notice.* Within 7 calendar days of receipt, the Reserve Bank may return any notice as informationally incomplete that does not contain all of the information required by this section. The return of such a notice shall be deemed action on the notice.

(iii) *Notice of action.* The Reserve Bank shall promptly notify the savings and loan holding company of any action or referral under this paragraph.

(iv) *Close of public comment period.* The Reserve Bank shall not approve any notice under this paragraph (e)(1) of this section prior to the third business day after the close of the public comment period, unless an emergency exists that requires expedited or immediate action.

(2) *Board action; internal schedule.* The Board seeks to act on every notice referred to it for decision within 60 days of the date that the notice is filed with the Reserve Bank. If the Board is unable to act within this period, the Board shall notify the notificant and explain the reasons and the date by which the Board expects to act.

(3)(i) *Required time limit for System action.* The Board or the Reserve Bank shall act on any notice under this section within 60 days after the submission of a complete notice.

(ii) Extension of required period for action. The Board may extend the 60-day period required for Board action under paragraph (e)(3)(i) of this section for an additional 30 days upon notice to the notificant.

(4) *Requests for additional information.* The Board or the Reserve Bank may modify the information requirements under this section or at any time request any additional information that either believes is needed for a decision on any notice under this section.

(5) *Tolling of period.* The Board or the Reserve Bank may at any time extend or toll the time period for action on a notice for any period with the consent of the notificant.

(g) *Modification or termination of service or activity.* The Board may require a savings and loan holding company or subsidiary thereof which has commenced a service or activity pursuant to this section to modify or terminate, in whole or in part, such service or activity as the Board finds necessary in order to ensure compliance with the provisions and purposes of this part and of section 10 of the Home Owners' Loan Act, as amended, or to prevent evasions thereof.

(h) *Alterations.* Except as may be otherwise provided in a resolution by or on behalf of the Board in a particular case, a service or activity commenced pursuant to this section shall not be altered in any material respect from that described in the notice filed under paragraph (c)(1) of this section, unless before making such alteration notice of intent to do so is filed in compliance with the appropriate procedures of said paragraph (c)(1) of this section.

(i) *Service corporation subsidiaries of savings associations.* The Board hereby approves without application the furnishing or performing of such services or engaging in such activities as permitted by the OTS pursuant to § 545.74 of this title, as in effect on March 5, 1987, if such service or activity is conducted by a service corporation subsidiary of a subsidiary savings association of a savings and loan holding company and if such service corporation has legal power to do so.

§ 238.54 Permissible bank holding company activities of savings and loan holding companies.

(a) *General.* For purposes of § 238.51(b)(6)(i), the services and activities permissible for bank holding companies pursuant to regulations that the Board has promulgated pursuant to section 4(c) of the Bank Holding Company Act are permissible for savings and loan holding companies, or subsidiaries thereof that are neither savings associations nor service corporation subsidiaries of subsidiary savings associations: *Provided,* That no savings and loan holding company shall commence any activity described in this paragraph (a) without the prior approval of this Board pursuant to paragraph (b) of this section, unless—

(1) The holding company received a rating of satisfactory or above prior to January 1, 2008, or a composite rating of ''1'' or ''2'' thereafter, in its most recent examination, and is not in a troubled condition as defined in § 238.72, and the holding company does not propose to commence the activity by an acquisition (in whole or in part) of a going concern; or

(2) The activity is permissible under authority other than section 10(c)(2)(F)(i) of the HOLA without prior notice or approval. Where an activity is within the scope of both § 238.53 and this section, the procedures of § 238.53 shall govern.

(b) *Procedures for applications.* Applications to commence any activity prescribed under paragraph (a) of this section shall be filed with the appropriate Reserve Bank on the designated form. The Board must act upon such application according to the procedures of § 238.53(d), (e), and (f).

(c) *Factors considered in acting on applications.* In evaluating an application filed under paragraph (b) of this section, the Board shall consider whether the performance by the applicant of the activity can reasonably be expected to produce benefits to the public (such as greater convenience, increased competition, or gains in efficiency) that outweigh possible adverse effects (such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound financial practices). This consideration includes an evaluation of the financial and managerial resources of the applicant, including its subsidiaries, and of any company to be acquired, and the effect of the proposed transaction on those resources.

Subpart G—Financial Holding Company Activities

§ 238.61 Scope.

Section 10(c)(2)(H) of the HOLA (12 U.S.C. 1467a(c)(2)(H)) permits a savings and loan holding company to engage in activities that are permissible for a financial holding company if the savings and holding company meets the criteria to qualify as a financial holding company and complies with all of the requirements applicable to a financial holding company under sections 4(l) and 4(m) of the BHC Act as if the savings and loan holding company was a bank holding company. This subpart provides the requirements and restrictions for a savings and holding company to be treated as a financial holding company for the purpose of engaging in financial holding company activities. This subpart does not apply to savings and loan holding companies described in section 10(c)(9)(C) of the HOLA (12 U.S.C. 1467a(c)(9)(C)).

§ 238.62 Definitions.

For the purposes of this subpart:

(a) *Financial holding company activities* refers to activities permissible under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)) and § 225.86 of this chapter.

(b) [Reserved]

§ 238.63 Requirements to engage in financial holding company activities.

(a) *In general.* In order for a savings and loan holding company to engage in financial holding company activities:

(1) The savings and loan holding company and all depository institutions controlled by the savings and loan holding company must be and remain well capitalized;

(2) The savings and loan holding company and all depository institutions controlled by the savings and loan company must be and remain well managed; and

(3) The savings and loan holding company must have made an effective election to be treated as a financial holding company.

§ 238.64 Election required.

(a) *In general.* Except as provided below, a savings and loan holding company that wishes to engage in financial holding company activities must have an effective election to be treated as a financial holding company.

(b) *Activities performed under separate HOLA authority.* A savings and loan holding company that conducts only the following activities is not required to elect to be treated as a financial holding company:

(1) *BHC Act section 4(c)(8) activities.* Activities permissible under section 10(c)(2)(F)(i) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(i)).

(2) *Insurance agency or escrow business activities.* Activities permissible under section 10(c)(2)(B) of the HOLA (12 U.S.C. 1467a(c)(2)(B)).

(3) *''1987 List'' activities.* Activities permissible under section 10(c)(2)(F)(ii) of the HOLA (12 U.S.C. 1467a(c)(2)(F)(ii)).

(c) *Existing requirements apply.* A savings and loan holding company that has not made an effective election to be treated as a financial holding company and that conducts the activities described in paragraphs (b)(1) through (3) of this section remains subject to any rules and requirements applicable to the conduct of such activities.

§ 238.65 Election procedures.

(a) *Filing requirement.* A savings and loan holding company may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank. A declaration by a savings and loan holding company is considered to be filed on the date that all information required by paragraph (b) of this section is received by the appropriate Reserve Bank.

(b) *Contents of declaration.* To be deemed complete, a declaration must:

(1) State that the savings and loan holding company elects to be treated as a financial holding company in order to engage in financial holding company activities;

(2) Provide the name and head office address of the savings and loan holding company and of each depository institution controlled by the savings and loan holding company;

(3) Certify that the savings and loan holding company and each depository institution controlled by the savings and loan holding company is well capitalized as of the date the savings and loan holding company submits its declaration;

(4) Certify that the savings and loan holding company and each savings association controlled by the savings and loan holding company is well managed as of the date the savings and loan holding company submits its declaration;

(c) *Effectiveness of election.* An election by a savings and loan holding company to be treated as a financial holding company shall not be effective if, during the period provided in paragraph (d) of this section, the Board finds that, as of the date the declaration was filed with the appropriate Reserve Bank:

(1) Any insured depository institution controlled by the savings and loan holding company (except an institution excluded under paragraph (d) of this section) has not achieved at least a rating of ''satisfactory record of meeting community credit needs'' under the Community Reinvestment Act at the savings association's most recent examination; or

(2) Any depository institution controlled by the bank holding company is not both well capitalized and well managed.

(d) *Consideration of the CRA performance of a recently acquired savings association.* Except as provided in paragraph (f) of this section, a savings association will be excluded for purposes of the review of the Community Reinvestment Act rating provisions of paragraph (c)(1) of this section if:

(1) The savings and loan holding company acquired the savings association during the 12-month period preceding the filing of an election under paragraph (a) of this section;

(2) The savings and loan holding company has submitted an affirmative plan to the appropriate Federal banking agency for the savings association to take actions necessary for the institution to achieve at least a rating of ''satisfactory record of meeting community credit needs'' under the Community Reinvestment Act at the next examination of the savings association; and

(3) The appropriate Federal banking agency for the savings association has accepted the plan described in paragraph (d)(2) of this section.

(e) *Effective date of election.*

(1) *In general.* An election filed by a savings and loan holding company under paragraph (a) of this section is effective on the 31st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the savings and loan holding company prior to that time that the election is ineffective.

(2) *Earlier notification that an election is effective.* The Board or the appropriate Reserve Bank may notify a savings and loan holding company that its election to be treated as a financial holding company is effective prior to the 31st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such a notification must be in writing.

(3) *Special effective date rules for the OTS transfer date.*

(i) *Deadline for filing declaration.* For savings and loan holding companies that meet the requirements of § 238.63 and that are engaged in financial holding company activities pursuant to existing authority as of July 21, 2011, an election under paragraph (a) must be filed with the appropriate Reserve Bank by December 31, 2011. The election must be accompanied by a description of the financial holding company activities conducted by the savings and loan holding company.

(ii) *Effective date of election.* An election filed under paragraph (e)(3)(i) of this section is effective on the 61st calendar day after the date that a complete declaration was filed with the appropriate Reserve Bank, unless the Board notifies the savings and loan holding company prior to that time that the election is ineffective.

(iii) *Earlier notification that an election is effective.* The Board or the appropriate Reserve Bank may notify a savings and loan holding company that its election under paragraph (e)(3)(i) of this section to be treated as a financial holding company is effective prior to the 61st day after the date that a complete declaration was filed with the appropriate Reserve Bank. Such notification must be in writing.

(iv) *Filings by savings and loan holding companies that do not meet requirements.* (A) For savings and loan holding companies that are engaged in financial holding company activities as of July 21, 2011 but do not meet the requirements of § 238.63, a declaration must be filed with the appropriate Reserve Bank by December 31, 2011, specifying:

(*1*) The name and head office address of the savings and loan holding company and of each despoitory institution controlled by the savings and loan holding company;

(*2*) The financial holding company activities that the savings and loan holding company is engaged in;

(*3*) The requirements of § 238.63 that the savings and loan holding company does not meet; and

(*4*) A description of how the savings and loan holding company will achieve compliance with § 238.63 prior to June 30, 2012.

(B) A savings and loan holding company covered by this subparagraph will be subject to:

(*1*) The notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter; or

(*2*) The activities limitations and any other requirements described in § 225.84 of this chapter, depending on which requirements of § 238.63 the savings and loan holding company does not meet.

(f) *Requests to be treated as a financial holding company submitted as part of an application to become a savings and loan holding company.* A company that is not a savings and loan holding company and has applied for the Board's approval to become a savings and loan holding company under section 10(e) of the HOLA (12 U.S.C. 1467a(e)) may as part of that application submit a request to be treated as a financial holding company. Such requests shall be made and reviewed by the Board as described in § 225.82(f) of this chapter.

(g) *Board's authority to exercise supervisory authority over a savings and loan holding company treated as a financial holding company.* An effective election to be treated as a financial holding company does not in any way limit the Board's statutory authority under the HOLA, the Federal Deposit Insurance Act, or any other relevant Federal statute to take appropriate action, including imposing supervisory limitations, restrictions, or prohibitions on the activities and acquisitions of a savings and loan holding company that has elected to be treated as a financial holding company, or enforcing compliance with applicable law.

§ 238.66 Ongoing requirements.

(a) *In general.* A savings and loan holding company with an effective election to be treated as a financial holding company is subject to the same requirements applicable to a financial holding company, under sections 4(l) and 4(m) of the Bank Holding Company Act and section 804(c) of the Community Reinvestment Act of 1977 (12 U.S.C. 2903(c)) as if the savings and loan holding company was a bank holding company.

(b) *Consequences of failing to continue to meet applicable capital and management requirements.* A savings and loan holding company with an effective election to be treated as a financial holding company that fails to meet applicable capital and management requirements at § 238.63 is subject to the notice, remediation agreement, divestiture, and any other requirements described in § 225.83 of this chapter.

(c) *Consequences of failing to continue to maintain a satisfactory or better rating under the Community*

Reinvestment Act at all insured depository institution subsidiaries. A savings and loan holding company with an effective election to be treated as a financial holding company that fails to maintain a satisfactory or better rating under the Community Reinvestment Act at all insured deposit institution subsidiaries is subject to the activities limitations and any other requirements described in § 225.84 of this chapter.

(d) *Notice and approval requirements for conducting financial holding company activities; permissible activities.* A savings and loan holding company with an effective election to be treated as a financial holding company may conduct the activities listed in § 225.86 of this chapter subject to the notice, approval, and any other requirements described in §§ 225.85 through 225.89 of this chapter.

Subpart H—Notice of Change of Director or Senior Executive Officer

§ 238.71 Purpose.

This subpart implements 12 U.S.C. 1831i, which requires certain savings and loan holding companies to notify the Board before appointing or employing directors and senior executive officers.

§ 238.72 Definitions.

The following definitions apply to this subpart:

(a) *Director* means an individual who serves on the board of directors of a savings and loan holding company. This term does not include an advisory director who:

(1) Is not elected by the shareholders;

(2) Is not authorized to vote on any matters before the board of directors or any committee of the board of directors;

(3) Provides only general policy advice to the board of directors or any committee of the board of directors; and

(4) Has not been identified by the Board or Reserve Bank in writing as an individual who performs the functions of a director, or who exercises significant influence over, or participates in, major policymaking decisions of the board of directors.

(b) *Senior executive officer* means an individual who holds the title or performs the function of one or more of the following positions (without regard to title, salary, or compensation): president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. *Senior executive officer* also includes any other person identified by the Board or Reserve Bank in writing as an individual who exercises significant influence over, or participates in, major policymaking decisions, whether or not hired as an employee.

(c) *Troubled condition* means:

(1) A savings and loan holding company that has an unsatisfactory rating under the applicable holding company rating system, or that is informed in writing by the Board or Reserve Bank that it has an adverse effect on its subsidiary savings association.

(2) A savings and loan holding company that is subject to a capital directive, a cease-and-desist order, a consent order, a formal written agreement, or a prompt corrective action directive relating to the safety and soundness or financial viability of the savings association, unless otherwise informed in writing by the Board or Reserve Bank; or

(3) A savings and loan holding company that is informed in writing by the Board or Reserve Bank that it is in troubled condition based on information available to the Board or Reserve Bank.

§ 238.73 Prior notice requirements.

(a) *Savings and loan holding company.* Except as provided under § 238.78, a savings and loan holding company must give the Board 30 days' written notice, as specified in § 238.74, before adding or replacing any member of its board of directors, employing any person as a senior executive officer, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive position if the savings and loan holding company is in troubled condition.

(b) *Notice by individual.* An individual seeking election to the board of directors of a savings and loan holding company described in paragraph (a) of this section that has not been nominated by management, must either provide the prior notice required under paragraph (a) of this section or follow the process under § 238.78(b).

§ 238.74 Filing and processing procedures.

(a) *Filing notice*—(1) *Content.* The notice required in § 238.73 shall be filed with the appropriate Reserve Bank and shall contain:

(i) The information required by paragraph 6(A) of the Change in Bank Control Act (12 U.S.C. 1817(j)(6)(A)) as may be prescribed in the designated Board form;

(ii) Additional information consistent with the Federal Financial Institutions Examination Council's Joint Statement of Guidelines on Conducting Background Checks and Change in Control Investigations, as set forth in the designated Board form; and

(iii) Such other information as may be required by the Board or Reserve Bank.

(2) *Modification.* The Reserve Bank may modify or accept other information in place of the requirements of this section for a notice filed under this subpart.

(3) *Acceptance and processing of notice.* The 30-day notice period specified in section 238.73 shall begin on the date all information required to be submitted by the notificant pursuant to this section is received by the appropriate Reserve Bank. The Reserve Bank shall notify the savings and loan holding company or individual submitting the notice of the date on which all required information is received and the notice is accepted for processing, and of the date on which the 30-day notice period will expire. The Board or Reserve Bank may extend the 30-day notice period for an additional period of not more than 60 days by notifying the savings and loan holding company or individual filing the notice that the period has been extended and stating the reason for not processing the notice within the 30-day notice period.

(b) [Reserved]

§ 238.75 Standards for review.

(a) *Notice of disapproval.* The Board or Reserve Bank will disapprove a notice if, pursuant to the standard set forth in 12 U.S.C. 1831i(e), the Board or Reserve Bank finds that the competence, experience, character, or integrity of the proposed individual indicates that it would not be in the best interests of the depositors of the savings and loan holding company or of the public to permit the individual to be employed by, or associated with, the savings and loan holding company. If the Board or Reserve Bank disapproves a notice, it will issue a written notice that explains why the Board or Reserve Bank disapproved the notice. The Board or Reserve Bank will send the notice to the savings and loan holding company and the individual.

(b) *Appeal of a notice of disapproval.* (1) A disapproved individual or a regulated institution that has submitted a notice that is disapproved under this section may appeal the disapproval to the Board within 15 days of the effective date of the notice of disapproval. An appeal shall be in writing and explain the reasons for the appeal and include all facts, documents, and arguments that the appealing party wishes to be considered in the appeal, and state whether the appealing party is requesting an informal hearing.

(2) Written notice of the final decision of the Board shall be sent to the appealing party within 60 days of the receipt of an appeal, unless the appealing party's request for an informal hearing is granted.

(3) The disapproved individual may not serve as a director or senior executive officer of the state member bank or bank holding company while the appeal is pending.

(c) *Informal hearing.* (1) An individual or regulated institution whose notice under this section has been disapproved may request an informal hearing on the notice. A request for an informal hearing shall be in writing and shall be submitted within 15 days of a notice of disapproval. The Board may, in its sole discretion, order an informal hearing if the Board finds that oral argument is appropriate or necessary to resolve disputes regarding material issues of fact.

(2) An informal hearing shall be held within 30 days of a request, if granted, unless the requesting party agrees to a later date.

(3) Written notice of the final decision of the Board shall be given to the individual and the regulated institution within 60 days of the conclusion of any informal hearing ordered by the Board, unless the requesting party agrees to a later date.

§ 238.76 Waiting period.

(a) *At expiration of period.* A proposed director or senior executive officer may begin service at the end of the 30-day period and any extension as provided under § 238.74 unless the Board or Reserve Bank notifies you that it has disapproved the notice before the end of the period.

(b) *Prior to expiration of period.* A proposed director or senior executive officer may begin service before the end of the 30-day period and any extension as provided under section 238.74 of this section, if the Board or the Reserve Bank notifies in writing the savings and loan holding company or individual submitting the notice of the Board's or Reserve Bank's intention not to disapprove the notice.

§ 238.77 Waiver of prior notice requirement.

(a) *Waiver request.* An individual may serve as a director or senior executive officer before filing a notice under this subpart if the Board or Reserve Bank finds that:

(1) Delay would threaten the safety or soundness of the savings and loan holding company;

(2) Delay would not be in the public interest; or

(3) Other extraordinary circumstances exist that justify waiver of prior notice.

(b) *Automatic waiver.* An individual may serve as a director upon election to the board of directors before filing a notice under this subpart, if the individual:

(1) Is not proposed by the management of the savings and loan holding company;

(2) Is elected as a new member of the board of directors at a meeting of the savings and loan holding company; and

(3) Provides to the appropriate Reserve Bank all the information required in § 238.74 within two (2) business days after the individual's election.

(c) *Subsequent Board or Reserve Bank action.* The Board or Reserve Bank may disapprove a notice within 30 days after the Board or Reserve Bank issues a waiver under paragraph (a) of this section or within 30 days after the election of an individual who has filed a notice and is serving pursuant to an automatic waiver under paragraph (b) of this section.

Subpart I—Prohibited Service at Savings and Loan Holding Companies

§ 238.81 Purpose.

This subpart implements section 19(e)(1) of the Federal Deposit Insurance Act (FDIA), which prohibits persons who have been convicted of certain criminal offenses or who have agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such criminal offenses from occupying various positions with a savings and loan holding company. This part also implements section 19(e)(2) of the FDIA, which permits the Board to provide exemptions, by regulation or order, from the application of the prohibition. This subpart provides an exemption for savings and loan holding company employees whose activities and responsibilities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations, and a temporary exemption for certain persons who held positions with respect to a savings and loan holding company as of October 13, 2006. The subpart also describes procedures for applying to the Board for an exemption.

§ 238.82 Definitions.

The following definitions apply to this subpart:

(a) *Institution-affiliated party* is defined at 12 U.S.C. 1813(u), except that the phrase ''savings and loan holding company'' is substituted for ''insured depository institution'' each place that it appears in that definition.

(b) *Enforcement Counsel* means any individual who files a notice of appearance to serve as counsel on behalf of the Board in the proceeding.

(c) *Person* means an individual and does not include a corporation, firm or other business entity.

(d) *Savings and loan holding company* is defined at § 238.2(m), but excludes a subsidiary of a savings and loan holding company that is not itself a savings and loan holding company.

§ 238.83 Prohibited actions.

(a) *Person.* If a person was convicted of a criminal offense described in § 238.84, or agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such a criminal offense, he or she may not:

(1) Become, or continue as, an institution-affiliated party with respect to any savings and loan holding company.

(2) Own or control, directly or indirectly, any savings and loan holding company. A person will own or control a savings and loan holding company if he or she owns or controls that company under subpart D of this part.

(3) Otherwise participate, directly or indirectly, in the conduct of the affairs of any savings and loan holding company.

(b) *Savings and loan holding company.* A savings and loan holding company may not permit any person described in paragraph (a) of this section to engage in any conduct or to continue any relationship prohibited under that paragraph.

§ 238.84 Covered convictions or agreements to enter into pre-trial diversions or similar programs.

(a) *Covered convictions and agreements.* Except as described in § 238.85, this subpart covers:

(1) Any conviction of a criminal offense involving dishonesty, breach of trust, or money laundering. Convictions do not cover arrests, pending cases not brought to trial, acquittals, convictions reversed on appeal, pardoned convictions, or expunged convictions.

(2) Any agreement to enter into a pretrial diversion or similar program in connection with a prosecution for a criminal offense involving dishonesty, breach of trust or money laundering. A pretrial diversion or similar program is a program involving a suspension or eventual dismissal of charges or of a criminal prosecution based upon an agreement for treatment, rehabilitation, restitution, or other non-criminal or non-punitive alternative.

(b) *Dishonesty or breach of trust.* A determination whether a criminal

offense involves dishonesty or breach of trust is based on the statutory elements of the crime.

(1) ''Dishonesty'' means directly or indirectly to cheat or defraud, to cheat or defraud for monetary gain or its equivalent, or to wrongfully take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving a want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

(2) ''Breach of trust'' means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity, or the misuse of one's official or fiduciary position to engage in a wrongful act, use, misappropriation, or omission.

§ 238.85 Adjudications and offenses not covered.

(a) *Youthful offender or juvenile delinquent.* This subpart does not cover any adjudication by a court against a person as:

(1) A youthful offender under any youthful offender law; or

(2) A juvenile delinquent by a court with jurisdiction over minors as defined by state law.

(b) *De minimis criminal offense.* This subpart does not cover *de minimis* criminal offenses. A criminal offense is *de minimis* if:

(1) The person has only one conviction or pretrial diversion or similar program of record;

(2) The offense was punishable by imprisonment for a term of less than one year, a fine of less than $1,000, or both, and the person did not serve time in jail.

(3) The conviction or program was entered at least five years before the date the person first held a position described in § 238.83(a); and

(4) The offense did not involve an insured depository institution, insured credit union, or other banking organization (including a savings and loan holding company, bank holding company, or financial holding company).

(5) The person must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

(6) The person must be covered by a fidelity bond to the same extent as others in similar positions with the savings and loan holding company.

§ 238.86 Exemptions.

(a) *Employees.* An employee of a savings and loan holding company is exempt from the prohibition in § 238.83, if all of the following conditions are met:

(1) The employee's responsibilities and activities are limited solely to agriculture, forestry, retail merchandising, manufacturing, or public utilities operations.

(2) The savings and loan holding company maintains a list of all policymaking positions and reviews this list annually.

(3) The employee's position does not appear on the savings and loan holding company's list of policymaking positions, and the employee does not, in fact, exercise any policymaking function with the savings and loan holding company.

(4) The employee:

(i) Is not an institution-affiliated party of the savings and loan holding company other than by virtue of the employment described in paragraph (a) of this section.

(ii) Does not own or control, directly or indirectly, the savings and loan holding company; and

(iii) Does not participate, directly or indirectly, in the conduct of the affairs of the savings and loan holding company.

(b) *Temporary exemption.* (1) Any prohibited person who was an institution affiliated party with respect to a savings and loan holding company, who owned or controlled, directly or indirectly a savings and loan holding company, or who otherwise participated directly or indirectly in the conduct of the affairs of a savings and loan holding company on October 13, 2006, may continue to hold the position with the savings and loan holding company.

(2) This exemption expires on December 31, 2012, unless the savings and loan holding company or the person files an application seeking a case-by-case exemption for the person under § 238.87 by that date. If the savings and loan holding company or the person files such an application, the temporary exemption expires on:

(i) The date of issuance of a Board approval of the application under § 238.89(a);

(ii) The expiration of the 20-day period for filing a request for hearing under § 238.90(a) provided there is no timely request for hearing following the issuance by the Board of a denial of the application under that section;

(iii) The date that the Board denies a timely request for hearing under § 238.90(b) following the issuance of a Board denial of the application under § 238.89(b);

(iv) The date that the Board issues a decision under § 238.90(d); or

(v) The date an applicant withdraws the application.

§ 238.87 Filing procedures.

(a) *Who may file.* (1) A savings and loan holding company or a person who was convicted of a criminal offense described in § 238.84 or who has agreed to enter into a pre-trial diversion or similar program in connection with a prosecution for such a criminal offense may file an application with the Board seeking an exemption from the prohibitions in this subpart.

(2) A savings and loan holding company or a person may seek an exemption only for a designated position (or positions) with respect to a named savings and loan holding company.

(3) A savings and loan holding company or a person may not file an application less than one year after the latter of the date of a denial of the same exemption under § 238.89(b), § 238.90(a) or § 238.90(d).

(b) *Prohibition pending Board action.* Unless a savings and loan holding company or a person is exempt under § 238.86(b), the prohibitions in § 238.83 continue to apply pending Board action on the application.

§ 238.88 Factors for review.

(a) *Board review.* (1) In determining whether to approve an exemption application filed under § 238.87, the Board will consider the extent to which the position that is the subject of the application enables a person to:

(i) Participate in the major policymaking functions of the savings and loan holding company; or

(ii) Threaten the safety and soundness of any insured depository institution that is controlled by the savings and loan holding company, the interests of its depositors, or the public confidence in the insured depository institution.

(2) The Board will also consider whether the applicant has demonstrated the person's fitness to hold the described position. Some positions may be approved without an extensive review of a person's fitness because the position does not enable a person to take the actions described in paragraph (a)(1) of this section.

(b) *Factors.* In making the determinations under paragraph (a) of this section, the Board will consider the following factors:

(1) The position;

(2) The amount of influence and control a person holding the position

will be able to exercise over the affairs and operations of the savings and loan holding company and the insured depository institution;

(3) The ability of the management of the savings and loan holding company to supervise and control the activities of a person holding the position;

(4) The level of ownership that the person will have at the savings and loan holding company;

(5) The specific nature and circumstances of the criminal offense. The question whether a person who was convicted of a crime or who agreed to enter into a pretrial diversion or similar program for a crime was guilty of that crime is not relevant;

(6) Evidence of rehabilitation; and

(7) Any other relevant factor.

§ 238.89 Board action.

(a) *Approval.* The Board will notify an applicant if an application under this subpart is approved. An approval by the Board may include such conditions as the Board determines to be appropriate.

(b) *Denial.* If Board denies an application, the Board will notify an applicant promptly.

§ 238.90 Hearings.

(a) *Hearing requests.* Within 20 days of the date of issuance of a denial of an application filed under this subpart, a savings and loan holding company or a person whose application the Board has denied may file a written request demonstrating good cause for a hearing on the denial.

(b) *Board review of hearing request.* The Board will review the hearing request to determine if the savings and loan holding company or person has demonstrated good cause for a hearing on the application. Within 30 days after the filing of a timely request for a hearing, the Board will notify the savings and loan holding company or person in writing of its decision to grant or deny the hearing request. If the Board grants the request for a hearing, it will order a hearing to be commenced within 60 days of the issuance of the notification. Upon the request of a party, the Board may at its discretion order a later hearing date.

(c) *Hearing procedures.* The following procedures apply to hearings under this subpart.

(1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Board.

(2) An applicant may elect in writing to have the matter determined on the basis of written submissions, rather than an oral hearing.

(3) The parties to the hearing are Enforcement Counsel and the applicant.

(4) The provisions of §§ 263.2, 263.4, 263.6 through 263.12, and 263.16 of this chapter apply to the hearing.

(5) Discovery is not permitted.

(6) A party may introduce relevant and material documents and make oral argument at the hearing.

(7) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses must be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party may cross-examine any witness presented by the opposing party. The Board will furnish a transcript of the proceedings upon an applicant's request and upon the payment of the costs of the transcript.

(8) The presiding officer has the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas *duces tecum.* If the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees are paid in accordance with section 263.14 of this chapter.

(9) Upon the request of a party, the record will remain open for five business days following the hearing for additional submissions to the record.

(10) Enforcement Counsel has the burden of proving a *prima facie* case that a person is prohibited from a position under section 19(e) of the FDIA. The applicant has the burden of proof on all other matters.

(11) The presiding officer must make recommendations to the Board, where possible, within 20 days after the last day for the parties to submit additions to the record.

(12) The presiding officer must forward his or her recommendation to the Board who shall promptly certify the entire record, including the presiding officer's recommendations. The Board's certification will close the record.

(d) *Decision.* After the certification of the record, the Board will notify the parties of its decision by issuing an order approving or denying the application.

(1) An approval order will require fidelity bond coverage for the position to the same extent as similar positions with the savings and loan holding company. The approval order may include such other conditions as may be appropriate.

(2) A denial order will include a summary of the relevant factors under § 238.88(b).

Subpart J—Management Official Interlocks

§ 238.91 Authority, purpose, and scope.

(a) *Authority.* This subpart is issued under the provisions of the Depository Institution Management Interlocks Act (Interlocks Act) (12 U.S.C. 3201 *et seq.*), as amended.

(b) *Purpose.* The purpose of the Interlocks Act and this subpart is to foster competition by generally prohibiting a management official from serving two nonaffiliated depository organizations in situations where the management interlock likely would have an anticompetitive effect.

(c) *Scope.* This subpart applies to management officials of savings and loan holding companies, and their affiliates.

§ 238.92 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Affiliate.* (1) The term *affiliate* has the meaning given in section 202 of the Interlocks Act (12 U.S.C. 3201). For purposes of that section 202, shares held by an individual include shares held by members of his or her immediate family. ''Immediate family'' means spouse, mother, father, child, grandchild, sister, brother, or any of their spouses, whether or not any of their shares are held in trust.

(2) For purposes of section 202(3)(B) of the Interlocks Act (12 U.S.C. 3201(3)(B)), an affiliate relationship involving a savings and loan holding company based on common ownership does not exist if the Board determines, after giving the affected persons the opportunity to respond, that the asserted affiliation was established in order to avoid the prohibitions of the Interlocks Act and does not represent a true commonality of interest between the depository organizations. In making this determination, the Board considers, among other things, whether a person, including members of his or her immediate family, whose shares are necessary to constitute the group owns a nominal percentage of the shares of one of the organizations and the percentage is substantially disproportionate to that person's ownership of shares in the other organization.

(b) *Area median income* means:

(1) The median family income for the metropolitan statistical area (MSA), if a

depository organization is located in an MSA; or

(2) The statewide nonmetropolitan median family income, if a depository organization is located outside an MSA.

(c) *Community* means a city, town, or village, and contiguous or adjacent cities, towns, or villages.

(d) *Contiguous or adjacent cities, towns, or villages* means cities, towns, or villages whose borders touch each other or whose borders are within 10 road miles of each other at their closest points. The property line of an office located in an unincorporated city, town, or village is the boundary line of that city, town, or village for the purpose of this definition.

(e) *Depository holding company* means a bank holding company or a savings and loan holding company (as more fully defined in section 202 of the Interlocks Act (12 U.S.C. 3201)) having its principal office located in the United States.

(f) *Depository institution* means a commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank, or a credit union, chartered under the laws of the United States and having a principal office located in the United States. Additionally, a United States office, including a branch or agency, of a foreign commercial bank is a depository institution.

(g) *Depository institution affiliate* means a depository institution that is an affiliate of a depository organization.

(h) *Depository organization* means a depository institution or a depository holding company.

(i) *Low- and moderate-income areas* means census tracts (or, if an area is not in a census tract, block numbering areas delineated by the United States Bureau of the Census) where the median family income is less than 100 percent of the area median income.

(j) *Management official.* (1) The term *management official* means:

(i) A director;

(ii) An advisory or honorary director of a depository institution with total assets of $100 million or more;

(iii) A senior executive officer as that term is defined in § 225.71(c) of this chapter;

(iv) A branch manager;

(v) A trustee of a depository organization under the control of trustees; and

(vi) Any person who has a representative or nominee serving in any of the capacities in this paragraph (j)(1).

(2) The term *management official* does not include:

(i) A person whose management functions relate exclusively to the business of retail merchandising or manufacturing;

(ii) A person whose management functions relate principally to the business outside the United States of a foreign commercial bank; or

(iii) A person described in the provisos of section 202(4) of the Interlocks Act (12 U.S.C. 3201(4)) (referring to an officer of a State-chartered savings bank, cooperative bank, or trust company that neither makes real estate mortgage loans nor accepts savings).

(k) *Office* means a principal or branch office of a depository institution located in the United States. *Office* does not include a representative office of a foreign commercial bank, an electronic terminal, or a loan production office.

(l) *Person* means a natural person, corporation, or other business entity.

(m) *Relevant metropolitan statistical area (RMSA)* means an MSA, a primary MSA, or a consolidated MSA that is not comprised of designated Primary MSAs to the extent that these terms are defined and applied by the Office of Management and Budget.

(n) *Representative or nominee* means a natural person who serves as a management official and has an obligation to act on behalf of another person with respect to management responsibilities. The Board will find that a person has an obligation to act on behalf of another person only if the first person has an agreement, express or implied, to act on behalf of the second person with respect to management responsibilities. The Board will determine, after giving the affected persons an opportunity to respond, whether a person is a *representative or nominee.*

(o) *Savings association* means:

(1) Any Federal savings association (as defined in section 3(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(2)));

(2) Any state savings association (as defined in section 3(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(3) Any corporation (other than a bank as defined in section 3(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(1))) the deposits of which are insured by the Federal Deposit Insurance Corporation, that the Board of Directors of the Federal Deposit Insurance Corporation and the Comptroller of the Currency jointly determine to be operating in substantially the same manner as a savings association.

(p) *Total assets.* (1) The term *total assets* means assets measured on a consolidated basis and reported in the most recent fiscal year-end Consolidated Report of Condition and Income.

(2) The term *total assets* does not include:

(i) Assets of a diversified savings and loan holding company as defined by section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) other than the assets of its depository institution affiliate;

(ii) Assets of a bank holding company that is exempt from the prohibitions of section 4 of the Bank Holding Company Act of 1956 pursuant to an order issued under section 4(d) of that Act (12 U.S.C. 1843(d)) other than the assets of its depository institution affiliate; or

(iii) Assets of offices of a foreign commercial bank other than the assets of its United States branch or agency.

(q) *United States* means the United States of America, any State or territory of the United States of America, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ 238.93 Prohibitions.

(a) *Community.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same community.

(b) *RMSA.* A management official of a depository organization may not serve at the same time as a management official of an unaffiliated depository organization if the depository organizations in question (or a depository institution affiliate thereof) have offices in the same RMSA and each depository organization has total assets of $50 million or more.

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The Board will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million. The Board will

announce the revised thresholds by publishing a final rule without notice and comment in the **Federal Register**.

§ 238.94 Interlocking relationships permitted by statute.

The prohibitions of § 238.93 do not apply in the case of any one or more of the following organizations or to a subsidiary thereof:

(a) A depository organization that has been placed formally in liquidation, or which is in the hands of a receiver, conservator, or other official exercising a similar function;

(b) A corporation operating under section 25 or section 25A of the Federal Reserve Act (12 U.S.C. 601 *et seq.* and 12 U.S.C. 611 *et seq.,* respectively) (Edge Corporations and Agreement Corporations);

(c) A credit union being served by a management official of another credit union;

(d) A depository organization that does not do business within the United States except as an incident to its activities outside the United States;

(e) A State-chartered savings and loan guaranty corporation;

(f) A Federal Home Loan Bank or any other bank organized solely to serve depository institutions (a bankers' bank) or solely for the purpose of providing securities clearing services and services related thereto for depository institutions and securities companies;

(g) A depository organization that is closed or is in danger of closing as determined by the appropriate Federal depository institutions regulatory agency and is acquired by another depository organization. This exemption lasts for five years, beginning on the date the depository organization is acquired;

(h)(1) A diversified savings and loan holding company (as defined in section 10(a)(1)(F) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)(1)(F)) with respect to the service of a director of such company who also is a director of an unaffiliated depository organization if:

(i) Both the diversified savings and loan holding company and the unaffiliated depository organization notify their appropriate Federal depository institutions regulatory agency at least 60 days before the dual service is proposed to begin; and

(ii) The appropriate regulatory agency does not disapprove the dual service before the end of the 60-day period.

(2) The Board may disapprove a notice of proposed service if it finds that:

(i) The service cannot be structured or limited so as to preclude an anticompetitive effect in financial services in any part of the United States;

(ii) The service would lead to substantial conflicts of interest or unsafe or unsound practices; or

(iii) The notificant failed to furnish all the information required by the Board.

(3) The Board may require that any interlock permitted under this paragraph (h) be terminated if a change in circumstances occurs with respect to one of the interlocked depository organizations that would have provided a basis for disapproval of the interlock during the notice period; and

(i) Any savings association or any savings and loan holding company (as defined in section 10(a)(1)(D) of the Home Owners' Loan Act) which has issued stock in connection with a qualified stock issuance pursuant to section 10(q) of such Act, except that this paragraph (i) shall apply only with regard to service by a single management official of such savings association or holding company, or any subsidiary of such savings association or holding company, by a single management official of the savings and loan holding company which purchased the stock issued in connection with such qualified stock issuance, and shall apply only when the Board has determined that such service is consistent with the purposes of the Interlocks Act and the Home Owners' Loan Act.

§ 238.95 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 238.93 is permissible, if:

(1) The interlock is not prohibited by § 238.93(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

§ 238.96 General exemption.

(a) *Exemption.* The Board may by agency order exempt an interlock from the prohibitions in § 238.93 if the Board finds that the interlock would not result in a monopoly or substantial lessening of competition and would not present safety and soundness concerns. A depository organization may apply to the Board for an exemption.

(b) *Presumptions.* In reviewing an application for an exemption under this section, the Board will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in § 238.72.

(c) *Duration.* Unless a shorter expiration period is provided in the Board approval, an exemption permitted by paragraph (a) of this section may continue so long as it does not result in a monopoly or substantial lessening of competition, or is unsafe or unsound. If the Board grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

§ 238.97 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

(b) *Transition period.* A management official described in paragraph (a) of this section may continue to serve the depository organization involved in the interlock for 15 months following the date of the change in circumstances. The Board may shorten this period under appropriate circumstances.

§ 238.98 Enforcement.

Except as provided in this section, the Board administers and enforces the Interlocks Act with respect to savings and loan holding companies and its affiliates, and may refer any case of a prohibited interlocking relationship

involving these entities to the Attorney General of the United States to enforce compliance with the Interlocks Act and this part. If an affiliate of a savings and loan holding company is subject to the primary regulation of another Federal depository organization supervisory agency, then the Board does not administer and enforce the Interlocks Act with respect to that affiliate.

§ 238.99 Interlocking relationships permitted pursuant to Federal Deposit Insurance Act.

A management official or prospective management official of a depository organization may enter into an otherwise prohibited interlocking relationship with another depository organization for a period of up to 10 years if such relationship is approved by the Federal Deposit Insurance Corporation pursuant to section 13(k)(1)(A)(v) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1823(k)(1)(A)(v)).

Subpart K—Dividends by Subsidiary Savings Associations

§ 238.101 Authority and purpose.

This subpart implements section 10(f) of HOLA which requires savings associations with holding companies to provide the Board not less than 30 days' notice of a proposed declaration of a dividend. This subpart applies to all declarations of dividends by a subsidiary savings association of a savings and loan holding company.

§ 238.102 Definitions.

The following definitions apply to this subpart:

(a) *Appropriate Federal banking agency* has the same meaning as in 12 U.S.C. 1813(q) and includes, with respect to agreements entered into and conditions imposed prior to July 21, 2011, the Office of Thrift Supervision.

(b) *Dividend* means:

(1) A distribution of cash or other property to owners of a savings association made on account of their ownership, but not any dividend consisting only of shares or rights to purchase shares; or

(2) Any transaction that the Board determines, by order or regulation, to be in substance a dividend.

(c) *Shares* means common and preferred stock, and any options, warrants, or other rights for the acquisition of such stock. The term ''share'' also includes convertible securities upon their conversion into common or preferred stock. The term does not include convertible debt securities prior to their conversion into common or preferred stock or other securities that are not equity securities at the time of a dividend.

§ 238.103 Filing requirement.

(a) *Filing.* A subsidiary savings association of a savings and loan holding company must file a notice with the appropriate Reserve Bank on the designated form at least 30 days before the proposed declaration of a dividend by its board of directors.

(b) *Schedules.* A notice may include a schedule proposing dividends over a specified period, not to exceed 12 months.

§ 238.104 Board action and criteria for review.

(a) *Board action.* (1) A subsidiary savings association of a savings and loan holding company may declare a proposed dividend after the end of a 30-day review period commencing on the date of submission to the Federal Reserve System of the complete record on the notice, unless the Board or Reserve Bank disapproves the notice before the end of the period.

(2) A subsidiary savings association of a savings and loan holding company may declare a proposed dividend before the end of the 30-day period if the Board or Reserve Bank notifies the applicant in writing of the Board's or Reserve Bank's intention not to disapprove the notice.

(b) *Criteria.* The Board or Reserve Bank may disapprove a notice, in whole or in part, if the Board or Reserve Bank makes any of the following determinations.

(1) Following the dividend the subsidiary savings association will be undercapitalized, significantly undercapitalized, or critically undercapitalized as set forth in applicable regulations under 12 U.S.C. 1831o.

(2) The proposed dividend raises safety or soundness concerns.

(3) The proposed dividend violates a prohibition contained in any statute, regulation, enforcement action, or agreement between the subsidiary savings association or any savings and loan holding company of which it is a subsidiary and an appropriate Federal banking agency, a condition imposed on the subsidiary savings association or any savings and loan holding company of which it is a subsidiary in an application or notice approved by an appropriate Federal banking agency, or any formal or informal enforcement action involving the subsidiary savings association or any savings and loan holding company of which it is a subsidiary. If so, the Board will determine whether it may permit the dividend notwithstanding the prohibition, condition, or enforcement action.

Subpart L—Investigative Proceedings and Formal Examination Proceedings

§ 238.111 Scope.

This part prescribes rules of practice and procedure applicable to the conduct of investigative proceedings under section 10(g)(2) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1467a(g)(2) (''HOLA'') and to the conduct of formal examination proceedings with respect to savings and loan holding companies and their affiliates under section 5(d)(1)(B) of the HOLA, as amended, 12 U.S.C. 1464(d)(1)(B) or section 7(j)(15) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1817(j)(15) (''FDIA''), section 8(n) of the FDIA, 12 U.S.C. 1818(n), or section 10(c) of the FDIA, 12 U.S.C. 1820(c). This part does not apply to adjudicatory proceedings as to which hearings are required by statute, the rules for which are contained in part 262 of this chapter.

§ 238.112 Definitions.

As used in this part:

(a) *Investigative proceeding* means an investigation conducted under section 10(g)(2) of the HOLA;

(b) *Formal examination proceeding* means the administration of oaths and affirmations, taking and preserving of testimony, requiring the production of books, papers, correspondence, memoranda, and all other records, the issuance of subpoenas, and all related activities in connection with examination of savings and loan holding companies and their affiliates conducted pursuant to section 5(d)(1)(B) of the HOLA, section 7(j)(15) of the FDIA, section 8(n) of the FDIA or section 10(c) of the FDIA; and

(c) *Designated representative* means the person or persons empowered by the Board to conduct an investigative proceeding or a formal examination proceeding.

§ 238.113 Confidentiality of proceedings.

All formal examination proceedings shall be private and, unless otherwise ordered by the Board, all investigative proceedings shall also be private. Unless otherwise ordered or permitted by the Board, or required by law, and except as provided in §§ 238.114 and 238.115, the entire record of any investigative proceeding or formal examination proceeding, including the resolution of the Board or its delegate(s) authorizing the proceeding, the transcript of such proceeding, and all documents and information obtained by the designated

representative(s) during the course of said proceedings shall be confidential.

§ 238.114 Transcripts.

Transcripts or other recordings, if any, of investigative proceedings or formal examination proceedings shall be prepared solely by an official reporter or by any other person or means authorized by the designated representative. A person who has submitted documentary evidence or given testimony in an investigative proceeding or formal examination proceeding may procure a copy of his own documentary evidence or transcript of his own testimony upon payment of the cost thereof; *provided,* that a person seeking a transcript of his own testimony must file a written request with the Board stating the reason he desires to procure such transcript, and the Board may for good cause deny such request. In any event, any witness (or his counsel) shall have the right to inspect the transcript of the witness' own testimony.

§ 238.115 Rights of witnesses.

(a) Any person who is compelled or requested to furnish documentary evidence or give testimony at an investigative proceeding or formal examination proceeding shall have the right to examine, upon request, the Board resolution authorizing such proceeding. Copies of such resolution shall be furnished, for their retention, to such persons only with the written approval of the Board.

(b) Any witness at an investigative proceeding or formal examination proceeding may be accompanied and advised by an attorney personally representing that witness.

(1) Such attorney shall be a member in good standing of the bar of the highest court of any state, Commonwealth, possession, territory, or the District of Columbia, who has not been suspended or debarred from practice by the bar of any such political entity or before the Board in accordance with the provisions of part 263 of this chapter and has not been excluded from the particular investigative proceeding or formal examination proceeding in accordance with paragraph (b)(3) of this section.

(2) Such attorney may advise the witness before, during, and after the taking of his testimony and may briefly question the witness, on the record, at the conclusion of his testimony, for the sole purpose of clarifying any of the answers the witness has given. During the taking of the testimony of a witness, such attorney may make summary notes solely for his use in representing his client. All witnesses shall be sequestered, and, unless permitted in the discretion of the designated representative, no witness or accompanying attorney may be permitted to be present during the taking of testimony of any other witness called in such proceeding. Neither attorney(s) for the association(s) that are the subjects of the investigative proceedings or formal examination proceedings, nor attorneys for any other interested persons, shall have any right to be present during the testimony of any witness not personally being represented by such attorney.

(3) The Board, for good cause, may exclude a particular attorney from further participation in any investigation in which the Board has found the attorney to have engaged in dilatory, obstructionist, egregious, contemptuous or contumacious conduct. The person conducting an investigation may report to the Board instances of apparently dilatory, obstructionist, egregious, contemptuous or contumacious conduct on the part of an attorney. After due notice to the attorney, the Board may take such action as the circumstances warrant based upon a written record evidencing the conduct of the attorney in that investigation or such other or additional written or oral presentation as the Board may permit or direct.

§ 238.116 Obstruction of proceedings.

The designated representative shall report to the Board any instances where any witness or counsel has engaged in dilatory, obstructionist, or contumacious conduct or has otherwise violated any provision of this part during the course of an investigative proceeding or formal examination proceeding; and the Board may take such action as the circumstances warrant, including the exclusion of counsel from further participation in such proceeding.

§ 238.117 Subpoenas.

(a) *Service.* Service of a subpoena in connection with any investigative proceeding or formal examination proceeding shall be effected in the following manner:

(1) *Service upon a natural person.* Service of a subpoena upon a natural person may be effected by handing it to such person; by leaving it at his office with the person in charge thereof, or, if there is no one in charge, by leaving it in a conspicuous place therein; by leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein; by mailing it to him by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to him.

(2) *Service upon other persons.* When the person to be served is not a natural person, service of the subpoena may be effected by handing the subpoena to a registered agent for service, or to any officer, director, or agent in charge of any office of such person; by mailing it to any such representative by registered or certified mail or by an express delivery service at his last known address; or by any method whereby actual notice is given to such person.

(b) *Motions to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the Board or its designee to quash or modify such subpoena, accompanying such application with a statement of the reasons therefore. The Board or its designee, as appropriate, may:

(1) Deny the application;

(2) Quash or revoke the subpoena;

(3) Modify the subpoena; or

(4) Condition the granting of the application on such terms as the Board or its designee determines to be just, reasonable, and proper.

(c) *Attendance of witnesses.* Subpoenas issued in connection with an investigative proceeding or formal examination proceeding may require the attendance and/or testimony of witnesses from any State or territory of the United States and the production by such witnesses of documentary or other tangible evidence at any designated place where the proceeding is being (or is to be) conducted. Foreign nationals are subject to such subpoenas if such service is made upon a duly authorized agent located in the United States.

(d) *Witness fees and mileage.* Witnesses summoned in any proceeding under this part shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Such fees and mileage need not be tendered when the subpoena is issued on behalf of the Board by any of its designated representatives.

■ 14. Add new part 239 to read as follows:

PART 239—MUTUAL HOLDING COMPANIES (REGULATION MM)

Subpart A—General Provisions

Sec.

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Authority: 12 U.S.C. 1462, 1462a, 1464, 1467a, 1828, and 2901.

Subpart A—General Provisions

§ 239.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System (''Board'') under section 10(g) and (o) of the Home Owners' Loan Act (''HOLA'').

(b) *Purpose.* The principal purposes of this part are to:

(1) Regulate the reorganization of mutual savings associations to mutual holding companies and the creation of subsidiary holding companies of mutual holding companies;

(2) Define and regulate the operations of mutual holding companies and subsidiary holding companies of mutual holding companies; and

(3) Set forth the procedures for securing approval for these transactions.

(c) *Scope.* Except as the Board may otherwise determine, the reorganization of mutual savings associations into mutual holding companies, any related stock issuances by subsidiary holding companies, and the conversion of mutual holding companies into stock form are exclusively governed by the provisions of this part, and no mutual savings association shall reorganize to a mutual holding company, no subsidiary holding company of a mutual holding company shall issue minority stock, and no mutual holding company shall convert into stock form without the prior written approval of the Board. The Board may grant a waiver in writing from any requirement of this part for good cause shown.

§ 239.2 Definitions.

As used in this part and in the forms under this part, the following definitions apply, unless the context otherwise requires:

(a) *Acquiree association* means any savings association, other than a resulting association, that:

(1) Is acquired by a mutual holding company as part of, and concurrently with, a mutual holding company reorganization; and

(2) Is in the mutual form immediately prior to such acquisition.

(b) *Acting in concert* has the same meaning as in § 238.31(b) of this chapter.

(c) *Affiliate* has the same meaning as in § 238.2(a) of this chapter.

(d) *Associate* of a person is:

(1) A corporation or organization (other than the mutual holding company, subsidiary holding company, or any majority-owned subsidiaries of such holding companies), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 239.59(k), 239.59(m), 239.59(n), 239.59(o), 239.59(p), 239.63(b), a person who has a substantial beneficial interest in the mutual holding company or subsidiary holding company's tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 239.59(k), the mutual holding company or subsidiary holding company's tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any natural person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is a director or senior officer of the mutual holding company, subsidiary holding company, or other subsidiary.

(e) *Company* means any corporation, partnership, trust, association, joint venture, pool, syndicate, unincorporated organization, joint-stock company or similar organization, as defined in paragraph (u) of this section; but a company does not include:

(1) The Federal Deposit Insurance Corporation, the Resolution Trust Corporation, or any Federal Home Loan Bank, or

(2) Any company the majority of shares of which is owned by:

(i) The United States or any State,

(ii) An officer of the United States or any State in his or her official capacity, or

(iii) An instrumentality of the United States or any State.

(f) *Control* has the same meaning as in § 238.2(e) of this chapter.

(g) *Default* means any adjudication or other official determination of a court of competent jurisdiction or other public authority pursuant to which a conservator, receiver, or other legal custodian is appointed for a mutual holding company or subsidiary savings association of a mutual holding company.

(h) *Demand accounts* mean non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

(i) *Insider* means any officer or director of a company or of any affiliate of such company, and any person acting in concert with any such officer or director.

(j) *Member* means any depositor or borrower of a mutual savings association that is entitled, under the charter of the savings association, to vote on matters affecting the association, and any depositor or borrower of a subsidiary savings association of a mutual holding company that is entitled, under the charter of the mutual holding company, to vote on matters affecting the mutual holding company.

(k) *Mutual holding company* means a holding company organized in mutual form under this part, and unless otherwise indicated, a subsidiary holding company controlled by a mutual holding company, organized under this part.

(l) *Parent* means any company which directly or indirectly controls any other company or companies.

(m) *Person* includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

(n) *Reorganization Notice* means a notice of a proposed mutual holding company reorganization that is in the form and contains the information required by the Board.

(o) *Reorganization Plan* means a plan to reorganize into the mutual holding company format containing the information required by § 239.6.

(p) *Reorganizing association* means a mutual savings association that proposes to reorganize to become a mutual holding company pursuant to this part.

(q) *Resulting association* means a savings association in the stock form that is organized as a subsidiary of a reorganizing association to receive the substantial part of the assets and liabilities (including all deposit accounts) of the reorganizing association upon consummation of the reorganization.

(r) *Savings account* means any withdrawable account, except a demand account, a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

(s) *Savings Association* has the same meaning as in § 238.2(l) of this chapter.

(t) *Savings and loan holding company* has the same meaning as specified in section 10(a)(1) of the HOLA and § 238.2(m) of this chapter.

(u) *Similar organization* for purposes of paragraph (e) of this section means a combination of parties with the potential for or practical likelihood of continuing rather than temporary existence, where the parties thereto have knowingly and voluntarily associated for a common purpose pursuant to identifiable and binding relationships which govern the parties with respect to either:

(1) The transferability and voting of any stock or other indicia of participation in another entity, or

(2) Achievement of a common or shared objective, such as to collectively manage or control another entity.

(v) *Stock* means common or preferred stock, or any other type of equity security, including (without limitation) warrants or options to acquire common or preferred stock, or other securities that are convertible into common or preferred stock.

(w) *Stock Issuance Plan* means a plan, submitted pursuant to § 239.24 and containing the information required by § 239.25, providing for the issuance of stock by a subsidiary holding company.

(x) *Subsidiary* means any company which is owned or controlled directly or indirectly by a person, and includes any service corporation owned in whole or in part by a savings association, or a subsidiary of such service corporation.

(y) *Subsidiary holding company* means a federally chartered stock holding company controlled by a mutual holding company that owns the stock of a savings association whose depositors have membership rights in the parent mutual holding company.

(z) *Tax and loan account* means an account, the balance of which is subject to the right of immediate withdrawal, established for receipt of payments of Federal taxes and certain United States obligations. Such accounts are not savings accounts or savings deposits.

(aa) *Tax-qualified employee stock benefit plan* means any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under sec. 401 of the Internal Revenue Code (26 U.S.C. 401).

(bb) *United States Treasury General Account* means an account maintained in the name of the United States Treasury the balance of which is subject to the right of immediate withdrawal, except in the case of the closure of the member, and in which a zero balance may be maintained. Such accounts are not savings accounts or savings deposits.

(cc) *United States Treasury Time Deposit Open Account* means a non-interest-bearing account maintained in the name of the United States Treasury which may not be withdrawn prior to the expiration of 30 days' written notice from the United States Treasury, or such other period of notice as the Treasury may require. Such accounts are not savings accounts or savings deposits.

Subpart B—Mutual Holding Companies

§ 239.3 Mutual holding company reorganizations.

(a) A mutual savings association may not reorganize to become a mutual holding company, or join in a mutual holding company reorganization as an acquiree association, unless it satisfies the following conditions:

(1) A Reorganization Plan is approved by a majority of the board of directors of the reorganizing association and any acquiree association;

(2) A Reorganization Notice is filed with the Board pursuant to § 238.14 of this chapter;

(3) The Reorganization Plan is submitted to the members of the reorganizing association and any acquiree association pursuant and is approved by a majority of the total votes of the members of each association eligible to be cast at a meeting held at the call of each association's directors in accordance with the procedures prescribed by each association's charter and bylaws; and

(4) All necessary regulatory approvals have been obtained and all conditions imposed by the Board have been satisfied.

(b) Upon receipt of an application under this section, the Reserve Bank will promptly furnish notice and a copy of the Reorganization Plan to the primary federal supervisor of any savings association involved in the transaction. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

§ 239.4 Grounds for disapproval of reorganizations.

(a) *Basic standards.* The Board may disapprove a proposed mutual holding company reorganization filed pursuant to § 239.3(a) if:

(1) Disapproval is necessary to prevent unsafe or unsound practices;

(2) The financial or managerial resources of the reorganizing association

or any acquiree association warrant disapproval;

(3) The proposed capitalization of the mutual holding company fails to meet the requirements of paragraph (b) of this section;

(4) A stock issuance is proposed in connection with the reorganization pursuant to § 239.24 that fails to meet the standards established by that section;

(5) The reorganizing association or any acquiree association fails to furnish the information required to be included in the Reorganization Notice or any other information requested by the Board in connection with the proposed reorganization; or

(6) The proposed reorganization would violate any provision of law, including (without limitation) § 239.3(a) and (c) (regarding board of directors and membership approval) or § 239.5(a) (regarding continuity of membership rights).

(b) *Capitalization.* (1) The Board shall disapprove a proposal by a reorganizing association or any acquiree association to capitalize a mutual holding company in an amount in excess of a nominal amount if immediately following the reorganization, the resulting association or the acquiree association would fail to be ''adequately capitalized'' under the regulatory capital requirements applicable to the savings association.

(2) Proposals by reorganizing associations and acquiree associations to capitalize mutual holding companies shall also comply with any applicable statutes, and with regulations or written policies of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, as applicable, governing capital distributions by savings associations in effect at the time of the reorganization.

(c) *Presumptive disqualifiers* —

(1) *Managerial resources.* The factors specified in § 238.15(d)(1)(i) through (vi) of this chapter shall give rise to a rebuttable presumption that the managerial resources test of paragraph (a)(2) of this section is not met. For this purpose, each place the term *acquiror* appears in § 238.15(d)(1)(i) through (vi) of this chapter, it shall be read to mean the reorganizing association or any acquiree association, and the reference in § 238.15(d)(1)(v) of this chapter to filings under this part shall be deemed to include filings under either part 238 of this chapter or this part.

(2) *Safety and soundness and financial resources.* Failure by a reorganizing association and any acquiree association to submit a business plan in connection with a Reorganization Notice, or submission of a business plan that projects activities that are inconsistent with the credit and lending needs of the reorganizing association or acquiree association's proposed market area or that fails to demonstrate that the capital of the mutual holding company will be deployed in a safe and sound manner, shall give rise to a rebuttable presumption that the safety and soundness and financial resources tests of paragraphs (a)(1) and (a)(2) of this section are not met.

(d) *Failure of the Board to act on a Reorganization Notice within the prescribed time period.* A proposed reorganization that obtains regulatory clearance from the Board due to the operation of § 238.14 of this chapter may take place in the manner proposed, subject to the following conditions:

(1) The reorganization shall be consummated within one year of the date of the expiration of the Board's review period under § 238.14 of this chapter;

(2) The mutual holding company shall not be capitalized in an amount in excess of what is permissible under § 239.4(b);

(3) No request for regulatory waivers or forbearances shall be deemed granted;

(4) The following information shall be submitted within the specified time frames:

(i) On the business day prior to the date of the reorganization, the chief financial officers of the reorganizing association and any acquiree association shall certify to the Board in writing that no material adverse events or material adverse changes have occurred with respect to the financial condition or operations of their respective associations since the date of the financial statements submitted with the Reorganization Notice;

(ii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification by legal counsel stating the effective date of the reorganization, the exact number of shares of stock of the resulting association and any acquiree association acquired by the mutual holding company and by any other persons, and that the reorganization has been consummated in accordance with § 239.3 and all other applicable laws and regulations and the Reorganization Notice;

(iii) No later than thirty days after the reorganization, the mutual holding company shall file with the Board an opinion from its independent auditors certifying that the reorganization was consummated in accordance with generally accepted accounting principles; and

(iv) No later than thirty days after the reorganization, the mutual holding company shall file with the Board a certification stating that the mutual holding company will not deviate materially, or cause its subsidiary savings associations to deviate materially, from the business plan submitted in connection with the Reorganization Notice, unless prior written approval from the Board is obtained.

§ 239.5 Membership rights.

(a) *Depositors and borrowers of resulting associations, acquiree associations, and associations in mutual form when acquired.* The charter of a mutual holding company must:

(1) Confer upon existing and future depositors of the resulting association the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the reorganizing association as in effect immediately prior to the reorganization;

(2) Confer upon existing and future depositors of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company the same membership rights in the mutual holding company as were conferred upon depositors by the charter of the acquired association immediately prior to acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the depositors of the acquired association shall receive the same membership rights as the depositors of the association into which the acquired association is merged;

(3) Confer upon the borrowers of the resulting association who are borrowers at the time of reorganization the same membership rights in the mutual holding company as were conferred upon them by the charter of the reorganizing association immediately prior to reorganization, but shall not confer any membership rights in connection with any borrowings made after the reorganization; and

(4) Confer upon the borrowers of any acquiree association or any association that is in the mutual form when acquired by the mutual holding company who are borrowers at the time of the acquisition the same membership rights in the mutual holding company as were conferred upon them by the charter of the acquired association immediately prior to acquisition, but shall not confer any membership rights in connection with any borrowings

made after the acquisition, *provided that* if the acquired association is merged into another association from which the mutual holding company draws members, the borrowers of the acquired association shall instead receive the same grandfathered membership rights as the borrowers of the association into which the acquired association is merged received at the time that association became a subsidiary of the mutual holding company.

(b) *Depositors and borrowers of associations in the stock form when acquired.* A mutual holding company that acquires a savings association in the stock form, other than a resulting association or an acquiree association, shall not confer any membership rights upon the depositors and borrowers of such association, unless such association is merged into an association from which the mutual holding company draws members, in which case the depositors of the stock association shall receive the same membership rights as other depositors of the association into which the stock association is merged.

§ 239.6 Contents of Reorganization Plans.

Each Reorganization Plan shall contain a complete description of all significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the Reorganization Plan, and shall:

(a) Provide for amendment of the charter and bylaws of the reorganizing association to read in the form of the charter and bylaws of a mutual holding company, and attach and incorporate such charter and bylaws;

(b) Provide for the organization of the resulting association, which shall be an interim federal or state subsidiary savings association of the reorganizing association, and attach and incorporate the proposed charter and bylaws of such association;

(c) If the reorganizing association proposes to form a subsidiary holding company, provide for the organization of a subsidiary holding company and attach and incorporate the proposed charter and bylaws of such subsidiary holding company.

(d) Provide for amendment of the charter and bylaws of any acquiree association to read in the form of the charter and bylaws of a state or federal savings association in the stock form, and attach and incorporate such charter and bylaws;

(e) Provide that, upon consummation of the reorganization, substantially all of the assets and liabilities (including all savings accounts, demand accounts, tax and loan accounts, United States Treasury General Accounts, or United States Treasury Time Deposit Open Accounts, as those terms are defined in this part) of the reorganizing association shall be transferred to the resulting association, which shall thereupon become an operating subsidiary savings association of the mutual holding company;

(f) Provide that all assets, rights, obligations, and liabilities of whatever nature of the reorganizing association that are not expressly retained by the mutual holding company shall be deemed transferred to the resulting association;

(g) Provide that each depositor in the reorganizing association or any acquiree association immediately prior to the reorganization shall upon consummation of the reorganization receive, without payment, an identical account in the resulting association or the acquiree association, as the case may be (Appropriate modifications should be made to this provision if savings associations are being merged as a part of the reorganization);

(h) Provide that the Reorganization Plan as adopted by the boards of directors of the reorganizing association and any acquiree association may be substantively amended by those boards of directors as a result of comments from regulatory authorities or otherwise prior to the solicitation of proxies from the members of the reorganizing association and any acquiree association to vote on the Reorganization Plan and at any time thereafter with the concurrence of the Board; and that the reorganization may be terminated by the board of directors of the reorganizing association or any acquiree association at any time prior to the meeting of the members of the association called to consider the Reorganization Plan and at any time thereafter with the concurrence of the Board;

(i) Provide that the Reorganization Plan shall be terminated if not completed within a specified period of time (The time period shall not be more than 24 months from the date upon which the members of the reorganizing association or the date upon which the members of any acquiree association, whichever is earlier, approve the Reorganization Plan and may not be extended by the reorganizing or acquiree association); and

(j) Provide that the expenses incurred in connection with the reorganization shall be reasonable.

§ 239.7 Acquisition and disposition of savings associations, savings and loan holding companies, and other corporations by mutual holding companies.

(a) *Acquisitions*— (1) *Stock savings associations.* A mutual holding company may not acquire control of a savings association that is in the stock form unless the necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter.

(2) *Mutual savings associations.* A mutual holding company may not acquire a savings association in the mutual form by merger of such association into any subsidiary savings association of such holding company from which the parent mutual holding company draws members or into an interim subsidiary savings association of the mutual holding company, unless:

(i) The proposed acquisition is approved by a majority of the board of directors of the mutual association;

(ii) The proposed acquisition is submitted to the mutual association's members and is approved by a majority of the total votes of the association's members eligible to be cast at a meeting held at the call of the association's directors in accordance with the procedures prescribed by the association's charter and bylaws;

(iii) The necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter, and any other approvals required to form an interim association, to amend the charter and bylaws of the association being acquired, and/or to amend the charter and bylaws of the mutual holding company consistent with § 239.6(a); and

(iv) The approval of the members of the mutual holding company is obtained, if the Board advises the mutual holding company in writing that such approval will be required.

(3) *Mutual holding companies.* A mutual holding company that is not a subsidiary holding company may not acquire control of another mutual holding company, including a subsidiary holding company, by merging with or into such company, unless the necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter. The approval of the members of the mutual holding companies shall also be obtained if the Board advises the mutual holding companies in writing that such approval will be required.

(4) *Stock holding companies.* A mutual holding company may not acquire control of a savings and loan holding company in the stock form that is not a subsidiary holding company,

unless the necessary approvals are obtained from the Board, including approval pursuant to § 238.11 of this chapter. The acquired holding company may be held as a subsidiary of the mutual holding company or merged into the mutual holding company.

(5) *Non-controlling acquisitions of savings association stock.* A mutual holding company may acquire non-controlling amounts of the stock of savings associations and savings and loan holding companies subject to the restrictions imposed by 12 U.S.C. 1467a(e) and (q) and §§ 238.41 and 238.11 of this chapter.

(6) *Other corporations.* A mutual holding company may not acquire control of, or make non-controlling investments in the stock of, any corporation other than a savings association or savings and loan holding company unless:

(i)(A) Such corporation is engaged exclusively in activities that are permissible for mutual holding companies pursuant to § 239.8(a); or

(B) It is lawful for the stock of such corporation to be purchased by a federal savings association under the applicable regulations of the Comptroller of the Currency or by a state savings association under the applicable regulations of the Federal Deposit Insurance Corporation and the laws of any state where any subsidiary savings association of the mutual holding company has its home office; and

(ii) Such corporation is not controlled, directly or indirectly, by a subsidiary savings association of the mutual holding company.

(b) *Dispositions.* (1) A mutual holding company shall provide written notice to the appropriate Reserve Bank at least 30 days prior to the effective date of any direct or indirect transfer of any of the stock that it holds in a subsidiary holding company, a resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company, including stock transferred in connection with a pledge pursuant to § 239.8(b) or any transfer of all or a substantial portion of the assets or liabilities of any such subsidiary holding company or association. Any such disposition shall comply with the requirements of this part, as appropriate, and with any other applicable statute or regulation.

(2) A mutual holding company may, subject to applicable laws and regulations, transfer any or all of the stock or cause or permit the transfer of any or all of the assets and liabilities of:

(i) Any subsidiary savings association that was in the stock form when acquired, provided such association is not a resulting association or an acquiree association;

(ii) Any subsidiary holding company acquired pursuant to paragraph (a)(4) of this section; or

(iii) Any corporation other than a savings association or savings and loan holding company.

(3) A mutual holding company may, subject to applicable laws and regulations, transfer any stock acquired pursuant to paragraph (a)(5) of this section.

(4) No transfer authorized by this section may be made to any insider of the mutual holding company, any associate of an insider of the mutual holding company, or any tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company unless the mutual holding company provides notice to the appropriate Reserve Bank at least 30 days prior to the effective date of the proposed transfer. This notice shall be in addition to any other application or notice required under applicable laws or regulations, including those imposed by this part or Regulation LL.

§ 239.8 Operating restrictions.

(a) *Activities restrictions.* A mutual holding company may engage in any business activity specified in 12 U.S.C. 1467a(c)(2) or (c)(9)(A)(ii). In addition, the business activities of subsidiaries of mutual holding companies may include the activities specified in § 239.7(a)(6). A mutual holding company or its subsidiaries may engage in the foregoing activities only upon compliance with the procedures specified in §§ 238.53(c) or 238.54(b) of this chapter.

(b) *Pledging stock.* (1) No mutual holding company may pledge the stock of its resulting association, an acquiree association, or any subsidiary savings association that was in the mutual form when acquired by the mutual holding company (or its parent mutual holding company), unless the proceeds of the loan secured by the pledge are infused into the association whose stock is pledged. No mutual holding company may pledge the stock of its subsidiary holding company unless the proceeds of the loan secured by the pledge are infused into any subsidiary savings association of the subsidiary holding company that is a resulting association, an acquiree association, or a subsidiary savings association that was in the mutual form when acquired by the subsidiary holding company (or its parent mutual holding company). In the event the subsidiary holding company has more than one subsidiary savings association, the loan proceeds shall, unless otherwise approved by the Board, be infused in equal amounts to each subsidiary savings association. Any amount of the stock of such association or subsidiary holding company may be pledged for these purposes. Nothing in this paragraph shall be deemed to prohibit:

(i) The payment of dividends from a subsidiary savings association to its mutual holding company parent to the extent otherwise permissible; or

(ii) The payment of dividends from a subsidiary holding company to its mutual holding company parent to the extent otherwise permissible; or

(iii) A mutual holding company from pledging the stock of more than one subsidiary savings association provided that the stock pledged of each such subsidiary association is proportionate to the proceeds of the loan infused into each subsidiary association.

(2) Any mutual holding company that fails to make any payment on a loan secured by the pledge of stock pursuant to paragraph (b)(1) of this section on or before the date on which such payment is due shall, on the first day after such payment is due, provide written notice of nonpayment to the appropriate Reserve Bank.

(c) *Restrictions on stock repurchases.* (1) No subsidiary holding company that has any stockholders other than its parent mutual holding company may repurchase any share of stock within one year of its date of issuance (which may include the time period the shares issued by the savings association were outstanding if the subsidiary holding company was formed after the initial issuance by the savings association), unless the repurchase:

(i) Is in compliance with the requirements set forth in § 239.63;

(ii) Is part of a general repurchase made on a pro rata basis pursuant to an offer approved by the Board and made to all stockholders of the association or subsidiary holding company (except that the parent mutual holding company may be excluded from the repurchase with the Board's approval);

(iii) Is limited to the repurchase of qualifying shares of a director; or

(iv) Is purchased in the open market by a tax-qualified or non-tax-qualified employee stock benefit plan of the savings association (or of a subsidiary holding company) in an amount reasonable and appropriate to fund such plan.

(2) No mutual holding company may purchase shares of its subsidiary savings association or subsidiary holding company within one year after a stock

issuance, except if the purchase complies with § 239.63. For purposes of this section, the reference in § 239.63 to five percent refers to minority shareholders.

(d) *Restrictions on waiver of dividends.* (1) A mutual holding company may waive the right to receive any dividend declared by a subsidiary of the mutual holding company, if—

(i) No insider of the mutual holding company, associate of an insider, or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company holds any share of the stock in the class of stock to which the waiver would apply; or

(ii) The mutual holding company gives written notice to the Board of the intent of the mutual holding company to waive the right to receive dividends, not later than 30 days before the date of the proposed date of payment of the dividend, and the Board does not object to the waiver.

(2) A notice of a waiver under paragraph (d)(1)(ii) of this section shall include a copy of the resolution of the board of directors of the mutual holding company together with any supporting materials relied upon by the board of directors of the mutual holding company, concluding that the proposed dividend waiver is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company.

The resolution shall include:

(i) A description of the conflict of interest that exists because of a mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as waiver by the directors of their right to receive dividends;

(ii) A finding by the mutual holding company's board of directors that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;

(iii) If the mutual holding company has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the mutual holding company, or is subject to any other loan agreement, an affirmation that the mutual holding company is able to meet the terms of the loan agreement; and

(iv) An affirmation that a majority of the mutual members of the mutual holding company eligible to vote have, within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, approved a waiver of dividends by the mutual holding company, and any proxy statement used in connection with the member vote contained—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends;

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and

(C) A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given.

(3) The Board may not object to a waiver of dividends under paragraph (d)(1)(ii) of this section if:

(i) The waiver would not be detrimental to the safe and sound operation of the savings association;

(ii) The board of directors of the mutual holding company expressly determines that a waiver of the dividend by the mutual holding company is consistent with the fiduciary duties of the board of directors to the mutual members of the mutual holding company; and

(iii) The mutual holding company has, prior to December 1, 2009—

(A) Reorganized into a mutual holding company under section 10(o) of HOLA;

(B) Issued minority stock either from its mid-tier stock holding company or its subsidiary stock savings association; and

(C) Waived dividends it had a right to receive from the subsidiary stock savings association.

(4) For a mutual holding company that does not meet each of the conditions in paragraph (d)(3) of this section, the Board will not object to a waiver of dividends under paragraph (d)(1)(ii) of this section if—:

(i) The savings association currently operates in a manner consistent with the safe and sound operation of a savings association, and the waiver is not detrimental to the safe and sound operation of the savings association;

(ii) If the mutual holding company has pledged the stock of a subsidiary holding company or subsidiary savings association as collateral for a loan made to the mutual holding company, or is subject to any other loan agreement, an affirmation that the mutual holding company is able to meet the terms of the loan agreement;

(iii) Within the 12 months prior to the declaration date of the dividend by the subsidiary of the mutual holding company, a majority of the mutual members of the mutual holding company has approved the waiver of dividends by the mutual holding company. Any proxy statement used in connection with the member vote must contain—

(A) A detailed description of the proposed waiver of dividends by the mutual holding company and the reasons the board of directors requested the waiver of dividends;

(B) The disclosure of any mutual holding company director's ownership of stock in the subsidiary declaring dividends and any actions the mutual holding company and board of directors have taken to eliminate the conflict of interest, such as the directors waiving their right to receive dividends; and

(C) A provision providing that the proxy concerning the waiver of dividends given by the mutual members may be used for no more than 12 months from the date it is given;

(iv) The board of directors of the mutual holding company expressly determines that the waiver of dividends is consistent with the board of directors' fiduciary duties despite any conflict of interest;

(v)(A) A majority of the entire board of directors of the mutual holding company approves the waiver of dividends and any director with direct or indirect ownership, control, or the power to vote shares of the subsidiary declaring the dividend, or who otherwise directly or indirectly benefits through an associate from the waiver of dividends, has abstained from the board vote; or

(B) Each officer or director of the mutual holding company or its affiliates, associate of such officer or director, and any tax-qualified or non-tax-qualified employee stock benefit plan in which such officer or director participates that holds any share of the stock in the class of stock to which the waiver would apply waives the right to receive any dividend declared by a subsidiary of the mutual holding company;

(vi) The Board does not object to the amount of dividends declared by a subsidiary of the mutual holding company. In reviewing whether a declaration by a subsidiary of the mutual holding company is appropriate, the Board may consider, among other factors, the reasonableness of the entire dividend distribution declared if the waiver is not approved;

(vii) The waived dividends are excluded from the capital accounts of the subsidiary holding company or savings association, as applicable, for

purposes of calculating any future dividend payments;

(viii) The mutual holding company appropriately accounts for all waived dividends in a manner that permits the Board to consider the waived dividends in evaluating the proposed exchange ratio in the event of a full conversion of the mutual holding company to stock form; and

(ix) The mutual holding company complies with such other conditions as the Board may require to prevent conflicts of interest or actions detrimental to the safe and sound operation of the savings association.

(5) *Valuation.* (i) The Board will consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(ii) In the case of a savings association that has reorganized into a mutual holding company, has issued minority stock from a mid-tier stock holding company or a subsidiary stock savings association of the mutual holding company, and has waived dividends it had a right to receive from a subsidiary savings association before December 1, 2009, the Board shall not consider waived dividends in determining an appropriate exchange ratio in the event of a full conversion to stock form.

(e) *Restrictions on issuance of stock to insiders.* A subsidiary of a mutual holding company that is not a savings association or subsidiary holding company may issue stock to any insider, associate of an insider or tax-qualified or non-tax-qualified employee stock benefit plan of the mutual holding company or any subsidiary of the mutual holding company, provided that such persons or plans provide written notice to the appropriate Reserve Bank at least 30 days prior to the stock issuance, and the Reserve Bank or the Board does not object to the subsequent stock issuance. Subsidiary holding companies may issue stock to such persons only in accordance with § 239.24.

(f) *Applicability of rules governing savings and loan holding companies.* Except as expressly provided in this part, mutual holding companies shall be subject to the provisions of 12 U.S.C. 1467a and 3201 *et seq.* and the provisions of parts 207, 228, and 238 of this chapter.

(g) *Separate vote for charitable organization contribution.* In a mutual holding company stock issuance, a separate vote of a majority of the outstanding shares of common stock held by stockholders other than the mutual holding company or subsidiary holding company must approve any charitable organization contribution.

§ 239.9 Conversion or liquidation of mutual holding companies.

(a) *Conversion*—(1) *Generally.* A mutual holding company may convert to the stock form in accordance with the rules and regulations set forth in subpart E of this part.

(2) Exchange of subsidiary savings association or subsidiary holding company stock. Any stock issued by a subsidiary savings association, or by a subsidiary holding company pursuant to § 239.24, of a mutual holding company to persons other than the parent mutual holding company may be exchanged for the stock issued by the successor to parent mutual holding company in connection with the conversion of the parent mutual holding company to stock form. The parent mutual holding company and the subsidiary holding company must demonstrate to the satisfaction of the Board that the basis for the exchange is fair and reasonable.

(3) If a subsidiary holding company or subsidiary savings association has issued shares to an entity other than the mutual holding company, the conversion of the mutual holding company to stock form may not be consummated unless a majority of the shares issued to entities other than the mutual holding company vote in favor of the conversion. This requirement applies in addition to any otherwise required account holder or shareholder votes.

(b) *Involuntary liquidation.* (1) The Board may file a petition with the federal bankruptcy courts requesting the liquidation of a mutual holding company pursuant to 12 U.S.C. 1467a(o)(9) and title 11, United States Code, upon the occurrence of any of the following events:

(i) The default of the resulting association, any acquiree association, or any subsidiary savings association of the mutual holding company that was in the mutual form when acquired by the mutual holding company;

(ii) The default of the parent mutual holding company or its subsidiary holding company; or

(iii) Foreclosure on any pledge by the mutual holding company of subsidiary savings association stock or subsidiary holding company stock.

(2) Except as provided in paragraph (b)(3) of this section, the net proceeds of any liquidation of any mutual holding company shall be transferred to the members of the mutual holding company and, if applicable, the stock holders of the subsidiary holding company in accordance with the charter of the mutual holding company and, if applicable, the charter of the subsidiary holding company.

(3) If the FDIC incurs a loss as a result of the default of any subsidiary savings association of a mutual holding company and that mutual holding company is liquidated pursuant to paragraph (b)(1) of this section, the FDIC shall succeed to the membership interests of the depositors of such savings association in the mutual holding company to the extent of the FDIC's loss.

(c) *Voluntary liquidation.* The provisions of § 239.16 shall apply to mutual holding companies.

§ 239.10 Procedural requirements.

(a) *Proxies and proxy statements*—(1) *Solicitation of proxies.* The provisions of §§ 239.56 and 239.57(a) through (d) and (f) through (h) shall apply to all solicitations of proxies by any person in connection with any membership vote required by this part. Proxy materials must be in the form specified by the Board and contain the information specified in §§ 239.57(b) and 239.57(d), to the extent such information is relevant to the action that members are being asked to approve, with such additions, deletions, and other modifications as are required under this part, or as are necessary or appropriate under the disclosure standard set forth in § 239.57(f). File proxies and proxy statements in accordance with § 239.55(c) and address them to the appropriate Reserve Bank. For purposes of this paragraph, the term *conversion,* as it appears in the provisions of part subpart E of this part, refers to *the reorganization, the stock issuance,* or *other corporate action,* as appropriate.

(2) *Additional proxy disclosure requirements.* In addition to the requirements in paragraph (a) of this section, all proxies requesting accountholder approval of a mutual holding company reorganization shall address in detail:

(i) The reasons for the reorganization, including the relative advantages and disadvantages of undertaking the transaction proposed instead of a standard conversion;

(ii) Whether management believes the reorganization is in the best interests of the association and its accountholders and the basis of that belief;

(iii) The fiduciary duties owed to accountholders by the association's officers and directors and why the reorganization is in accord with those duties and is otherwise equitable to the accountholders and the association;

(iv) Any compensation agreements that will be entered into by management

in connection with the reorganization; and

(v) Whether the mutual holding company intends to waive dividends, the implications to accountholders, and the reasons such waivers are consistent with the fiduciary duties of the directors of the mutual holding company.

(3) *Nonconforming minority stock issuances.* Subsidiary holding companies proposing non-conforming minority stock issuances pursuant to § 239.24(c)(6)(ii) must include in the proxy materials to accountholders seeking approval of a proposed reorganization an additional disclosure statement that serves as a cover sheet that clearly addresses:

(i) The consequences to accountholders of voting to approve a reorganization in which their subscription rights are prioritized differently and potentially eliminated; and

(ii) Any intent by the mutual holding company to waive dividends, and the implications to accountholders.

(4) *Use of ''running'' proxies.* Unless otherwise prohibited, a mutual holding company may make use of any proxy conferring general authority to vote on any and all matters at any meeting of members, provided that the member granting such proxy has been furnished a proxy statement regarding the matters and the member does not grant a later-dated proxy to vote at the meeting at which the matter will be considered or attend such meeting and vote in person, and further provided that ''running'' proxies or similar proxies may not be used to vote for a mutual holding company reorganization, mutual-to-stock conversion undertaken by a mutual holding company, dividend waiver, or any other material transaction. Subject to the limitations set forth in this paragraph, any proxy conferring on the board of directors or officers of a mutual savings association general authority to cast a member's votes on any and all matters presented to the members shall be deemed to cover the member's votes as a member of the mutual holding company and such authority shall be conferred on the board of directors or officers of a mutual holding company.

(b) *Applications under this part.* Except as provided in paragraph (c) of this section, any application, notice or certification required to be filed with the Board under this part must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this part in accordance with § 238.14 of this chapter.

(c) *Reorganization Notices and stock issuance applications*—(1) *Contents.* Each Reorganization Notice submitted to the appropriate Reserve Bank pursuant to § 239.3(a) and each application for approval of the issuance of stock submitted to the appropriate Reserve Bank pursuant to § 239.24(a) shall be in the form and contain the information specified by the Board.

(2) *Filing instructions.* Any Reorganization Notice submitted under § 239.3(a) must be filed in accordance with § 238.14 of this chapter. Any stock issuance application submitted pursuant to § 239.24(a) shall be filed in accordance with § 239.55.

(3) *Public notice, public comment, and meetings.* Mutual holding company reorganizations are subject to applicable public notice, public comment, and meeting requirements under the Bank Merger Act regulations at § 238.11(e) of this chapter and the Savings and Loan Holding Company Act regulations at § 238.14 of this chapter.

(d) *Amendments.* Any mutual holding company may amend any notice or application submitted pursuant to this part or file additional information with respect thereto upon request of the Board or upon the mutual holding company's own initiative.

(e) *Time-frames.* All Reorganization Notices and applications filed pursuant to this part must be processed in accordance with the processing procedures at § 238.14 of this chapter. Any related approvals requested in connection with Reorganization Notices or applications for approval of stock issuances (including, without limitation, requests for approval to transfer assets to resulting associations, to acquire acquiree associations, and to organize resulting associations or interim associations, and requests for approval of charters, bylaws, and stock forms) shall be processed pursuant to the procedures specified in this section in conjunction with the Reorganization Notice or stock issuance application to which they pertain, rather than pursuant to any inconsistent procedures specified elsewhere in this chapter. The approval standards for all such related applications, however, shall remain unchanged. The review by the Board of any materials used in connection with the issuance of stock under § 239.24 must not be subject to the applications processing time-frames set forth in §§ 238.14(f) and (g) of this chapter.

(f) *Disclosure.* The rules governing disclosure of any notice or application submitted pursuant to this part, or any public comment submitted pursuant to paragraph (c) of this section, shall be the same as set forth in § 238.14(b) of this chapter for notices, applications, and public comments filed under § 238.14 of this chapter.

(g) *Appeals.* Any party aggrieved by a final action by the Board which approves or disapproves any application or notice pursuant to this part may obtain review of such action in accordance with 12 U.S.C. 1467a(j).

(h) *Federal preemption.* This part preempts state law with regard to the creation and regulation of mutual holding companies.

§ 239.11 Subsidiary holding companies.

(a) *Subsidiary holding companies.* A mutual holding company may establish a subsidiary holding company as a direct subsidiary to hold 100 percent of the stock of its subsidiary savings association. The formation and operation of the subsidiary holding company may not be utilized as a means to evade or frustrate the purposes of this part. The subsidiary holding company may be established either at the time of the initial mutual holding company reorganization or at a subsequent date, subject to the approval of the Board.

(b) *Stock issuances.* §§ 239.24 and 239.25 apply to issuance of stock by a subsidiary holding company. In the case of a stock issuance by a subsidiary holding company, the aggregate amount of outstanding common stock of the association owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50 percent of the subsidiary holding company's total outstanding common stock.

(c) *Charters and bylaws for subsidiary holding companies.* The charter and bylaws of a subsidiary holding company shall be in the form set forth in Appendices B and D, respectively.

§ 239.12 Communication between members of a mutual holding company.

(a) *Right of communication with other members.* A member of a mutual holding company has the right to communicate, as prescribed in paragraph (b) of this section, with other members of the mutual holding company regarding any matter related to the mutual holding company's affairs, except for ''improper'' communications, as defined in paragraph (c) of this section. The mutual holding company may not defeat that right by redeeming a savings member's savings account in the subsidiary savings association.

(b) *Member communication procedures.* If a member of a mutual holding company desires to

communicate with other members, the following procedures shall be followed:

(1) The member shall give the mutual holding company a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the mutual holding company's members, the request shall be given at least thirty days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the mutual holding company at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The mutual holding company shall reply to the request within either—

(i) Fourteen days;

(ii) Ten days, if the communication is in connection with the annual meeting; or

(iii) Three days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the mutual holding company's members and the estimated reasonable cost to the mutual holding company of mailing to them the proposed communication; or

(ii) Notification that the mutual holding company has determined not to mail the communication because it is ''improper'', as defined in paragraph (c) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the mutual holding company shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within fourteen days;

(ii) Within seven days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member;

(7) If the mutual holding company refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the appropriate Reserve Bank a copy of each of the requesting member's materials, the mutual holding company's written statement, and any other relevant material. The materials shall be sent within:

(i) Fourteen days,

(ii) Ten days if the communication is in connection with the annual meeting, or

(iii) Three days, if the communication is in connection with a special meeting, after the mutual holding company receives the request for communication.

(c) *Improper communication.* A communication is an ''improper communication'' if it contains material which:

(1) At the time and in the light of the circumstances under which it is made:

(i) Is false or misleading with respect to any material fact; or

(ii) Omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading;

(2) Relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party;

(3) Relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the mutual holding company or is not within the control of the mutual holding company; or

(4) Directly or indirectly and without expressed factual foundation:

(i) Impugns character, integrity, or personal reputation,

(ii) Makes charges concerning improper, illegal, or immoral conduct, or

(iii) Makes statements impugning the stability and soundness of the mutual holding company.

§ 239.13 Charters.

(a) *Charters.* The charter of a mutual holding company shall be in the form set forth in Appendix A of this part and may be amended pursuant to this paragraph. The Board may amend the form of charter set forth in Appendix A to this part.

(b) *Corporate title.* The corporate title of each mutual holding company shall include the term ''mutual'' or the abbreviation ''M.H.C.''

(c) *Availability of charter.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its charter, including any amendments, and shall deliver such a copy to any member upon request.

§ 239.14 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a mutual holding company must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the mutual holding company must adopt a resolution proposing the charter amendment that states the text of such amendment;

(2) *Form of filing*—

(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the mutual holding company, or the removal of incumbent management; or involve a significant issue of law or policy; then, the mutual holding shall submit the charter amendment to the appropriate Reserve Bank for approval. Applications submitted under this paragraph are subject to the processing procedures at § 238.14 of this chapter.

(ii) *Notice requirement.* If the proposed charter amendment does not implicate paragraph (a)(2)(i) of this section and is permissible under all applicable laws, rules and regulations, the mutual holding company shall submit the proposed amendment to the appropriate Reserve Bank at least 30 days prior to the effective date of the proposed charter amendment.

(b) *Approval*—Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment with the appropriate Reserve Bank, provided that the mutual holding company follows the requirements of its charter in adopting such amendment, unless the Reserve Bank or the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. Notwithstanding anything in paragraph (a) of this section to the contrary, the following charter amendments, including the adoption of the Federal mutual holding company charter as set forth in Appendix A, shall be effective and deemed approved at the time of adoption, if adopted without change and filed with Board, within 30 days after adoption, provided the mutual holding company follows the requirements of its charter in adopting such amendments.

(1) *Title change.* (i) Subject to § 239.13 and this paragraph (b), a mutual holding company may amend its charter by substituting a new corporate title in section 1 of its charter.

(ii) Prior to changing its corporate title, a mutual holding company must file with the Board a written notice indicating the intended change. The Board shall provide to the mutual holding company a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Board does not notify the mutual holding company of its objection to the corporate title change on the grounds that the title misrepresents the nature of the institution or the services it offers, the mutual holding company may change its title by amending its charter in accordance with § 239.14(b) or § 239.22 and the amendment provisions of its charter.

(2) *Maximum number of votes.* A mutual holding company may amend section 5 of its charter by substituting the maximum number of votes per member to any number from 1 to 1000.

(c) *Reissuance of charter.* A mutual holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such request for reissuance should be filed with the appropriate Reserve Bank.

§ 239.15 Bylaws.

(a) *General.* A mutual holding company shall operate under bylaws that contain provisions that comply with all requirements specified by the Board, the provisions of this section, the mutual holding company's charter, and all other applicable laws, rules, and regulations *provided that,* a bylaw provision inconsistent with the provisions of this section may be adopted with the approval of the Board. Bylaws may be adopted, amended or repealed by a majority of the votes cast by the members at a legal meeting or a majority of the mutual holding company's board of directors. Throughout this section, the term ''trustee'' may be substituted for the term ''director'' as relevant.

(b) The following requirements are applicable to mutual holding companies:

(1) *Annual meetings of members.* A mutual holding company shall provide for and conduct an annual meeting of its members for the election of directors and at which any other business of the mutual holding company may be conducted. Such meeting shall be held, as designated by its board of directors, at a location within the state that constitutes the principal place of business of the subsidiary savings association, or at any other convenient place the board of directors may designate, and at a date and time within 150 days after the end of the mutual holding company's fiscal year. At each annual meeting, the officers shall make a full report of the financial condition of the mutual holding company and of its progress for the preceding year and shall outline a program for the succeeding year.

(2) *Special meetings of members.* Procedures for calling any special meeting of the members and for conducting such a meeting shall be set forth in the bylaws. The subject matter of such special meeting must be established in the notice for such meeting. The board of directors of the mutual holding company or the holders of 10 percent or more of the voting capital shall be entitled to call a special meeting. For purposes of this section, ''voting capital'' means FDIC-insured deposits as of the voting record date.

(3) *Notice of meeting of members.* Notice specifying the date, time, and place of the annual or any special meeting and adequately describing any business to be conducted shall be published for two successive weeks immediately prior to the week in which such meeting shall convene in a newspaper of general circulation in the city or county in which the principal place of business of the subsidiary savings association is located, or mailed postage prepaid at least 15 days and not more than 45 days prior to the date on which such meeting shall convene to each of its members of record at the last address appearing on the books of the mutual holding company. A similar notice shall be posted in a conspicuous place in each of the offices of the subsidiary savings association during the 14 days immediately preceding the date on which such meeting shall convene. The bylaws may permit a member to waive in writing any right to receive personal delivery of the notice. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

(4) *Fixing of record date.* For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the bylaws shall provide for the fixing of a record date and a method for determining from the books of the subsidiary savings association the members entitled to vote. Such date shall be not more than 60 days or fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The same determination shall apply to any adjourned meeting.

(5) *Member quorum.* Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. At any adjourned meeting, any business may be transacted that might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

(6) *Voting by proxy.* Procedures shall be established for voting at any annual or special meeting of the members by proxy pursuant to the rules and regulations of the Board, including the placing of such proxies on file with the secretary of the mutual holding company, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the subsidiary savings association must run to the board of directors as a whole, or to a committee appointed by a majority of such board.

(7) *Communications between members.* Provisions relating to communications between members shall be consistent with § 239.12. No member, however, shall have the right to inspect or copy any portion of any books or records of a mutual holding company containing:

(i) A list of depositors in or borrowers from the subsidiary savings association;

(ii) Their addresses;

(iii) Individual deposit or loan balances or records; or

(iv) Any data from which such information could be reasonably constructed.

(8) *Number of directors, membership.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Board. Each director of the mutual holding company shall be a member of the mutual holding company. Directors may be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate.

(9) *Meetings of the board.* The board of directors shall determine the place, frequency, time, procedure for notice, which shall be at least 24 hours unless waived by the directors, and waiver of notice for all regular and special meetings. The meetings shall be under the direction of a chairman, appointed annually by the board; or in the absence of the chairman, the meetings shall be under the direction of the president. The board also may permit telephonic participation at meetings. The bylaws may provide for action to be taken without a meeting if unanimous written consent is obtained for such action. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board.

(10) *Officers, employees, and agents.* (i) The bylaws shall contain provisions regarding the officers of the mutual holding company, their functions, duties, and powers. The officers of the mutual holding company shall consist of a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected annually by the board of directors. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed in the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(ii) All officers and agents of the mutual holding company, as between themselves and the mutual holding company, shall have such authority and perform such duties in the management of the mutual holding company as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws. In the absence of any such provision, officers shall have such powers and duties as generally pertain to their respective offices. Any officer may be removed by the board of directors with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the officer so removed.

(iii) Any indemnification provision must provide that any indemnification is subject to applicable Federal law, rules, and regulations.

(11) *Vacancies, resignation or removal of directors.* Members of the mutual holding company shall elect directors by ballot: Provided, that in the event of a vacancy on the board, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. The bylaws shall set out the procedure for the resignation of a director, which shall be by written notice or by any other procedure established in the bylaws. Directors may be removed only for cause as defined in § 239.41, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

(12) *Powers of the board.* The board of directors shall have the power:

(i) By resolution, to appoint from among its members and remove an executive committee and one or more other committees, which committee[s] shall have and may exercise all the powers of the board between the meetings or the board; but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the mutual holding company. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law;

(ii) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause;

(iii) To exercise any and all of the powers of the mutual holding company not expressly reserved by the charter to the members.

(13) *Nominations for directors.* The bylaws shall provide that nominations for directors may be made at the annual meeting by any member and shall be voted upon, except, however, the bylaws may require that nominations by a member must be submitted to the secretary and then prominently posted in the principal place of business, at least 10 days prior to the date of the annual meeting. However, if such provision is made for prior submission of nominations by a member, then the bylaws must provide for a nominating committee, which, except in the case of a nominee substituted as a result of death or other incapacity, must submit nominations to the secretary and have such nominations similarly posted at least 15 days prior to the date of the annual meeting.

(14) *New business.* The bylaws shall provide procedures for the introduction of new business at the annual meeting. Those provisions may require that such new business be stated in writing and filed with the secretary prior to the annual meeting at least 30 days prior to the date of the annual meeting.

(15) *Amendment.* Bylaws may include any provision for their amendment that would be consistent with applicable law, rules, and regulations and adequately addresses its subject and purpose.

(i) Amendments shall be effective:

(A) After approval by a majority vote of the authorized board, or by a majority of the vote cast by the members of the mutual holding company at a legal meeting; and

(B) After receipt of any applicable regulatory approval.

(ii) When a mutual holding company fails to meet its quorum requirement, solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

(16) *Miscellaneous.* The bylaws may also address the subject of age limitations for directors or officers as long as they are consistent with applicable Federal law, rules or regulations, and any other subjects necessary or appropriate for effective operation of the mutual holding company.

(c) *Form of filing*—(1) *Application requirement.* (i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

(A) Render more difficult or discourage a merger, proxy contest, the assumption of control by a mutual account holder of the mutual holding company, or the removal of incumbent management;

(B) Involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability; or

(C) Be inconsistent with the requirements of this section or with applicable laws, rules, regulations, or the mutual holding company's charter.

(ii) Applications submitted under paragraph (c)(1)(i) of this section are subject to the processing procedures at § 238.14 of this chapter.

(iii) For purposes of this paragraph (c), bylaw provisions that adopt the language of the model bylaws contained in Appendix C to this part, if adopted without change, and filed with Board within 30 days after adoption, are effective upon adoption. The Board may amend the model bylaws provided in Appendix C to this part.

(2) *Filing requirement.* If the proposed bylaw amendment does not implicate paragraph (c)(1) or (c)(3) of this section, then the mutual holding company shall submit the amendment to the appropriate Reserve Bank at least 30 days prior to the date the bylaw

amendment is to be adopted by the mutual holding company.

(3) *Corporate governance procedures.* A mutual holding company may elect to follow the corporate governance procedures of the laws of the state where the main office of the institution is located, provided that such procedures may be elected only to the extent not inconsistent with applicable Federal statutes, regulations, and safety and soundness, and such procedures are not of the type described in paragraph (c)(1)(i) of this section. If this election is selected, a mutual holding company shall designate in its bylaws the provision or provisions from the body of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions do not require an application under paragraph (c)(1)(i) of this section.

(d) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (c)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the mutual holding company follows the requirements of its charter and bylaws in adopting such amendment, unless the Board notifies the mutual holding company prior to the expiration of the 30-day period that such amendment is rejected or that such amendment requires an application to be filed pursuant to paragraph (c)(1) of this section.

(e) *Availability of bylaws.* A mutual holding company shall make available to its members at all times in the offices of each subsidiary savings association from which the mutual holding company draws members a true copy of its bylaws, including any amendments, and shall deliver such a copy to any member upon request.

§ 239.16 Voluntary dissolution.

(a) A mutual holding company's board of directors may propose a plan for dissolution of the mutual holding company. All references in this section to mutual holding company shall also apply to a subsidiary holding company organized under this part. The plan may provide for either:

(1) Transfer of all the mutual holding company's assets to another mutual holding company or home-financing institutions under Federal charter either for cash sufficient to pay all obligations of the mutual holding company and retire all outstanding accounts or in exchange for that mutual holding company's payment of all the mutual holding company's outstanding obligations and issuance of share accounts or other evidence of interest to the mutual holding company's members on a *pro rata* basis; or

(2) Dissolution in a manner proposed by the directors which they consider best for all concerned.

(b) The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the appropriate Reserve Bank for approval. The Board will approve the plan if the Board believes dissolution is advisable and the plan is best for all concerned. If the Board considers the plan inadvisable, the Board may either make recommendations to the mutual holding company concerning the plan or disapprove it. When the plan is approved by the mutual holding company's board of directors and by the Board, it shall be submitted to the mutual holding company's members at a duly called meeting and, when approved by a majority of votes cast at that meeting, shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to the Board, it will terminate the corporate existence of the dissolved mutual holding company and the mutual holding company's charter shall thereby be canceled.

Subpart C—Subsidiary Holding Companies

§ 239.20 Scope.

This subpart applies only to a subsidiary holding company of a mutual holding company.

§ 239.21 Charters.

(a) *Charters.* The charter of a subsidiary holding company of a mutual holding company shall be in the form set forth in Appendix B of this part and may be amended pursuant to § 239.22. The Board may amend the form of charter provided in Appendix B.

(b) *Optional charter provision limiting minority stock ownership.*

(1) A subsidiary holding company that engages in its initial minority stock issuance after October 1, 2008 may, before it conducts its initial minority stock issuance, at the time it conducts its initial minority stock issuance, or, subject to the condition below, at any time during the five years following a minority stock issuance that such subsidiary holding company conducts in accordance with the purchase priorities set forth in subpart E of this part, include in its charter the provision set forth in paragraph (b)(2) of this section. For purposes of the charter provision set forth in paragraph (b)(2), the definitions set forth at § 239.22(b)(8) apply. This charter provision expires a maximum of five years from the date of the minority stock issuance. The subsidiary holding company may adopt the charter provision set forth in paragraph (b)(2) of this section after a minority stock issuance only if it provided, in the offering materials related to its previous minority stock issuance or issuances, full disclosure of the possibility that the subsidiary holding company might adopt such a charter provision.

(2) *Beneficial ownership limitation.* No person may directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of the outstanding stock of any class of voting stock of the subsidiary holding company held by persons other than the subsidiary holding company's mutual holding company parent. This limitation expires on [insert date within five years of minority stock issuance] and does not apply to a transaction in which an underwriter purchases stock in connection with a public offering, or the purchase of stock by an employee stock ownership plan or other tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 238.12(a)(7) of this chapter.

(c) In the event a person acquires stock in violation of this section, all stock beneficially owned in excess of 10 percent shall be considered ''excess stock'' and shall not be counted as stock entitled to vote and shall not be voted by any person or counted as voting stock in connection with any matters submitted to the stockholders for a vote.

§ 239.22 Charter amendments.

(a) *General.* In order to adopt a charter amendment, a subsidiary holding company must comply with the following requirements:

(1) *Board of directors approval.* The board of directors of the subsidiary holding company must adopt a resolution proposing the charter amendment that states the text of such amendment.

(2) *Form of filing.*

(i) *Application requirement.* If the proposed charter amendment would render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a block of the subsidiary holding company's stock, the removal of incumbent management, or involve a

significant issue of law or policy, the subsidiary holding company shall file the proposed amendment with and shall obtain the prior approval of the Board pursuant to § 238.14 of this chapter; and

(ii) *Notice requirement.* If the proposed charter amendment does not implicate paragraph (a)(2)(i) of this section and such amendment is permissible under all applicable laws, rules or regulations, the subsidiary holding company shall submit the proposed amendments to the appropriate Reserve Bank, at least 30 days prior to the date the proposed charter amendment is to be mailed for consideration by the subsidiary holding company's shareholders.

(b) *Approval.* Any charter amendment filed pursuant to paragraph (a)(2)(ii) of this section shall automatically be approved 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter in adopting such amendment, unless the Board notifies the mutual holding company prior to the expiration of such 30-day period that such amendment is rejected or is deemed to be filed under the provisions of paragraph (a)(2)(i) of this section. In addition, the following charter amendments, including the adoption of the charter as set forth in Appendix B of this part, shall be approved at the time of adoption, if adopted without change and filed with the Board within 30 days after adoption, provided the subsidiary holding company follows the requirements of its charter in adopting such amendments.

(1) *Title change.* Prior to changing its corporate title, a subsidiary holding company must file with the appropriate Reserve Bank a written notice indicating the intended change. The Reserve Bank shall provide to the subsidiary holding company a timely written acknowledgment stating when the notice was received. If, within 30 days of receipt of notice, the Reserve Bank or the Board does not notify the subsidiary holding company of its objection on the grounds that the title misrepresents the nature of the institution or the services it offers, the subsidiary holding company may change its title by amending section 1 of its charter in accordance with this section and the amendment provisions of its charter.

(2) *Home office.* A subsidiary holding company may amend its charter by substituting a new domicile in section 2 of its charter.

(3) *Number of shares of stock and par value.* A subsidiary holding company may amend Section 5 of its charter to change the number of authorized shares of stock, the number of shares within each class of stock, and the par or stated value of such shares.

(4) *Capital stock.* A subsidiary holding company may amend its charter by revising Section 5 to read as follows:

Section 5. Capital stock. The total number of shares of all classes of capital stock that the subsidiary holding company has the authority to issue is ___, of which ___ shall be common stock of par [or if no par value is specified the stated] value of ___ per share and of which [list the number of each class of preferred and the par or if no par value is specified the stated value per share of each such class]. The shares may be issued from time to time as authorized by the board of directors without further approval of shareholders, except as otherwise provided in this Section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted), labor, or services actually performed for the subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons of the association or subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless their issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

Nothing contained in this Section 5 (or in any supplementary sections hereto) shall entitle the holders of any class of a series of capital stock to vote as a separate class or series or to more than one vote per share, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting: *Provided,* That this restriction on voting separately by class or series shall not apply:

(i) To any provision which would authorize the holders of preferred stock, voting as a class or series, to elect some members of the board of directors, less than a majority thereof, in the event of default in the payment of dividends on any class or series of preferred stock;

(ii) To any provision that would require the holders of preferred stock, voting as a class or series, to approve the merger or consolidation of the subsidiary holding company with another corporation or the sale, lease, or conveyance (other than by mortgage or pledge) of properties or business in exchange for securities of a corporation other than the subsidiary holding company if the preferred stock is exchanged for securities of such other corporation: *Provided,* That no provision may require such approval for transactions undertaken with the assistance or pursuant to the direction of the Board or the Federal Deposit Insurance Corporation;

(iii) To any amendment which would adversely change the specific terms of any class or series of capital stock as set forth in this Section 5 (or in any supplementary sections hereto), including any amendment which would create or enlarge any class or series ranking prior thereto in rights and preferences. An amendment which increases the number of authorized shares of any class or series of capital stock, or substitutes the surviving subsidiary holding company in a merger or consolidation for the subsidiary holding company, shall not be considered to be such an adverse change.

A description of the different classes and series (if any) of the subsidiary holding company's capital stock and a statement of the designations, and the relative rights, preferences, and limitations of the shares of each class of and series (if any) of capital stock are as follows:

A. *Common stock.* Except as provided in this Section 5 (or in any supplementary sections thereto) the holders of the common stock shall exclusively possess all voting power. Each holder of shares of the common stock shall be entitled to one vote for each share held by each holder, except as to the cumulation of votes for the election of directors, unless the charter otherwise provides that there shall be no such cumulative voting.

Whenever there shall have been paid, or declared and set aside for payment, to the holders of the outstanding shares of any class of stock having preference over the common stock as to the payment of dividends, the full amount of dividends and of sinking fund, retirement fund, or other retirement payments, if any, to which such holders are respectively entitled in preference to the common stock, then dividends may be paid on the common stock and on any class or series of stock entitled to participate therewith as to dividends out of any assets legally available for the payment of dividends.

In the event of any liquidation, dissolution, or winding up of the subsidiary holding company, the holders of the common stock (and the holders of any class or series of stock entitled to participate with the common stock in the distribution of assets) shall be entitled to receive, in cash or in kind, the assets of the subsidiary holding company available for distribution remaining after: (i)

Payment or provision for payment of the subsidiary holding company's debts and liabilities; (ii) distributions or provision for distributions in settlement of its liquidation account; and (iii) distributions or provision for distributions to holders of any class or series of stock having preference over the common stock in the liquidation, dissolution, or winding up of the subsidiary holding company. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

B. *Preferred stock.* The subsidiary holding company may provide in supplementary sections to its charter for one or more classes of preferred stock, which shall be separately identified. The shares of any class may be divided into and issued in series, with each series separately designated so as to distinguish the shares thereof from the shares of all other series and classes. The terms of each series shall be set forth in a supplementary section to the charter. All shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

(a) The distinctive serial designation and the number of shares constituting such series;

(b) The dividend rate or the amount of dividends to be paid on the shares of such series, whether dividends shall be cumulative and, if so, from which date(s), the payment date(s) for dividends, and the participating or other special rights, if any, with respect to dividends;

(c) The voting powers, full or limited, if any, of shares of such series;

(d) Whether the shares of such series shall be redeemable and, if so, the price(s) at which, and the terms and conditions on which, such shares may be redeemed;

(e) The amount(s) payable upon the shares of such series in the event of voluntary or involuntary liquidation, dissolution, or winding up of the subsidiary holding company;

(f) Whether the shares of such series shall be entitled to the benefit of a sinking or retirement fund to be applied to the purchase or redemption of such shares, and if so entitled, the amount of such fund and the manner of its application, including the price(s) at which such shares may be redeemed or purchased through the application of such fund;

(g) Whether the shares of such series shall be convertible into, or exchangeable for, shares of any other class or classes of stock of the subsidiary holding company and, if so, the conversion price(s) or the rate(s) of exchange, and the adjustments thereof, if any, at which such conversion or exchange may be made, and any other terms and conditions of such conversion or exchange.

(h) The price or other consideration for which the shares of such series shall be issued; and

(i) Whether the shares of such series which are redeemed or converted shall have the status of authorized but unissued shares of serial preferred stock and whether such shares may be reissued as shares of the same or any other series of serial preferred stock.

Each share of each series of serial preferred stock shall have the same relative rights as and be identical in all respects with all the other shares of the same series.

The board of directors shall have authority to divide, by the adoption of supplementary charter sections, any authorized class of preferred stock into series, and, within the limitations set forth in this section and the remainder of this charter, fix and determine the relative rights and preferences of the shares of any series so established.

Prior to the issuance of any preferred shares of a series established by a supplementary charter section adopted by the board of directors, the subsidiary holding company shall file with the appropriate Reserve Bank a dated copy of that supplementary section of this charter established and designating the series and fixing and determining the relative rights and preferences thereof.

(5) *Limitations on subsequent issuances.* A subsidiary holding company may amend its charter to require shareholder approval of the issuance or reservation of common stock or securities convertible into common stock under circumstances which would require shareholder approval under the rules of the New York or American Stock Exchange if the shares were then listed on the New York or American Stock Exchange.

(6) *Cumulative voting.* A subsidiary holding company may amend its charter by substituting the following sentence for the second sentence in the third paragraph of Section 5: ''Each holder of shares of common stock shall be entitled to one vote for each share held by such holder and there shall be no right to cumulate votes in an election of directors.''

(7) [Reserved]

(8) *Anti-takeover provisions following mutual to stock conversion.* Notwithstanding the law of the state in which the subsidiary holding company is located, a subsidiary holding company may amend its charter by renumbering existing sections as appropriate and adding a new section 8 as follows:

Section 8. Certain Provisions Applicable for Five Years. Notwithstanding anything contained in the subsidiary holding company's charter or bylaws to the contrary, for a period of [specify number of years up to five] years from the date of completion of the conversion of the subsidiary holding company from mutual to stock form, the following provisions shall apply:

A. *Beneficial Ownership Limitation.* No person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than 10 percent of any class of an equity security of the subsidiary holding company. This limitation shall not apply to a transaction in which the subsidiary holding company forms a holding company without change in the respective beneficial ownership interests of its stockholders other than pursuant to the exercise of any dissenter and appraisal rights, the purchase of shares by underwriters in connection with a public offering, or the purchase of shares by a tax-qualified employee stock benefit plan which is exempt from the approval requirements under § 238.12(a) of this chapter.

In the event shares are acquired in violation of this section 8, all shares beneficially owned by any person in excess of 10 percent shall be considered ''excess shares'' and shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matters submitted to the stockholders for a vote.

For purposes of this section 8, the following definitions apply:

(1) The term ''person'' includes an individual, a group acting in concert, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization or similar company, a syndicate or any other group formed for the purpose of acquiring, holding or disposing of the equity securities of the subsidiary holding company.

(2) The term ''offer'' includes every offer to buy or otherwise acquire, solicitation of an offer to sell, tender offer for, or request or invitation for tenders of, a security or interest in a security for value.

(3) The term ''acquire'' includes every type of acquisition, whether effected by purchase, exchange, operation of law or otherwise.

(4) The term ''acting in concert'' means (a) knowing participation in a joint activity or conscious parallel action towards a common goal whether or not pursuant to an express agreement, or (b) a combination or pooling of voting or other interests in the securities of an issuer for a common purpose pursuant to any contract, understanding, relationship, agreement or other arrangements, whether written or otherwise.

B. *Cumulative Voting Limitation.* Stockholders shall not be permitted to cumulate their votes for election of directors.

C. *Call for Special Meetings.* Special meetings of stockholders relating to changes in control of the subsidiary holding company or amendments to its charter shall be called only upon direction of the board of directors.

(c) *Anti-takeover provisions.* The Board may grant approval to a charter amendment not listed in paragraph (b) of this section regarding the acquisition by any person or persons of its equity securities provided that the subsidiary holding company shall file as part of its application for approval an opinion, acceptable to the Board, of counsel independent from the subsidiary holding company that the proposed charter provision would be permitted to be adopted by a corporation chartered by the state in which the principal office of the subsidiary holding company is located. Any such provision must be consistent with applicable statutes, regulations, and Board policies. Further, any such provision that would have the effect of rendering more difficult a change in control of the subsidiary

holding company and would require for any corporate action (other than the removal of directors) the affirmative vote of a larger percentage of shareholders than is required by this part, shall not be effective unless adopted by a percentage of shareholder vote at least equal to the highest percentage that would be required to take any action under such provision.

(d) *Reissuance of charter.* A subsidiary holding company that has amended its charter may apply to have its charter, including the amendments, reissued by the Board. Such requests for reissuance should be filed with the appropriate Reserve Bank, and contain signatures required by the charter in Appendix B to this part, together with such supporting documents as needed to demonstrate that the amendments were properly adopted.

§ 239.23 Bylaws.

(a) *General.* At its first organizational meeting, the board of directors of a subsidiary holding company shall adopt a set of bylaws for the administration and regulation of its affairs. Bylaws may be adopted, amended or repealed by either a majority of the votes cast by the shareholders at a legal meeting or a majority of the board of directors. The bylaws shall contain sufficient provisions to govern the subsidiary holding company in accordance with the requirements of §§ 239.26, 239.27, 239.28, and 239.29 and shall not contain any provision that is inconsistent with those sections or with applicable laws, rules, regulations or the subsidiary holding company's charter, except that a bylaw provision inconsistent with §§ 239.26, 239.27, 239.28, and 239.29 may be adopted with the approval of the Board.

(b) *Form of filing* —(1) *Application requirement.*

(i) Any bylaw amendment shall be submitted to the appropriate Reserve Bank for approval if it would:

(A) Render more difficult or discourage a merger, tender offer, or proxy contest, the assumption of control by a holder of a large block of the subsidiary holding company's stock, or the removal of incumbent management; or

(B) Be inconsistent with §§ 239.26, 239.27, 239.28, and 239.29, with applicable laws, rules, regulations or the subsidiary holding company's charter or involve a significant issue of law or policy, including indemnification, conflicts of interest, and limitations on director or officer liability.

(ii) Applications submitted under paragraph (b)(1)(i) of this section are subject to the processing procedures under § 238.14 of this chapter;

(iii) For purposes of this paragraph (b), bylaw provisions that adopt the language of the model bylaws contained in Appendix D to this part, if adopted without change and filed with Board within 30 days after adoption, are effective upon adoption. The Board may amend the model bylaws provided in Appendix D.

(2) *Filing requirement.* If the proposed bylaw amendment does not implicate paragraph (b)(1) or (b)(3) of this section and is permissible under all applicable laws, rules, or regulations, the subsidiary holding company shall submit the amendment to the appropriate Reserve Bank at least 30 days prior to the date the bylaw amendment is to be adopted by the subsidiary holding company.

(3) *Corporate governance procedures.* A subsidiary holding company may elect to follow the corporate governance procedures of: The laws of the state where the main office of the subsidiary holding company is located; Delaware General Corporation law; or The Model Business Corporation Act, provided that such procedures may be elected to the extent not inconsistent with applicable Federal statutes and regulations and safety and soundness, and such procedures are not of the type described in paragraph (b)(1)(i) of this section. If this election is selected, a subsidiary holding company shall designate in its bylaws the provision or provisions from the body or bodies of law selected for its corporate governance procedures, and shall file a copy of such bylaws, which are effective upon adoption, within 30 days after adoption. The submission shall indicate, where not obvious, why the bylaw provisions do not require an application under paragraph (b)(1)(i) of this section.

(c) *Effectiveness.* Any bylaw amendment filed pursuant to paragraph (b)(2) of this section shall automatically be effective 30 days from the date of filing of such amendment, provided that the subsidiary holding company follows the requirements of its charter and bylaws in adopting such amendment, unless the Board notifies the subsidiary holding company prior to the expiration of such 30-day period that such amendment is rejected or requires an application to be filed pursuant to paragraph (b)(1) of this section.

(d) *Effect of subsequent charter or bylaw change.* Notwithstanding any subsequent change to its charter or bylaws, the authority of a subsidiary holding company to engage in any transaction shall be determined only by the subsidiary holding company's charter or bylaws then in effect, unless otherwise provided by Federal law or regulation.

§ 239.24 Issuances of stock by subsidiary holding companies of mutual holding companies.

(a) *Requirements.* No subsidiary holding company of a mutual holding company may issue stock to persons other than its mutual holding company parent in connection with a mutual holding company reorganization, or at any time subsequent to the subsidiary holding company's acquisition by the mutual holding company, unless the subsidiary holding company obtains advance approval of each such issuance from the Board. Approval of a mutual holding company reorganization filed pursuant to § 239.3(a) shall be deemed to constitute approval of any stock issuance specifically applied for pursuant to this section in connection with the reorganization, unless otherwise specified by the Board. The Board shall approve any proposed issuance that meets each of the criteria set forth below in paragraphs (a)(1) through (a)(7) of this section.

(1) The proposed issuance is to be made pursuant to a Stock Issuance Plan that contains all the provisions required by § 239.25.

(2) The Stock Issuance Plan is consistent with the terms of the subsidiary holding company's charter (or any proposed amendments thereto), including terms governing the type and amount of stock that may be issued.

(3) The Stock Issuance Plan would provide the subsidiary holding company, its mutual holding company parent, and any subsidiary savings associations of the subsidiary holding company with fully sufficient capital and would not be inequitable or detrimental to the subsidiary holding company or its mutual holding company parent or to members of the mutual holding company parent.

(4) The proposed price or price range of the stock to be issued is reasonable. The Board shall review the reasonableness of the proposed price or price range.

(5) The aggregate amount of outstanding common stock of the subsidiary holding company owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than 50 percent of the subsidiary holding company's total outstanding common stock, unless the subsidiary holding company was a stock holding company when acquired by the mutual holding company, in which case the foregoing

restriction shall not apply. Any amount of preferred stock may be issued by any subsidiary holding company of a mutual holding company to persons other than the subsidiary holding company's mutual holding company, consistent with any other applicable laws and regulations.

(6) The subsidiary holding company furnishes the information required by the Board in connection with the proposed issuance.

(7) The proposed stock issuance meets the convenience and needs standard of § 239.55(g).

(8) The proposed issuance complies with all other applicable laws and regulations.

(9) Unless otherwise determined by the Board, the limitations on the minimum and maximum amounts of the estimated price range required by § 239.59(c) shall apply.

(b) *Related approvals.* Approval by the Board of any stock issuance pursuant to this section shall also be deemed to constitute:

(1) Approval of the form of stock certificate proposed to be utilized in connection with the stock issuance, provided such form was included in the application materials filed pursuant to this section; and

(2) Approval of any charter or bylaw amendment required to authorize issuance of the stock, provided such amendment was proposed in the application materials filed pursuant to this section.

(c) *Offering restrictions.* (1) No representations may be made in any manner in connection with the offer or sale of any stock issued pursuant to this section that the price, price range or any other pricing information related to such stock issuance has been approved by the Board or that the stock has been approved or disapproved by the Board or that the Board has endorsed the accuracy or adequacy of any securities offering documents disseminated in connection with such stock.

(2) The sale of minority stock of the subsidiary holding company to be made under the minority stock issuance plan, including any sale in a public offering or direct community marketing, shall be completed as promptly as possible and within 45 calendar days after the last day of the subscription period, unless extended by the Board.

(3) In the offer, sale, or purchase of stock issued pursuant to this section, no person shall:

(i) Employ any device, scheme, or artifice to defraud;

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser or seller.

(4) Prior to the completion of a stock issuance pursuant to this section, no person shall transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of the stock to be issued to any other person.

(5) Prior to the completion of a stock issuance pursuant to this section, no person shall make any offer, or any announcement of any offer, to purchase any stock to be issued, or knowingly acquire any stock in the issuance, in excess of the maximum purchase limitations established in the Stock Issuance Plan.

(6) All stock issuances pursuant to this section must:

(i) Comply with § 239.59 and, to the extent applicable, the form or forms specified by the Board; and

(ii) Provide that the offering be structured in a manner similar to a standard conversion under subpart E of this part, including the stock purchase priorities accorded members of the issuing subsidiary holding company's mutual holding company, unless the subsidiary holding company would qualify for a supervisory conversion if it were to undertake a conversion under subpart E of this part; or demonstrates to the satisfaction of the Board that a non-conforming issuance would be more beneficial to the savings association and subsidiary holding company compared to a conforming offering, considering, in the aggregate, the effect of each on the savings association and subsidiary holding company's financial and managerial resources and future prospects, the effect of the issuance upon the savings association and subsidiary holding company, the insurance risk to the Deposit Insurance Fund, and the convenience and needs of the community to be served.

(7) Notwithstanding the restrictions in paragraph (c)(6)(ii) of this section, a subsidiary holding company of a mutual holding company may issue stock as part of a stock benefit plan to any insider, associate of an insider, or tax qualified or non-tax qualified employee stock benefit plan of the mutual holding company or subsidiary of the mutual holding company without including the purchase priorities of subpart E of this part.

(8) As part of a reorganization, a reasonable amount of shares or proceeds may be contributed to a charitable organization that complies with §§ 239.64(b) to 239.64(f), provided such contribution does not result in any taxes on excess business holdings under section 4943 of the Internal Revenue Code (26 U.S.C. 4943).

(d) *Procedural and substantive requirements.* The procedural and substantive requirements of subpart E of this part shall apply to all mutual holding company stock issuances and subsidiary holding company stock issuances under this section, unless clearly inapplicable, as determined by the Board. For purposes of this paragraph, the term *conversion* as it appears in the provisions of subpart E of this part shall refer to the stock issuance, and the term *mutual holding company* shall refer to the subsidiary holding company undertaking the stock issuance.

§ 239.25 Contents of Stock Issuance Plans.

(a) *Mandatory provisions.* Each of the provisions mandatory for all stock issuance plans under this paragraph (a) shall be deemed regulatory requirements. Each Stock Issuance Plan shall contain a complete description of all significant terms of the proposed stock issuance (including the information specified in § 239.65(f) to the extent known), shall attach and incorporate the proposed form of stock certificate, the proposed stock order form, and any agreements or other documents defining the rights of the stockholders, and shall:

(1) Provide that the stock shall be sold at a total price equal to the estimated *pro forma* market value of such stock, based upon an independent valuation;

(2) Provide that the aggregate amount of outstanding common stock of the subsidiary holding company owned or controlled by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance shall be less than fifty percent of the subsidiary holding company's total outstanding common stock (This provision may be omitted if the proposed issuance will be conducted by a subsidiary holding company that was in the stock form when acquired by its mutual holding company parent);

(3) Provide that all employee stock ownership plans or other tax-qualified employee stock benefit plans (collectively, ESOPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's

stockholders' equity at the close of the proposed issuance;

(4) Provide that all ESOPs and management recognition plans (MRPs) must not encompass, in the aggregate, more than either 4.9 percent of the outstanding shares of the subsidiary holding company's common stock or 4.9 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance. However, if the subsidiary holding company's tangible capital equals at least ten percent at the time of implementation of the plan, the Board may permit such ESOPs and MRPs to encompass, in the aggregate, up to 5.88 percent of the outstanding common stock or stockholders' equity at the close of the proposed issuance;

(5) Provide that all MRPs must not encompass, in the aggregate, more than either 1.47 percent of the common stock of the subsidiary holding company or 1.47 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance. However, if the subsidiary holding company's tangible capital is at least ten percent at the time of implementation of the plan, the Board may permit MRPs to encompass, in the aggregate, up to 1.96 percent of the outstanding shares of the subsidiary holding company's common stock or 1.96 percent of the savings subsidiary holding company's stockholders' equity at the close of the proposed issuance;

(6) Provide that all stock option plans (Option Plans) must not encompass, in the aggregate, more than either 4.9 percent of the subsidiary holding company's outstanding common stock at the close of the proposed issuance or 4.9 percent of the subsidiary holding company's stockholders' equity at the close of the proposed issuance;

(7) Provide that an ESOP, a MRP or an Option Plan modified or adopted no earlier than one year after the close of: the proposed issuance, or any subsequent issuance that is made in substantial conformity with the purchase priorities § 239.59(a) set forth in subpart E of this part, may exceed the percentage limitations contained in paragraphs (a)(3) through (6) of this section (plan expansion), subject to the following two requirements. First, all common stock awarded in connection with any plan expansion must be acquired for such awards in the secondary market. Second, such acquisitions must begin no earlier than when such plan expansion is permitted to be made;

(8)(i) Provide that the aggregate amount of common stock that may be encompassed under all Option Plans and MRPs, or acquired by all insiders of the subsidiary holding company and subsidiary savings association and associates of insiders of the subsidiary holding company and subsidiary savings association, must not exceed the following percentages of common stock or stockholders' equity of the subsidiary holding company, held by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance:

Institution size	Officer and director purchases (percent)
$ 50,000,000 or less	35
$ 50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(ii) The percentage limitations contained in paragraph 8(i) of this section may be exceeded provided that all stock acquired by insiders and associates of insiders or awarded under all MRPs and Option Plans in excess of those limitations is acquired in the secondary market. If acquired for such awards on the secondary market, such acquisitions must begin no earlier than one year after the close of the proposed issuance or any subsequent issuance that is made in substantial conformity with the purchase priorities set forth in subpart E of this part.

(iii) In calculating the number of shares held by insiders and their associates under this provision, shares awarded but not delivered under an ESOP, MRP, or Option Plan that are attributable to such persons shall not be counted as being acquired by such persons.

(9) Provide that the amount of common stock that may be encompassed under all Option Plans and MRPs must not exceed, in the aggregate, 25 percent of the outstanding common stock held by persons other than the subsidiary holding company's mutual holding company parent at the close of the proposed issuance;

(10) Provide that the issuance shall be conducted in compliance with, to the extent applicable, the forms required by the Board;

(11) Provide that the sales price of the shares of stock to be sold in the issuance shall be a uniform price determined in accordance with § 239.24;

(12) Provide that, if at the close of the stock issuance the subsidiary holding company has more than thirty-five shareholders of any class of stock, the subsidiary holding company shall promptly register that class of stock pursuant to the Securities Exchange Act of 1934, as amended (15 U.S.C. 78a–78jj), and undertake not to deregister such stock for a period of three years thereafter;

(13) Provide that, if at the close of the stock issuance the subsidiary holding company has more than one hundred shareholders of any class of stock, the subsidiary holding company shall use its best efforts to:

(i) Encourage and assist a market maker to establish and maintain a market for that class of stock; and

(ii) List that class of stock on a national or regional securities exchange or on the NASDAQ quotation system;

(14) Provide that, for a period of three years following the proposed issuance, no insider of the subsidiary holding company or his or her associates shall purchase, without the prior written approval of the Board, any stock of the subsidiary holding company except from a broker dealer registered with the Securities and Exchange Commission, except that the foregoing restriction shall not apply to:

(i) Negotiated transactions involving more than one percent of the outstanding stock in the class of stock; or

(ii) Purchases of stock made by and held by any tax-qualified or non-tax-qualified employee stock benefit plan of the subsidiary holding company even if such stock is attributable to insiders of the subsidiary holding company and subsidiary savings association or their associates;

(15) Provide that stock purchased by insiders of the subsidiary holding company and subsidiary savings association and their associates in the proposed issuance shall not be sold for a period of at least one year following the date of purchase, except in the case of death of the insider or associate;

(16) Provide that, in connection with stock subject to restriction on sale for a period of time:

(i) Each certificate for such stock shall bear a legend giving appropriate notice of such restriction;

(ii) Appropriate instructions shall be issued to the subsidiary holding company's transfer agent with respect to applicable restrictions on transfer of such stock; and

(iii) Any shares issued as a stock dividend, stock split, or otherwise with respect to any such restricted stock shall

be subject to the same restrictions as apply to the restricted stock;

(17) Provide that the subsidiary holding company will not offer or sell any of the stock proposed to be issued to any person whose purchase would be financed by funds loaned, directly or indirectly, to the person by the subsidiary holding company;

(18) Provide that, if necessary, the subsidiary holding company's charter will be amended to authorize issuance of the stock and attach and incorporate by reference the text of any such amendment;

(19) Provide that the expenses incurred in connection with the issuance shall be reasonable;

(20) Provide that the Stock Issuance Plan, if proposed as part of a Reorganization Plan, may be amended or terminated in the same manner as the Reorganization Plan. Otherwise, the Stock Issuance Plan shall provide that it may be substantively amended by the board of directors of the issuing subsidiary holding company as a result of comments from regulatory authorities or otherwise prior to approval of the Plan by the Board, and at any time thereafter with the concurrence of the Board; and that the Stock Issuance Plan may be terminated by the board of directors at any time prior to approval of the Plan by the Board, and at any time thereafter with the concurrence of the Board;

(21) Provide that, unless an extension is granted by the Board, the Stock Issuance Plan shall be terminated if not completed within 90 days of the date of such approval; or

(22) Provide that the subsidiary holding company may make scheduled discretionary contributions to a tax-qualified employee stock benefit plan provided such contributions do not cause the subsidiary holding company to fail to meet any of its regulatory capital requirements.

(b) *Optional provisions.* A Stock Issuance Plan may:

(1) Provide that, in the event the proposed stock issuance is part of a Reorganization Plan, the stock offering may be commenced concurrently with or at any time after the mailing to the members of the reorganizing association and any acquiree association of any proxy statement(s). The offering may be closed before the required membership vote(s), provided the offer and sale of the stock shall be conditioned upon the approval of the Reorganization Plan and Stock Issuance Plan by the members of the reorganizing association and any acquiree association;

(2) Provide that any insignificant residue of stock of the subsidiary holding company not sold in the offering may be sold in such other manner as provided in the Stock Issuance Plan, with the Board's approval;

(3) Provide that the subsidiary holding company may issue and sell, in lieu of shares of its stock, units of securities consisting of stock and long-term warrants or other equity securities, in which event any reference in the provisions of this section and in § 239.24 to stock shall apply to such units of equity securities unless the context otherwise requires; or

(4) Provide that the subsidiary holding company may reserve shares representing up to ten percent of the proposed offering for issuance in connection with an employee stock benefit plan.

(c) *Applicability of provisions of § 239.63(a)(1) to minority stock issuances.* Notwithstanding § 239.24(d), § 239.63(a)(1)(ii) do not apply to minority stock issuances, because the permissible sizes of ESOPs, MRPs, and Option Plans in minority stock issuances are subject to each of the requirements set forth at paragraphs (a)(3) through (a)(9) of this section. Section 239.63(a)(4) through (a)(14), apply for one year after the subsidiary holding company engages in a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part. In addition to the shareholder vote requirement for Option Plans and MRPs set forth at § 239.63(a)(1)(vi), any Option Plans and MRPs put to a shareholder vote after a minority stock issuance that is conducted in accordance with the purchase priorities set forth in subpart E of this part must be approved by a majority of the votes cast by stockholders other than the mutual holding company.

§ 239.26 Shareholders.

(a) *Shareholder meetings.* An annual meeting of the shareholders of the subsidiary holding company for the election of directors and for the transaction of any other business of the subsidiary holding company shall be held annually within 150 days after the end of the subsidiary holding company's fiscal year. Unless otherwise provided in the subsidiary holding company's charter, special meetings of the shareholders may be called by the board of directors or on the request of the holders of 10 percent or more of the shares entitled to vote at the meeting, or by such other persons as may be specified in the bylaws of the subsidiary holding company. All annual and special meetings of shareholders shall be held at such place as the board of directors may determine in the state in which the subsidiary savings association has its principal place of business, or at any other convenient place the board of directors may designate.

(b) *Notice of shareholder meetings.* Written notice stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, the secretary, or the directors, or other natural persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address appearing on the stock transfer books or records of the subsidiary holding company as of the record date prescribed in paragraph (c) of this section, with postage thereon prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the shareholder notice requirement.

(c) *Fixing of record date.* For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

(d) *Voting lists.* (1) At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for the shares of the subsidiary holding company shall make a complete list of the stockholders of record entitled to vote at such meeting, or any adjournments thereof, arranged

in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the subsidiary holding company and shall be subject to inspection by any shareholder of record or the stockholder's agent during the entire time of the meeting. The original stock transfer book shall constitute *prima facie* evidence of the stockholders entitled to examine such list or transfer books or to vote at any meeting of stockholders. Notwithstanding anything in this section, however, a subsidiary holding company that is wholly owned shall not be subject to the voting list requirements.

(2) In lieu of making the shareholders list available for inspection by any shareholders as provided in paragraph (d)(1) of this section, the board of directors may perform such acts as required by paragraphs (a) and (b) of Rule 14a–7 of the General Rules and Regulations under the Securities and Exchange Act of 1934 (17 CFR 240.14a–7) as may be duly requested in writing, with respect to any matter which may be properly considered at a meeting of shareholders, by any shareholder who is entitled to vote on such matter and who shall defray the reasonable expenses to be incurred by the subsidiary holding company in performance of the act or acts required.

(e) *Shareholder quorum.* A majority of the outstanding shares of the subsidiary holding company entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the stockholders, unless the vote of a greater number of stockholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

(f) *Shareholder voting*— (1) *Proxies.* Unless otherwise provided in the subsidiary holding company's charter, at all meetings of shareholders, a shareholder may vote in person or by proxy executed in writing by the shareholder or by a duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. A proxy may designate as holder a corporation, partnership or company, or other person. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

(2) *Shares controlled by subsidiary holding company.* Neither treasury shares of its own stock held by the subsidiary holding company nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the subsidiary holding company, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting.

(g) *Nominations and new business submitted by shareholders.* Nominations for directors and new business submitted by shareholders shall be voted upon at the annual meeting if such nominations or new business are submitted in writing and delivered to the secretary of the subsidiary holding company at least five days prior to the date of the annual meeting. Ballots bearing the names of all the natural persons nominated shall be provided for use at the annual meeting.

(h) *Informal action by stockholders.* If the bylaws of the subsidiary holding company so provide, any action required to be taken at a meeting of the stockholders, or any other action that may be taken at a meeting of the stockholders, may be taken without a meeting if consent in writing has been given by all the stockholders entitled to vote with respect to the subject matter.

§ 239.27 Board of directors.

(a) *General powers and duties.* The business and affairs of the subsidiary holding company shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board from among its members and shall designate the chairman of the board, when present, to preside at its meeting. Directors need not be stockholders unless the bylaws so require.

(b) *Number and term.* The bylaws shall set forth a specific number of directors, not a range. The number of directors shall be not fewer than five nor more than fifteen, unless a higher or lower number has been authorized by the Board. Directors shall be elected for a term of one to three years and until their successors are elected and qualified. If a staggered board is chosen, the directors shall be divided into two or three classes as nearly equal in number as possible and one class shall be elected by ballot annually. In the case of a converting or newly chartered subsidiary holding company where all directors shall be elected at the first election of directors, if a staggered board is chosen, the terms shall be staggered in length from one to three years.

(c) *Regular meetings.* A regular meeting of the board of directors shall be held immediately after, and at the same place as, the annual meeting of shareholders. The board of directors shall determine the place, frequency, time and procedure for notice of regular meetings.

(d) *Quorum.* A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the board of directors. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board.

(e) *Vacancies.* Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office continuing only until the next election of directors by the shareholders.

(f) *Removal or resignation of directors.* (1) At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause, as defined in § 239.41, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. Subsidiary holding companies may provide for procedures regarding resignations in the bylaws.

(2) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part.

(3) Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

(g) *Executive and other committees.* The board of directors, by resolution adopted by a majority of the full board, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in the resolution or bylaws of the subsidiary holding company, shall have and may exercise all of the authority of the board of directors, except no committee shall have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the subsidiary holding company; recommending to the stockholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all, or substantially all, of the property and assets of the subsidiary holding company otherwise than in the usual and regular course of its business; a voluntary dissolution of the subsidiary holding company; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest. The designation of any committee and the delegation of authority thereto shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

(h) *Notice of special meetings.* Written notice of at least 24 hours regarding any special meeting of the board of directors or of any committee designated thereby shall be given to each director in accordance with the bylaws, although such notice may be waived by the director. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting need be specified in the notice or waiver of notice of such meeting. The bylaws may provide for telephonic participation at a meeting.

(i) *Action without a meeting.* Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the actions so taken, shall be signed by all of the directors.

(j) *Presumption of assent.* A director of the subsidiary holding company who is present at a meeting of the board of directors at which action on any subsidiary holding company matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless a written dissent to such action shall be filed with the individual acting as the secretary of the meeting before the adjournment thereof or shall be forwarded by registered mail to the secretary of the subsidiary holding company within five days after the date on which a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

(k) *Age limitation on directors.* A subsidiary holding company may provide a bylaw on age limitation for directors. Bylaws on age limitations must comply with all Federal laws, rules and regulations.

§ 239.28 Officers.

(a) *Positions.* The officers of the subsidiary holding company shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same individual and the vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the subsidiary holding company may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

(b) *Removal.* Any officer may be removed by the board of directors whenever in its judgment the best interests of the subsidiary holding company will be served thereby; but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the individual so removed. Employment contracts shall conform with § 239.41.

(c) *Age limitation on officers.* A subsidiary holding company may provide a bylaw on age limitation for officers. Bylaws on age limitations must comply with all Federal laws, rules, and regulations.

§ 239.29 Certificates for shares and their transfer.

(a) *Certificates for shares.* Certificates representing shares of capital stock of the subsidiary holding company shall be in such form as shall be determined by the board of directors and approved by the Board. The certificates shall be signed by the chief executive officer or by any other officer of the subsidiary holding company authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the subsidiary holding company itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the subsidiary holding company. All certificates surrendered to the subsidiary holding company for transfer shall be cancelled and no new certificate shall be issued until the former certificate for a like number of shares shall have been surrendered and cancelled, except that in the case of a lost or destroyed certificate a new certificate may be issued upon such terms and indemnity to the subsidiary holding company as the board of directors may prescribe.

(b) *Transfer of shares.* Transfer of shares of capital stock of the subsidiary holding company shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by a legal representative, who shall furnish proper evidence of such authority, or by an attorney authorized by a duly executed power of attorney and filed with the subsidiary holding company. The transfer shall be made only on surrender for cancellation of the certificate for the shares. The person in whose name shares of capital stock stand on the books of the subsidiary holding company shall be deemed by the subsidiary holding company to be the owner for all purposes.

§ 239.30 Annual reports; books and records.

(a) *Annual reports to stockholders.* A subsidiary holding company not wholly-owned by a holding company shall, within 130 days after the end of its fiscal year, mail to each of its stockholders entitled to vote at its annual meeting an annual report

containing financial statements that satisfy the requirements of rule 14a–3 under the Securities Exchange Act of 1934. (17 CFR 240.14a–3). Concurrently with such mailing a certification of such mailing signed by the chairman of the board, the president or a vice president of the subsidiary holding company, together with a copy of the report, shall be transmitted by the subsidiary holding company to the appropriate Reserve Bank.

(b) *Books and records.* (1) Each subsidiary holding company shall keep correct and complete books and records of account; shall keep minutes of the proceedings of its stockholders, board of directors, and committees of directors; and shall keep at its home office or at the office of its transfer agent or registrar, a record of its stockholders, giving the names and addresses of all stockholders, and the number, class and series, if any, of the shares held by each.

(2) Any stockholder or group of stockholders of a subsidiary holding company, holding of record the number of voting shares of such subsidiary holding company specified below, upon making written demand stating a proper purpose, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, nonconfidential portions of its books and records of account, minutes and record of stockholders and to make extracts therefrom. Such right of examination is limited to a stockholder or group of stockholders holding of record:

(i) Voting shares having a cost of not less than $100,000 or constituting not less than one percent of the total outstanding voting shares, provided in either case such stockholder or group of stockholders have held of record such voting shares for a period of at least six months before making such written demand, or

(ii) Not less than five percent of the total outstanding voting shares.

No stockholder or group of stockholders of a subsidiary holding company shall have any other right under this section or common law to examine its books and records of account, minutes and record of stockholders, except as provided in its bylaws with respect to inspection of a list of stockholders.

(3) The right to examination authorized by paragraph (b)(2) of this section and the right to inspect the list of stockholders provided by a subsidiary holding company's bylaws may be denied to any stockholder or group of stockholders upon the refusal of any such stockholder or group of stockholders to furnish such subsidiary holding company, its transfer agent or registrar an affidavit that such examination or inspection is not desired for any purpose which is in the interest of a business or object other than the business of the subsidiary holding company, that such stockholder has not within the five years preceding the date of the affidavit sold or offered for sale, and does not now intend to sell or offer for sale, any list of stockholders of the subsidiary holding company or of any other corporation, and that such stockholder has not within said five-year period aided or abetted any other person in procuring any list of stockholders for purposes of selling or offering for sale such list.

(4) Notwithstanding any provision of this section or common law, no stockholder or group of stockholders shall have the right to obtain, inspect or copy any portion of any books or records of a subsidiary holding company containing:

(i) A list of depositors in or borrowers from such subsidiary holding company;

(ii) Their addresses;

(iii) Individual deposit or loan balances or records; or

(iv) Any data from which such information could be reasonably constructed.

§ 239.31 Indemnification; employment contracts.

(a) *Restrictions on indemnification.* The provisions of § 239.40 shall apply to subsidiary holding companies.

(b) *Restrictions on employment contracts.* The provisions of § 239.41 and any policies of the Board thereunder shall apply to subsidiary holding companies.

Subpart D—Indemnification; Employment Contracts

§ 239.40 Indemnification of directors, officers and employees.

A mutual holding company shall indemnify its directors, officers, and employees in accordance with the following requirements:

(a) *Definitions and rules of construction.* (1) Definitions for purposes of this section.

(i) *Action* means any judicial or administrative proceeding, or threatened proceeding, whether civil, criminal, or otherwise, including any appeal or other proceeding for review;

(ii) *Court* includes, without limitation, any court to which or in which any appeal or any proceeding for review is brought.

(iii) *Final judgment* means a judgment, decree, or order which is not appealable or as to which the period for appeal has expired with no appeal taken.

(iv) *Settlement* includes entry of a judgment by consent or confession or a plea of guilty or *nolo contendere.*

(2) References in this section to any individual or other person, including any mutual holding company, shall include legal representatives, successors, and assigns thereof.

(b) *General.* Subject to paragraphs (c) and (g) of this section, a mutual holding company shall indemnify any person against whom an action is brought or threatened because that person is or was a director, officer, or employee of the mutual holding company, for:

(1) Any amount for which that person becomes liable under a judgment if such action; and

(2) Reasonable costs and expenses, including reasonable attorney's fees, actually paid or incurred by that person in defending or settling such action, or in enforcing his or her rights under this section if he or she attains a favorable judgment in such enforcement action.

(c) *Requirements.* Indemnification shall be made to such period under paragraph (b) of this section only if:

(1) Final judgment on the merits is in his or her favor; or

(2) In case of:

(i) Settlement,

(ii) Final judgment against him or her, or

(iii) Final judgment in his or her favor, other than on the merits, if a majority of the disinterested directors of the mutual holding company determine that he or she was acting in good faith within the scope of his or her employment or authority as he or she could reasonably have perceived it under the circumstances and for a purpose he or she could reasonably have believed under the circumstances was in the best interests of the mutual holding company or its members.

However, no indemnification shall be made unless the mutual holding company gives the Board at least 60 days' notice of its intention to make such indemnification. Such notice shall state the facts on which the action arose, the terms of any settlement, and any disposition of the action by a court. Such notice, a copy thereof, and a certified copy of the resolution containing the required determination by the board of directors shall be sent to the appropriate Reserve Bank, who shall promptly acknowledge receipt thereof. The notice period shall run from the date of such receipt. No such indemnification shall be made if the Board advises the mutual holding company in writing, within such notice

period, of its objection to the indemnification.

(d) *Insurance.* A mutual holding company may obtain insurance to protect it and its directors, officers, and employees from potential losses arising from claims against any of them for alleged wrongful acts, or wrongful acts, committed in their capacity as directors, officers, or employees. However, no mutual holding company may obtain insurance which provides for payment of losses of any individual incurred as a consequence of his or her willful or criminal misconduct.

(e) *Payment of expenses.* If a majority of the directors of a mutual holding company concludes that, in connection with an action, any person ultimately may become entitled to indemnification under this section, the directors may authorize payment of reasonable costs and expenses, including reasonable attorneys' fees, arising from the defense or settlement of such action. Nothing in this paragraph shall prevent the directors of a mutual holding company from imposing such conditions on a payment of expenses as they deem warranted and in the interests of the mutual holding company. Before making advance payment of expenses under this paragraph, the mutual holding company shall obtain an agreement that the mutual holding company will be repaid if the person on whose behalf payment is made is later determined not to be entitled to such indemnification.

(f) *Exclusiveness of provisions.* No mutual holding company shall indemnify any person referred to in paragraph (b) of this section or obtain insurance referred to in paragraph (d) of the section other than in accordance with this section. However, a mutual holding company which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section.

(g) The indemnification provided for in paragraph (b) of this section is subject to and qualified by 12 U.S.C. 1821(k).

§ 239.41 Employment contracts.

(a) *General.* A mutual holding company may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by the respective mutual holding company's board of directors. A mutual holding company shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the mutual holding company or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the mutual holding company. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The mutual holding company's board of directors may terminate the officer or employee's employment at any time, but any termination by the mutual holding company's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the mutual holding company's affairs by a notice served under section 8 (e)(3) or (g)(1) of Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(3) and (g)(1)) the mutual holding company's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the mutual holding company may in its discretion:

(i) Pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and

(ii) Reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the mutual holding company's affairs by an order issued under section 8 (e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818 (e)(4) or (g)(1)), all obligations of the mutual holding company under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the subsidiary savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (b) shall not affect any vested rights of the contracting parties: *Provided,* that this paragraph (b) need not be included in an employment contract if prior written approval is secured from the Board.

(5) If the mutual holding company is subject to bankruptcy proceedings under title 11 of the United States Code, all obligations of the mutual holding company under the contract shall terminate as of the date that the petition is filed, but vested rights of the contracting parties shall not be affected: *Provided,* that this paragraph (b) need not be included in an employment contract if prior written approval is secured from the Board.

(6) All obligations under the contract shall be terminated, except to the extent determined that continuation of the contract is necessary to the continued operation of the mutual holding company—

(i) By the Board, at the time the Federal Deposit Insurance Corporation enters into an agreement to provide assistance to or on behalf of the subsidiary savings association under the authority contained in 13(c) of the Federal Deposit Insurance Act; or

(ii) By the Board, at the time the Board approves a supervisory merger to resolve problems related to operation of the mutual holding company or when the mutual holding company is determined by the Board to be in an unsafe or unsound condition.

Subpart E—Conversions From Mutual to Stock Form

§ 239.50 Purpose and scope.

(a) *General.* This subpart governs how a mutual holding company may convert from the mutual to the stock form of ownership. This subpart supersedes all inconsistent charter and bylaw provisions of mutual holding companies converting to stock form.

(b) *Prescribed forms.* A mutual holding company must use the forms prescribed under this subpart and provide such information as the Board may require under the forms by regulation or otherwise. The forms

required under this subpart include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form).

(c) *Waivers.* The Board may waive any requirement of this subpart or a provision in any prescribed form. To obtain a waiver, a mutual holding company must file a written request with the Board that:

(1) Specifies the requirement(s) or provision(s) that the mutual holding company wants the Board to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the mutual holding company, mutual members, or other mutual holding companies or savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

§ 239.51 Acquiring another insured stock depository institution as part of a conversion.

When a mutual holding company converts to stock form, the subsidiary savings association may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 239.52 Definitions.

The following definitions apply to this subpart and the forms prescribed under this subpart:

(a) *Association members* or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

(b) *Eligibility record date* is the date for determining eligible account holders. The eligibility record date must be at least one year before the date that the board of directors adopts the plan of conversion.

(c) *Eligible account holders* are any persons holding qualifying deposits on the eligibility record date.

(d) *IRS* is the United States Internal Revenue Service.

(e) *Local community* includes:

(1) Every county, parish, or similar governmental subdivision in which the mutual holding company has a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in the mutual holding company's Community Reinvestment Act assessment area; and

(4) Any other area or category the mutual holding company sets out in its plan of conversion, as approved by the Board.

(f) *Mutual holding company* has the same meaning in this subpart as that term is given in subpart A. For purposes of this subpart, references to mutual holding company shall also include a resulting stock holding company, where applicable.

(g) *Offer, offer to sell,* or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with the mutual holding company or resulting stock holding company, are not offers, offers to sell, or offers for sale.

(h) *Proxy soliciting material* includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

(i) *Purchase* or *buy* includes every contract to acquire a security or interest in a security for value.

(j) *Qualifying deposit* is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. The mutual holding company's plan of conversion may provide that only savings accounts with total deposit balances of $50 or more will qualify.

(k) *Resulting stock holding company* means the stock savings and loan holding company that is issuing stock in connection with conversion of a mutual holding company pursuant to this subpart.

(l) *Sale* or *sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the Board is not a sale.

(m) *Solicitation* and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause the members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

(n) *Subscription offering* is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 239.59(h);

(2) Tax-qualified employee stock ownership plans under § 239.59(m);

(3) Supplemental eligible account holders under § 239.59(h); and

(4) Other voting members under § 239.59(j).

(o) *Supplemental eligibility record date* is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the Board approves the conversion and will occur only if the Board has not approved the conversion within 15 months of the eligibility record date.

(p) *Supplemental eligible account holders* are any persons, except officers, directors, and their associates of the mutual holding company or subsidiary savings association, holding qualifying deposits on the supplemental eligibility record date.

(q) *Underwriter* is any person who purchases any securities from the mutual holding company or resulting stock holding company with a view to distributing the securities, offers or sells securities for the mutual stock holding company or resulting stock holding company in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

§ 239.53 Prior to conversion.

(a) *Pre-filing meeting and consultation.* (1) The mutual holding company's board, or a subcommittee of the board, may meet with the staff of the appropriate Reserve Bank or Board staff before the mutual holding company's board of directors votes on the plan of conversion. At that meeting the mutual holding company may provide the Reserve Bank or Board staff with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(2) The mutual holding company should also consult with the Board or appropriate Reserve Bank before it files its application for conversion. The Reserve Bank or Board will discuss the information that the mutual holding company must include in the application for conversion, general issues that the mutual holding company may confront in the conversion process, and any other pertinent issues.

(b) *Business plan.*

(1) Prior to filing an application for conversion, the mutual holding company must adopt a business plan reflecting the mutual holding company's intended plans for deployment of the proposed conversion proceeds. The

business plan is required, under § 239.55(b), to be included in the mutual holding company's conversion application. At a minimum, the business plan must address:

(i) The subsidiary savings association's projected operations and activities for three years following the conversion. The business plan must describe how the conversion proceeds will be deployed at the savings association (and holding company, if applicable), what opportunities are available to reasonably achieve the planned deployment of conversion proceeds in the relevant proposed market areas, and how its deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms, by the final year of the business plan. The business plan must include three years of projected financial statements. The business plan must provide that the subsidiary savings associations receive at least 50 percent of the net conversion proceeds. The Board may require that a larger percentage of proceeds be contributed to the subsidiary savings associations.

(ii) The mutual holding company's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The Board strongly discourages business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion, or as part of a properly managed leverage strategy.

(iii) The risks associated with the plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(iv) The expertise of the mutual holding company and saving association subsidiary's management and board of directors, or that the mutual holding company has planned for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in its business plan.

(2) The mutual holding company may not project returns of capital or special dividends in any part of the business plan. A newly converted company may not plan on stock repurchases in the first year of the business plan.

(c) *Management and board review of business plan.*

(1) The chief executive officer and members of the board of directors of the mutual holding company must review, and at least two-thirds of the board of directors must approve, the business plan.

(2) The chief executive officer and at least two-thirds of the board of directors of the mutual holding company must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The mutual holding company must submit these certifications with its business plan, as part of the conversion application under paragraph (b) of this section.

(d) *Board review of the business plan.*

(1) The Board will review the business plan to determine whether it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the conversion application. In making its determination, the Board will consider how the mutual holding company has addressed the applicable factors of paragraph (b) of this section. No single factor will be determinative. The Board will review every case on its merits.

(2) The mutual holding company must file its business plan with the appropriate Reserve Bank. The Board or appropriate Reserve Bank may request additional information, if necessary, to support its determination under paragraph (d)(1) of this section. The mutual holding company must file its business plan as a confidential exhibit to the Form AC.

(3) If the Board approves the application for conversion and the mutual holding company completes the conversion, the resulting stock holding company must operate within the parameters of the business plan. The Board must approve any material deviation from the business plan in writing prior to such material deviation.

(e) *Disclosure of business plan.*

(1) The mutual holding company may discuss information about the conversion with individuals that it authorizes to prepare documents for the conversion.

(2) Except as permitted under paragraph (e)(1) of this section, the mutual holding company must keep all information about the conversion confidential until the board of directors adopts the plan of conversion.

(3) If the mutual holding company violates this section, the Board may require it to take remedial action. For example, the Board may require the mutual holding company to take any or all of the following actions:

(i) Publicly announce that the mutual holding company is considering a conversion;

(ii) Set an eligibility record date acceptable to the Board;

(iii) Limit the subscription rights of any person who violates or aids in a violation of this section; or

(iv) Take any other action to ensure that the conversion is fair and equitable.

§ 239.54 Plan of conversion.

(a) *Adoption by the board of directors.* Prior to filing an application for conversion, the board of directors of the mutual holding company must adopt a plan of conversion that conforms to §§ 239.59 through 239.62 and 239.63(b). The board of directors must adopt the plan by at least a two-thirds vote. The plan of conversion is required, under § 239.55(b), to be included in the conversion application.

(b) *Contents of the plan of conversion.* The mutual holding company must include the information included in §§ 239.59 through 239.62 and 239.63(b) in the plan of conversion. The Board may require the mutual holding company to delete or revise any provision in the plan of conversion if the Board determines the provision is inequitable; is detrimental to the mutual holding company, the account holders, other mutual holding companies, or other savings associations; or is contrary to public interest.

(c) *Notice of board of directors' approval of the plan of conversion.*

(1) *Notice.* The mutual holding company must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the mutual holding company's home office and in each of the subsidiary savings association's branch offices. The mutual holding company must mail a letter to each member or publish a notice in the local newspaper in every local community where the savings association has an office. The mutual holding company may also issue a press release. The Board may require broader publication, if necessary, to ensure adequate notice to the members.

(2) *Contents of notice.* The mutual holding company may include any of the following statements and descriptions in the letter, notice, or press release.

(i) The board of directors adopted a proposed plan to convert from mutual to stock form.

(ii) The mutual holding company will send its members a proxy statement with detailed information on the proposed conversion before the mutual holding company convenes a members' meeting to vote on the conversion.

(iii) The members will have an opportunity to approve or disapprove the proposed conversion at a meeting. At least a majority of the eligible votes must approve the conversion.

(iv) The mutual holding company will not vote existing proxies to approve or disapprove the conversion. The mutual holding company will solicit new proxies for voting on the proposed conversion.

(v) The Board must approve the conversion before the conversion will be effective. The members will have an opportunity to file written comments, including objections and materials supporting the objections, with the Board.

(vi) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the conversion before the Board will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(vii) The Board might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(viii) Savings account holders will continue to hold accounts in the savings association with the same dollar amounts, rates of return, and general terms as existing deposits. The FDIC will continue to insure the accounts.

(ix) The mutual holding company's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(x) The savings association's business of accepting deposits and making loans will continue without interruption.

(xi) The current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(xii) The subsidiary savings association may continue to be a member of the Federal Home Loan Bank System.

(xiii) The mutual holding company may substantively amend the proposed plan of conversion before the members' meeting.

(xiv) The mutual holding company may terminate the proposed conversion.

(xv) After the Board approves the proposed conversion, the mutual holding company will send proxy materials providing additional information. After the mutual holding company sends proxy materials, members may telephone or write to the mutual holding company with additional questions.

(xvi) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the shares.

(xvii) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the shares.

(xviii) A brief description of how voting members may participate in the conversion.

(xix) A brief description of how directors, officers, and employees will participate in the conversion.

(xx) A brief description of the proposed plan of conversion.

(xxi) The par value (if any) and approximate number of shares that will be issued and sold in the conversion.

(3) *Other requirements.*

(i) The mutual holding company may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of the shares upon conversion in the letter, notice, or press release.

(ii) If the mutual holding company responds to inquiries about the conversion, it may address only the matters listed in paragraph (c)(2) of this section.

(d) *Amending a plan of conversion.* The mutual holding company may amend its plan of conversion before it solicits proxies. After the mutual holding company solicits proxies, it may amend the plan of conversion only if the Board concurs.

§ 239.55 Filing requirements.

(a) *Applications under this subpart.* Any filing with the Board required under this subpart must be filed in accordance with § 238.14 of this chapter. The Board will review any filing made under this subpart in accordance with § 238.14 of this chapter.

(b) *Requirements.*

(1) The application for conversion must include all of the following information.

(i) A plan of conversion meeting the requirements of § 239.54(b).

(ii) Pricing materials meeting the requirements paragraph (g)(2) of this section.

(iii) Proxy soliciting materials under § 239.57(d), including:

(A) A preliminary proxy statement with signed financial statements;

(B) A form of proxy meeting the requirements of § 239.57(b); and

(C) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the mutual holding company plans to use or furnish to the members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(iv) An offering circular described in § 239.58(a).

(v) The documents and information required by Form AC. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site (*http://www.federalreserve.gov*).

(vi) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. See Form AC, instruction B(7).

(vii) The business plan, submitted as a separately bound, confidential exhibit. See paragraph (c) of this section.

(viii) Any additional information the Board requests.

(2) The Board will not accept for filing, and will return, any application for conversion that is improperly executed, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

(c) *Filing an application for conversion.*

(1) The mutual holding company must file the application for conversion on Form AC with the appropriate Reserve Bank.

(2) Upon receipt of an application under this subpart, the Reserve Bank will promptly furnish notice and a copy of the application to the primary federal supervisor of any subsidiary savings association. The primary supervisor will have 30 calendar days from the date of the letter giving notice in which to submit its views and recommendations to the Board.

(d) *Confidential treatment of portions of an application for conversion.*

(1) The Board makes all filings under this subpart available to the public, but may keep portions of the application for conversion confidential under paragraph (d)(2) of this section.

(2) The mutual holding company may request the Board keep portions of the application confidential. To do so, the mutual holding company must separately bind and clearly designate as ''confidential'' any portion of the application for conversion that the mutual holding company deems confidential. The mutual holding company must provide a written statement specifying the grounds supporting the request for confidentiality. The Board will not treat as confidential the portion of the

application describing how the mutual holding company plans to meet the Community Reinvestment Act (CRA) objectives. The CRA portion of the application may not incorporate by reference information contained in the confidential portion of the application.

(3) The Board will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and part 261 of this chapter. The Board will advise the mutual holding company before it makes information the mutual holding company designated as ''confidential'' available to the public.

(e) *Amending an application for conversion.* To amend an application for conversion, the mutual holding company must:

(1) File an amendment with an appropriate facing sheet;

(2) Number each amendment consecutively;

(3) Respond to all issues raised by the Board; and

(4) Demonstrate that the amendment conforms to all applicable regulations.

(f) *Notice of filing of application and comment process.*

(1) *Public notice of an application for conversion.*

(i) The mutual holding company must publish a public notice of the application for conversion in accordance with the procedures in § 238.14 of this chapter. The mutual holding company must simultaneously prominently post the notice in its home office and in all of the branch offices of its subsidiary savings associations.

(ii) Promptly after publication, the mutual holding company must file a copy of any public notice and an affidavit of publication from each publisher with the appropriate Reserve Bank.

(iii) If the Board does not accept the application for conversion under § 239.55(g) and requires the mutual holding company to file a new application, the mutual holding company must publish and post a new notice and allow an additional 30 days for comment.

(2) *Public comments.* Commenters may submit comments on the application in accordance with the procedures in § 238.14 of this chapter. A commenter must file any comments with the appropriate Reserve Bank.

(g) *Board review of the application for conversion.*

(1) *Board action on a conversion application.* The Board may approve an application for conversion only if:

(i) The conversion complies with this subpart;

(ii) The mutual holding company will meet all applicable regulatory capital requirements after the conversion; and

(iii) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(2) *Board review of appraisal.* The Board will review the appraisal required by paragraph (b)(1)(ii) of this section in determining whether to approve the application. The Board will review the appraisal under the following requirements.

(i) Independent persons experienced and expert in corporate appraisal, and acceptable to the Board, must prepare the appraisal report.

(ii) An affiliate of the appraiser may serve as an underwriter or selling agent, if the mutual holding company ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(iii) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(iv) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(v) If the appraisal is based on a capitalization of the pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(vi) If the appraisal is based on a comparison of the shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(vii) The Board may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(viii) The mutual holding company may not represent or imply that the Board has approved the appraisal.

(3) *Board review of compliance record.* The Board will review the compliance record of the subsidiary savings association under the regulations applicable to the savings association and the business plan to determine how the conversion will affect the convenience and needs of its communities.

(i) Based on this review, the Board may approve the application, deny the application, or approve the application on the condition that the resulting stock holding company will improve the CRA performance or will address the particular credit or lending needs of the communities that it will serve.

(ii) The Board may deny the application if the business plan does not demonstrate that the proposed use of conversion proceeds will help the resulting stock holding company to meet the credit and lending needs of the communities that the resulting stock holding company will serve.

(4) The Board may request that the mutual holding company amend the application if further explanation is necessary, material is missing, or material must be corrected.

(5) The Board will deny the application if the application does not meet the requirements of this subpart, unless the Board waives the requirement under § 239.50(c).

(h) *Judicial review.*

(1) Any person aggrieved by the Board's final action on the application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1467a(j), which provisions shall apply in all respects as if such final action were an order, subject to paragraph (h)(2) of this section.

(2) To obtain court review of the action, the aggrieved person must file a written petition requesting that the court modify, terminate, or set aside the final Board action. The aggrieved person must file the petition with the court within the later of 30 days after the Board publishes notice of its final action in the **Federal Register** or 30 days after the mutual holding company mails the proxy statement to its members under § 239.56(c).

§ 239.56 Vote by members.

(a) *Mutual member approval of the plan of conversion*

(1) After the Board approves the plan of conversion, the mutual holding company must submit the plan of conversion to its members for approval. The mutual holding company must obtain this approval at a meeting of its members.

(2) The members must approve the plan of conversion by a majority of the total outstanding votes.

(3) The members may vote in person or by proxy.

(4) The mutual holding company may notify eligible account holders or supplemental eligible account holders who are not voting members of the proposed conversion. The mutual holding company may include only the information in § 239.54(c) in the notice.

(b) *Eligibility to vote for the plan of conversion.* The mutual holding company determines members' eligibility to vote by setting a voting record date. The mutual holding company must set a voting record date that is not more than 60 days nor less than 20 days before the meeting.

(c) *Notifying members of the meeting.*

(1) The mutual holding company must notify the members of the meeting to consider the conversion by sending the members a proxy statement.

(2) The mutual holding company must notify its members 20 to 45 days before the meeting.

(3) The mutual holding company must also notify each beneficial holder of an account at any subsidiary savings association held in a fiduciary capacity:

(i) If the subsidiary savings association is a federal association and the name of the beneficial holder is disclosed on the records of the subsidiary savings association; or

(ii) If the subsidiary savings association is a state-chartered association and the beneficial holder possesses voting rights under state law.

(d) *Submissions to the Board after the members' meeting.*

(1) Promptly after the members' meeting, the mutual holding company must file all of the following information with the appropriate Reserve Bank:

(i) A certified copy of each adopted resolution on the conversion.

(ii) The total votes eligible to be cast.

(iii) The total votes represented in person or by proxy.

(iv) The total votes cast in favor of and against each matter.

(v) The percentage of votes necessary to approve each matter.

(vi) An opinion of counsel that the mutual holding company conducted the members' meeting in compliance with all applicable state or federal laws and regulations.

(2) Promptly after completion of the conversion, the mutual holding company must submit to the appropriate Reserve Bank an opinion of counsel that the mutual holding company has complied with all laws applicable to the conversion.

§ 239.57 Proxy solicitation.

(a) *Applicability of proxy solicitation provisions.*

(1) The mutual holding company must comply with these proxy solicitation provisions when the mutual holding company provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(2) Members of the mutual holding company must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to paragraph (f) of this section except where:

(i) The member solicits 50 people or fewer and does not solicit proxies on behalf of the mutual holding company; or

(ii) The member solicits proxies through newspaper advertisements after the board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(A) The name of the mutual holding company;

(B) The reason for the advertisement;

(C) The proposal or proposals to be voted upon;

(D) Where a member may obtain a copy of the proxy solicitation material; and

(E) A request for the members of the mutual holding company to vote at the meeting.

(b) *Form of proxy.* The form of proxy must include all of the following:

(1) A statement in bold face type stating that management is soliciting the proxy.

(2) Blank spaces where the member must date and sign the proxy.

(3) Clear and impartial identification of each matter or group of related matters that members will vote upon. It must include any proposed charitable contribution as an item to be voted on separately.

(4) The phrase ''Revocable Proxy'' in bold face type (at least 18 point).

(5) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(6) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(7) The date, time, and the place of the meeting, when available.

(8) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(9) A statement that management will vote the proxy in accordance with the member's specifications.

(10) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

(c) *Permissible use of proxies.*

(1) The mutual holding company may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the mutual holding company may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

(2) The mutual holding company may vote a proxy obtained under this subpart on matters that are incidental to the conduct of the meeting. The mutual holding company or its management may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

(d) *Proxy statement requirements.*

(1) *Content requirements.* The mutual holding company must prepare the proxy statement in compliance with this subpart and Form PS. The mutual holding company may obtain Form PS from the appropriate Reserve Bank and the Board's Web site (*http://www.federalreserve.gov*).

(2) *Other requirements.*

(i) The Board will review the proxy solicitation material in its review of the application for conversion.

(ii) The mutual holding company must provide a written proxy statement to the members before or at the same time the mutual holding company provides any other soliciting material. The mutual holding company must mail proxy solicitation material to the members no later than ten days after the Board approves the conversion.

(e) *Filing revised proxy materials.*

(1) The mutual holding company must file revised proxy materials as an amendment to the application for conversion.

(2) To revise the proxy solicitation materials, the mutual holding company must file:

(i) Revised proxy materials as required by Form PS;

(ii) Revised form of proxy, if applicable; and

(iii) Any additional proxy solicitation material subject to paragraph (d) of this section.

(3) The mutual holding company must clearly indicate changes from the prior filing.

(4) The mutual holding company must file a definitive copy of all proxy solicitation material, in the form in which the mutual holding company furnishes the material to the members. The mutual holding company must file no later than the date that it sends or gives the proxy solicitation material to the members. The mutual holding

company must indicate the date that it plans to release the materials.

(5) Unless the Board requests the mutual holding company to do so, the mutual holding company does not have to file copies of replies to inquiries from the members or copies of communications that merely request members to sign and return proxy forms.

(f) *Mailing proxy solicitation material.*

(1) The mutual holding company must mail the member's proxy solicitation material if:

(i) The board of directors adopted a plan of conversion;

(ii) A member requests in writing that the mutual holding company mail the proxy solicitation material; and

(iii) The member agrees to defray reasonable expenses of the mutual holding company.

(2) As soon as practicable after the mutual holding company receives a request under paragraph (f)(1) of this section, the mutual holding company must mail or otherwise furnish the following information to the member:

(i) The approximate number of members that the mutual holding company solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(ii) The estimated cost of mailing the proxy solicitation material for the member.

(3) The mutual holding company must mail proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the mutual holding company.

(4) The mutual holding company is not responsible for the content of a member's proxy solicitation material.

(5) A member may furnish other members its own proxy solicitation material, subject to the rules in this section.

(g) *Prohibited solicitations.*

(1) False or misleading statements.

(i) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(A) Is false or misleading with respect to any material fact;

(B) Omits any material fact that is necessary to make the statements not false or misleading; or

(C) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(ii) No one may represent or imply that the Board determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(2) Other prohibited solicitations. No person may solicit:

(i) An undated or post-dated proxy;

(ii) A proxy that states it will be dated after the date it is signed by a member;

(iii) A proxy that is not revocable at will by the member; or

(iv) A proxy that is part of another document or instrument.

(3) If a solicitation violates this section, the Board may require remedial measures, including:

(i) Correction of the violation by a retraction and a new solicitation;

(ii) Rescheduling the members' meeting; or

(iii) Any other actions necessary to ensure a fair vote.

(4) The Board may also bring an enforcement action against the violator for violations of this section.

(h) *Re-soliciting proxies.* If the mutual holding company amends its application for conversion, the Board may require it to re-solicit proxies for the members' meeting as a condition of approval of the amendment.

§ 239.58 Offering circular.

(a) *Filing requirements.*

(1) The mutual holding company must prepare and file the offering circular with the appropriate Reserve Bank in compliance with this subpart and Form OC. The mutual holding company may obtain Form OC from the Reserve Bank and the Board's Web site (*http://www.federalreserve.gov*).

(2) The mutual holding company must condition the stock offering upon member approval of the plan of conversion.

(3) The Board will review the Form OC and may comment on the included disclosures and financial statements.

(4) The mutual holding company must file a revised offering circular, final offering circular, and any post-effective amendment to the final offering circular.

(5) The Board will not approve the adequacy or accuracy of the offering circular or the disclosures.

(b) *Distribution of the offering circular.*

(1) The mutual holding company may distribute a preliminary offering circular at the same time as or after the mutual holding company mails the proxy statement to its members.

(2) The mutual holding company must distribute the offering circular in accordance with this subpart and with all applicable securities laws.

(3) The mutual holding company must distribute the offering circular to persons listed in the plan of conversion no later than ten days after the Board approves the conversion.

(c) *Post-effective amendments to the offering circular.*

(1) The mutual holding company must file a post-effective amendment to the offering circular with the Board when a material event or change of circumstance occurs.

(2) After the Securities and Exchange Commission declares the post-effective amendment effective, the mutual holding company must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(3) The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(4) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless the Board approves a longer rescission period.

§ 239.59 Offers and sales of stock.

(a) *Purchase priorities.* The mutual holding company must offer to sell the conversion shares in the following order:

(1) Eligible account holders.

(2) Tax-qualified employee stock ownership plans.

(3) Supplemental eligible account holders.

(4) Other voting members who have subscription rights.

(5) The community, the community and the general public, or the general public.

(b) *Offering conversion shares.*

(1) The mutual holding company may offer to sell the conversion shares if the Board approves the conversion, subject to compliance with requirements of the Securities and Exchange Commission.

(2) The offer may commence at the same time as the proxy solicitation of the members begins.

(c) *Pricing conversion shares.*

(1) The conversion shares must be sold at a uniform price per share and at a total price that is equal to the estimated pro forma market value of the shares after conversion.

(2) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the offering circular.

(3) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the offering circular.

(4) If the Board permits, the maximum price of conversion shares sold may be increased. The maximum price, as adjusted, must be no more than 15 percent above the maximum price

computed under paragraph (c)(2) of this section.

(5) The maximum price must be between $5 and $50 per share.

(6) The mutual holding company must include the estimated price in any preliminary offering circular.

(d) *Selling conversion shares.*

(1) The mutual holding company must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The mutual holding company may either send the order forms with the offering circular or after it distributes the offering circular.

(2) The mutual holding company may sell the conversion shares in a community offering, a public offering, or both. The mutual holding company may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(3) The mutual holding company may pay underwriting commissions (including underwriting discounts). The Board may object to the payment of unreasonable commissions. The mutual holding company may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the mutual holding company may pay an underwriter a consulting fee. The Board may object to the payment of unreasonable consulting fees.

(4) If the mutual holding company conducts the community offering, the public offering, or both at the same time as the subscription offering, it must fill all subscription orders first.

(5) The mutual holding company must prepare the order form in compliance with this subpart and Form OF. The mutual holding company may obtain Form OF from the Reserve Bank and from the Board's Web site (www.federalreserve.gov).

(e) *Prohibited sales practices.*

(1) In connection with offers, sales, or purchases of conversion shares under this subpart, the mutual holding company and its directors, officers, agents, or employees may not:

(i) Employ any device, scheme, or artifice to defraud;

(ii) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(iii) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(2) During the conversion, no person may:

(i) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the conversion shares or the underlying securities to the account of another;

(ii) Make any offer, or any announcement of an offer, to purchase any of the conversion shares from anyone but the mutual holding company; or

(iii) Knowingly acquire more than the maximum purchase allowable under the plan of conversion.

(3) The restrictions in paragraphs (e)(2)(i) and (e)(2)(ii) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(i) An underwriter or a selling group, acting on behalf of the mutual holding company or resulting stock holding company, that makes the offer with a view toward public resale; or

(ii) One or more of the tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the equity securities in the aggregate.

(4) Any person that violates the restrictions in paragraphs (e)(2)(i) and (e)(2)(ii) of this section may face prosecution or other legal action.

(f) *Payment for conversion shares.*

(1) A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases conversion shares by a withdrawal from a certificate of deposit, the mutual holding company or its subsidiary savings association may not assess a penalty for the withdrawal.

(2) The mutual holding company may not extend credit to any person to purchase the conversion shares.

(g) *Interest on payments for conversion shares.*

(1) The mutual holding company or its subsidiary savings association must pay interest from the date it receives a payment for conversion shares until the date it completes or terminates the conversion. The mutual holding company or its subsidiary savings association must pay interest at no less than the passbook rate for amounts paid in cash, check, or money order.

(2) If a subscriber withdraws money from a savings account to purchase conversion shares, the mutual holding company or its subsidiary savings association must pay interest on the payment until the mutual holding company completes or terminates the conversion as if the withdrawn amount remained in the account.

(3) If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the mutual holding company or its subsidiary savings association may cancel the certificate and pay interest at no less than the passbook rate on any remaining balance.

(h) *Subscription rights for each eligible account holder and each supplemental eligible account holder.*

(1) The mutual holding company must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(i) The maximum purchase limitation established for the community offering or the public offering under paragraph (p) of this section;

(ii) One-tenth of one percent of the total stock offering; or

(iii) Fifteen times the following number: The total number of conversion shares that the mutual holding company will issue, multiplied by the following fraction: the numerator is the total qualifying deposit of the eligible account holder, and the denominator is the total qualifying deposits of all eligible account holders. The mutual holding company must round down the product of this multiplied fraction to the next whole number.

(2) The mutual holding company must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (h)(1) of this section, except that the mutual holding company must compute the fraction described in paragraph (h)(1)(iii) of this section as follows: the numerator is the total qualifying deposit of the supplemental eligible account holder, and the denominator is the total qualifying deposits of all supplemental eligible account holders.

(i) *Officers, directors, and their associates as eligible account holders.* The officers, directors, and their associates of the mutual holding company and subsidiary savings association may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the mutual holding company must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

(j) *Other voting members eligible to purchase conversion shares.*

(1) The mutual holding company must give rights to purchase the conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The mutual holding company must allocate rights to each voting member that are equal to the greater of:

(i) The maximum purchase limitation established for the community offering and the public offering under paragraph (p) of this section; or

(ii) One-tenth of one percent of the total stock offering.

(2) The mutual holding company must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

(k) *Purchase limitations for officers, directors, and their associates.*

(1) When the mutual holding company converts, the officers, directors, and their associates of the mutual holding company and subsidiary savings association may not purchase, in the aggregate, more than the following percentage of the total stock offering:

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(2) The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the officers, directors, and their associates.

(l) *Allocating conversion shares in the event of oversubscription.*

(1) If the conversion shares are oversubscribed by the eligible account holders, the mutual holding company must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(2) If the conversion shares are oversubscribed by the supplemental eligible account holders, the mutual holding company must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(3) If a person is an eligible account holder and a supplemental eligible account holder, the mutual holding company must include the eligible account holder's allocation in determining the number of conversion shares that the mutual holding company may allocate to the person as a supplemental eligible account holder.

(4) For conversion shares that the mutual holding company does not allocate under paragraphs (l)(1) and (l)(2) of this section, the mutual holding company must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The mutual holding company must describe this method of allocation in its plan of conversion.

(5) If shares remain after the mutual holding company has allocated shares as provided in paragraphs (l)(1) and (l)(2) of this section, and if the voting members oversubscribe, the mutual holding company must allocate the conversion shares among those members equitably. The mutual holding company must describe the method of allocation in its plan of conversion.

(m) *Employee stock ownership plan purchase of conversion shares.*

(1) The tax-qualified employee stock ownership plan of the mutual holding company may purchase up to 10 percent of the total offering of the conversion shares.

(2) If the Board approves a revised stock valuation range as described in paragraph (c)(5) of this section, and the final conversion stock valuation range exceeds the former maximum stock offering range, the mutual holding company may allocate conversion shares to the tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (m)(1) of this section.

(3) If the tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior Board approval and appropriate disclosure in the offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(4) The mutual holding company may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (m)(1) and (m)(2) of this section, unless the Board objects on supervisory grounds.

(n) *Purchase limitations.*

(1) The mutual holding company may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(2) If the mutual holding company sets a limit of five percent under paragraph (n)(1) of this section, it may modify that limit with Board approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and ten percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(3) The mutual holding company may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a $500 subscription or 25 shares.

(4) In setting purchase limitations under this section, the mutual holding company may not aggregate conversion shares attributed to a person in the tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

(o) *Purchase preference for persons in the local community.*

(1) In the subscription offering, subject to the purchase priorities set forth in paragraph (a) of this section, the mutual holding company may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in the local community.

(2) In the community offering, the mutual holding company must give a purchase preference to natural persons residing in the local community.

(p) *Conditions on community offerings and public offerings.*

(1) If the mutual holding company offers conversion shares in a community offering, a public offering, or both, it must offer and sell the stock to achieve a widespread distribution of the stock.

(2) If the mutual holding company offers shares in a community offering, a public offering, or both, it must first fill orders for the stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The mutual holding company must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

§ 239.60 Completion of the offering.

(a) *Deadline for completing the sale of stock.* The mutual holding company must complete all sales of the stock within 45 calendar days after the last day of the subscription period, unless

the offering is extended under paragraph (b) of this section.

(b) *Offering period extension.*

(1) The mutual holding company must request, in writing, an extension of any offering period.

(2) The Board may grant extensions of time to sell the shares. The Board will not grant any single extension of more than 90 days.

(3) If the Board grants the request for an extension of time, the mutual holding company must provide a post-effective amendment to the offering circular under § 239.58(c) to each person who subscribed for or ordered stock. The amendment must indicate that the Board extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

§ 239.61 Completion of the conversion.

(a) *Completion of the conversion.*

(1) In the plan of conversion, the mutual holding company must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the members approve the plan of conversion. The date, once set, may not be extended by the mutual holding company or by the Board. The mutual holding company must terminate the conversion if it is not completed by that date.

(2) The conversion is complete on the date that the mutual holding company accepts the offers for stock of the resulting stock holding company.

(b) *Termination of the conversion.*

(1) The members may terminate the conversion by failing to approve the conversion at the members' meeting.

(2) The mutual holding company may terminate the conversion before the members' meeting.

(3) The mutual holding company may terminate the conversion after the members' meeting only if the Board concurs.

(c) *Voting rights for stockholders following conversion.* The resulting stock holding company must provide the stockholders with exclusive voting rights.

(d) *Rights of savings account holders.* The resulting stock holding company must provide a liquidation account for each eligible and supplemental eligible account holder under § 239.62(a)(1)–(3).

§ 239.62 Liquidation accounts.

(a) *Liquidation account.*

(1) A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the mutual holding company's net worth at the time of conversion. The resulting stock holding company must maintain a sub-account to reflect the interest of each account holder.

(2) Before the resulting stock holding company may provide a liquidation distribution to common stockholders, the resulting stock holding company must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(3) The resulting stock holding company may not record the liquidation account in the financial statements. The resulting stock holding company must disclose the liquidation account in the footnotes to the financial statements.

(4) The initial balance of the liquidation account is the net worth in the statement of financial condition included in the final offering circular.

(b) *Liquidation sub-accounts.*

(1)(i) The resulting stock holding company determines the initial sub-account balance for a savings account held by an eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date. The denominator is total qualifying deposits of all eligible account holders on that date.

(ii) The resulting stock holding company determines the initial sub-account balance for a savings account held by a supplemental eligible account holder by multiplying the initial balance of the liquidation account by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date. The denominator is total qualifying deposits of all supplemental eligible account holders on that date.

(iii) If an account holder holds a savings account on the eligibility record date and a separate savings account on the supplemental eligibility record date, the resulting stock holding company must compute separate sub-accounts for the qualifying deposits in the savings account on each record date.

(2) The resulting stock holding company may not increase the initial sub-account balances. The resulting stock holding company must decrease the initial balance under § 239.62(d) as depositors reduce or close their accounts.

(c) *Retention of voting rights based on liquidation sub-accounts.* Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

(d) *Adjusting liquidation sub-accounts.*

(1)(i) The resulting stock holding company must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the fiscal year end, after the relevant eligibility record dates is less than:

(A) The deposit balance in the account holder's savings account at the close of business on any other annual closing date after the relevant eligibility record date; or

(B) The qualifying deposits in the account holder's savings account on the relevant eligibility record date.

(ii) The reduction must be proportionate to the reduction in the deposit balance.

(2) If the resulting stock holding company reduces the balance of a liquidation sub-account, the resulting stock holding company may not subsequently increase it if the deposit balance increases.

(3) The resulting stock holding company is not required to adjust the liquidation account and sub-account balances at each annual closing date if it maintains sufficient records to make the computations if a liquidation subsequently occurs.

(4) The resulting stock holding company must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number or tax identification number, as applicable.

(5) If there is a complete liquidation, the resulting stock holding company must provide each account holder with a liquidation distribution in the amount of the sub-account balance.

(e) *Liquidation defined.*

(1) For purposes of this subpart, a liquidation is a sale of the assets and settlement of the liabilities with the intent to cease operations and close. Upon liquidation, the resulting stock holding company must return the charter to the governmental agency that issued it. The government agency must cancel the charter.

(2) A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If the resulting stock holding company is involved in such a transaction, the surviving institution must assume the liquidation account.

(f) *Effect of liquidation on net worth.* The liquidation account does not affect the net worth.

§ 239.63 Post-conversion.

(a) *Management stock benefit plans.*

(1) During the 12 months after the conversion, the resulting stock holding company may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided the resulting stock holding company meets all of the following requirements.

(i) The resulting stock holding company discloses the plans in the proxy statement and offering circular and indicates in the offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The ESOP must be tax-qualified.

(ii) The Option Plan does not exceed more than ten percent of the number of shares that the resulting stock holding company issued in the conversion.

(iii)(A) The ESOP and MRP do not exceed, in the aggregate, more than ten percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more following the conversion, the Board may permit the ESOP and MRP to represent, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(B) The MRP does not exceed more than three percent of the number of shares that the resulting stock holding company issued in the conversion. If the resulting stock holding company has tangible capital of ten percent or more after the conversion, the Board may permit the MRP to represent up to four percent of the number of shares that the resulting stock holding company issued in the conversion.

(iv) No individual receives more than 25 percent of the shares under any plan.

(v) The directors who are not the officers do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(vi) The shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the resulting stock holding company establishes or implements the plan. The resulting stock holding company may not hold this meeting until six months after the conversion.

(vii) When the resulting stock holding company distributes proxies or related material to shareholders in connection with the vote on a plan, the resulting stock holding company states that the plan complies with Board regulations and that the Board does not endorse or approve the plan in any way. The resulting stock holding company may not make any written or oral representations to the contrary.

(viii) The resulting stock holding company does not grant stock options at less than the market price at the time of grant.

(ix) The resulting stock holding company does not fund the Option Plan or the MRP at the time of the conversion.

(x) The plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(xi) The plan permits accelerated vesting only for disability or death, or if the resulting stock holding company undergoes a change of control.

(xii) The plan provides that the executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized under the applicable regulatory capital requirements, is subject to Board enforcement action, or receives a capital directive under § 263.83 of this chapter.

(xiii) The resulting stock holding company files a copy of the proposed Option Plan or MRP with the Board and certifies to the Board that the plan approved by the shareholders is the same plan that the resulting stock holding company filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(xiv) The resulting stock holding company files the plan and the certification with the Board within five calendar days after the shareholders approve the plan.

(2) The resulting stock holding company may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to the stock in the ESOP, MRP, and Option Plan.

(3) The restrictions in paragraph (a)(1) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a)(1) of this section is amended more than 12 months following the conversion, the shareholders must ratify any material deviations to the requirements in paragraph (a)(1) of this section.

(b) *Restrictions on the sale of conversion shares by directors, officers, and their associates.*

(1) Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(2) The resulting stock holding company must include notice of the restriction described in paragraph (b)(1) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(3) The resulting stock holding company must instruct the stock transfer agent about the transfer restrictions in this section.

(4) For three years after the resulting stock holding company converts, the officers, directors, and their associates may purchase stock of the resulting stock holding company only from a broker or dealer registered with the Securities and Exchange Commission. However, the officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the outstanding stock, and may purchase stock through any of the management or employee stock benefit plans.

(c) *Repurchase of conversion shares.*

(1) The resulting stock holding company may not repurchase its shares in the first year after the conversion except:

(i) In extraordinary circumstances, the resulting stock holding company may make open market repurchases of up to five percent of the outstanding stock in the first year after the conversion if the resulting stock holding company files a notice under paragraph (d)(1) of this section and the Board does not disapprove the repurchase. The Board will not approve such repurchases unless the repurchase meets the standards in paragraph (d)(3) of this section, and the repurchase is consistent with paragraph (c)(3) of this section.

(ii) The resulting stock holding company may repurchase qualifying shares of a director or conduct a Board approved repurchase pursuant to an offer made to all shareholders of the stock holding company.

(iii) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund

such plans require prior written notification to the Board.

(iv) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(2) After the first year, the resulting stock holding company may repurchase the shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c)(3) of this section.

(3) All stock repurchases are subject to the following restrictions.

(i) The resulting stock holding company may not repurchase the shares if the repurchase will reduce its applicable capital levels below the amount required for the liquidation account under § 239.62(a). The resulting stock holding company must comply with the capital distribution requirements of this subpart.

(ii) The restrictions on share repurchases apply to a charitable organization under § 239.64(b). The resulting stock holding company must aggregate purchases of shares by the charitable organization with the repurchases.

(d) *Board review of repurchase of conversion shares.*

(1) To repurchase stock in the first year following conversion, other than repurchases under paragraphs (c)(1)(iii) or (c)(1)(iv) of this section, the resulting stock holding company must file a written notice with the appropriate Reserve Bank. The resulting stock holding company must provide the following information:

(i) The proposed repurchase program;

(ii) The effect of the repurchases on the regulatory capital and other capital levels; and

(iii) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(2) The resulting stock holding company must file the notice with the appropriate Reserve Bank at least thirty days before the resulting stock holding company begins the repurchase program. The Board may extend its review of the notice for an additional sixty days.

(3) The resulting stock holding company may not repurchase the shares if the Board objects to the repurchase program. The Board will not object to the repurchase program if:

(i) The repurchase program will not adversely affect the financial condition of the resulting savings association;

(ii) The resulting stock holding company submits sufficient information to evaluate the proposed repurchases;

(iii) The resulting stock holding company demonstrate extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(iv) The repurchase program would not be contrary to other applicable regulations.

(e) *Declaring and paying dividends following conversion.* The resulting stock holding company may declare or pay a dividend on its shares after it converts if:

(1) The dividend will not reduce the regulatory capital below the amount required for the liquidation account under § 239.62(a);

(2) The resulting stock holding company complies with all applicable regulatory capital requirements after it declares or pays dividends;

(3) The resulting stock holding company complies with the capital distribution requirements under this subpart; and

(4) The resulting stock holding company does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

(f) *Eligibility to acquire shares after conversion.*

(1) For three years after the resulting stock holding company converts, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than ten percent of any class of the equity securities without the Board's prior written approval. If a person violates this prohibition, the resulting stock holding company may not permit the person to vote shares in excess of ten percent, and may not count the shares in excess of ten percent in any shareholder vote.

(2) A person acquires beneficial ownership of more than ten percent of a class of shares when he or she holds any combination of the stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under §§ 238.21(a) and (d) of this chapter. The Board will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(3) Notwithstanding the restrictions in this section:

(i) Paragraphs (f)(1) and (f)(2) of this section do not apply to any offer with a view toward public resale made exclusively to the resulting stock holding company, to the underwriters, or to a selling group acting on behalf of the resulting savings association.

(ii) Unless the Board objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(iii) A corporation whose ownership is, or will be, substantially the same as the ownership may acquire or offer to acquire more than ten percent of the common stock, if it makes the offer or acquisition more than one year after the resulting stock holding company converts.

(iv) One or more of the tax-qualified employee stock benefit plans may acquire the shares, if the plan or plans do not beneficially own more than 25 percent of any class of shares of the resulting savings association in the aggregate.

(v) An acquiror does not have to file a separate application to obtain Board approval under paragraph (f)(1) of this section, if the acquiror files an application under part 238 of this chapter that specifically addresses the criteria listed under paragraph (f)(4) of this section and the resulting stock holding company does not oppose the proposed acquisition.

(4) The Board may deny an application under paragraph (f)(1) of this section if the proposed acquisition:

(i) Is contrary to the purposes of this subpart;

(ii) Is manipulative or deceptive;

(iii) Subverts the fairness of the conversion;

(iv) Is likely to injure the resulting stock holding company;

(v) Is inconsistent with the plan to meet the credit and lending needs of the proposed market area;

(vi) Otherwise violates laws or regulations; or

(vii) Does not prudently deploy the conversion proceeds.

(g) *Additional requirements that apply following conversion.* After conversion, the resulting stock holding company must:

(1) Promptly register the shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). The resulting stock holding company may not deregister the shares for three years.

(2) Encourage and assist a market maker to establish and to maintain a market for the shares. A market maker for a security is a dealer who:

(i) Regularly publishes bona fide competitive bid and offer quotations for

the security in a recognized inter-dealer quotation system;

(ii) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(iii) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(3) Use the best efforts to list the shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(4) File all post-conversion reports that the Board requires.

§ 239.64 Contributions to charitable organizations.

(a) *Forming a charitable organization as part of a conversion.* When a mutual holding company converts to the stock form, it may form a charitable organization. Its contributions to the charitable organization are governed by the requirements of paragraphs (b) through (f) of this section.

(b) *Donating conversion shares or conversion proceeds to a charitable organization.* Some of the conversion shares or proceeds may be contributed to a charitable organization if:

(1) The plan of conversion provides for the proposed contribution;

(2) The members approve the proposed contribution; and

(3) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

(c) *Member approval of charitable contributions.* At the meeting to consider conversion of the mutual holding company, the members must separately approve by at least a majority of the total eligible votes, a contribution of conversion shares or proceeds. If the mutual holding company has a subsidiary holding company with minority shareholders, or if the subsidiary savings association has minority shareholders, and the mutual holding company is adding a charitable contribution as part of a second step stock conversion, it must also have the minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

(d) *Charitable organization contribution limits.* A reasonable amount of conversion shares or proceeds may be contributed to a charitable organization, if the contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the Board does not object on supervisory grounds. If the mutual holding company or resulting stock holding company is well-capitalized pursuant to § 238.62 of this chapter, the Board generally will not object if it contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

(e) *Charitable organization requirements.* The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(1) The charitable organization's primary purpose is to serve and make grants in the local community;

(2) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the shareholders;

(3) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the local community. This director may not be the officer, director, or employee, or the affiliate's officer, director, or employee, and should have experience with local community charitable organizations and grant making; and

(4) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the board of directors or the board of directors of an acquiror or resulting institution in the event of a merger or acquisition of the organization.

(5) The Board may examine the charitable organization at the charitable organization's expense;

(6) The charitable organization must comply with all supervisory directives that the Board imposes;

(7) The charitable organization must annually provide the Board with a copy of the annual report that the charitable organization submitted to the IRS;

(8) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy; and

(9) The charitable organization may not engage in self-dealing, and must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(f) *Conflicts of interest involving the directors of the mutual holding company or resulting stock holding company.*

(1) An individual who is the director, officer, or employee, or a person who has the power to direct the management or policies, or otherwise owes a fiduciary duty to the mutual holding company or resulting stock holding company and who will serve as an officer, director, or employee of the charitable organization, is subject to the following obligations:

(i) The individual must not advance their own personal or business interests, or those of others with whom the individual has a personal or business relationship, at the expense of the mutual holding company or resulting stock holding company;

(ii) If the individual has an interest in a matter or transaction before the board of directors, the individual must:

(A) Disclose to the board all material nonprivileged information relevant to the board's decision on the matter or transaction, including the existence, nature and extent of the individual's interests, and the facts known to the individual as to the matter or transaction under consideration;

(B) Refrain from participating in the board's discussion of the matter or transaction; and

(C) Recuse themselves from voting on the matter or transaction (if the individual is a director). *See* Form AC, which provides further information or operating plans and conflict of interest plans. The mutual holding company may obtain Form AC from the appropriate Reserve Bank and the Board's Web site at *http://www.federalreserve.gov.*

(2) Before the board of directors may adopt a plan of conversion that includes a charitable organization, the mutual holding company must identify the directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

(3) The stock certificates of shares contributed to the charitable organization or that the charitable organization otherwise acquires must bear the following legend: ''The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.''

(4) As long as the charitable organization controls shares, the resulting stock holding company must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the shareholders.

(5) After the stock offering is complete, the resulting stock holding company must submit an executed copy of the following documents to the

appropriate Reserve Bank: the charitable organization's charter and bylaws (or trust agreement), operating plan (within six months after the stock offering), conflict of interest policy, and the gift instrument for the contributions of either stock or cash to the charitable organization.

§ 239.65 Voluntary supervisory conversions.

(a) *Voluntary supervisory conversion.*

(1) The mutual holding company must comply with this section and § 239.66 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 10(o)(7) and 10(p) of the Home Owners' Loan Act (12 U.S.C. 1467a(o) and (p)).

(2) Sections 239.50 through 239.64 also apply to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

(b) *Conducting a voluntary supervisory conversion.* In conducting a voluntary supervisory conversion, the mutual holding company may:

(1) Sell its shares to the public;

(2) Convert into stock form by merging into a state-chartered corporation; or

(3) Sell its shares directly to an acquiror, who may be an individual, company, depository institution, or depository institution holding company.

(c) *Member rights in a voluntary supervisory conversion.* Members of the mutual holding company do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the Board provides otherwise. The members may have interests in a liquidation account, if one is established.

(d) *Eligibility for a voluntary supervisory conversion.* A mutual holding company may be eligible to engage in a voluntary supervisory conversion if:

(1) Either the mutual holding company or its subsidiary savings association is significantly undercapitalized under applicable regulatory capital requirements (or the mutual holding company or its subsidiary savings association is undercapitalized under applicable regulatory capital requirements and a standard conversion that would make it adequately capitalized is not feasible) and will be a viable entity following the conversion;

(2) Severe financial conditions threaten stability of the mutual holding company, and a conversion is likely to improve its financial condition.

(e) A mutual holding company or its subsidiary savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) It will be adequately capitalized as a result of the conversion;

(2) It, the proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the best interest of the mutual holding company and its subsidiary savings associations, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the mutual holding company and its subsidiary savings associations, the Deposit Insurance Fund, or the public interest.

(f) *Plan of voluntary supervisory conversion.* A majority of the board of directors of the mutual holding company must approve a plan of voluntary supervisory conversion. The mutual holding company must include all of the following information in the plan of voluntary supervisory conversion.

(1) The name and address of the mutual holding company.

(2) The name, address, date and place of birth, and social security number or tax identification number, as applicable, of each proposed purchaser of conversion shares and a description of that purchaser's relationship to the mutual holding company.

(3) The title, per-unit par value, number, and per-unit and aggregate offering price of shares that the mutual holding company will issue.

(4) The number and percentage of shares that each investor will purchase.

(5) The aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(6) A description of any liquidation account.

(7) Certified copies of all resolutions of the board of directors relating to the conversion.

(g) *Voluntary supervisory conversion application.* The mutual holding company must include all of the following information and documents in a voluntary supervisory conversion application to the Board under this subpart:

(1) *Eligibility.*

(i) Evidence establishing that the mutual holding company meets the eligibility requirements under paragraph (d) of this section.

(ii) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(2) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with paragraph (e) of this section.

(3) *Business plan.* A business plan that complies with § 239.53(b), when required by the Board.

(4) *Financial data.* (i) The most recent audited financial statements and Thrift Financial Report. The mutual holding company must explain how its current capital levels or the capital levels of its subsidiary savings associations make it eligible to engage in a voluntary supervisory conversion under paragraph (d) of this section.

(ii) A description of the estimated conversion expenses.

(iii) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the Board and the non-cash asset must meet all other Board policy guidelines.

(iv) Pro forma financial statements that reflect the effects of the transaction. The mutual holding company must identify the tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The mutual holding company must prepare the pro forma statements in conformance with Board regulations and policy.

(5) *Proposed documents.* (i) The proposed charter and bylaws.

(ii) The proposed stock certificate form.

(6) *Agreements.* (i) A copy of any agreements between the mutual holding company and proposed purchasers.

(ii) A copy and description of all existing and proposed employment contracts. The mutual holding company must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(7) *Related applications.* (i) All filings required under the securities offering rules of subpart E of this part.

(ii) Any required Holding Company Act application or Control Act notice under part 238 of this chapter.

(iii) A subordinated debt application, if applicable.

(iv) Applications for permission to organize a stock savings and loan holding company and for approval of a merger.

(v) A statement describing any other applications required under federal or state banking laws for all transactions related to the conversion, copies of all dispositive documents issued by

regulatory authorities relating to the applications, and, if requested by the Board, copies of the applications and related documents.

(8) *Waiver request.* A description of any of the features of the application that do not conform to the requirements of this subpart, including any request for waiver of any of these requirements.

(h) *Offers and sales of stock.* If the mutual holding company converts under this subpart, the conversion shares must be offered and sold in compliance with § 239.59.

(i) *Post-conversion acquisition of shares.* For three years after the completion of a voluntary supervisory conversion, neither the resulting stock holding company nor the principal shareholder(s) may acquire shares from minority shareholders without the Board's prior approval.

§ 239.66 Board review of the voluntary supervisory conversion application.

(a) *Board review of a voluntary supervisory conversion application.* The Board will generally approve the application to engage in a voluntary supervisory conversion unless it determines:

(1) The mutual holding company does not meet the eligibility requirements for a voluntary supervisory conversion under §§ 239.65(d) or because the proceeds from the sale of the conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(2) The transaction is detrimental to or would cause potential injury to the mutual holding company, its subsidiary savings association, or the Deposit Insurance Fund or is contrary to the public interest;

(3) The mutual holding company or the acquiror, or the controlling parties or directors and officers of the mutual holding company or the acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(4) The mutual holding company fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the Board generally will not approve employment contracts of more than one year for the existing management.

(b) *Conditions the Board may impose on an approval.*

(1) The Board will condition approval of a voluntary supervisory conversion application on all of the following.

(i) The conversion stock sale must be complete within three months after the Board approves the application. The Board may grant an extension for good cause.

(ii) The mutual holding company and the resulting stock holding company must comply with all filing requirements of subpart E of this part.

(iii) The mutual holding company must submit an opinion of independent legal counsel indicating that the sale of the shares complies with all applicable state securities law requirements.

(iv) The mutual holding company and the resulting stock holding company must comply with all applicable laws, rules, and regulations.

(v) The mutual holding company and the resulting stock holding company must satisfy any other requirements or conditions the Board may impose.

(2) The Board may condition approval of a voluntary supervisory conversion application on either of the following:

(i) The mutual holding company and the resulting stock holding company must satisfy any conditions and restrictions the Board imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the mutual holding company before and after the conversion. The Board may impose these conditions and restrictions on the mutual holding company and the resulting stock holding company (before and after the conversion), the acquiror, controlling parties, or directors and officers of the mutual holding company or the acquiror; or

(ii) The mutual holding company or the resulting stock holding company must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

Appendix A to Part 239—Mutual Holding Company Model Charter

FEDERAL MUTUAL HOLDING COMPANY CHARTER

Section 1: Corporate title. The name of the mutual holding company is ____(the ''Mutual Holding Company'').

Section 2: Duration. The duration of the Mutual Holding Company is perpetual.

Section 3: Purpose and powers. The purpose of the Mutual Holding Company is to pursue any or all of the lawful objectives of a federal mutual savings and loan holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and all acts amendatory thereof and supplemental thereto, subject to the Constitution and the laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Federal Reserve Board (''Board'').

Section 4: Capital. The Mutual Holding Company shall have no capital stock.

Section 5: Members. [The content of this section 5 shall be identical to the content of the parallel section in the charter of the reorganizing association, with the following exceptions: (A) Any provisions conferring membership rights upon borrowers of the reorganizing association shall be eliminated and replaced with provisions grandfathering those rights in accordance with 12 CFR 239.5; and (B) appropriate changes shall be made to indicate that membership rights in the mutual holding company derive from deposit accounts in and, to the extent of any grandfather provisions, borrowings from the resulting association. Set forth below is an example of how section 5 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 5 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 239.5.]

All holders of the savings, demand, or other authorized accounts of ____[insert the name of the resulting association] (the ''Association'') are members of the Mutual Holding Company. With respect to all questions requiring action by the members of the Mutual Holding Company, each holder of an account in the Association shall be permitted to cast one vote for each $100, or fraction thereof, of the withdrawal value of the member's account. In addition, borrowers from the Association as of ____[insert the date of the reorganization or any earlier date as of which new borrowings ceased to result in membership rights] shall be entitled to one vote for the period of time during which such borrowings are in existence. [The foregoing sentence should be included only if the charter of the reorganizing association confers voting rights on any borrowers.] No member, however, shall cast more than one thousand votes. All accounts shall be nonassessable.

Section 6. Directors. The Mutual Holding Company shall be under the direction of a board of directors. The authorized number of directors shall not be fewer than five nor more than fifteen, as fixed in the Mutual Holding Company's bylaws, except that the number of directors may be decreased to a number less than five or increased to a number greater than fifteen with the prior approval of the Board.

Section 7: Capital, surplus, and distribution of earnings. [The content of this section 7 shall be identical to the content of the parallel section in the charter of the reorganizing association, except for changes made to indicate that distribution rights in the mutual holding company derive from deposit accounts in the resulting association, any changes required to provide that the

Board shall be the approving authority in instances where the charter requires regulatory approval of distributions, and any other changes necessary to accommodate the mutual holding company format. Set forth below is an example of how section 7 should appear in the charter of a mutual holding company formed by a reorganizing association whose charter conforms to the model charter prescribed for federal mutual savings associations for calendar year 1989. Additional changes to this section 7 may be required whenever a mutual holding company reorganization involves an acquiree association, or a mutual holding company makes a post-reorganization acquisition of a mutual savings association, so as to preserve the membership rights of the members of the acquired association consistent with 12 CFR 239.5].

The Mutual Holding Company shall distribute net earnings to account holders of the Association on such basis and in accordance with such terms and conditions as may from time to time be authorized by the Board, provided that the Mutual Holding Company may establish minimum account balance requirements for account holders to be eligible for distributions of earnings.

All holders of accounts of the Association shall be entitled to equal distribution of the assets of the Mutual Holding Company, *pro rata* to the value of their accounts in the Association, in the event of voluntary or involuntary liquidation, dissolution, or winding up of the Mutual Holding Company.

Section 8. Amendment. Adoption of any preapproved charter amendment shall be effective after such preapproved amendment has been approved by the members at a legal meeting. Any other amendment, addition, change, or repeal of this charter must be approved by the Board prior to approval by the members at a legal meeting and shall be effective upon filing with the Board in accordance with regulatory procedures.

Attest: _____
Secretary of the Association
By: _____
President or Chief Executive Officer of the Association
By: _____
Secretary of the Board of Governors of the Federal Reserve System
Effective Date: _____

Appendix B to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Charter

FEDERAL MHC SUBSIDIARY HOLDING COMPANY CHARTER

Section 1. Corporate title. The full corporate title of the mutual holding company (''MHC'') subsidiary holding company is XXX.

Section 2. Domicile. The domicile of the MHC subsidiary holding company shall be in the city of __, in the State of __.

Section 3. Duration. The duration of the MHC subsidiary holding company is perpetual.

Section 4. Purpose and powers. The purpose of the MHC subsidiary holding company is to pursue any or all of the lawful objectives of a federal mutual holding company chartered under section 10(o) of the Home Owners' Loan Act, 12 U.S.C. 1467a(o), and to exercise all of the express, implied, and incidental powers conferred thereby and by all acts amendatory thereof and supplemental thereto, subject to the Constitution and laws of the United States as they are now in effect, or as they may hereafter be amended, and subject to all lawful and applicable rules, regulations, and orders of the Board of Governors of the Federal Reserve System (''Board'').

Section 5. Capital stock. The total number of shares of all classes of the capital stock that the MHC subsidiary holding company has the authority to issue is __, all of which shall be common stock of par [or if no par is specified then shares shall have a stated] value of __ per share. The shares may be issued from time to time as authorized by the board of directors without the approval of its shareholders, except as otherwise provided in this section 5 or to the extent that such approval is required by governing law, rule, or regulation. The consideration for the issuance of the shares shall be paid in full before their issuance and shall not be less than the par [or stated] value. Neither promissory notes nor future services shall constitute payment or part payment for the issuance of shares of the MHC subsidiary holding company. The consideration for the shares shall be cash, tangible or intangible property (to the extent direct investment in such property would be permitted to the MHC subsidiary holding company), labor, or services actually performed for the MHC subsidiary holding company, or any combination of the foregoing. In the absence of actual fraud in the transaction, the value of such property, labor, or services, as determined by the board of directors of the MHC subsidiary holding company, shall be conclusive. Upon payment of such consideration, such shares shall be deemed to be fully paid and nonassessable. In the case of a stock dividend, that part of the retained earnings of the MHC subsidiary holding company that is transferred to common stock or paid-in capital accounts upon the issuance of shares as a stock dividend shall be deemed to be the consideration for their issuance.

Except for shares issued in the initial organization of the MHC subsidiary holding company, no shares of capital stock (including shares issuable upon conversion, exchange, or exercise of other securities) shall be issued, directly or indirectly, to officers, directors, or controlling persons (except for shares issued to the parent mutual holding company) of the MHC subsidiary holding company other than as part of a general public offering or as qualifying shares to a director, unless the issuance or the plan under which they would be issued has been approved by a majority of the total votes eligible to be cast at a legal meeting.

The holders of the common stock shall exclusively possess all voting power. Each holder of shares of common stock shall be entitled to one vote for each share held by such holder, except as to the cumulation of votes for the election of directors, unless the charter provides that there shall be no such cumulative voting. Subject to any provision for a liquidation account, in the event of any liquidation, dissolution, or winding up of the MHC subsidiary holding company, the holders of the common stock shall be entitled, after payment or provision for payment of all debts and liabilities of the MHC subsidiary holding company, to receive the remaining assets of the MHC subsidiary holding company available for distribution, in cash or in kind. Each share of common stock shall have the same relative rights as and be identical in all respects with all the other shares of common stock.

Section 6. Preemptive rights. Holders of the capital stock of the MHC subsidiary holding company shall not be entitled to preemptive rights with respect to any shares of the MHC subsidiary holding company which may be issued.

Section 7. Directors. The MHC subsidiary holding company shall be under the direction of a board of directors. The authorized number of directors, as stated in the MHC subsidiary holding company's bylaws, shall not be fewer than five nor more than fifteen except when a greater or lesser number is approved by the Board, or his or her delegate.

Section 8. Amendment of charter. Except as provided in Section 5, no amendment, addition, alteration, change or repeal of this charter shall be made, unless such is proposed by the board of directors of the MHC subsidiary holding company, approved by the shareholders by a majority of the votes eligible to be cast at a legal meeting, unless a higher vote is otherwise required, and approved or preapproved by the Board.

Attest: _____
Secretary of the Subsidiary Holding Company
By: _____
President or Chief Executive Officer of the Subsidiary Holding Company
By: _____
Secretary of the Board of Governors of the Federal Reserve System
Effective Date: _____

Appendix C to Part 239—Mutual Holding Company Model Bylaws

MODEL BYLAWS FOR MUTUAL HOLDING COMPANIES

The term ''trustees'' may be substituted for the term ''directors.''

1. Annual meeting of members. The annual meeting of the members of the mutual holding company for the election of directors and for the transaction of any other business of the mutual holding company shall be held, as designated by the board of directors, at a location within the state that constitutes the principal place of business of the mutual holding company, or at any other convenient place the board of directors may designate, at (insert date and time within 150 days after the end of the mutual holding company's fiscal year, if not a legal holiday, or if a legal holiday then on the next succeeding day not a legal holiday). At each annual meeting, the officers shall make a full report of the financial condition of the mutual holding company and of its progress for the preceding year and shall outline a program for the succeeding year.

2. Special meetings of members. Special meetings of the members of the mutual holding company may be called at any time by the president or the board of directors and shall be called by the president, a vice president, or the secretary upon the written request of members of record, holding in the aggregate at least one-tenth of the voting capital of the mutual holding company. Such written request shall state the purpose of the meeting and shall be delivered at the principal place of business of the mutual holding company addressed to the president. For purposes of this section, ''voting capital'' means FDIC-insured deposits as of the voting record date. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order or any other set of written procedures agreed to by the board of directors.

3. Notice of meeting of members. Notice of each meeting shall be either published once a week for the two successive calendar weeks (in each instance on any day of the week) immediately prior to the week in which such meeting shall convene, in a newspaper printed in the English language and of general circulation in the city or county in which the principal place of business of the mutual holding company is located, or mailed postage prepaid at least (insert number no less than 15) days and not more than (insert number not more than 45) days prior to the date on which such meeting shall convene, to each of its members of record at the last address appearing on the books of the mutual holding company. Such notice shall state the name of the mutual holding company, the place of the meeting, the date and time when it shall convene, and the matters to be considered. A similar notice shall be posted in a conspicuous place in each of the offices of the mutual holding company during the 14 days immediately preceding the date on which such meeting shall convene. If any member, in person or by authorized attorney, shall waive in writing notice of any meeting of members, notice thereof need not be given to such member. When any meeting is adjourned for 30 days or more, notice of the adjournment and reconvening of the meeting shall be given as in the case of the original meeting.

4. Fixing of record date. For the purpose of determining members entitled to notice of or to vote at any meeting of members or any adjournment thereof, or in order to make a determination of members for any other proper purpose, the board of directors shall fix in advance a record date for any such determination of members. Such date shall be not more than 60 days nor fewer than 10 days prior to the date on which the action, requiring such determination of members, is to be taken. The member entitled to participate in any such action shall be the member of record on the books of the mutual holding company on such record date. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the mutual holding company as of such record date. Any member of such record date who ceases to be a member prior to such meeting shall not be entitled to vote at that meeting. The same determination shall apply to any adjourned meeting.

5. Member quorum. Any number of members present and voting, represented in person or by proxy, at a regular or special meeting of the members shall constitute a quorum. A majority of all votes cast at any meeting of the members shall determine any question, unless otherwise required by regulation. Directors, however, are elected by a plurality of the votes cast at an election of directors. At any adjourned meeting any business may be transacted which might have been transacted at the meeting as originally called. Members present at a duly constituted meeting may continue to transact business until adjournment.

6. Voting by proxy. Voting at any annual or special meeting of the members may be by proxy pursuant to the rules and regulations of the Board of Governors of the Federal Reserve System (Board), provided, that no proxies shall be voted at any meeting unless such proxies shall have been placed on file with the secretary of the mutual holding company, for verification, prior to the convening of such meeting. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the member. All proxies with a term greater than eleven months or solicited at the expense of the mutual holding company must run to the board of directors as a whole, or to a committee appointed by a majority of such board. Accounts held by an administrator, executor, guardian, conservator or receiver may be voted in person or by proxy by such person. Accounts held by a trustee may be voted by such trustee either in person or by proxy, in accordance with the terms of the trust agreement, but no trustee shall be entitled to vote accounts without a transfer of such accounts into the trustee name. Accounts held in trust in an IRA or Keogh Account, however, may be voted by the mutual holding company if no other instructions are received. Joint accounts shall be entitled to no more than 1000 votes, and any owner may cast all the votes unless the mutual holding company has otherwise been notified in writing.

7. Communication between members. Communication between members shall be subject to any applicable rules or regulations of the Board. No member, however, shall have the right to inspect or copy any portion of any books or records of a mutual holding company containing: (i) a list of depositors in or borrowers from such mutual holding company; (ii) their addresses; (iii) individual deposit or loan balances or records; or (iv) any data from which such information could reasonably be constructed.

8. Number of directors, membership. The number of directors shall be ____[not fewer than five nor more than fifteen], except where authorized by the Board. Each director shall be a member of the mutual holding company. Directors shall be elected for periods of one to three years and until their successors are elected and qualified, but if a staggered board is chosen, provision shall be made for the election of approximately one-third or one-half of the board each year, as appropriate.

9. Meetings of the board. The board of directors shall meet regularly without notice at the principal place of business of the mutual holding company at least once each month at an hour and date fixed by resolution of the board, provided that the place of meeting may be changed by the directors. Special meetings of the board may be held at any place specified in a notice of such meeting and shall be called by the secretary upon the written request of the chairman or of three directors. All special meetings shall be held upon at least 24 hours written notice to each director unless notice is waived in writing before or after such meeting. Such notice shall state the place, date, time, and purposes of such meeting. A majority of the authorized directors shall constitute a quorum for the transaction of business. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the board. Action may be taken without a meeting if unanimous written consent is obtained for such action. The board may also permit telephonic participation at meetings. The meetings shall be under the direction of a chairman, appointed annually by the board, or in the absence of the chairman, the meetings shall be under the direction of the president.

10. Officers, employees, and agents. Annually at the meeting of the board of directors of the mutual holding company following the annual meeting of the members of the mutual holding company, the board shall elect a president, one or more vice presidents, a secretary, and a treasurer or comptroller: Provided, that the offices of president and secretary may not be held by the same person and a vice president may also be the treasurer or comptroller. The board may appoint such additional officers, employees, and agents as it may from time to time determine. The term of office of all officers shall be one year or until their respective successors are elected and qualified. Any officer may be removed at any time by the board with or without cause, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the person so removed. In the absence of designation from time to time of powers and duties by the board, the officers shall have such powers and duties as generally pertain to their respective offices. Any indemnification by the mutual holding company of the mutual holding company's personnel is subject to any applicable rules or regulations of the Board.

11. Vacancies, resignation or removal of directors. Members of the mutual holding company shall elect directors by ballot: Provided, that in the event of a vacancy on the board between meetings of members, the board of directors may, by their affirmative vote, fill such vacancy, even if the remaining directors constitute less than a quorum. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the members. Any director may resign at any time by sending a written notice of such resignation to the mutual holding company delivered to the secretary. Unless otherwise specified therein such resignation shall take effect upon receipt by the secretary. More than three consecutive absences from regular meetings of the board,

unless excused by resolution of the board, shall automatically constitute a resignation, effective when such resignation is accepted by the board. At a meeting of members called expressly for that purpose, directors or the entire board may be removed, only with cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors.

12. Powers of the board. The board of directors shall have the power: (a) By resolution, to appoint from among its members and remove an executive committee, which committee shall have and may exercise the powers of the board between the meetings of the board, but no such committee shall have the authority of the board to amend the charter or bylaws, adopt a plan of merger, consolidation, dissolution, or provide for the disposition of all or substantially all the property and assets of the mutual holding company. Such committee shall not operate to relieve the board, or any member thereof, of any responsibility imposed by law; (b) To appoint and remove by resolution the members of such other committees as may be deemed necessary and prescribe the duties thereof; (c) To fix the compensation of directors, officers, and employees; and to remove any officer or employee at any time with or without cause; (d) To limit payments on capital which may be accepted; and (e) To exercise any and all of the powers of the mutual holding company not expressly reserved by the charter to the members.

13. Execution of instruments, generally. All documents and instruments or writings of any nature shall be signed, executed, verified, acknowledged, and delivered by such officers, agents, or employees of the mutual holding company or any one of them and in such manner as from time to time may be determined by resolution of the board. All notes, drafts, acceptances, checks, endorsements, and all evidences of indebtedness of the mutual holding company whatsoever shall be signed by such officer or officers or such agent or agents of the mutual holding company and in such manner as the board may from time to time determine. Endorsements for deposit to the credit of the mutual holding company in any of its duly authorized depositories shall be made in such manner as the board may from time to time determine. Proxies to vote with respect to shares or accounts of other mutual holding companies or stock of other corporations owned by, or standing in the name of, the mutual holding company may be executed and delivered from time to time on behalf of the mutual holding company by the president or a vice president and the secretary or an assistant secretary of the mutual holding company or by any other persons so authorized by the board.

14. Nominating committee. The chairman, at least 30 days prior to the date of each annual meeting, shall appoint a nominating committee of three individuals who are members of the mutual holding company. Such committee shall make nominations for directors in writing and deliver to the secretary such written nominations at least 15 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 15-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Provided such committee is appointed and makes such nominations, no nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by members are made in writing and delivered to the secretary of the mutual holding company at least 10 days prior to the date of the annual meeting, which nominations shall then be posted in a prominent place in the principal place of business for the 10-day period prior to the date of the annual meeting, except in the case of a nominee substituted as a result of death or other incapacity. Ballots bearing the names of all individuals nominated by the nominating committee and by other members prior to the annual meeting shall be provided for use by the members at the annual meeting. If at any time the chairman shall fail to appoint such nominating committee, or the nominating committee shall fail or refuse to act at least 15 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any member and shall be voted upon.

15. New business. Any new business to be taken up at the annual meeting, including any proposal to increase or decrease the number of directors of the mutual holding company, shall be stated in writing and filed with the secretary of the mutual holding company at least 30 days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any member may make any other proposal at the annual meeting and the same may be discussed and considered; but unless stated in writing and filed with the secretary 30 days before the meeting, such proposal shall be laid over for action at an adjourned, special, or regular meeting of the members taking place at least 30 days thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of the reports of officers and committees, but in connection with such reports no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

16. Seal. The seal shall be two concentric circles between which shall be the name of the mutual holding company. The year of incorporation, the word ''Incorporated'' or an emblem may appear in the center.

17. Amendment. Adoption of any bylaw amendment pursuant to § 239.15 of the Board's regulations, as long as consistent with applicable law, rules and regulations, and which adequately addresses the subject and purpose of the stated by law section, shall be effective after (i) approval of the amendment by a majority vote of the authorized board, or by a vote of the members of the mutual holding company at a legal meeting; and (ii) receipt of any applicable regulatory approval. When a mutual holding company fails to meet its quorum requirement solely due to vacancies on the board, the bylaws may be amended by an affirmative vote of a majority of the sitting board.

18. Age limitations. [Bylaws on age limitations must comply with all Federal laws, such as the Age Discrimination in Employment Act and the Employee Retirement Income Security Act.]

(a) Directors. No individual ____ years of age shall be eligible for election, reelection, appointment, or reappointment to the board of the mutual holding company. No director shall serve as such beyond the annual meeting of the mutual holding company immediately following the director becoming ____(fill in age used above), except that a director serving on ____(fill in bylaw adoption date) may complete the term as director. This age limitation does not apply to an advisory director.

(b) Officers. No individual ____ years of age shall be eligible for election, reelection, appointment, or reappointment as an officer of the mutual holding company. No officer shall serve beyond the annual meeting of the mutual holding company immediately following the officer becoming ____(fill in age used above), except that an officer serving on ____(fill in bylaw adoption date) may complete the term. However, an officer shall, at the option of the board, retire at age ____ if the officer has served in an executive or high policy-making post for at least two years immediately prior to retirement and is immediately entitled to nonforfeitable annual retirement benefits of at least ____.

Appendix D to Part 239—Subsidiary Holding Company of a Mutual Holding Company Model Bylaws

MHC Subsidiary Holding Company Bylaws

Article I—Home Office

The home office of the Subsidiary Holding Company shall be at _____. [set forth the full address] in the County of _____, in the State of _____.

Article II—Shareholders

Section 1. Place of Meetings. All annual and special meetings of shareholders shall be held at the home office of the Subsidiary Holding Company or at such other convenient place as the board of directors may determine.

Section 2. Annual Meeting. A meeting of the shareholders of the Subsidiary Holding Company for the election of directors and for the transaction of any other business of the Subsidiary Holding Company shall be held annually within 150 days after the end of the Subsidiary Holding Company's fiscal year on the ____of ____ if not a legal holiday, and if a legal holiday, then on the next day following which is not a legal holiday, at ____, or at such other date and time within such 150-day period as the board of directors may determine.

Section 3. Special Meetings. Special meetings of the shareholders for any purpose or purposes, unless otherwise prescribed by the regulations of the Board of Governors of the Federal Reserve System (''Board''), may be called at any time by the chairman of the

board, the president, or a majority of the board of directors, and shall be called by the chairman of the board, the president, or the secretary upon the written request of the holders of not less than one-tenth of all of the outstanding capital stock of the Subsidiary Holding Company entitled to vote at the meeting. Such written request shall state the purpose or purposes of the meeting and shall be delivered to the home office of the Subsidiary Holding Company addressed to the chairman of the board, the president, or the secretary.

Section 4. Conduct of Meetings. Annual and special meetings shall be conducted in accordance with the most current edition of Robert's Rules of Order unless otherwise prescribed by regulations of the Board or these bylaws or the board of directors adopts another written procedure for the conduct of meetings. The board of directors shall designate, when present, either the chairman of the board or president to preside at such meetings.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of the meeting and the purpose(s) for which the meeting is called shall be delivered not fewer than 20 nor more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the chairman of the board, the president, or the secretary, or the directors calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the mail, addressed to the shareholder at the address as it appears on the stock transfer books or records of the Subsidiary Holding Company as of the record date prescribed in section 6 of this article II with postage prepaid. When any shareholders' meeting, either annual or special, is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. It shall not be necessary to give any notice of the time and place of any meeting adjourned for less than 30 days or of the business to be transacted at the meeting, other than an announcement at the meeting at which such adjournment is taken.

Section 6. Fixing of Record Date. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders. Such date in any case shall be not more than 60 days and, in case of a meeting of shareholders, not fewer than 10 days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment.

Section 7. Voting Lists. At least 20 days before each meeting of the shareholders, the officer or agent having charge of the stock transfer books for shares of the Subsidiary Holding Company shall make a complete list of the shareholders of record entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address and the number of shares held by each. This list of shareholders shall be kept on file at the home office of the Subsidiary Holding Company and shall be subject to inspection by any shareholder of record or the shareholder's agent at any time during usual business hours for a period of 20 days prior to such meeting. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any shareholder of record or any shareholder's agent during the entire time of the meeting. The original stock transfer book shall constitute prima facie evidence of the shareholders entitled to examine such list or transfer books or to vote at any meeting of shareholders. In lieu of making the shareholder list available for inspection by shareholders as provided in the preceding paragraph, the board of directors may elect to follow the procedures prescribed in § 239.26(d) of the Board's regulations as now or hereafter in effect.

Section 8. Quorum. A majority of the outstanding shares of the Subsidiary Holding Company entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders. If less than a majority of the outstanding shares is represented at a meeting, a majority of the shares so represented may adjourn the meeting from time to time without further notice. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to constitute less than a quorum. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number of shareholders voting together or voting by classes is required by law or the charter. Directors, however, are elected by a plurality of the votes cast at an election of directors.

Section 9. Proxies. At all meetings of shareholders, a shareholder may vote by proxy executed in writing by the shareholder or by his or her duly authorized attorney in fact. Proxies may be given telephonically or electronically as long as the holder uses a procedure for verifying the identity of the shareholder. Proxies solicited on behalf of the management shall be voted as directed by the shareholder or, in the absence of such direction, as determined by a majority of the board of directors. No proxy shall be valid more than eleven months from the date of its execution except for a proxy coupled with an interest.

Section 10. Voting of Shares in the Name of Two or More Persons. When ownership stands in the name of two or more persons, in the absence of written directions to the Subsidiary Holding Company to the contrary, at any meeting of the shareholders of the Subsidiary Holding Company any one or more of such shareholders may cast, in person or by proxy, all votes to which such ownership is entitled. In the event an attempt is made to cast conflicting votes, in person or by proxy, by the several persons in whose names shares of stock stand, the vote or votes to which those persons are entitled shall be cast as directed by a majority of those holding such and present in person or by proxy at such meeting, but no votes shall be cast for such stock if a majority cannot agree.

Section 11. Voting of Shares by Certain Holders. Shares standing in the name of another corporation may be voted by any officer, agent, or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. Shares held by an administrator, executor, guardian, or conservator may be voted by him or her, either in person or by proxy, without a transfer of such shares into his or her name. Shares standing in the name of a trustee may be voted by him or her, either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her without a transfer of such shares into his or her name. Shares held in trust in an IRA or Keogh Account, however, may by voted by the Subsidiary Holding Company if no other instructions are received. Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer into his or her name if authority to do so is contained in an appropriate order of the court or other public authority by which such receiver was appointed. A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred. Neither treasury shares of its own stock held by the Subsidiary Holding Company nor shares held by another corporation, if a majority of the shares entitled to vote for the election of directors of such other corporation are held by the Subsidiary Holding Company, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time for purposes of any meeting. [If charter authorizes cumulative voting, the following Section 12 shall apply, otherwise renumber Sections 13–16 as Sections 12–15.]

Section 12. Cumulative Voting. Every shareholder entitled to vote at an election for directors shall have the right to vote, in person or by proxy, the number of shares owned by the shareholder for as many persons as there are directors to be elected and for whose election the shareholder has a right to vote, or to cumulate the votes by giving one candidate as many votes as the number of such directors to be elected multiplied by the number of shares shall equal or by distributing such votes on the same principle among any number of candidates.

Section 13. Inspectors of Election. In advance of any meeting of shareholders, the board of directors may appoint any individual other than nominees for office as inspectors of election to act at such meeting

or any adjournment. The number of inspectors shall be either one or three. Any such appointment shall not be altered at the meeting. If inspectors of election are not so appointed, the chairman of the board or the president may, or on the request of not fewer than 10 percent of the votes represented at the meeting shall, make such appointment at the meeting. If appointed at the meeting, the majority of the votes present shall determine whether one or three inspectors are to be appointed. In case any individual appointed as inspector fails to appear or fails or refuses to act, the vacancy may be filled by appointment by the board of directors in advance of the meeting or at the meeting by the chairman of the board or the president. Unless otherwise prescribed by regulations of the Board, the duties of such inspectors shall include: determining the number of shares and the voting power of each share, the shares represented at the meeting, the existence of a quorum, and the authenticity, validity and effect of proxies; receiving votes, ballots, or consents; hearing and determining all challenges and questions in any way arising in connection with the rights to vote; counting and tabulating all votes or consents; determining the result; and such acts as may be proper to conduct the election or vote with fairness to all shareholders.

Section 14. Nominating Committee. The board of directors shall act as a nominating committee for selecting the management nominees for election as directors. Except in the case of a nominee substituted as a result of the death or other incapacity of a management nominee, the nominating committee shall deliver written nominations to the secretary at least 20 days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Subsidiary Holding Company. No nominations for directors except those made by the nominating committee shall be voted upon at the annual meeting unless other nominations by shareholders are made in writing and delivered to the secretary of the Subsidiary Holding Company at least five days prior to the date of the annual meeting. Upon delivery, such nominations shall be posted in a conspicuous place in each office of the Subsidiary Holding Company. Ballots bearing the names of all persons nominated by the nominating committee and by shareholders shall be provided for use at the annual meeting. However, if the nominating committee shall fail or refuse to act at least 20 days prior to the annual meeting, nominations for directors may be made at the annual meeting by any shareholder entitled to vote and shall be voted upon.

Section 15. New Business. Any new business to be taken up at the annual meeting shall be stated in writing and filed with the secretary of the Subsidiary Holding Company at least five days before the date of the annual meeting, and all business so stated, proposed, and filed shall be considered at the annual meeting; but no other proposal shall be acted upon at the annual meeting. Any shareholder may make any other proposal at the annual meeting and the same may be discussed and considered, but unless stated in writing and filed with the secretary at least five days before the meeting, such proposal shall be laid over for action at an adjourned, special, or annual meeting of the shareholders taking place 30 days or more thereafter. This provision shall not prevent the consideration and approval or disapproval at the annual meeting of reports of officers, directors, and committees; but in connection with such reports, no new business shall be acted upon at such annual meeting unless stated and filed as herein provided.

Section 16. Informal Action by Shareholders. Any action required to be taken at a meeting of the shareholders, or any other action which may be taken at a meeting of shareholders, may be taken without a meeting if consent in writing, setting forth the action so taken, shall be given by all of the shareholders entitled to vote with respect to the subject matter.

Article III—Board of Directors

Section 1. General Powers. The business and affairs of the Subsidiary Holding Company shall be under the direction of its board of directors. The board of directors shall annually elect a chairman of the board and a president from among its members and shall designate, when present, either the chairman of the board or the president to preside at its meetings.

Section 2. Number and Term. The board of directors shall consist of ____ [not fewer than five nor more than fifteen] members, and shall be divided into three classes as nearly equal in number as possible. The members of each class shall be elected for a term of three years and until their successors are elected and qualified. One class shall be elected by ballot annually.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held without other notice than this bylaw following the annual meeting of shareholders. The board of directors may provide, by resolution, the time and place, for the holding of additional regular meetings without other notice than such resolution. Directors may participate in a meeting by means of a conference telephone or similar communications device through which all individuals participating can hear each other at the same time. Participation by such means shall constitute presence in person for all purposes.

Section 4. Qualification. Each director shall at all times be the beneficial owner of not less than 100 shares of capital stock of the Subsidiary Holding Company unless the Subsidiary Holding Company is a wholly owned subsidiary of a holding company.

Section 5. Special Meetings. Special meetings of the board of directors may be called by or at the request of the chairman of the board, the president, or one-third of the directors. The persons authorized to call special meetings of the board of directors may fix any place, within the Subsidiary Holding Company's normal lending territory, as the place for holding any special meeting of the board of directors called by such persons. Members of the board of directors may participate in special meetings by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Such participation shall constitute presence in person for all purposes.

Section 6. Notice. Written notice of any special meeting shall be given to each director at least 24 hours prior thereto when delivered personally or by telegram or at least five days prior thereto when delivered by mail at the address at which the director is most likely to be reached. Such notice shall be deemed to be delivered when deposited in the mail so addressed, with postage prepaid if mailed, when delivered to the telegraph company if sent by telegram, or when the Subsidiary Holding Company receives notice of delivery if electronically transmitted. Any director may waive notice of any meeting by a writing filed with the secretary. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any meeting of the board of directors need be specified in the notice of waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors fixed by section 2 of this article III shall constitute a quorum for the transaction of business at any meeting of the board of directors; but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time. Notice of any adjourned meeting shall be given in the same manner as prescribed by section 5 of this article III.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless a greater number is prescribed by regulation of the Board or by these bylaws.

Section 9. Action Without a Meeting. Any action required or permitted to be taken by the board of directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Resignation. Any director may resign at any time by sending a written notice of such resignation to the home office of the Subsidiary Holding Company addressed to the chairman of the board or the president. Unless otherwise specified, such resignation shall take effect upon receipt by the chairman of the board or the president. More than three consecutive absences from regular meetings of the board of directors, unless excused by resolution of the board of directors, shall automatically constitute a resignation, effective when such resignation is accepted by the board of directors.

Section 11. Vacancies. Any vacancy occurring on the board of directors may be filled by the affirmative vote of a majority of the remaining directors although less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected to serve only until the next election of directors by the shareholders. Any directorship to be filled by reason of an increase in the number of directors may be filled by election by the board of directors for a term of office

continuing only until the next election of directors by the shareholders.

Section 12. Compensation. Directors, as such, may receive a stated salary for their services. By resolution of the board of directors, a reasonable fixed sum, and reasonable expenses of attendance, if any, may be allowed for attendance at each regular or special meeting of the board of directors. Members of either standing or special committees may be allowed such compensation for attendance at committee meetings as the board of directors may determine.

Section 13. Presumption of Assent. A director of the Subsidiary Holding Company who is present at a meeting of the board of directors at which action on any Subsidiary Holding Company matter is taken shall be presumed to have assented to the action taken unless his or her dissent or abstention shall be entered in the minutes of the meeting or unless he or she shall file a written dissent to such action with the individual acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Subsidiary Holding Company within five days after the date a copy of the minutes of the meeting is received. Such right to dissent shall not apply to a director who voted in favor of such action.

Section 14. Removal of Directors. At a meeting of shareholders called expressly for that purpose, any director may be removed only for cause by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against the removal would be sufficient to elect a director if then cumulatively voted at an election of the class of directors of which such director is a part. [If cumulative voting has been deleted, the preceding sentence should be deleted.] Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the charter or supplemental sections thereto, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

Article IV—Executive and Other Committees

Section 1. Appointment. The board of directors, by resolution adopted by a majority of the full board, may designate the chief executive officer and two or more of the other directors to constitute an executive committee. The designation of any committee pursuant to this Article IV and the delegation of authority shall not operate to relieve the board of directors, or any director, of any responsibility imposed by law or regulation.

Section 2. Authority. The executive committee, when the board of directors is not in session, shall have and may exercise all of the authority of the board of directors except to the extent, if any, that such authority shall be limited by the resolution appointing the executive committee; and except also that the executive committee shall not have the authority of the board of directors with reference to: the declaration of dividends; the amendment of the charter or bylaws of the Subsidiary Holding Company, or recommending to the shareholders a plan of merger, consolidation, or conversion; the sale, lease, or other disposition of all or substantially all of the property and assets of the Subsidiary Holding Company otherwise than in the usual and regular course of its business; a voluntary dissolution of the Subsidiary Holding Company; a revocation of any of the foregoing; or the approval of a transaction in which any member of the executive committee, directly or indirectly, has any material beneficial interest.

Section 3. Tenure. Subject to the provisions of section 8 of this article IV, each member of the executive committee shall hold office until the next regular annual meeting of the board of directors following his or her designation and until a successor is designated as a member of the executive committee.

Section 4. Meetings. Regular meetings of the executive committee may be held without notice at such times and places as the executive committee may fix from time to time by resolution. Special meetings of the executive committee may be called by any member thereof upon not less than one day's notice stating the place, date, and hour of the meeting, which notice may be written or oral. Any member of the executive committee may waive notice of any meeting and no notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 5. Quorum. A majority of the members of the executive committee shall constitute a quorum for the transaction of business at any meeting thereof, and action of the executive committee must be authorized by the affirmative vote of a majority of the members present at a meeting at which a quorum is present.

Section 6. Action Without a Meeting. Any action required or permitted to be taken by the executive committee at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the executive committee.

Section 7. Vacancies. Any vacancy in the executive committee may be filled by a resolution adopted by a majority of the full board of directors.

Section 8. Resignations and Removal. Any member of the executive committee may be removed at any time with or without cause by resolution adopted by a majority of the full board of directors. Any member of the executive committee may resign from the executive committee at any time by giving written notice to the president or secretary of the Subsidiary Holding Company. Unless otherwise specified, such resignation shall take effect upon its receipt; the acceptance of such resignation shall not be necessary to make it effective. No notice of any meeting need be given to any member thereof who attends in person. The notice of a meeting of the executive committee need not state the business proposed to be transacted at the meeting.

Section 9. Procedure. The executive committee shall elect a presiding officer from its members and may fix its own rules of procedure, which shall not be inconsistent with these bylaws. It shall keep regular minutes of its proceedings and report the same to the board of directors for its information at the meeting held next after the proceedings shall have occurred.

Section 10. Other Committees. The board of directors may by resolution establish an audit, loan, or other committee composed of directors as they may determine to be necessary or appropriate for the conduct of the business of the Subsidiary Holding Company and may prescribe the duties, constitution, and procedures thereof.

Article V—Officers

Section 1. Positions. The officers of the Subsidiary Holding Company shall be a president, one or more vice presidents, a secretary, and a treasurer or comptroller, each of whom shall be elected by the board of directors. The board of directors may also designate the chairman of the board as an officer. The offices of the secretary and treasurer or comptroller may be held by the same individual and a vice president may also be either the secretary or the treasurer or comptroller. The board of directors may designate one or more vice presidents as executive vice president or senior vice president. The board of directors may also elect or authorize the appointment of such other officers as the business of the Subsidiary Holding Company may require. The officers shall have such authority and perform such duties as the board of directors may from time to time authorize or determine. In the absence of action by the board of directors, the officers shall have such powers and duties as generally pertain to their respective offices.

Section 2. Election and Term of Office. The officers of the Subsidiary Holding Company shall be elected annually at the first meeting of the board of directors held after each annual meeting of the shareholders. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as possible. Each officer shall hold office until a successor has been duly elected and qualified or until the officer's death, resignation, or removal in the manner hereinafter provided. Election or appointment of an officer, employee, or agent shall not of itself create contractual rights. The board of directors may authorize the Subsidiary Holding Company to enter into an employment contract with any officer in accordance with regulations of the Board; but no such contract shall impair the right of the board of directors to remove any officer at any time in accordance with section 3 of this article V.

Section 3. Removal. Any officer may be removed by the board of directors whenever in its judgment the best interests of the Subsidiary Holding Company will be served thereby, but such removal, other than for cause, shall be without prejudice to the contractual rights, if any, of the officer so removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal,

disqualification, or otherwise may be filled by the board of directors for the unexpired portion of the term.

Section 5. Remuneration. The remuneration of the officers shall be fixed from time to time by the board of directors.

Article VI—Contracts, Loans, Checks, and Deposits

Section 1. Contracts. To the extent permitted by regulations of the Board, and except as otherwise prescribed by these bylaws with respect to certificates for shares, the board of directors may authorize any officer, employee, or agent of the Subsidiary Holding Company to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Subsidiary Holding Company. Such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Subsidiary Holding Company and no evidence of indebtedness shall be issued in its name unless authorized by the board of directors. Such authority may be general or confined to specific instances.

Section 3. Checks; Drafts. *etc.* All checks, drafts, or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Subsidiary Holding Company shall be signed by one or more officers, employees or agents of the Subsidiary Holding Company in such manner as shall from time to time be determined by the board of directors.

Section 4. Deposits. All funds of the Subsidiary Holding Company not otherwise employed shall be deposited from time to time to the credit of the Subsidiary Holding Company in any duly authorized depositories as the board of directors may select.

Article VII—Certificates for Shares and Their Transfer

Section 1. Certificates for Shares. Certificates representing shares of capital stock of the Subsidiary Holding Company shall be in such form as shall be determined by the board of directors and approved by the Board. Such certificates shall be signed by the chief executive officer or by any other officer of the Subsidiary Holding Company authorized by the board of directors, attested by the secretary or an assistant secretary, and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon a certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or a registrar other than the Subsidiary Holding Company itself or one of its employees. Each certificate for shares of capital stock shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the Subsidiary Holding Company. All certificates surrendered to the Subsidiary Holding Company for transfer shall be canceled and no new certificate shall be issued until the former certificate for a like number of shares has been surrendered and canceled, except that in the case of a lost or destroyed certificate, a new certificate may be issued upon such terms and indemnity to the Subsidiary Holding Company as the board of directors may prescribe.

Section 2. Transfer of Shares. Transfer of shares of capital stock of the Subsidiary Holding Company shall be made only on its stock transfer books. Authority for such transfer shall be given only by the holder of record or by his or her legal representative, who shall furnish proper evidence of such authority, or by his or her attorney authorized by a duly executed power of attorney and filed with the Subsidiary Holding Company. Such transfer shall be made only on surrender for cancellation of the certificate for such shares. The person in whose name shares of capital stock stand on the books of the Subsidiary Holding Company shall be deemed by the Subsidiary Holding Company to be the owner for all purposes.

Article VIII—Fiscal Year

The fiscal year of the Subsidiary Holding Company shall end on the _____of_____each year. The appointment of accountants shall be subject to annual ratification by the shareholders.

Article IX—Dividends

Subject to the terms of the Subsidiary Holding Company's charter and the regulations and orders of the Board, the board of directors may, from time to time, declare, and the Subsidiary Holding Company may pay, dividends on its outstanding shares of capital stock.

Article X—Corporate Seal

The board of directors shall provide a Subsidiary Holding Company seal, which shall be two concentric circles between which shall be the name of the Subsidiary Holding Company. The year of incorporation or an emblem may appear in the center.

Article XI—Amendments

These bylaws may be amended in a manner consistent with regulations of the Board and shall be effective after: (i) approval of the amendment by a majority vote of the authorized board of directors, or by a majority vote of the votes cast by the shareholders of the Subsidiary Holding Company at any legal meeting, and (ii) receipt of any applicable regulatory approval. When a Subsidiary Holding Company fails to meet its quorum requirements, solely due to vacancies on the board, then the affirmative vote of a majority of the sitting board will be required to amend the bylaws.

PART 261—RULES REGARDING AVAILABILITY OF INFORMATION

■ 15. The authority citation for part 261 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 248(i) and (k), 321 *et seq.,* 611 *et seq.,* 1442, 1467a, 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o), 1821(t), 1830, 1844, 1951 *et seq.,* 2601, 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.;* 15 U.S.C. 77uuu(b), 78q(c)(3); 29 U.S.C. 1204; 31 U.S.C. 5301 *et seq.;* 42 U.S.C. 3601; 44 U.S.C. 3510.

Subpart A—General Provisions

■ 16. Revise § 261.1(a)(1) and (a)(2) to read as follows:

§ 261.1 Authority, purpose, and scope.

* * * * *

(a) *Authority.* (1) This part is issued by the Board of Governors of the Federal Reserve System (the Board) pursuant to the Freedom of Information Act, 5 U.S.C. 552; Sections 9, 11, and 25A of the Federal Reserve Act, 12 U.S.C. 248(i) and (k), 321 *et seq.,* (including 326), 611 *et seq.;* Section 22 of the Federal Home Loan Bank Act, 12 U.S.C 1442; section 10 of the Home Owners' Loan Act, 12 U.S.C. 1467a; the Federal Deposit Insurance Act, 12 U.S.C. 1817(a)(2)(A), 1817(a)(8), 1818(u) and (v), 1821(o); section 5 of the Bank Holding Company Act, 12 U.S.C. 1844; the Bank Secrecy Act, 12 U.S.C. 1951 *et seq.,* and Chapter 53 of Title 31; the Home Mortgage Disclosure Act, 12 U.S.C. 2801 *et seq.;* the Community Reinvestment Act, 12 U.S.C. 2901 *et seq.;* the International Banking Act, 12 U.S.C. 3101 *et seq.;* the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.;* the Securities and Exchange Commission Authorization Act, 15 U.S.C. 77uuu(b), 78q(c)(3); the Employee Retirement Income Security Act, 29 U.S.C. 1204; the Money Laundering Suppression Act, 31 U.S.C. 5301, the Fair Housing Act, 42 U.S.C. 3601; the Paperwork Reduction Act, 44 U.S.C. 3510; and any other applicable law that establishes a basis for the exercise of governmental authority by the Board.

(2) This part establishes mechanisms for carrying out the Board's statutory responsibilities under statutes in paragraph (a)(1) of this section to the extent those responsibilities require the disclosure, production, or withholding of information. In this regard, the Board has determined that the Board, or its delegees, may disclose exempt information of the Board, in accordance with the procedures set forth in this part, whenever it is necessary or appropriate to do so in the exercise of any of the Board's supervisory or regulatory authorities, including but not limited to, authority granted to the Board in the Federal Reserve Act, 12 U.S.C. 221 *et seq.,* the Bank Holding Company Act, 12 U.S.C. 1841 *et seq.,* the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.,* and the International Banking Act, 12 U.S.C. 3101 *et seq.* The Board has determined that all such disclosures, made in accordance with the rules and procedures specified in this part, are authorized by law.

* * * * *

■ 17. In § 261.2, revise paragraphs (c)(1)(ii), paragraphs (k) and (o) to read as follows:

§ 261.2 Definitions.

* * * * *

(c)(1) * * *

(ii) Information gathered by the Board in the course of any investigation, suspicious activity report, cease-and-desist orders, civil money penalty enforcement orders, suspension, removal or prohibition orders, or other orders or actions under the Financial Institutions Supervisory Act of 1966, Public Law 89–695, 80 Stat. 1028 (codified as amended in scattered sections of 12 U.S.C.), the Bank Holding Company Act of 1956, 12 U.S.C. 1841 *et seq.,* the Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.,* the Federal Reserve Act, 12 U.S.C. 221 *et seq.,* the International Banking Act of 1978, Public Law 95–369, 92 Stat. 607 (codified as amended in scattered sections of 12 U.S.C.), and the International Lending Supervision Act of 1983, 12 U.S.C. 3901 *et seq.;* except—

* * * * *

(k) *Report of inspection* means a report prepared by the Board concerning its inspection of a bank holding company and its bank and nonbank subsidiaries or other supervised financial institution.

* * * * *

(o) *Supervised financial institution* includes a bank, bank holding company (including subsidiaries), savings and loan holding company (including non-depository subsidiaries), U.S. branch or agency of a foreign bank, or any other institution that is supervised by the Board.

Subpart B—Published Information and Records Available to Public; Procedures for Requests

■ 18. Revise § 261.10(a)(7) to read as follows:

§ 261.10 Published information.

(a) * * *

(7) Notices of applications received under the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*), the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*), and the Change in Bank Control Act (12 U.S.C. 1817);

* * * * *

■ 19. Revise § 261.14(a)(5)(iii) to read as follows:

§ 261.14 Exemptions from disclosure.

(a) * * *

(5) * * *

(iii) Other documents prepared by the staffs of the Board, Federal Reserve Banks, or the Office of Thrift Supervision (including documents transferred to the Board pursuant to section 323(b)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5433)); and

* * * * *

Subpart C—Confidential Information Made Available to Institutions, Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances

■ 20. In § 261.20, revise paragraphs (a), (b)(1), (c) and (d) to read as follows:

§ 261.20 Confidential supervisory information made available to supervised financial institutions and financial institution supervisory agencies.

(a) *Disclosure of confidential supervisory information to supervised financial institutions.* Confidential supervisory information concerning a supervised bank, bank holding company (including subsidiaries), U.S. branch or agency of a foreign bank, savings and loan holding company (including subsidiaries), or other institution examined by the Federal Reserve System (''supervised financial institution'') may be made available by the Board or the appropriate Federal Reserve Bank to the supervised financial institution.

(b) * * *

(1) *Parent bank holding company, parent savings and loan holding company, directors, officers, and employees.* Any supervised financial institution lawfully in possession of confidential supervisory information of the Board pursuant to this section may disclose such information, or portions thereof, to its directors, officers, and employees, and to its parent bank holding company or parent savings and loan holding company and its directors, officers, and employees.

* * * * *

(c) *Disclosure upon request to Federal financial institution supervisory agencies.* Upon requests, the Director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank, may make available to the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board and their regional offices and representatives, confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), savings and loan holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution.

(d) *Disclosure upon request to state financial institution supervisory agencies.* Upon requests, the Director of the Division of Banking Supervision and Regulation or the appropriate Federal Reserve Bank may make available confidential supervisory information and other appropriate information (such as confidential operating and condition reports) relating to a bank, bank holding company (including subsidiaries), savings and loan holding company (including subsidiaries), U.S. branch or agency of a foreign bank, or other supervised financial institution to:

* * * * *

■ 21. Revise § 261.21(a) to read as follows:

§ 261.21 Confidential information made available to law enforcement agencies and other nonfinancial institution supervisory agencies.

(a) *Disclosure upon request.* Upon written request, the Board may make available to appropriate law enforcement agencies and to other nonfinancial institution supervisory agencies for use where necessary in the performance of official duties, reports of examination and inspection, confidential supervisory information, and other confidential documents and information of the Board concerning banks, bank holding companies and their subsidiaries, U.S. branches and agencies of foreign banks, savings and loan holding companies and their subsidiaries, and other examined institutions.

* * * * *

PART 261b—RULE REGARDING PUBLIC OBSERVATION OF MEETINGS

■ 22a. The authority citation for part 261b continues to read as follows:

Authority: 5 U.S.C. 552b.

■ 22b. Revise § 261b.7(a) to read as follows:

§ 261b.7 Meetings closed to public observation under expedited procedures.

(a) Since the Board and the Committee qualifies for the use of expedited procedures under subsection (d)(4) of the Act, meetings or portions thereof exempt under paragraph (a)(4), (a)(8), (a)(9)(i) or (a)(10) of § 261b.5 of this part, will be closed to public observation under the expedited procedures of this section. Following are examples of types of items that, absent compelling contrary circumstances, will qualify for these exemptions: Matters relating to a

specific bank or bank holding company, such as bank branches or mergers, bank holding company formations, or acquisition of an additional bank or acquisition or de novo undertaking of a permissible nonbanking activity; matters relating to a specific savings and loan holding company or its subsidiaries, such as acquisitions, reorganizations, savings and loan holding company formations, conversions, or acquisition or de novo undertaking of a permissible activity; bank regulatory matters, such as applications for membership, issuance of capital notes and investment in bank premises; foreign banking matters; bank supervisory and enforcement matters, such as cease-and-desist and officer removal proceedings; monetary policy matters, such as discount rates, use of the discount window, changes in the limitations on payment of interest on time and savings accounts, and changes in reserve requirements or margin regulations.

* * * * *

PART 262—RULES OF PROCEDURE

■ 23. The authority citation for part 262 is revised to read as follows:

Authority: 5 U.S.C. 552, 12 U.S.C. 321, 1467a, 1828(c), and 1842.

■ 24. In § 262.3:
■ A. Revise paragraphs (b)(1)(i)(B) and (b)(1)(i)(C);
■ B. Remove the undesignated paragraph following paragraph (b)(1)(i)(C);
■ C. Add paragraphs (b)(1)(i)(D) and (b)(1)(i)(E);
■ D. Revise paragraphs (b)(1)(ii)(D) and (b)(1)(ii)(E), and add paragraphs (b)(1)(ii)(F);
■ E. Revise paragraphs (i) introductory text, (i)(1), and (i)(5); and
■ F. Add paragraph (j)(3).

The revisions and additions read as follows:

§ 262.3 Applications.

* * * * *

(b) * * *

(1)(i) * * *

(B) To become a bank holding company (except as provided in § 225.15 of this chapter),

(C) By a bank holding company to acquire ownership or control of shares or assets of a bank, or to merge or consolidate with any other bank holding company,

(D) To become a savings and loan holding company (except as provided in § 238.14 of this chapter), and

(E) By a savings and loan holding company to acquire ownership or control of shares or assets of a savings association, or to merge or consolidate with any other savings and loan holding company, the applicant shall cause to be published a notice in the form prescribed by the Board.

(ii) * * *

(D) The community or communities in which the head office of each of the banks to be party to the merger, consolidation, or acquisition of assets or assumption of liabilities are located in the case of an application by a bank for merger, consolidation, or acquisition of assets or assumption of liabilities,

(E) The community or communities in which the head offices of the largest subsidiary bank, if any, or an applicant and of each bank, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 3 of the Bank Holding Company Act, or

(F) The community or communities in which the head offices of the largest subsidiary savings association, if any, or an applicant and of each savings association, shares of which are to be directly or indirectly acquired, are located in the case of applications under section 10 of the Home Owners' Loan Act.

* * * * *

(i) *General procedures for bank holding company, savings and loan holding company, and merger applications.* In addition to procedures applicable under other provisions of this part, the following procedures are applicable in connection with the Board's consideration of applications under sections 3 and 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842 and 1843), hereafter referred to as ''section 3 applications'' or ''section 4 applications,'' applications under section 10(c), (e), and (o) of the Home Owners' Loan Act (12 U.S.C. 1467a), hereafter referred to as ''section 10 applications,'' and of applications under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823), hereafter called ''merger applications.'' Except as otherwise indicated, the following procedures apply to all such applications.

(1) The Board issues each week a list that identifies section 3, section 4, section 10, and merger applications received and acted upon during the preceding week by the Board or the Reserve Banks pursuant to delegated authority. Notice of receipt of all section 3 section 4(c)(8), and section 10 applications acted on by the Board is published in the **Federal Register**.

* * * * *

(5) Unless the Board shall otherwise direct, each section 3, section 4, section 10, and merger application is made available for inspection by the public except for portions thereof as to which the Board determines that nondisclosure is warranted under section 552(b) of title 5 of the United States Code.

(j) * * *

(3) Special rules pertaining to applications filed pursuant to section 10(e) and (o) of HOLA follow:

(i) Each order or each letter of notification approving an application also includes, as a condition of approval, a requirement that the transaction approved shall be consummated within 3 months and, in the case of acquisition by a holding company of stock of a newly organized savings association, a requirement that such savings association shall be opened for business within 6 months, but such periods may be extended for good cause by the Board (or by the appropriate Federal Reserve Bank where authority to grant such extensions is delegated to the Reserve Bank).

(ii) [Reserved]

* * * * *

■ 25. In § 262.25 revise paragraphs (a) introductory text, (a)(2), (a)(3), and (a)(4) to read as follows:

§ 262.25 Policy statement regarding notice of applications; timeliness of comments; informal meetings.

(a) *Notice of applications.* A bank or company applying to the Board for a deposit-taking facility must first publish notice of its application in local newspapers. This requirement, found in § 262.3(b)(1) of the Board's Rules of Procedure covers applications under the Bank Holding Company Act, Bank Merger Act, and Home Owners' Loan Act, as well as applications for membership in the Federal Reserve System and for new branches of State member banks. Notices of these applications are published in newspapers of general circulation in the communities where the applicant intends to do business as well as in the community where the applicant's head office is located. These notices are important in calling the public's attention to an applicant's plans and giving the public a chance to comment on these plans. To improve the effectiveness of the notices, the Board has supplemented its notice procedures as follows.

* * * * *

(2) The Board also publishes notice of bank holding company applications for bank acquisitions (but not for bank mergers or branches) and savings and

loan holding company applications for savings association acquisitions (but not for savings association mergers or branches) in the **Federal Register** after the application is received and the Community Affairs Officer can provide the exact date on which this comment period ends. (The **Federal Register** comment period will generally end after the date specified in the newspaper notice.)

(3) In addition to the formal newspaper and **Federal Register** notices discussed above, each Reserve Bank publishes a weekly list of applications submitted to the Reserve Bank for which newspaper notices have been published. Any person or organization may arrange to have the list mailed to them regularly, or may request particular lists, by contacting the Reserve Bank's Community Affairs Officer. Each Reserve Bank's list includes only applications submitted to that particular Reserve Bank, and persons or groups should request lists from each Reserve Bank having jurisdiction over applications in which they may be interested. Since the lists are prepared as a courtesy by the Reserve Bank, and are not intended to replace any formal notice required by statute or regulation, the Reserve Banks and the Board do not assume responsibility for errors or omissions. In addition, the weekly lists prepared by Reserve Banks include certain applications by bank holding companies and savings and loan holding companies for nonbank and non-depository institution acquisitions, respectively, filed with the Reserve Bank.

(4) With respect to applications by bank holding companies and savings and loan holding companies to engage *de novo* in nonbank activities or make acquisitions of nonbank firms, the Board publishes notice of most of these applications in the **Federal Register** when the applications are filed. Notice of certain small acquisitions may be published in a newspaper of general circulation in the area(s) to be served. While applications for nonbanking activities are not covered by the provisions of the Community Reinvestment Act or the notice provisions of § 262.3 of the Board's Rules of Procedure, the provisions of this Statement apply to such applications.

* * * * *

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 26. The authority citation for Part 263 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 504, 505, 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1828(c), 1829(e), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3349, 3907, 3909, 4717; 15 U.S.C. 21, 78(l), 78o–4, 78o–5, 78u–2; and 28 U.S.C. 2461 *note*.; 31 U.S.C. 5321; 42 U.S.C. 4012a.

Subpart A—Uniform Rules of Practice and Procedure

■ 27. In § 263.1:

■ A. Revise paragraph (c); paragraphs (e)(2), (e)(11); and

■ B. Add paragraphs (e)(13) through (e)(15).

The additions and revisions read as follows:

§ 263.1 Scope.

* * * * *

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the Board of Governors of the Federal Reserve System (''Board'') should issue an order to approve or disapprove a person's proposed acquisition of a state member bank, bank holding company, or savings and loan holding company;

* * * * *

(e) * * *

(2) Sections 19, 22, 23, 23A and 23B of the Federal Reserve Act (''FRA''), or any regulation or order issued thereunder and certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 504 and 505;

* * * * *

(11) Any provision of law referenced in section 102(f) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)) or any order or regulation issued thereunder;

* * * * *

(13) Section 5 of the Home Owners' Loan Act (''HOLA'') or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(14) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d); and

(15) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a (i) and (r);

* * * * *

■ 28. In § 263.3:

■ A. Revise paragraphs (f)(4), (f)(5);

■ B. Add paragraph (f)(6);

■ C. Revise paragraphs (i) and (m).

The additions and revisions read as follows:

§ 263.3 Definitions.

* * * * *

(f) * * *

(4) Any foreign bank or company to which section 8 of the IBA (12 U.S.C. 3106), applies or any subsidiary (other than a bank) thereof;

(5) Any Federal agency as that term is defined in section 1(b) of the IBA (12 U.S.C. 3101(5)); and

(6) Any savings and loan holding company or any subsidiary (other than a savings association) of a savings and loan holding company as those terms are defined in the HOLA (12 U.S.C. 1461 *et seq.*).

* * * * *

(i) *OFIA* means the Office of Financial Institution Adjudication, the executive body charged with overseeing the administration of administrative enforcement proceedings for the Board, the Office of Comptroller of the Currency (the *OCC*), the Federal Deposit Insurance Corporation (the *FDIC*), and the National Credit Union Administration (the *NCUA*).

* * * * *

(m) *Uniform Rules* means those rules in subpart A of this part that are common to the Board, the OCC, the FDIC, and the NCUA.

* * * * *

Subpart B—Board Local Rules Supplementing the Uniform Rules

■ 29. Section 263.50(b)(13) and (b)(14) are revised and paragraph (b)(15) is added to read as follows:

§ 263.50 Purpose and scope.

* * * * *

(b) * * *

(13) Reclassification of a member bank on grounds of unsafe and unsound practice under section 38(g)(1) of the FDI Act (12 U.S.C. 1831o(g)(1));

(14) Issuance of an order requiring a member bank to dismiss a director or senior executive officer under section 38 (e)(5) and 38(f)(2) (F)(ii) of the FDI Act (12 U.S.C. 1831o(e)(5) and 1831o(f)(2) (F)(ii));

(15) Adjudications under section 10 of the HOLA (12 U.S.C. 1467a).

■ 30. Revise § 263.56 to read as follows:

§ 263.56 Initial licensing proceedings.

Proceedings with respect to applications for initial licenses shall include, but not be limited to, applications for Board approval under section 3 of the BHC Act and section 10 of HOLA and such proceedings as may be ordered by the Board with respect to applications under section 18(c) of the FDIA. In such initial licensing proceedings, the procedures set forth in subpart A of this part shall apply, except that the Board may designate a Board Counsel to represent the Board in a nonadversary capacity for the purpose of developing for the record information

relevant to the issues to be determined by the Presiding Officer and the Board. In such proceedings, Board Counsel shall be considered to be a decisional employee for purposes of §§ 263.9 and 263.40 of subpart A.

Subpart C—Rules and Procedures for Assessment and Collection of Civil Money Penalties

■ 31. In § 263.65, revise paragraph (a) and add new paragraphs (b) (11) and (b)(12) to read as follows:

§ 263.65 Civil penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 *note*), the Board has set forth in paragraph (b) of this section adjusted maximum penalty amounts for each civil money penalty provided by law within its jurisdiction. The adjusted civil penalty amounts provided in paragraphs (b)(1) through (10) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and the previously-adjusted amounts adopted as of October 12, 2004, October 12, 2000, and October 24, 1996.The adjusted civil penalty amounts provided in paragraphs (b)(11) and (12) of this section replace only the amounts published in the statutes authorizing the assessment of penalties and were adjusted by the Office of Thrift Supervision as of October 27, 2008. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The increased penalty amounts apply only to violations occurring after September 13, 2011.

* * * * *

(b) * * *

(11) 12 U.S.C. 1467a(i):

(i) 12 U.S.C. 1467a(i)(2)–$32,500.

(ii) 12 U.S.C. 1467a(i)(3)–$32,500.

(12) 12 U.S.C. 1467a(r):

(i) 12 U.S.C. 1467a(r)(1)–$ 2,200.

(ii) 12 U.S.C. 1467a(r)(2)–$32,500.

(iii) 12 U.S.C. 1467a(r)(3)–$1,375,000.

Subpart E—Procedures for Issuance and Enforcement of Directives To Maintain Adequate Capital

■ 32. Revise § 263.80 to read as follows:

§ 263.80 Purpose and scope.

This subpart establishes procedures under which the Board may issue a directive or take other action to require a state member bank, bank holding company, or a savings and loan holding company to achieve and maintain adequate capital.

■ 33. In § 263.81, revise paragraph (c) and add new paragraph (e) to read as follows:

§ 263.81 Definitions.

* * * * *

(c) *Directive* means a final order issued by the Board:

(1) Pursuant to ILSA (12 U.S.C. 3907(b)(2)) requiring a state member bank or bank holding company to increase capital to or maintain capital at the minimum level set forth in the Board's Capital Adequacy Guidelines or as otherwise established under procedures described in § 263.85; or

(2) Pursuant to HOLA (12 U.S.C. 1467a(g)(1)) requiring a savings and loan holding company to increase capital to or maintain capital at a certain level.

* * * * *

(e) *Savings and loan holding company* means any company that controls a savings association as defined in section 10 of the HOLA, 12 U.S.C. 1467a, and in the Board's Regulation LL (12 CFR 238.2) or any direct or indirect subsidiary thereof other than a savings association subsidiary as defined in section 10 of the HOLA, 12 U.S.C. 1467a, and in the Board's Regulation LL (12 CFR 238.2).

■ 34. In § 263.83 revise paragraph (a) to read as follows:

§ 263.83 Issuance of capital directives.

(a) *Notice of intent to issue directive.* If a state member bank or bank holding company is operating with less than the minimum level of capital established in the Board's Capital Adequacy Guidelines, or as otherwise established under the procedures described in § 263.85, or if the Board has determined that the current capital level of a savings and loan holding company is not adequate, the Board may issue and serve upon such state member bank, bank holding company, or savings and loan holding company written notice of the Board's intent to issue a directive to require the bank, bank holding company, or savings and loan holding company to achieve and maintain adequate capital within a specified time period.

* * * * *

■ 35. In § 263.84, revise paragraphs (a) and (c) to read as follows:

§ 263.84 Enforcement of directive.

(a) *Judicial and administrative remedies.* (1) Whenever a bank or bank holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the appropriate United States district court, pursuant to section 908 (b)(2)(B)(ii) of ILSA (12 U.S.C. 3907(b)(2)(B)(ii)) and to section 8(i) of the FDIA (12 U.S.C. 1818(i)), in the same manner and to the same extent as if the directive were a final cease-and-desist order. Whenever a savings and loan holding company fails to follow a directive issued under this subpart, or to submit or adhere to a capital adequacy plan as required by such directive, the Board may seek enforcement of the directive, including the capital adequacy plan, in the proper United States district court, or the United States court of any territory or other place subject to the jurisdiction of the United States, pursuant to section 10(g)(4) of HOLA (12 U.S.C. 1567a(g)(4)).

(2) The Board, pursuant to section 910(d) of ILSA (12 U.S.C. 3909(d)), may also assess civil money penalties for violation of the directive against any bank or bank holding company and any institution-affiliated party of the bank or bank holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order. The Board, pursuant to section 10(i) (12 U.S.C. 1467a(i)), may also assess civil money penalties for violation of the directive against any savings and loan holding company and any institution-affiliated party of the savings and loan holding company, in the same manner and to the same extent as if the directive were a final cease-and-desist order.

* * * * *

(c) *Consideration in application proceedings.* In acting upon any application or notice submitted to the Board pursuant to any statute administered by the Board, the Board may consider the progress of a state member bank, bank holding company, or savings and loan holding company or any subsidiary thereof in adhering to any directive or capital adequacy plan required by the Board pursuant to this subpart, or by any other appropriate banking supervisory agency pursuant to ILSA. The Board shall consider whether approval or a notice of intent not to disapprove would divert earnings, diminish capital, or otherwise impede the bank, bank holding company, or savings and loan holding company in achieving its required minimum capital level or complying with its capital adequacy plan.

■ 36. In § 263.85, revise paragraphs (b)(1), (b)(2), and (b)(3) to read as follows:

§ 263.85 Establishment of increased capital level for specific institutions.

* * * * *

(b) *Procedure to establish higher capital requirement* —(1) *Notice.* When the Board determines that capital levels above those in the Board's Capital Adequacy Guidelines may be necessary and appropriate for a particular bank or bank holding company under the circumstances, or when the Board determines that the current capital level of a savings and loan holding company is not adequate, the Board shall give the bank or bank holding company notice of the proposed higher capital requirement and shall permit the bank, bank holding company, or savings and loan holding company an opportunity to comment upon the proposed capital level, whether it should be required and, if so, under what time schedule. The notice shall contain the Board's reasons for proposing a higher level of capital.

(2) *Response.* The bank, bank holding company, or savings and loan holding company shall be allowed at least 14 days to respond, unless the Board determines that a shorter period is necessary because of the financial condition of the bank, bank holding company, or savings and loan holding company. Failure by the bank, bank holding company, or savings and loan holding company to file a written response to the notice within the time set by the Board shall constitute a waiver of the opportunity to respond and shall constitute consent to issuance of a directive containing the required minimum capital level.

(3) *Board decision.* After considering the response of the institution, the Board may issue a written directive to the bank, bank holding company, or savings and loan holding company setting an appropriate capital level and the date on which this capital level will become effective. The Board may require the bank, bank holding company, or savings and loan holding company to submit and adhere to a plan for achieving such higher capital level as the Board may set.

* * * * *

Subpart F—Practice Before the Board

■ 37. Revise § 263.94(g) to read as follows:

§ 263.94 Conduct warranting sanctions.

* * * * *

(g) Suspension or debarment from practice before the OCC, the FDIC, the Office of Thrift Supervision, the Securities and Exchange Commission, the NCUA, or any other Federal agency based on matters relating to the supervisory responsibilities of the Board;

* * * * *

Subpart G—Rules Regarding Claims Under the Equal Access to Justice Act

■ 38. Revise § 263.103(c)(3) to read as follows:

§ 263.103 Eligibility of applicants.

* * * * *

(c) * * *

(3) The net worth of a financial institution shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the financial institution's financial report to its supervisory agency for the last reporting date before the initiation of the adversary proceeding. A bank holding company's and a savings and loan holding company's net worth will be considered on a consolidated basis even if the bank holding company or the savings and loan holding company is not required to file its regulatory reports to the Board on a consolidated basis.

* * * * *

■ 39. Revise § 263.105(b)(2) and (b)(3) to read as follows:

§ 263.105 Statement of net worth.

* * * * *

(b) * * *

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 263.103(c)(5). The net worth of a bank holding company or a savings and loan holding company shall be considered on a consolidated basis. Assets and liabilities of individuals shall include those beneficially owned.

(3) If the applicant or any of its affiliates is a bank or a savings association, the portion of the statement of net worth which relates to the bank or the savings association shall consist of a copy of the bank's or a savings association's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. Net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks or mutual savings associations, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's or the savings association's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

* * * * *

Subpart J—Removal, Suspension, and Debarment of Accountants From Performing Audit Services

■ 40. Revise § 263.400 to read as follows:

§ 263.400 Scope.

This subpart, which implements section 36(g)(4) of the Federal Deposit Insurance Act (FDIA)(12 U.S.C. 1831m(g)(4)), provides rules and procedures for the removal, suspension, or debarment of independent public accountants and their accounting firms from performing independent audit and attestation services for insured state member banks, bank holding companies, and savings and loan holding companies required by section 36 of the FDIA (12 U.S.C. 1831m).

■ 41. Revise § 263.401(c) to read as follows:

§ 263.401 Definitions.

* * * * *

(c) *Banking organization* means an insured state member bank, bank holding company, or savings and loan holding company that obtains audit services that are used to satisfy requirements imposed by section 36 or part 363 on an insured subsidiary bank or insured savings association of that holding company.

* * * * *

PART 264a—POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 42. The authority citation for Part 264a continues to read as follows:

Authority: 12 U.S.C. 1820(k).

■ 43 Revise § 264a.2 to read as follows:

§ 264a.2 Who is considered a senior examiner of the Federal Reserve?

For purposes of this part, an officer or employee of the Federal Reserve is considered to be the ''senior examiner'' for a particular state member bank, bank holding company, savings and loan holding company, or foreign bank if—

(a) The officer or employee has been authorized by the Board to conduct examinations or inspections on behalf of the Board;

(b) The officer or employee has been assigned continuing, broad and lead responsibility for examining or inspecting the state member bank, bank holding company, savings and loan holding company, or foreign bank; and

(c) The officer's or employee's responsibilities for examining, inspecting and supervising the state member bank, bank holding company, savings and loan holding company, or foreign bank—

(1) Represent a substantial portion of the officer's or employee's assigned responsibilities; and

(2) Require the officer or employee to interact routinely with officers or employees of the state member bank, bank holding company, savings and loan holding company, or foreign bank or its affiliates.

■ 44. In § 264a.3, add paragraph (d) to read as follows:

§ 264a.3 What special post-employment restrictions apply to senior examiners?

* * * * *

(d) *Senior Examiners of Savings and Loan Holding Companies.* An officer or employee of the Federal Reserve who serves as the senior examiner of a savings and loan holding company for two or more months during the last twelve months of such individual's employment with the Federal Reserve may not, within one year of leaving the employment of the Federal Reserve, knowingly accept compensation as an employee, officer, director or consultant from—

(1) The savings and loan holding company; or

(2) Any depository institution that is controlled by the savings and loan holding company.

■ 45. Revise § 264a.5(a)(1)(i) to read as follows:

§ 264a.5 What are the penalties for violating these special post-employment restrictions?

(a) * * *

(1) * * *

(i) Removing the individual from office or prohibiting the individual from further participation in the affairs of the relevant state member bank, bank holding company, savings and loan holding company, foreign bank or other depository institution or company for a period of up to five years; and

* * * * *

■ 46. Section 264a.6(c) is revised and paragraph (h) is added to read as follows:

§ 264a.6 What other definitions and rules of construction apply for purposes of this part?

* * * * *

(c) *Control* has the meaning given in section 2 of the Bank Holding Company Act, with respect to banking holding companies, and has the meaning given in section 10 of the Home Owners' Loan Act, with respect to savings and loan holding companies.

* * * * *

(h) *Savings and loan holding company* means any company that controls a savings association (as provided in section 10 of the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*)).

By order of the Board of Governors of the Federal Reserve System, September 1, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–22854 Filed 9–12–11; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 42 Great Basin and Mojave Desert Springsnails as Threatened or Endangered With Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0001; 92210–0–0008–B2]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List 42 Great Basin and Mojave Desert Springsnails as Threatened or Endangered With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list 42 Great Basin and Mojave Desert springsnails as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We addressed 3 of the 42 petitioned species in a 90-day finding dated August 18, 2009, in which we found that substantial scientific or commercial information was presented indicating that listing may be warranted for those 3 species. In this finding, we find that the petition does not present substantial scientific or commercial information indicating that listing 7 of the remaining 39 may be warranted. In addition, we find that the petition presents substantial scientific or commercial information indicating that listing may be warranted for 32 of the remaining 39 species. Therefore, with the publication of this notice, we are initiating status reviews of these 32 species to determine if listing is warranted. To ensure that the status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these 32 species. Based on the status reviews, we will issue 12-month findings on these 32 species, which will address whether the petitioned actions are warranted, as provided in the Act. If an emergency situation develops for any of the 42 petitioned species that warrants emergency listing, we will act immediately to provide necessary protection.

DATES: To allow us adequate time to conduct the status reviews, we request that we receive information on or before November 14, 2011. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is midnight Eastern Daylight Saving Time on this date.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the box that reads ''Enter Keyword or ID,'' enter the Docket number for this finding, which is FWS–R8–ES–2011–0001. You should then see an icon that reads ''Submit a Comment.'' Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: [FWS–R8–ES–2011–0001], Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

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

After November 14, 2011, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

FOR FURTHER INFORMATION CONTACT: Jill Ralston, Deputy State Supervisor, Nevada Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd, Suite 234, Reno, NV 89502, by telephone 775–861–6300, or by facsimile 775–861–6301. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the 32 springsnail species from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, their habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing any of the 32 springsnail species is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by each of the 32 springsnail species, we request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species;''

(2) Where these features are currently found; and

(3) Whether any of these features may require special management considerations or protection.

In addition, we request data and information on ''specific areas outside the geographical area occupied by the species'' that are ''essential to the conservation of the species.'' Please provide specific comments and information as to what, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If 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 supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or you may make an appointment during normal business hours at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1533(b)(3)(A)) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

Petition History

On February 27, 2009, we received a formal petition dated February 17, 2009, from the Center for Biological Diversity (CBD), Tierra Curry, Noah Greenwald, Dr. James Deacon, Don Duff, and the Freshwater Mollusk Conservation Society (hereinafter referred to as the petitioners), requesting that we, the Service, list 42 species of Great Basin springsnails in Nevada, Utah, and California as threatened or endangered with critical habitat under the Act. The petition clearly identified itself as a petition and included the appropriate identification information for the petitioners, as required in 50 CFR 424.14(a).

In an October 19, 2009, letter to the petitioners, we acknowledged receipt of the petition, and responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that compliance with various court orders, settlement agreements and other statutory deadlines required us to expend all of our listing and critical habitat funding for Fiscal Year 2009; thus, we anticipated making an initial finding in Fiscal Year 2010. This finding addresses the petition.

Previous Federal Actions

Three of the 42 petitioned springsnail species were addressed in a separate 90-day finding on a petition to list 206 species in the midwest and western United States (August 18, 2009; 74 FR 41649); thus, these three species are not included in this finding. In the finding dated August 18, 2009, we found substantial scientific or commercial information was presented indicating that listing may be warranted for the longitudinal gland pyrg (*Pyrgulopsis anguina*), Hamlin Valley pyrg (*Pyrgulopsis hamlinensis*), and sub-globose snake pyrg (*Pyrgulopsis saxatilis*). Therefore, this finding addresses the remaining 39 springsnail species from the petition dated February 17, 2009.

On December 14, 2009, one of the petitioners, CBD, filed a 60-day notice of intent to sue indicating that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on the petition to list these 42 springsnail species, as well as findings for numerous other species. On April 26, 2010, CBD amended its complaint in *Center for Biological Diversity* v. *Salazar, U.S. Fish and Wildlife Service,* Case No.: 1:10–cv–230–PLF (D.D.C.), adding an allegation that the Service failed to issue its 90-day petition findings on the 42 springsnail species within the mandatory statutory timeframe.

Evaluation of Information for This Finding

Section 4 of the Act and its implementing regulations at 50 CFR 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

In making this 90-day finding, we evaluated whether information regarding threats to the 39 springsnail species as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned action may be warranted. Our evaluation of this information is presented below.

Summary of Common Species Information

The 39 species of springsnails included in the petition and evaluated in this finding are endemic, aquatic macroinvertebrates of Great Basin and Mojave Desert freshwater springs of Nevada, Utah, and California (Table 1). All of the petitioned species are from the phylum Mollusca, class Gastropoda, superorder Caenogastropoda (Bouchet and Rocroi 2005, pp. 4–368). Thirty-four of the species are in the genus *Pyrgulopsis,* family Hydrobiidae, and five species are in the genus *Tryonia,* family Cochliopidae (Table 1) (Wilke *et al.* 2001, pp. 1–21). Both in the petition and in our files, little to no information is available on population numbers or population trends for the majority of these springsnail species. Life history information for the 39 species is available in the petition, and in references cited in the petition and this finding. In this finding, we included a short summary of distribution information for each species.

TABLE 1—NAMES AND LOCATIONS OF 39 SPRINGSNAIL SPECIES INCLUDED IN THIS FINDING

Scientific name	Common name	Hydrographic area(s)	County (Co.), state
Species for which substantial information indicating listing may be warranted was not presented or available:			
Pyrgulopsis aloba	Duckwater pyrg	Railroad Valley North	Nye Co., NV.
Pyrgulopsis anatine	Southern Duckwater pyrg	Railroad Valley North	Nye Co., NV.
Pyrgulopsis gracilis	Emigrant pyrg	White River Valley	Nye Co., NV.
Pyrgulopsis lockensis	Lockes pyrg	Railroad Valley North	Nye Co., NV.
Pyrgulopsis montana	Camp Valley pyrg	Meadow Valley Wash (Camp Valley).	Lincoln Co., NV.
Pyrgulopsis papillata	Big Warm Spring pyrg	Railroad Valley North	Nye Co., NV.
Pyrgulopsis villacampae	Duckwater Warm Spring pyrg	Railroad Valley North	Nye Co., NV.
Species for which substantial information indicating listing may be warranted was presented or available:			
Pyrgulopsis avernalis	Moapa pebblesnail	Upper Muddy River Springs	Clark Co., NV.
Pyrgulopsis breviloba	Flag pyrg	Dry Lake and White River	Lincoln and Nye Cos., NV.
Pyrgulopsis carinifera	Moapa Valley pyrg	Upper Muddy River Springs	Clark Co., NV.
Pyrgulopsis coloradensis	Blue Point pyrg	Black Mountains Area (Lake Mead).	Clark Co., NV.
Pyrgulopsis crystalis	Crystal springsnail	Amargosa Desert	Nye Co., NV.
Pyrgulopsis deaconi	Spring Mountains pyrg	Las Vegas Valley and Pahrump Valley.	Clark Co., NV.
Pyrgulopsis erythropoma	Ash Meadows pebblesnail	Amargosa Desert	Nye Co., NV.
Pyrgulopsis fairbanksensis	Fairbanks springsnail	Amargosa Desert	Nye Co., NV.
Pyrgulopsis fausta	Corn Creek pyrg	Las Vegas Valley	Clark Co., NV.
Pyrgulopsis hubbsi	Hubbs pyrg	Pahranagat Valley	Lincoln Co., NV.
Pyrgulopsis isolatus	Elongate gland springsnail	Amargosa Desert	Nye Co., NV.
Pyrgulopsis landyei	Landyes pyrg	Steptoe Valley	White Pine Co., NV.
Pyrgulopsis lata	Butterfield pyrg	White River Valley	Nye Co., NV.
Pyrgulopsis marcida	Hardy pyrg	Cave Valley and White River Valley.	Lincoln, Nye, and White Pine Cos., NV.
Pyrgulopsis merriami	Pahranagat pebblesnail	Pahranagat Valley and White River Valley.	Lincoln and Nye Cos., NV.
Pyrgulopsis nanus	Distal gland springsnail	Amargosa Desert	Nye Co., NV.
Pyrgulopsis neritella	Neritiform Steptoe Ranch pyrg	Steptoe Valley	White Pine Co., NV.
Pyrgulopsis orbiculata	Sub-globose Steptoe Ranch pyrg	Steptoe Valley	White Pine Co., NV.
Pyrgulopsis peculiaris	Bifid duct pyrg	Snake Valley and Spring Valley	White Pine Co., NV; Millard Co., UT.
Pyrgulopsis pisteri	Median gland Nevada pyrg	Amargosa Desert	Nye Co., NV.
Pyrgulopsis planulata	Flat-topped Steptoe pyrg	Steptoe Valley	White Pine Co., NV.
Pyrgulopsis sathos	White River Valley pyrg	White River Valley	Lincoln, Nye and White Pine Cos., NV.
Pyrgulopsis serrata	Northern Steptoe pyrg	Steptoe Valley	Elko and White Pine Cos., NV.
Pyrgulopsis sterilis	Sterile Basin pyrg	Ralston Valley and Stone Cabin Flat.	Nye Co., NV.
Pyrgulopsis sublata	Lake Valley pyrg	Lake Valley	Lincoln Co., NV.
Pyrgulopsis sulcata	Southern Steptoe pyrg	Steptoe Valley	White Pine Co., NV.
Pyrgulopsis turbatrix	Southeast Nevada pyrg	Las Vegas Valley, Indian Springs, Pahrump Valley, Amargosa Flat, and Frenchman Flat.	Clark and Nye Cos., NV.
Tryonia angulata	Sportinggoods tryonia	Amargosa Desert	Nye Co., NV.
Tryonia clathrata	Grated tryonia	Upper Muddy River Springs, White River Valley, and Pahranagat Valley.	Clark, Lincoln, and Nye Cos., NV.
Tryonia elata	Point of Rocks tryonia	Amargosa Desert	Nye Co., NV.
Tryonia ericae	Minute tryonia	Amargosa Desert	Nye Co., NV.
Tryonia variegata	Amargosa tryonia	Amargosa Desert	Inyo Co., CA; Nye Co., NV.

Summary of Common Threats

The petition identified several potential threats common to most, if not all, of the petitioned springsnail species: groundwater development (withdrawal, extraction, pumping, etc.), spring development, water pollution, recreation, grazing, invasive species, global climate change, isolated populations, and inadequate regulatory mechanisms (CBD *et al.* 2009, pp. 21–60). These threats are generally described in the petition with little to no information in the petition or available in our files that correlates the threats to existing or probable impacts on the individual springsnail species. In this section, we summarize these common threats and provide the rationale as to whether or not information in the petition and available in our files is substantial, thereby indicating that listing any of the 39 petitioned species may be warranted. Our conclusion for each species as it relates to each of the five factors, as well as specific threat information if available, is then summarized later in the finding in species sections below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Groundwater Development

The petition identifies groundwater development (withdrawal, extraction, pumping, etc.) as ''an overarching and imminent threat'' (CBD *et al.* 2009, p. 23) to the persistence of the petitioned springsnail species and their aquatic habitats as this may reduce or eliminate spring discharge, thus altering the springhead environment and the specific conditions (*e.g.,* flow, substrate, water temperature) required by springsnails. As this threat relates to impacts to the petitioned species, it is primarily characterized in the petition as ''unsustainable groundwater withdrawal rates'' from: (1) Existing water rights and applications for water rights that exceed the amount of perennial yield of a specific basin or sub-basin where springsnails occur; and (2) existing and proposed groundwater development and pumping projects in groundwater basin(s) where springsnails occur or basin(s) hydrologically connected to other basins where springsnails occur (CBD *et al.* 2009, pp. 23–32).

The petition presented significant information regarding groundwater development as it relates to perennial yield versus committed water resources within hydrographic basins where the petitioned springsnails may occur. The information they provide is referenced to the Nevada Division of Water Resources (NDWR) database (*http://water.nv.gov/*). We accessed and reviewed the NDWR database on January 12, 2010, and saved hard copies of pertinent information for each basin where the petitioned springsnails may occur. Where we discuss perennial yield, committed water resources, and effects of groundwater development within this finding we are referring to information we have reviewed from the NDWR database. The Nevada State Engineer (NSE) approves and permits groundwater rights in Nevada, and defines perennial yield as ''the amount of usable water from a ground-water aquifer that can be economically withdrawn and consumed each year for an indefinite period of time. It cannot exceed the natural recharge to that aquifer and ultimately is limited to maximum amount of discharge that can be utilized for beneficial use.'' In some basins, system yield estimates may also be included with perennial yield estimates. System yield is defined as ''the amount of usable groundwater and surface water that can be economically withdrawn and consumed each year for an indefinite period of time without depleting the source.'' The NSE considers system yield with perennial yield estimates in basins with ''significant groundwater discharges to streams.'' The NSE estimates perennial yield for 256 basins and sub-basins (areas) in Nevada, and may ''designate'' a groundwater basin, meaning the basin ''is being depleted or is in need of additional administration, and in the interest of public welfare, [the NSE may] declare preferred uses (such as municipal, domestic) in such basins.'' Many of the hydrographic areas in which the petitioned springsnails occur are ''designated'' by the NSE, and permitted groundwater rights approach or exceed the estimated average annual recharge. Furthermore, the petition provides evidence that such commitment of water resources beyond perennial yield may result in detrimental impacts to spring and stream conditions, and thereby could impact habitats and microhabitat conditions of many of the petitioned species in the designated basins. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying and degradation, or the loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Based on this summary, groundwater development resulting from permitted groundwater rights that approach or exceed perennial yield may be a potential threat and is identified as such for specific species in the species sections below.

As noted in the petition, several groundwater development projects have been proposed by various entities and are at different stages of planning and implementation. The petition asserts which springs and springsnails would be affected by these groundwater development projects (CBD *et al.* 2009, pp. 23–32). However, based on the information in the petition and in our files, we determined for certain springs and their associated petitioned springsnails there is not substantial information indicating that they may be threatened by the proposed groundwater projects because the basins in which groundwater development is proposed do not have a hydrologic connection to the springs and flow systems where the species occur (Welch *et al.* 2007, pp. 71–79). These springs are upgradient and outside of the zone of influence of the carbonate aquifer (*e.g.,* in the alluvial aquifer or mountain block aquifer). Therefore based on this summary, there is not substantial information indicating that listing may be warranted for 9 of the 39 petitioned springsnail species because the proposed groundwater projects in these systems are not potential threats. This is appropriately noted for each specific species it applies to in the species sections below.

For other systems, significant uncertainties still remain regarding many of the groundwater development projects and these uncertainties are factored into our evaluation of the information. These uncertainties include, but are not limited to: (1) Timing of pending applications for water rights not yet permitted by the NSE; (2) timing of authorization by the NSE to use those existing, permitted water rights that are required to perform testing, monitoring, or other measures before they can be fully utilized; (3) outcome of protests, lawsuits, and legal proceedings against water rights applications and groundwater development projects; (4) progress of project planning, timing of issuance of necessary permits (*e.g.,* right-of-way permits, National Environmental Policy Act compliance), and project analyses that may correlate impacts to spring systems; (5) varying results of different models being used to determine project impacts and timing of projected impacts (*e.g.,* some project impacts are projected to be 100–200 years in the future); (6) availability of funding for construction and implementation of projects, including monitoring; and (7) locations of wells and other infrastructure in relation to the petitioned species. Whether or not there is substantial information indicating that listing may be warranted due to groundwater development from existing and proposed projects is appropriately identified for the specific species it applies to in the species sections below.

In addition to habitat impacts from groundwater development, inadequate regulation of groundwater development is cited as a threat in the petition (CBD *et al.* 2009, pp. 28–29, 57); therefore, as the potential threat of groundwater development relates to regulatory mechanisms, we analyzed this potential threat under Factor D below.

Spring Development, Grazing, and Recreation

The petition identifies spring development (*e.g.,* capturing and piping spring flow), grazing, and recreation as threats to the persistence of the petitioned springsnails (CBD *et al.* 2009, pp. 33–39). In general, all of these activities have been known to degrade spring environments by decreasing or eliminating flow and altering water quality, substrate condition, and vegetative cover, composition, and

structure. This, in turn, decreases available habitat for species that require flowing, high-quality water, such as springsnails. Sada and Vinyard (2002, pp. 277 and 283) reviewed historical anthropogenic changes in the aquatic biota of the Great Basin and found that water flow diversions and livestock grazing in riparian areas likely contributed to historical declines or losses of several springsnail species. Yet, overall site disturbance from spring development and grazing did not always equate to low numbers of springsnails, as some sites classified as moderately to highly disturbed were also described as having springsnails that were common or abundant (Sada 2006, p. 6).

In many cases, these activities have been occurring on the landscape for some time, and for the majority of species, the petition does not present specific information that there may be an increase in the intensity of the activity or that the activity may expand into additional occupied sites in the future. The petition does not directly relate loss of springsnail populations or reduction in numbers of individuals to these activities for 31 of the petitioned springsnail species. In addition, State and Federal agencies, conservation organizations, and private landowners are conducting management actions, restoration, and planning activities that remove spring developments, restore systems to a more natural state, and control or reduce the impacts of livestock grazing and recreationists at springs occupied by five of the petitioned springsnails. Specific information pertaining to each of the petitioned species is included in the species sections below. Based on this summary, there is not substantial information to indicate that 26 of the petitioned springsnail species may warrant listing due to spring development, grazing, and recreation and this is noted in the individual species sections below. However, for the remaining 8 petitioned springsnail species specific information indicates that these activities may be potential threats, and as appropriate, is noted below in the species sections.

The petition identifies invasive, nonnative species as a threat to the persistence of the petitioned springsnails through: habitat loss and degradation such as alteration of water quality, substrate condition, or vegetative cover, composition, and structure; predation; and competition (CBD *et al.* 2009, pp. 33–39). Since these potential impacts of invasive species raised in the petition cross several of the five factors, we analyzed this potential threat under Factor E.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition identifies improper collection for scientific, educational and recreational purposes as a potential threat that could contribute to the decline of the petitioned springsnails (CBD *et al.* 2009, p. 42). The petition indicates that unauthorized collection of invertebrates was observed at one location where a petitioned springsnail species occurs, but no information was included on whether or not the petitioned springsnail species was collected or if the invertebrate collection activity affected the springsnail population. The petition also cites a location in central Arizona where population sampling without replacement of aquatic organisms resulted in a stark but temporary (1 year) decline in the population size of the springsnail species sampled at that location (CBD *et al.* 2009, p. 42). However, the petition provides no data or information that directly relates overutilization or collection to loss of springsnail populations or reduction in numbers of individuals for any of the petitioned springsnails. We have no information in our files to indicate that overutilization may be a threat to any of the petitioned springsnail species. Therefore, we conclude there is not substantial information indicating that listing may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes for all of the 39 petitioned springsnail species because these activities do not pose a potential threat.

Factor C. Disease or Predation

The petition asserts the risk of predation and disease is increased for springsnail populations with the invasion of exotic species, but provides no supporting information. Natural predation of springsnails by various taxa is also noted but no information is provided as to the significance of this threat to springsnails or their populations. We have no information in our files to indicate that disease and predation may be threats to any of the petitioned springsnail species. Therefore, based on this summary, there is not substantial information indicating that listing may be warranted due to disease and predation for all of the 39 petitioned springsnails species. In regard to invasive (exotic) species, we address this potential threat under Factor E.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

The petitioned springsnails occur on private, Federal, and State lands, and as such are subject to a variety of land management strategies. The petition states that none of the 39 petitioned springsnail species have legal protective status and asserts that all are imperiled or critically imperiled (CBD *et al.* 2009, p. 47). The petition maintains that, although Federal and State land management may incorporate conservation for fish, wildlife and plant resources, conservation for springsnails is often by default through other species' conservation, is not generally given high priority, or is limited by lack of funding or staff (CBD *et al.* 2009, pp. 47–56). In addition, the petition asserts that an expired 1998 Memorandum of Understanding among the Forest Service, Bureau of Land Management, National Park Service, Geological Survey, Fish and Wildlife Service, Smithsonian Institution, and The Nature Conservancy, as well as State wildlife conservation strategies/plans, State Natural Heritage Programs, other conservation programs, habitat conservation plans, and groundwater development stipulated agreements do not provide regulatory protection to any of the petitioned springsnails (CBD *et al.* 2009, pp. 51–59). Furthermore, according to the petition, despite Federal or State conservation programs, springsnails are threatened on State and Federal lands by invasive species; overgrazing by cattle, feral horses, and burros; spring development and groundwater pumping; and climate change (CBD *et al.* 2009, pp. 48–52).

We do not consider land ownership and associated management activities, memorandums of understanding, conservation strategies, or other conservation agreements, plans, or programs to be regulatory mechanisms since the conservation activities associated with these types of documents are discretionary. Many of these agreements, strategies, and plans were not intended to provide regulatory protection, but rather to facilitate voluntary cooperation or partnerships between and among agencies and entities to promote conservation. If specific laws, statutes, permits, or other mechanisms regulate specific activities and actions by landowners, entities, or agencies that relate to a potential threat to the petitioned springsnails, we have determined whether there is substantial information regarding the inadequacy of those mechanisms in this finding.

Specifically, the inadequate regulation of groundwater development

is considered a threat in the petition (CBD *et al.* 2009, p. 57). Through various permit and approval mechanisms, the NSE regulates groundwater rights in Nevada. In many hydrologic basins in Nevada where the petitioned springsnails occur, the permitted groundwater usage approaches or exceeds the estimated perennial yield of the basin. This commitment of water resources by the NSE beyond perennial yield may result in detrimental impacts to spring and stream condition in the designated basins, and thereby could impact habitats and microhabitat conditions of many of the petitioned species. For the springsnail species where substantial information indicates that listing may be warranted based on the inadequacy of this regulatory mechanism, it is noted in the individual species sections below.

Factor E. Other Natural or Manmade Factors Affecting its Continued Existence

Nonnative and Invasive Species

The petition identifies invasive, nonnative species (fish, invertebrates, amphibians, and vegetation) as a threat to the persistence of the petitioned springsnails through: habitat loss and degradation such as alteration of water quality, substrate condition, or vegetative cover, composition, and structure; predation; and competition (CBD *et al.* 2009, pp. 43–45). Since the potential impacts of invasive species raised in the petition cross several of the five factors, we have determined whether there is substantial information regarding this potential threat under Factor E. As summarized above for the common threats under Factor A, Sada and Vinyard (2002, pp. 277 and 283) found that nonnative species was one of several prevalent threats to springsnail species of the Great Basin, and historical declines or losses of several springsnail species, in some cases, have been attributed to the introduction of nonnative species. Thirty-four of the 42 petitioned species were included in the study, but Sada and Vinyard did not conclude that a population decline in any of the 34 species occurred as a result of nonnative species introductions (Sada and Vinyard 2002, pp. 284–287). Sada and Vinyard (2002, pp. 277 and 286–287) did have sufficient information to confirm that major population declines occurred in 1970 in 7 out of the 10 petitioned Amargosa Desert species due to regional economic conditions and human immigration (see species section for the Amargosa Desert for more information). At one thermal spring system (Upper Muddy River) in southern Nevada, Sada (2008, p. 69) observed that the niche overlap between the nonnative red-rimmed melania (*Melanoides tuberculata*) and native springsnails (Moapa pebblesnail, Moapa Valley pyrg, and grated tryonia) was small and that competitive interactions were minor. The abundance of, or habitat use by, the native springsnails was minimally affected by the presence of the nonnative red-rimmed melania. Sada (2008, p. 69) states that these observations provide insight into the potential impacts of nonnative red-rimmed melania on native springsnails. The negative impacts or influences of competition, or other life-history interactions, may be negligible at other thermal springs as well, if nonnative and native snail species utilize different temperatures, substrates, and water velocities within the systems.

In many cases, nonnative species have been present on the landscape for some time, and for 36 of the 39 springsnail species, the petition does not present specific information that additional occupied springsnail sites may be threatened by an increase or expansion of nonnative species. The petition also does not correlate loss of springsnail populations or reduction in numbers of individuals directly to the introduction or presence of invasive, nonnative species for the majority of species. Management actions and restoration activities have been implemented by various agencies to avoid or reduce the potential impacts of nonnative species to fish and wildlife resources in certain areas. Some of these actions have occurred at springs with petitioned springsnails; however, we are unaware of information supporting the benefit or detriment of such actions to springsnails. If available, specific nonnative species information pertaining to the petitioned species or the springs systems they occupy is included in the species section below. Therefore based on this summary, there is not substantial information to indicate that listing may be warranted for 36 of the 39 petitioned springsnail species, due to threats from nonnative and invasive species; this is reiterated for specific species in the individual species sections below. However, for three of the petitioned species, specific information regarding effects from nonnative and invasive species is available to indicate a potential threat, and as appropriate, is noted for specific species in those species sections below.

Inherent Vulnerability of Isolated Populations and Limited Distribution

The petition asserts that springsnails are inherently vulnerable to extirpation due to their isolation and limited distribution (CBD *et al.* 2009, p. 47). Local endemism is common in springsnails (Hershler and Sada 2002, p. 225), with many of the species in the western United States restricted to a single spring, spring complex, or drainage system (Hershler 1998, p. 1; Hershler *et al.* 1999, p. 377, Liu *et al.* 2003, p. 2775). Additionally, the spring systems in which these species are located are typically isolated and separated from other surface waters by large expanses of dry land. This isolation and limited distribution, coupled with low vagility, increases the vulnerability of species or local populations of springsnails to extirpation from stochastic demographic and natural events, and anthropogenic factors.

However, many springsnails have evolved and continue to persist in isolation with limited distribution (Hershler and Sada 2002, p. 255). Thus, for all 39 of the petitioned springsnail species, we do not find substantial information indicating that isolation with limited distribution, in and of itself, is a potential threat. For some of the petitioned springsnail species, isolation and limited distribution are aspects we considered in determining whether there is substantial information that indicates that a natural or anthropogenic threat, or a combination of threats, may be affecting a specific springsnail species, and as appropriate, this is discussed for those specific species in the species sections below.

Global Climate Change

The petition identified global climate change (CBD *et al.* 2009, p. 46) as a significant threat to the petitioned springsnail species ''due to potential increased frequency and intensity of drought, altered precipitation patterns, shifting ecological zones, decreased groundwater levels and increasing demand for freshwater.'' Climate, particularly temperature and precipitation, is a primary factor affecting spring system structure, function, and dynamics in the Great Basin and Mojave Desert. In general, spring ecosystems are adapted to short-term climatic changes and the highly variable and unpredictable climatic patterns characteristic of the Basin and Range Province. Because springsnails are aquatic obligates with limited dispersal ability, their presence in a spring is indicative of perennial water

that has likely persisted for thousands of years (Sada and Pohlmann 2006, p. 10), including through past climatic fluctuations.

In the long term, major and relatively rapid shifts in climatic patterns that are characteristic predictions of global climate change have the potential to cause large-scale changes to spring ecosystems. Climate change has occurred over the past century in high northern latitudes (increased precipitation) and areas below 10 degrees south and 30 degrees north (decreased precipitation), with associated changes in components of the hydrologic cycle (*e.g.,* precipitation patterns, snow melt, evaporation, soil moisture, and runoff) (Bates *et al.* 2008, p. 3).

The petition did not provide climate change information specific to Nevada, Utah, and California, or the basins and spring systems occupied by the 39 petitioned springsnails species. Based on information in our files, the recent projections of climate change in the Great Basin and Mojave Desert over the next century include: increased temperatures, with an increased frequency of extremely hot days in summer; more variable weather patterns and more severe storms; more winter precipitation in the form of rain, with potentially little change or decreases in summer precipitation; and earlier, more rapid snowmelt (United States Environmental Protection Agency (U.S. EPA) 1998, pp. 1–4; Chambers and Pellant 2008, pp. 29–33). According to a report of the Intergovernmental Panel on Climate Change (Bates *et al.* 2008, p. 36), higher temperatures and earlier snow melt due to climate change could result in increased evapotranspiration and shifts in the timing or amount of groundwater recharge and runoff (EPA 1998, pp. 1–4), potentially resulting in decreased summer flows in springs and streams. Compounding these issues could be increased water demand and groundwater development for human consumption.

In summary, it is difficult to predict local climate change impacts due to substantial uncertainty in trends of hydrological variables (*e.g.,* natural variability can mask long-term climate trends); limitations in spatial and temporal coverage of monitoring networks; and differences in the spatial scales of global climate models and hydrological models (Bates *et al.* 2008, p. 3). Thus, while the information in the petition and our files indicates that climate change from a large-scale or regional level has the potential to affect spring ecosystems in the Great Basin and Mojave Desert in the longterm, there is much uncertainty and the information is unreliable at a finer scales to predict what habitat attributes could be affected by climate change. Given the current uncertainty and unreliability of information as summarized above, we determine that there is not substantial information indicating that listing may be warranted for all of the 39 petitioned springsnail species due to global climate change; this is identified as such for specific species in the species sections below.

Species for Which Substantial Information was Not Presented

In this summary section, the springsnail species are grouped by hydrographic areas or basins in alphabetical order for ease in discussing common threats within those areas. Within each hydrographic area, the springsnails are listed in alphabetical order by their scientific name.

Railroad (Duckwater) Valley Northern Hydrographic Area Species

Pyrgulopsis aloba (Duckwater pyrg): known from two unnamed springs northwest and southeast of Duckwater on tribal lands within the Duckwater Reservation, Nye County, Nevada (Hershler 1998, p. 62).

Pyrgulopsis anatine (southern Duckwater pyrg): occurs at a single spring southeast of Old Collins Spring on tribal lands within the Duckwater Reservation, Nye County, Nevada (Hershler 1998, p. 64).

Pyrgulopsis lockensis (Lockes pyrg): known from one spring on Lockes Ranch, State of Nevada lands, Nye County, Nevada (Hershler 1998, p. 58).

Pyrgulopsis papillata (Big Warm Spring pyrg): occurs at Big Warm Spring and Little Warm Spring on tribal lands within the Duckwater Reservation, Nye County, Nevada (Hershler 1998, p. 59).

Pyrgulopsis villacampae (Duckwater Warm Spring pyrg): known from Big Warm Spring and Little Warm Spring on tribal lands within the Duckwater Reservation, Nye County, Nevada (Hershler 1998, p. 63).

Factor A: The petition states that groundwater development, spring development, water pollution, recreation, and grazing are threats that may affect the five petitioned Railroad Valley springsnails. The petition mentions that groundwater resources in the Railroad Valley Southern hydrographic area (#173A) are over committed; however, none of the five petitioned species of Railroad Valley springsnails occur in that area. Rather, these species occur in the Railroad Valley Northern hydrographic area. The perennial yield of the Railroad Valley Northern hydrographic area (#173B) is 75,000 acre-feet per year (afy) (92,510,000 cubic-meters per year (m^3/year)), and there are 24,943 afy (30,770,000 m^3/year) committed; thus, the permitted groundwater rights do not approach or exceed the estimated average annual recharge in this hydrographic area. Based on the preceding discussion, the information presented in the petition for these species is incorrect, and there is no information providing evidence that groundwater development may affect habitat for the five petitioned Railroad Valley springsnails. Neither the petition, nor our files contain substantial information indicating that listing the five petitioned Railroad Valley springsnails may be warranted due to threats from groundwater development.

The petition specifically cites a diversion (spring development) in Big Warm Spring as a threat to the five Railroad Valley springsnails. However, in 2006 and 2008, Big Warm Spring and Little Warm Spring underwent extensive restoration efforts, including removal of the cited diversion, which have reduced or eliminated the threats to the habitat for these species (Poore 2008b, pp. 1–10). Through a Safe Harbor Agreement and several grants from the Service's Partners for Fish and Wildlife Program and through section 6 of the Act, conservation is being implemented to avoid threats such as spring development, water pollution, recreation, and grazing to Big Warm Spring and Little Warm Spring (Service 2007, pp. 1–25; Service 2009, pp. 1–36). In 2005, Lockes Ranch was purchased by the State of Nevada through a Recovery Lands Acquisition grant for protection of the federally threatened Railroad Valley springfish (*Crenichthys nevadae*). Although the State does not regulate invertebrates, this purchase provides protection to riparian habitat, spring systems, and associated wildlife. The State of Nevada actively manages grazing and recreation, or has eliminated these activities from portions of Lockes Ranch such that these past threats to the species are reduced. In fall 2008, the four springs on Lockes Ranch underwent extensive restoration, which included creation of a new sinuous channel, improvement of existing channels, dewatering of a man-made irrigation ditch that was previously used for stock watering, and removal of nonnative vegetation surrounding the four spring systems (Poore 2008a, pp. 1–4). The petition does not provide evidence suggesting that these restoration efforts are beneficial or

detrimental to the petitioned Railroad Valley springsnail species.

In summary, these restoration activities and acquisition have significantly reduced the threat of grazing and recreation, and eliminated the threats associated with spring diversions. Based on the preceding discussion we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Railroad Valley springsnail species, may be warranted due to threats from spring development, water pollution, recreation, and grazing.

Based on the above discussions, we have determined that the petition does not present substantial information to indicate that listing the Duckwater pyrg, southern Duckwater pyrg, Lockes pyrg, Big Warm Spring pyrg, or the Duckwater Warm Spring pyrg as threatened or endangered may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

Factors B and C: The petition asserts that the five Railroad Valley petitioned springsnails are threatened by collection for scientific or educational purposes and disease or predation. The petition does not provide any information to indicate that collection, disease or predation is impacting the any of the five Railroad Valley species or to indicate these activities are occurring in, or are likely to occur in their habitats. The petitioners offer no evidence of population decline for any of the five Railroad Valley springsnail species as a result of Factors B or C, and these species continue to persist in their habitats. Therefore based on the preceding discussion and the discussion in the ''Summary of Common Threats'' for Factors B and C, we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Duckwater pyrg, southern Duckwater pyrg, Lockes pyrg, Big Warm Spring pyrg, or the Duckwater Warm Spring pyrg may be warranted due to the overutilization for commercial, recreational, scientific or educational purposes and disease or predation.

Factor D: We have determined that the information in the petition and in our files does not present substantial information to indicate that listing the five Railroad Valley springsnails may be warranted due to threats associated with Factors A, B, C, and E. It follows that the adequacy or inadequacy of mechanisms to regulate any of these threats is not at issue. Further, the petition does not present any additional information that there are existing regulatory mechanisms designed to protect the species that are inadequate. Therefore, we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Duckwater pyrg, southern Duckwater pyrg, Lockes pyrg, Big Warm Spring pyrg, or the Duckwater Warm Spring pyrg may be warranted due to the inadequacy of existing regulatory mechanisms.

Factor E: The petition states that inherent vulnerability of isolated springsnail populations, invasive species, and global climate change are threats that may affect the five Railroad Valley petitioned springsnails. Specifically regarding invasive species and the five Railroad Valley springsnails, the Service and NDOW are continuously working to eradicate nonnative species in Big Warm Spring (Goldstein and Hobbs 2009, pp. 1–14). Little Warm Spring and the spring system at Lockes Ranch currently do not contain nonnative species that could threaten the petitioned Railroad Valley springsnails, and it is unknown if the two other unnamed springs where the petitioned Railroad Valley springsnails are known to occur contain nonnative species. The petition does not provide any information regarding the potential threat from isolation and limited distribution. We do not consider isolation and limited distribution, in and of itself, to be a threat to the five Railroad Valley species. The petitioners offer no evidence of population decline for any of the five Railroad Valley springsnail species as a result of isolated populations, invasive species, and global climate change under Factor E. The petitioned Railroad Valley springsnails continue to persist in their habitats. Therefore, based on the preceding discussion and discussion of isolated springsnail populations, invasive species, and global climate change in the ''Summary of Common Threats,'' we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Duckwater pyrg, southern Duckwater pyrg, Lockes pyrg, Big Warm Spring pyrg, or the Duckwater Warm Spring pyrg may be warranted due to other natural or manmade factors such as threats from isolation,, invasive species, and global climate change.

Railroad Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition does not present substantial information to indicate that listing of the Duckwater pyrg, southern Duckwater pyrg, Lockes pyrg, Big Warm Spring pyrg, or the Duckwater Warm Springs pyrg may be warranted due to threats associated with any of the five factors.

Spring Valley (Meadow Valley Wash/ Camp Valley) Hydrographic Area Species

The *Pyrgulopsis montana* (Camp Valley pyrg) is known from a single unnamed spring on private land in Camp Valley, Lincoln County, Nevada (Hershler 1998, pp. 31–33; Garside and Schilling 1979, p. 46). Data from the 1992 survey indicates that the Camp Valley pyrg was abundant (abundant is the highest qualitative population description; *e.g.* abundant > common > scarce > absent.) (Sada 2003, database record 701).

Factor A: The petition identifies groundwater development, spring development, water pollution, recreation, and grazing as threats. The petition incorrectly asserts that the unnamed spring where the Camp Valley pyrg occurs is within the region of influence to be affected by groundwater development projects (CBD *et al.* 2009, p. 89). The petition cites generalized studies of that model future groundwater development (Schaefer and Harrill 1995; Harrill and Prudic 1998; Deacon *et al.* 2007) to support its assertion that it will affect the Camp Valley pyrg and its habitat. Schaefer and Harrill (1995, p. 7) indicated that, for their analysis, the data that were used in their model were highly generalized and that their assumptions were simplifications of the actual system. In addition, the locations of proposed wells and the pumping schedule were likely to be revised. Thus, their results were only indications of potential generalized results and are not specific to the Camp Valley pyrg. Harrill and Prudic (1998) and Deacon *et al.* (2007) present overviews of the groundwater system in southern Nevada, western Utah, and southeastern California; however, neither study presents specific information regarding potential impacts to the Camp Valley pyrg.

References cited in the petition regarding groundwater development projects that petitioners use to assert that this activity is a potential threat to the species (cited below) do not support the claims in the petition that the Camp Valley pyrg or its habitat will be affected by proposed groundwater development projects. The Camp Valley pyrg occurs in an unnamed spring within the Spring Valley hydrographic area (#201), This hydrographic area was not identified as being within the Region of Influence for two groundwater development projects

in Lincoln County (Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project (BLM 2008, pp. 3–12) and Kane Springs Valley Groundwater Development Project (BLM 2008, pp. 3–10)). After evaluating the hydrologic evidence presented, the NSE did not identify the unnamed spring where the Camp Valley pyrg occurs as a location where impacts will occur as a result of the groundwater development (NDWR 2007, pp. 1–23; NDWR 2008, pp. 1–40). The Spring Valley hydrographic area has not been classified as a ''Designated Groundwater Basin'' by the NSE. The perennial yield of the Spring Valley hydrographic area is 25,000 afy (30,840,000 m^3/year), and there are 1,112 afy (1,372,000 m^3/year) committed; thus, permitted groundwater rights do not exceed the estimated average annual recharge. Based upon the preceding discussion we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Camp Valley pyrg may be warranted due to threats from groundwater development.

The unnamed spring where the Camp Valley pyrg occurs was assessed as being heavily disturbed by cattle (ranking ranged from 1 if undisturbed to 4 if heavily disturbed) during a 1992 survey (Hershler 1998, p. 33; Sada 2003, database record 701), however Sada showed that the Camp Valley pyrg was abundant (Sada 2003, database record 701). Based on this information, the species was abundant despite livestock activity in its habitat. There is no indication that livestock activity has or may increase in intensity or extent, or that the activity ceased. Therefore, we have determined that the information in the petition and in our files does not present substantial information that listing may be warranted because grazing does not seem to be affecting the species.

The petition does not present specific information with regard to the potential threats of spring development, and groundwater water development. Although the petition mentions water pollution, and recreation it does not present any supporting information to its assertions that these activities are impacting or are likely to impact the Camp Valley pyrg or its habitat. Therefore, based on the preceding discussion and the discussion of spring development, water pollution, and recreation in the ''Summary of Common Threats'' section above, for, we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Camp Valley pyrg may be warranted due to threats from spring development, water pollution, or recreation.

We have determined that the petition does not present substantial information to indicate that listing the Camp Valley pyrg as threatened or endangered may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats. As discussed in the ''Summary of Common Threats Section'' above, the petition does not provide any specific information relative to the Camp Valley pyrg to indicate that collection for scientific or education purposes, disease or predation, invasive species, and global climate change are threats to the species. The Camp Valley pyrg is currently known from one spring, and the extent of springsnail surveys in the area is unknown. The petition (CBD *et al.* 2009, p. 89) does not provide any specific information regarding the potential threat from isolation and limited distribution. We do not consider isolation and limited distribution, in and of itself, to be a threat to the Camp Valley pyrg. Therefore based on the preceding discussion and the discussion of potential threats of overutilization, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change in the ''Summary of Common Threats'' section above, we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Camp Valley pyrg may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes, disease or predation, or other natural or manmade factors such as threats from invasive species, isolation, and global climate change.

Factor D: We have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Camp Valley pyrg under Factors A, B, C, and E may be warranted as detailed above.It follows that the adequacy or inadequacy of mechanisms to regulate these threats is not at issue. Further, the petition does not present any additional information that there are existing regulatory mechanisms designed to protect the species that are inadequate. Therefore, based on the preceding discussion we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Camp Valley pyrg may be warranted due to the inadequacy of existing regulatory mechanisms.

Spring Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition does not present substantial information to indicate that listing of the Camp Valley pyrg may be warranted due to threats associated with any of the five factors.

White River Valley Hydrographic Area Species

Pyrgulopsis gracilis (Emigrant pyrg): found on private land in Emigrant Springs, Nye County, Nevada (Hershler 1998, pp. 45 and 47). Emigrant Springs is located in White River Valley (HB #207). Sada (2003, database record 734) identified that the Emigrant pyrg was common at Emigrant Springs during a survey in 1992.

Factor A: The petition identifies groundwater development, spring development, water pollution, recreation, and grazing as threats to the Emigrant pyrg. The petition provided information (Schaefer and Harrill 1995; Harrill and Prudic 1998; Deacon *et al.* 2007) that broadly describes predicted impacts of groundwater development to general areas, but did not provide any information to indicate that groundwater development is a potential threat to Emigrant Springs or the Emigrant pyrg. The Southern Nevada Water Authority (SNWA) is proposing to withdraw groundwater from the Cave Valley hydrographic area (#180) (SNWA 2008, p. 1–1). There is evidence for a hydrologic connection suggesting that groundwater may flow between Cave Valley and White River Valley based on isotopic similarities of groundwater in Cave Valley that emerge at Butterfield Springs and Flag Springs, but not at Emigrant Springs where this springsnail species occurs (NDWR 2008, pp. 16–17). After evaluating all hydrological evidence presented, the NSE did not identify Emigrant Springs as a location where impacts will occur as a result of the groundwater development in Cave Valley (NDWR 2008, pp. 16–17). The White River hydrographic area (#207) has not been classified as a ''Designated Groundwater Basin'' by the NSE. The perennial yield of the White River hydrographic area is 37,000 afy (45,640,000 m^3/year), and there are 31,699 afy (39,100,000 m^3/year) committed; thus, permitted groundwater rights do not exceed the estimated average annual recharge. Therefore, the

information in the petition does not provide reliable information that groundwater providing habitat for the Emigrant pyrg will be affected from current or by proposed groundwater development.. Based on the above discussion we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Emigrant pyrg may be warranted due to groundwater development.

A survey of Emigrant Springs (southernmost of the complex) in 1992 (Hershler (1998, p. 12; Sada 2003, database record X) described it as highly impacted by cattle, but effects on the springsnail population were not described. Springsnails were described as common during the survey though it is unknown whether there were differences in abundance of the sympatric Emigrant pyrg and Hardy pyrg. Sada (2005; as cited in Golden *et al.* 2007, p. 162) indicated that the Emigrant pyrg was common. We have no additional information, nor was any information presented in the petition, on whether livestock activity has or may increase in intensity or extent, or if it has ceased. The species remains common in abundance despite this potential activity in its habitat, which may suggest that grazing under past conditions and use levels has not acted as a threat to the Emigrant pyrg. Therefore, we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Emigrant pyrg may be warranted because grazing does not seem to be affecting the species.

Although the petition mentions spring development, water pollution, and recreation it does not present any supporting information to its assertions that these activities are impacting or are likely to impact the Emigrant pyrg, or its habitat. Therefore, based on this preceding discussion we have determined that the information in the petition and in our files does not present substantial information to indicate that that listing the Emigrant pyrg may be warranted due to spring development, water pollution, or recreation.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Emigrant pyrg. The petition does not cite any specific information (CBD *et al.* 2009, p. 114) correlating these potential threats with impacts to the Emigrant pyrg or provide any specific information to indicate the activities are occurring in or are likely to occur in its habitat at Emigrant Spring, where the Emigrant pyrg occurs. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Emigrant pyrg. Therefore, based on the preceding discussion and the discussion of the potential threats of overcollection, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change in the ''Summary of Common Threats'' section above, we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Emigrant pyrg may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes, disease or predation, or other natural or manmade factors such as threats from invasive species, isolation, and global climate change.

Factor D: Since we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Emigrant pyrg may be warranted due to threats associated with Factors A, B, C, and E as detailed above, the adequacy or inadequacy of mechanisms to regulate these threats is not at issue. Further, the petition does not present any additional information that there are existing regulatory mechanisms designed to protect the species that are inadequate. Therefore, based on the preceding discussion we have determined that the information in the petition and in our files does not present substantial information to indicate that listing the Emigrant pyrg may be warranted due to the inadequacy of regulatory mechanisms.

White River Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition does not present substantial information to indicate that listing of the Emigrant pyrg may be warranted due to threats associated with any of the five factors.

Species for Which Substantial Information was Presented

In this summary section, the springsnail species are grouped by hydrographic areas or basins in alphabetical order for ease in discussing common threats within those areas. Within each hydrographic area, the springsnails are listed in alphabetical order by their scientific name.

Amargosa Desert Hydrographic Area Species

Ten species from the Amargosa Desert hydrographic area were included in the petition. All but one of these species occur only in Nye County, Nevada, and most are present on Service-managed lands at Ash Meadows National Wildlife Refuge (NWR).

Pyrgulopsis crystalis (Crystal springsnail) is limited to Crystal Pool (Hershler and Sada 1987, p. 801; Hershler 1994, p. 32) located in Ash Meadows NWR.

Pyrgulopsis erythropoma (Ash Meadows pebblesnail) is distributed primarily within Ash Meadows NWR among 6 springs and 5 spring brooks, all of which are located within 0.5 kilometer (km) (0.3 mile (mi)) of one another, at the Point of Rocks Spring complex (Hershler and Sada 1987, p. 795).

Pyrgulopsis fairbanksensis (Fairbanks springsnail) is restricted to its type locality at Fairbanks Spring, within Ash Meadows NWR, where it is common on the travertine at the spring orifice (Hershler and Sada 1987, p. 796).

Pyrgulopsis isolatus (elongate-gland springsnail) is restricted to its type locality at an unnamed spring west of Carson Slough and south of the claypits on private land (Hershler and Sada 1987, pp. 807 and 810).

Pyrgulopsis nanus (distal-gland springsnail) is known from four small springbrooks within 10 km (6.2 mi) of one another (Hershler and Sada 1987, p. 804) and is found primarily on public land. These springs and their associated springbrooks include: Collins Ranch on Ash Meadows NWR, Five Springs on private land and Ash Meadows NWR, North Collins Ranch on Ash Meadows NWR, and Mary Scott Spring on BLM-managed land (Service 1990, p. 10).

Pyrgulopsis pisteri (median-gland springsnail or Median-gland Nevada pyrg) is located at Marsh Spring on BLM-managed land, North Scruggs Springs on Ash Meadows NWR, and below School Springs in an observation pond on Ash Meadows NWR, all within 2 km (1.2 mi) of each other (Hershler and Sada 1987, p. 807).

Tryonia angulata (Sportinggoods tryonia) is common in three springs, which include Fairbanks Spring on Ash Meadows NWR, Crystal Pool on Ash Meadows NWR, and Big Spring on BLM land (Hershler and Sada 1987, pp. 811 and 817).

Tryonia elata (Point of Rocks tryonia) is found on travertine mound in two small springs at Point of Rocks where it

is common in stream outflows in silted areas (Hershler and Sada 1987, p. 831) on BLM land and Ash Meadows NWR.

Tryonia ericae (minute tryonia) occurs in North Scruggs Spring and a spring north of Collins Ranch Spring, which are located within 4 km (2.5 mi) of each other on Ash Meadows NWR (Hershler and Sada 1987, p. 830).

Tryonia variegata (Amargosa tryonia) occurs on private and public land in at least 21 small springs in Nye County, Nevada, and 2 springs in Inyo County, California (Hershler and Sada 1987, p. 826).

Factor A: The petition proposes groundwater development, spring development, water pollution, recreation, and grazing are threats to all 10 species of springsnails occurring in the Amargosa Desert hydrographic area. The Amargosa Desert hydrographic area (#230) has been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights exceed the estimated average annual recharge. The perennial yield of Amargosa Desert is 24,000 afy (29,600,000 m^3/year), and approximately 25,282 afy (31,180,000 m^3/year) are committed for use. When groundwater extraction exceeds aquifer recharge, it may result in surface water level decline, spring drying and degradation, or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). On July 16, 2007, the Nevada State Engineer issued Ruling 5750 denying numerous water rights applications in the Amargosa Valley, and finding that the groundwater basin is over-appropriated (NDWR 2007, p. 22). On November 4, 2008, the Nevada State Engineer issued Order 1197 further stipulating that any new applications for water rights in the Amargosa Valley will be denied (NDWR 2008, p. 1). Most groundwater monitoring wells in the Amargosa Valley have shown a significant decline in water levels since 1992, especially in the Amargosa Farms area (northwest of Ash Meadows). In some areas of Amargosa Valley, groundwater pumping is currently occurring at about twice the rate predicted to be sustainable. Water levels for some wells in the Ash Meadows area were relatively stable 1992–2002 (USGS 2002, pp. 1, 53 and 66). Mayer (2006, pp. 19 and 28) indicates groundwater monitoring wells and spring discharges on the Refuge are currently stable to slightly declining. The Service has permitted water rights for 16,376 afy (20,200,000 m^3/year) of annual spring discharge on Ash Meadows NWR (Mayer 2005, pp. 2–3). This constitutes approximately 96 percent of the 17,025 afy (21,000,000 m^3/year) annual discharge by the springs and seeps at Ash Meadows (Mayer 2000, pp. 2–3), and offers some protection for the springsnails and other aquatic species; however, as previously noted, permitted groundwater rights exceed the estimated average annual recharge in the hydrographic area where the 10 Amargosa Desert springsnails and their spring habitats occur. Based upon the preceding discussion and additional rationale discussing groundwater development in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the 10 Amargosa Desert springsnails may be warranted due to threats from groundwater development.

The petition does not provide specific information regarding spring development, recreation, and grazing as potential threats to the 10 Amargosa Desert springsnails. Based on information in our files, the Service and other partnering agencies have completed and continue to implement extensive efforts to restore wetland, riparian, and spring systems and other protective measures (*e.g.,* installation of boardwalks and fencing in sensitive areas to manage use) at Ash Meadows NWR and on BLM land within the Ash Meadows NWR boundary that benefit aquatic and riparian species, including 9 of the Amargosa Desert species that occur on the Ash Meadows NWR and on BLM land. These actions have reduced or eliminated the potential threats from spring diversion, grazing, and recreation for the springsnail populations on Ash Meadows NWR and on BLM land within the Ash Meadows NWR boundary. In 1995, the Service excluded grazing from springsnail habitats by constructing roughly 16 mi (25.7 km) of perimeter fencing around Ash Meadows NWR (including BLM land within Ash Meadows NWR) and any trespass animals, such as burros, cattle, or horses, are removed. It is unknown if the two springs in California occupied by the Amargosa tryonia springsnail are grazed or if fencing excludes grazing. The petition does not provide specific information regarding water pollution as a potential threat to the 10 Amargosa Desert springsnails, nor is there any information in our files regarding water pollution in the springs where the 10 Amargosa Desert springsnails occur. Therefore, based on the preceding discussion and additional rationale in the ''Summary of Common Threats,'' in which we conclude the petition does not directly relate loss of springsnail populations or reduction in numbers of individuals to these activities for the majority of species, we have determined that the information in the petition and our files does not indicate that spring development, water pollution, recreation, and grazing may be threats to any of the 10 Amargosa Desert springsnails. However, we will further consider this and any additional information on these activities received during our status review for these species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, inherent vulnerability of isolated springsnail populations, and global climate change are threats to all 10 Amargosa Desert springsnails. The petition does not provide specific information regarding the potential threat from isolation and limited distribution, and we do not consider inherent vulnerability due to isolation and limited distribution, in and of itself, as a threat to the 10 Amargosa Desert springsnails. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide specific information, nor does the Service have any information in its files regarding collection for scientific or educational purposes, disease or predation for any of the petitioned springsnails, including the 10 Amargosa Desert species. Additionally, the petition does not contain specific information, nor does the Service have specific information about the potential effects of global climate change as potential threats to the 10 Amargosa Desert springsnails due to the current uncertainty in model predictions. Therefore, based on this and the preceding discussion in the ''Summary of Common Threats,'' we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to any of the 10 Amargosa Desert springsnails. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for these species.

The petition further asserts that invasive species are a threat to the 10 Amargosa Desert springsnails. Hershler and Sada (1987, pp. 778–779 and 839–843) indicate that invasive species are present in the springs. The nonnative red-rimmed melania is present in thermal springs on Ash Meadows NWR and on BLM land within the Ash Meadows NWR boundary. A study in the thermal, Upper Muddy River spring system of competition from red-rimmed

melania suggest that this competition may not be a threat because there are only minor niche overlap and interactions between native and nonnative snails (Sada 2008, p. 69). Other nonnatives species (fish, amphibians, crustaceans, and vegetation) have been present in the past or currently exist in the springs on Ash Meadows NWR and on BLM land within the Ash Meadows NWR boundary; however, the Service and its partners have implemented and continue to implement ongoing management actions and restoration activities to eradicate, manage, or reduce the impacts of nonnative species at springs with springsnails on Ash Meadows NWR and on BLM land within the Ash Meadows NWR boundary. Information is not available in the petition or our files about the status of any threat from nonnative species on private land. Based on the preceding discussion and additional rationale regarding invasive species in the ''Summary of Common Threats,'' we have determined that there is not substantial information in the petition and our files indicating that invasive species may be a threat to any of the 10 Amargosa Desert springsnails. However, we will further consider this and any additional information on these potential threats received during our status review for these species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the 10 Amargosa Desert springsnails due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the Amargosa Desert hydrographic area currently exceed the average annual recharge (see details under Factor A above). Based on the preceding discussion and additional rationale discussing regulatory mechanisms in the ''Summary of Common Threats,'' we have determined that there is substantial information in the petition and in our files to indicate that listing the 10 Amargosa Desert springsnails may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Amargosa Desert Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of Crystal springsnail, Ash Meadows pebblesnail, Fairbanks springsnail, elongate-gland springsnail, distal gland springsnail, median-gland springsnail, sportinggoods tryonia, Point of Rocks tryonia, minute tryonia, and Amargosa tryonia may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Black Mountains (Lake Mead) Hydrographic Area Species

Pyrgulopsis coloradensis (Blue Point pyrg) is found in Blue Point Spring in Lake Mead National Recreation Area (National Park Service managed lands), Clark County, Nevada (Hershler 1998, p. 29). Hershler (1998, p. 29) described the population as occurring in limited abundance and becoming increasingly scarce in the past decade. The Blue Point pyrg was not located during intensive surveys between 1999 and 2001, and was believed to be extinct (Sada field notes 2001 as cited in Sada 2002, pp. 2–3). The petition indicates that the Blue Point pyrg was found during a survey in 2008 (CBD *et al.* 2009, p. 82).

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats to this species. The Black Mountains hydrographic area (#215) has been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights approach or exceed the estimated average annual recharge. The perennial yield of the Black Mountains hydrographic area is 1,300 afy (1,604,000 m^3/year) and system yield is 7,000 afy (8,634,000 m^3/year), while 6,882 afy (8,489,000 m^3/year) are committed for use—which is approaching the estimated average annual recharge. When groundwater extraction exceeds aquifer recharge, it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Therefore, based on the preceding discussion and additional rationale discussing groundwater development in the ''Summary of Common Threats,'' we have determined that there is substantial information in the petition and in our files to indicate that listing the Blue Point pyrg may be warranted due to threats from groundwater development.

As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding spring development, water pollution, recreation, and grazing as potential threats to the Blue Point pyrg. Therefore, we have determined that there is not substantial information in the petition and in our files indicating that spring development, water pollution, recreation, and grazing may be threats to the Blue Point pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B and C: The petition proposes that collection for scientific or educational purposes and disease or predation are threats to the Blue Point pyrg. As discussed in the ''Summary of Common Threats'' section, the petition does not present any specific information, nor is there any information in our files regarding collection for scientific or educational purposes and disease or predation as potential threats to the Blue Point pyrg. Therefore, we have determined that there is not substantial information in the petition and in our files indicating that collection for scientific or educational purposes and disease or predation may be threats to the Blue Point pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Blue Point pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic area currently approach the average annual recharge (see details under Factor A). Therefore, based on this and the preceding discussion of regulatory mechanisms pertaining to permitting of groundwater rights and use in the ''Summary of Common Threats,'' we have determined that there is substantial information in the petition and our files indicating that listing the Blue Point pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use..

Factor E: The petition proposes that invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Blue Point pyrg. The petition does not provide and specific information, nor is there any information in our files, regarding global climate change as a potential threat to the Blue Point pyrg. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Blue Point pyrg.

Specifically regarding invasive species, Sada (2002, p. 4) indicates that nonnative convict cichlids (*Amatitlania nigrofacsciata*) are present and may feed on members of the macroinvertebrate community. The nonnative red-rimmed melania is present in Blue Point Spring, and its appearance coincided with declines of the Blue Point pyrg (Sada 2002, p. 2). A study in the thermal, Upper Muddy River spring system of competition from red-rimmed melania suggests that this competition may not be a threat because there are only minor niche overlaps and interactions between native and nonnative snails (Sada 2008, p. 69). This information suggests that the Blue Point pyrg's limited distribution and isolation appear to make it more susceptible to other potential natural or anthropogenic threats, including potential predation by or other effects of nonnative species such as convict cichlids. Therefore, based on the preceding discussion and the discussion in the ''Summary of Common Threats,'' we have determined that there is not substantial information in the petition and our files indicating that inherent vulnerability of isolated springsnail populations and global climate change may be threats to the Blue Point pyrg. However, we have determined that there is substantial information in the petition and our files to indicate that listing the Blue Point pyrg may be warranted due to threats from invasive species. Nevertheless, we will further consider this and any additional information received on these potential threats during our status review for this species.

Black Mountains Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Blue Point pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development, the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use, and other natural or manmade factors affecting its survival (Factor E) from the introduction or presence of invasive species.

Cave Valley and White River Valley Hydrographic Area Species

Pyrgulopsis lata (Butterfield pyrg) is found in Butterfield Springs on private land in Nye County, Nevada (Hershler 1998, p. 43).

Pyrgulopsis marcida (Hardy pyrg) is located in several springs or spring complexes in Nye, Lincoln, and White Pine Counties, Nevada (Hershler 1998, pp. 48–50; Golden *et al.* 2007, p. 162). Sada (2003, database records 723, 726, 734, 735 and 737) reported that the Hardy pyrg was common at Emigrant Springs, Arnoldson Spring, Hardy Spring, and Silver Spring. The species is also present at Butterfield Springs.

Pyrgulopsis sathos (White River Valley pyrg) occurs in Flag Springs (north and middle), Nye County, Nevada; Camp Spring, Lincoln County, Nevada; and Lund Spring, Arnoldson Spring, Preston Big Spring, and Nicholas Spring, White Pine County, Nevada (Hershler 1998, p. 39; Golden *et al.* 2007, p. 160).

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats. The perennial yield of the White River hydrographic area is 37,000 (afy) (45,640,000 m^3/year), and there are 31,699 afy (39,100,000 m^3/year) committed; thus, permitted groundwater rights do not exceed the estimated average annual recharge. However, SNWA is proposing to develop 134,000 afy (165,288,100 m^3/year) of groundwater from the Cave Valley hydrographic area (#180) (SNWA 2008, p. 1–1). There is evidence for a hydrologic connection suggesting that groundwater may flow between Cave Valley and White River Valley based on isotopic similarities of groundwater in Cave Valley that emerge at Butterfield Springs and Flag Springs, where these three springsnail species occur (NDWR 2008, pp. 16–17). The NSE expressed concern for potential impacts to these springs from groundwater development in Cave Valley (NDWR 2008, p. 17). Based on the preceding discussion, we have determined that there is substantial information in the petition and our files to indicate that listing the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg may be warranted due to threats from groundwater development.

As discussed in the ''Summary of Common Threats'' section above, the petition does not present specific information, nor is there any information in our files regarding spring development, water pollution, recreation, and grazing as potential threats to the any of the petitioned springsnail species, which includes the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg. Therefore, we have determined there is not substantial information in the petition and our files indicating that spring development, water pollution, recreation, and grazing may be threats to the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail population, and global climate change are threats to the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to any of the petitioned springsnail species, which includes the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg due to the permitting of groundwater rights by the NSE. The NSE expressed concern for potential impacts to Butterfield Springs and Flag Springs, where the three springsnail species occur, from the proposed groundwater development by SNWA in the Cave Valley hydrographic area (see details under Factor A). Based on the preceding discussion, we have determined there is substantial information in the petition and in our files to indicate that listing the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg due to the inadequacy of existing regulatory mechanisms related to permitting of groundwater rights and use .

Cave Valley Summary: Based on our evaluation of the information provided

in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Butterfield pyrg, Hardy pyrg, and White River Valley pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Dry Lake Valley and White River Valley Hydrographic Area Species

Pyrgulopsis breviloba (Flag pyrg) is found at the Flag Springs complex (North, Middle, and South springs), Nye County, Nevada; and Meloy Spring, Lincoln County, Nevada (Hershler 1998, p. 39; Golden *et al.* 2007, pp. 161–162).

Factor A: The petition proposes that groundwater development, spring development, water pollution, grazing, and recreation are threats to the Flag pyrg. The perennial yield of the White River hydrographic area is 37,000 (afy) (45,640,000 m^3/year), and there are 31,699 afy (39,100,000 m^3/year) committed; thus, permitted groundwater rights do not exceed the estimated average annual recharge. The perennial yield of the Dry Lake Valley hydrographic area is 12,700 afy (15,670,000 m^3/year), and there are 1,066 afy (1,315,000 m^3/year) committed; thus, permitted groundwater rights do not exceed the estimated average annual recharge. However, SNWA is proposing to develop 134,000 afy (165,288,100 m^3/year) of groundwater from the Cave Valley hydrographic area (#180) (SNWA 2008, p. 1–1). There is evidence for a hydrologic connection suggesting that groundwater may flow between Cave Valley and White River Valley based on isotopic similarities of groundwater in Cave Valley that emerge at Butterfield Springs and Flag Springs (NDWR 2008, pp. 16–17). The NSE expressed concern for potential impacts to these springs from groundwater development in Cave Valley (NDWR 2008, p. 17), and a large proportion of habitat of Flag pyrg occurs at Flag Springs. Therefore, based on the preceding discussion, we have determined there is substantial information in the petition and in our files to indicate that listing the Flag pyrg may be warranted due to threats from groundwater development .

As discussed in the ''Summary of Common Threats'' section, the petition does not present any specific information, nor is there any information in our files regarding spring development, water pollution, grazing, and recreation as potential threats to the Flag pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that spring development, water pollution, grazing, and recreation may be threats to the Flag pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Flag pyrg. The petition does not provide specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Flag pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide specific information, nor is there any information in our files, regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to any of the petitioned springsnail species, which includes the Flag pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Flag pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Flag pyrg due to the permitting of groundwater rights by the NSE. The NSE expressed concern for potential impacts to Flag Springs, where the species occurs, from the proposed groundwater development by SNWA in the Cave Valley hydrographic area (see details under Factor A). Based on the preceding discussion, we have determined there is substantial information in the petition and in our files to indicate that listing the Flag pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Dry Lake Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Flag pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Lake Valley Hydrographic Area Species

Pyrgulopsis sublata (Lake Valley pyrg) is found in Wambolt Springs, Lincoln County, Nevada (Hershler 1998, p. 57). Golden *et al.* (2007, p. 133) indicate that there are at least six spring sources, of which they focused their attention at two. During surveys in 1992, Sada (2003, database record 717) described Lake Valley pyrg as common. During surveys in 2004, Golden *et al.* (2007, p. 136) observed that Lake Valley pyrg was common at one spring head and scarce 5–15 meter (m) (16 feet (ft)–49 ft) downstream. Brief surveys of the remaining springs by Golden *et al.* 2007, p. 136) showed that springsnails were scarce at one and absent from the remaining four. Golden *et al.* (2007, p. 137) found that Lake Valley pyrg was the fourth most dominant taxa in the macroinvertebrate samples collected at springs they surveyed.

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats to the Lake Valley pyrg. The Lake Valley hydrographic area (#183) has been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights exceed the estimated average annual recharge. The perennial yield of Lake Valley is 12,000 afy (14,800,000 m^3/year), while 21,868 afy (26,970,000 m^3/year) are committed for use. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). A berm (spring development) is present at the complex and was potentially created to pool water (Golden *et al.* 2007, p. 137). Pooling of water can alter springsnail habitat conditions from flowing to standing water. Therefore, based on the preceding discussion and the discussion of groundwater and spring development in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the Lake Valley pyrg may be warranted due to threats

from groundwater development and spring development.

As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding water pollution and recreation as potential threats to any of the petitioned springsnail species, which includes the Lake Valley pyrg. Specifically regarding grazing, Golden *et al.* (2007, p. 137) described the two springs surveyed as slightly disturbed indicating that livestock were prevalent, but damage to habitat was minimal. Therefore, based on the preceding discussion and the discussion of water pollution, recreation, and grazing in the ''Summary of Common Threats,'' we have determined that there is not substantial information in the petition and our files indicating that water pollution, recreation, and grazing may be threats to the Lake Valley pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Lake Valley pyrg. The petition does not provide any information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Lake Valley pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide any information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to any of the petitioned springsnail species, which includes the Lake Valley pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Lake Valley pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Lake Valley pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic area currently exceed the average annual recharge (see details under Factor A). Based on this and the discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the Lake Valley pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Lake Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of Lake Valley pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and spring development, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Las Vegas Valley, Indian Springs, Pahrump Valley, Amargosa Flat, and Frenchman Flat Hydrographic Areas Species

Pyrgulopsis deaconi (Spring Mountains pyrg) is found on Federal land at Kiup Spring, Red Spring, and Willow Spring, Clark County, Nevada (Hershler 1998, p. 25; Sada and Nachlinger 1998, p. 15). A population described as scarce is also present at Rainbow Spring (Sada and Nachlinger 1998, p. 28 as confirmed by Sada (2002, p. 2)). Previously unknown populations were documented at Horse Spring 1 and 2 in the late 1990s and early 2000s (Sada 2002, p. 2). A population at Manse Spring in Nye County, Nevada, has been extirpated (Sada 2002, p. 4).

Sada (2002, p. 3) surveyed areas in Clark County for the Spring Mountains pyrg between 1999 and 2001, and described their estimated abundance in occupied habitat. The Spring Mountains pyrg was described as abundant at Horse Spring 1 and 2; common at Red Spring; and scarce at Kiup Spring and Rainbow Spring. In 2001, the Spring Mountains pyrg was repatriated to Willow Spring from Lost Canyon Creek. Springsnails were found during surveys in 2002 at Willow Spring, but no collections were made to identify species (Sada 2002, p. 6).

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats to the Spring Mountains pyrg. The Pahrump Valley (#162) and Las Vegas Valley (#212) hydrographic areas have each been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights exceed the estimated average annual recharge. The perennial yield of Pahrump Valley hydrographic area is 12,000 afy (14,800,000 m^3/year), while 62,740 afy (77,390,000 m^3/year) are committed for use. The perennial yield of Las Vegas Valley hydrographic area is 25,000 afy (30,840,000 m^3/year), while 92,406 afy (114,000,000 m^3/year) are committed for use. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Sada (2002, p. 4) reported that the extirpation of the Spring Mountains pyrg from Manse Spring is believed to coincide with its drying in 1975, which occurred as a result of localized groundwater development (Soltz and Naiman 1978, p. 24). Therefore, based on this and the discussion of groundwater development in the ''Summary of Common Threats'' section, above, we have determined there is substantial information in the petition and our files to indicate that listing the Spring Mountains pyrg may be warranted due to threats from groundwater development.

The springsnail population at Willow Spring (on Bureau of Land Management (BLM) lands, not Willow Creek on Forest Service lands) was extirpated between 1992 and 1995 as a result of spring diversion and channel modification for recreation (Sada and Nachlinger 1996, pp. 17 and 29; Sada 2002, p. 4). In 2001, Willow Spring was restored, including a boardwalk to protect the spring, and the Spring Mountains pyrg was repatriated using individuals from Lost Canyon Creek. Red Spring had a high level of use by the public in the past (Sada and Nachlinger 1996, p. 29). Recreationists may have dammed and diverted stream flow from the spring (Putnam and Botsford 2002, as cited in CBD *et al.* 2009, p. 87). Areas around Red Spring have been restored, including the installation of a boardwalk to limit further disturbance. Based on the preceding discussion, we have determined there is substantial information in the petition and our files to indicate recreation may be a threat to the Spring Mountains pyrg, but there is not substantial information in the petition and our files indicating spring

development may be a threat to the Spring Mountains pyrg. As discussed in the ''Summary of Common Threats Section'' above, the petition does not present any specific information, nor is there any information in our files regarding water pollution and grazing as potential threats to the Spring Mountains pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating water pollution, grazing, and spring development may be threats to the Spring Mountains pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Spring Mountains pyrg. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Spring Mountains pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to the Spring Mountains pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Spring Mountains pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Spring Mountains pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic areas currently exceed the average annual recharge (see details under Factor A). Based on this and the discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats above,'' we have determined there is substantial information in the petition and our files to indicate that listing the Spring Mountains pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Spring Mountains Pyrg Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Spring Mountains pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and recreation, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Pyrgulopsis fausta (Corn Creek pyrg) is found at Corn Creek Springs on the Desert NWR, Clark County, Nevada (Hershler 1998, p. 23).

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats to the Corn Creek pyrg. The Las Vegas Valley hydrographic area (#212) has been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights exceed the estimated average annual recharge. The perennial yield of Las Vegas Valley hydrographic area is 25,000 afy (30,840,000 m^3/year), while 92,406 afy (114,000,000 m^3/year) are committed for use. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying and degradation, or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Based on this and the preceding discussion of groundwater development in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the Corn Creek pyrg may be warranted due to threats from groundwater development.

Development of the springs at and near Corn Creek Springs dates back to the early 1900s. Reduction in abundance of the Corn Creek pyrg from when it was first collected (Hershler 1998, p. 23) was attributed to the historical lining of the main outflow of Corn Creek Springs with cement, which eliminated all but 5 m (16.4 ft) of Corn Creek pyrg habitat (Sada 2002, p. 4). This past spring development action impacted the abundance of the Corn Creek pyrg. Estimates of abundance from surveys conducted at two springs at Corn Creek between 1999 and 2001 indicated that the Corn Creek pyrg was scarce at both springs and that the species was restricted to estimated 5-m and 1-m (16.4-ft and 3.3-ft) lengths of habitat in each spring, respectively (Sada 2002, p. 3). However, in 2002, the Service removed the channel modifications and restored the springs. Sada (2002, p. 4) projected the abundance of the Corn Creek pyrg would increase as habitat stabilized, thereby removing the past impacts of spring development, and anecdotal observations support this, although formal surveys for the Corn Creek pyrg have not been conducted since the restoration. Based on the preceding discussion regarding the current habitat conditions and conservation management, which have alleviated the threat of spring development, we have determined that there is not substantial information in the petition and our files indicating that spring development may be a threat to the Corn Creek pyrg. However, we will further consider this and any additional information on this activity received during our status review for this species.

As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding water pollution, recreation, and grazing as potential threats to any of the petitioned springsnail species, which includes the Corn Creek pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that water pollution, recreation, and grazing may be threats to the Corn Creek pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Corn Creek pyrg. As discussed in the ''Summary of Common Threats'' section above,the petition does not provide any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to any of the petitioned springsnails, which includes the Corn Creek pyrg. Therefore, we have determined that

there is not substantial information in the petition and our files does indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Corn Creek pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Corn Creek pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic area currently exceed the average annual recharge (see details under Factor A). Therefore, based on this and the discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats'' section above, we have determined there is substantial information in the petition and our files to indicate that listing the Corn Creek pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Corn Creek Pyrg Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing the Corn Creek pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Pyrgulopsis turbatrix (Southeast Nevada pyrg) is found in approximately 10 spring or creek areas around the Spring Mountains of southern Nevada in Clark and Nye Counties, Nevada; Grapevine Springs in Amargosa Flat of Nye County, Nevada; and Cane Spring in Frenchman Flat, Nye County, Nevada. The Southeast Nevada pyrg is one of the most widely distributed springsnail species in southern Nevada (Sada 2002, p. 4). This species has previously been misidentified as or confused with *Pyrgulopsis micrococcus* (Oasis Valley springsnail (Hershler 1998, p. 53)).

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats to the Southeast Nevada pyrg. The Indian Springs Valley (#161), Pahrump Valley (#162), and Las Vegas Valley (#212) hydrographic areas each have been classified as ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights exceed the estimated average annual recharge. The perennial yield of Indian Springs Valley hydrographic area is 500 afy (616,700 m^3/year), while 1,380 afy (1,702,000 m^3/year) are committed for use. The perennial yield of Pahrump Valley hydrographic area is 12,000 afy (14,800,000 m^3/year), while 62,740 afy (77,390,000 m^3/year) are committed for use. The perennial yield of Las Vegas Valley hydrographic area is 25,000 afy (30,840,000 m^3/year), while 92,406 afy (114,000,000 m^3/year) are committed for use. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Based on this and the discussion of groundwater development in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the Southeast Nevada pyrg may be warranted due to threats from groundwater development.

Horseshutem Springs has been highly impacted by ungulate grazing and water diversion (Sada and Nachlinger 1996, p. 22; Hershler 1998, p. 53), but the Southeast Nevada pyrg remains common (Sada 2002, p. 3). Sada (2002, p. 4) observed levels of ungulate grazing disturbance at Horseshutem Springs and Grapevine Springs that may have reduced the levels of springsnail abundance but appeared insufficient to extirpate populations. Based on the preceding discussion, we have determined there is substantial information in the petition and our files to indicate that listing the Southeast Nevada pyrg may be warranted due to threats from grazing.

At Grapevine Springs one of four populations was extirpated when one of the springs dried as a result of a diversion (spring development) between 1992 and 1995 (Sada and Nachlinger 1996, p. 17). The population at Willow Spring (on BLM lands) was extirpated between 1992 and 1995 as a result of spring development (diversion and channel modification) for recreation (Sada and Nachlinger 1996, p. 17; Sada 2002, p. 4). In 2001, Willow Spring was restored, including a boardwalk to protect the spring, and the Southeast Nevada pyrg was repatriated using individuals from Lost Canyon Creek. Springsnails were found during surveys in late 2002 at Willow Spring, but no collections were made to identify species (Sada 2002, p. 6). Based on the preceding discussion, we have determined there is substantial information in the petition and our files to indicate that listing the Southeast Nevada pyrg may be warranted due to threats from spring development and recreation.

The petition does not present any specific information, nor is there any information in our files regarding water pollution as a potential threat to the Southeast Nevada pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that water pollution may be a threat to the Southeast Nevada pyrg. However, we will further consider this and any additional information on this activity received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Southeast Nevada pyrg. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Southeast Nevada pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to any of the petitioned springsnails, which includes the Southeast Nevada pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Southeast Nevada pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Southeast Nevada pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic areas currently exceed the average annual recharge (see details

under Factor A). Therefore, based on this and the discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats'' section above, we have determined there is substantial information in the petition and our files to indicate that listing the Southeast Nevada pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Southeast Nevada Pyrg Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Southeast Nevada pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development, spring development, recreation, and grazing, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Pahranagat Valley Hydrographic Area Species

Pyrgulopsis hubbsi (Hubbs pyrg) is found on private land at Hiko Spring and Crystal Springs in Lincoln County, Nevada (Hershler 1998, p. 35; Golden *et al.* 2007, p. 197). Springsnails were not observed at Hiko Spring during surveys in 2000 (Sada 2003, database records) or 2006 and may be extirpated there (Golden *et al.* 2007, pp. 197–198). At Crystal Springs, Hubbs pyrg was abundant during 1992 surveys (Sada 2003, database record 804 and 805), but scarce during surveys in 2006 (Golden *et al.* 2007, pp. 197–198).

Pyrgulopsis merriami (Pahranagat pebblesnail) is found in four springs in Nevada including: Ash Springs in Pahranagat Valley, Lincoln County (Hershler 1994, p. 41); and Hot Creek Spring, Moon River Spring, and Moorman Spring of White River Valley, Nye County (Hershler 1998, p. 31). Of the public lands surveyed, Golden *et al.* (2007, p. 198) described Pahranagat pebblesnail as common to scarce at two spring heads in Ash Springs, absent in much of the pool area, and common in a stretch 60 m (197 ft) downstream to an area discharging to private property. Pahranagat pebblesnail was common in Hot Creek Spring, Moon River Spring, and Moorman Spring during 1992 surveys (Sada 2003, database record 806). Springsnails were scarce throughout most, but common in a few, areas of Hot Creek Spring during 2006 surveys (Golden *et al.* 2007, p. 162).

Factor A: The petition asserts that groundwater development, spring development, water pollution, recreation, and grazing are threats to the Hubbs pyrg and Pahranagat pebblesnail. The SNWA is proposing to develop groundwater from the Cave Valley (#180), Dry Lake Valley (#181), and Delamar Valley (#182) hydrographic areas, (SNWA 2008, p. 1–1). There is evidence suggesting a hydrologic connection between these basins and the Pahranagat Valley as discussed in NSE ruling #5875 (NSE 2008, p. 18). However, groundwater development model scenarios indicate that potential effects may not express themselves at down-gradient springs in Pahranagat Valley for centuries (NSE 2008, pp. 22–23). In addition, a monitoring and mitigation plan is required as a condition of approval (NSE 2008, p. 23). Based on the preceding discussion, we have determined that there is not substantial information in the petition and our files indicating that groundwater development may be a threat to the Hubbs pyrg or the Pahranagat pebblesnail. However, we will further consider this and any additional information on this activity received during our status review for this species.

Golden *et al.* (2007, p. 200) observed that Hiko Spring, Crystal Springs, and Ash Springs were highly disturbed by water diversions (spring development) and recreation. Sada and Vinyard (2002, p. 286) identified water diversion at Crystal Springs as a threat to the Hubbs pyrg. Based on this information, coupled with the available population abundance information for Hubbs pyrg and Pahranagat pebblesnail as cited above, we have determined that there is substantial information in the petition and in our files indicating that listing the Hubbs pyrg and Pahranagat pebblesnail may be warranted due to threats from spring development and recreation.

As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files, regarding water pollution and grazing as potential threats to any of the petitioned springsnails, which includes the Hubbs pyrg and Pahranagat pebblesnail. Therefore, we have determined that there is not substantial information in the petition and our files indicating that water pollution and grazing may be threats to the Hubbs pyrg and Pahranagat pebblesnail. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and D: The petition proposes that collection for scientific or educational purposes, disease or predation, and inadequate regulatory mechanisms are threats to the Hubbs pyrg and Pahranagat pebblesnail. The petition does not provide specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, and inadequate regulatory mechanisms as potential threats to the Hubbs pyrg and Pahranagat pebblesnail. Therefore, based on this and the discussion in the ''Summary of Common Threats,'' we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, and inadequate regulatory mechanisms may be threats to the Hubbs pyrg and Pahranagat pebblesnail. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor E: The petition proposes that invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the Hubbs pyrg and Pahranagat pebblesnail. Nonnative, invasive species (fish, invertebrates, amphibians and vegetation) are present—and in some locations are the dominant species—in Ash Springs, Hiko Spring, and Crystal Springs, which may be affecting the Hubbs pyrg and Pahranagat pebblesnail (Golden *et al.* 2007, pp. 184–199). Presence of nonnative species in these three springs, particularly nonnative fishes, has resulted in extirpations and negative interactions with native fish species, although the information in the petition and in our files does not directly correlate presence of nonnative species with impacts to the Hubbs pyrg and Pahranagat pebblesnail (Golden *et al.* 2007, p. 194). Based on the information in the petition and in our files, we are unable to identify any single potential threat that is affecting the abundance of the Hubbs pyrg and Pahranagat pebblesnail, and it is likely that their abundance is being affected by a combination of threats, including nonnative species. Therefore, we have determined there is substantial information in the petition and our files to indicate that listing the Hubbs pyrg and Pahranagat pebblesnail may be warranted due to potential threats from invasive species.

The petition asserts that inherent vulnerability of isolated springsnail populations and global climate change are threats to the Hubbs pyrg and Pahranagat pebblesnail. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Hubbs pyrg and Pahranagat pebblesnail. The petition does not provide any specific information, nor is there any information in our files regarding global climate change as a potential threat to the Hubbs pyrg and Pahranagat pebblesnail. Based on this and the discussion in the ''Summary of Common Threats,'' we have determined that there is not substantial information in the petition and our files indicating that inherent vulnerability of isolated springsnail populations and global climate change may be threats to the Hubbs pyrg and Pahranagat pebblesnail. However, we will further consider this and any additional information on this and other potential threats received during our status review for this species.

Pahranagat Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Hubbs pyrg and Pahranagat pebblesnail may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from spring development and recreation, and due to other natural or manmade factors affecting its continued existence (Factor E) resulting from invasive species.

Ralston Valley and Stone Cabin Flat Hydrographic Areas Species

Pyrgulopsis sterilis (Sterile Basin pyrg) is known from two springs on private lands, Hunts Canyon Ranch and Sidehill Spring, Nye County, Nevada (Hershler 1998, p. 54).

Factor A: The petition states that groundwater development, spring development, water pollution, recreation, and grazing are threats that may affect the Sterile Basin pyrg. The Stone Cabin Flat (#149) and Ralston Valley (#141) hydrographic areas each have been classified as ''Designated Groundwater Basins'' by the NSE. The permitted groundwater rights in the Stone Cabin Flat hydrographic area exceed the estimated average annual recharge. The perennial yield of Stone Cabin Flat hydrographic area is 2,000 afy (2,467,000 m^3/year), while 11,532 afy (14,220,000 m^3/year) are committed. The permitted groundwater rights in the Ralston Valley hydrographic area do not exceed, but are approaching the estimated average annual recharge with the perennial yield at 6,000 afy (7,401,000 m^3/year), and 4,415 afy (5,446,000 m^3/year) are committed. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Based upon this and the discussion of groundwater development in the ''Summary of Common Threats'' section above, we have determined there is substantial information in the petition and our files to indicate that listing the Sterile Basin pyrg may be warranted due to threats from groundwater development.

The petition asserts spring development, water pollution, recreation, and grazing are threats to the Sterile Basin pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding spring development, water pollution, recreation, and grazing as potential threats to the Sterile Basin pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that spring development, water pollution, recreation, and grazing may be threats to the Sterile Basin pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition states that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats that may affect the Sterile Basin pyrg. The petition provides little information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Sterile Basin pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to the Sterile Basin pyrg. Therefore, we have determined that here is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, and global climate change may be threats to the Sterile Basin pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Sterile Basin pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic areas currently approach or exceed the average annual recharge (see details under Factor A). Based on this and the discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats'' section above, we have determined there is substantial information in the petition and our files to indicate that listing the Sterile Basin pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Ralston Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Sterile Basin pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Snake Valley and Spring Valley Hydrographic Area Species

Pyrgulopsis peculiaris (bifid duct pyrg) occurs at 6 sites in Millard County, Utah, and two sites in White Pine County, Nevada (Hershler 1998, p. 110).

Factor A: The petition states that groundwater development, spring development, agricultural development, water pollution, recreation, and grazing are threats to the bifid duct pyrg. The Snake Valley (#195) and Spring Valley (#184) hydrographic areas are not classified as ''Designated Groundwater Basins'' by the NSE. The permitted groundwater rights in the Snake Valley hydrographic area do not exceed the estimated average annual recharge. The perennial yield of Snake Valley hydrographic area is 25,000 afy (30,840,000 m^3/year), and there are 10,720 afy (13,220,000 m^3/year) committed. However, the permitted groundwater rights in the Spring Valley

hydrographic area exceed the estimated average annual recharge. The perennial yield of the Spring Valley hydrographic area is 80,000 afy (98,680,000 m^3/year), and there are 86,085 afy (106,200,000 m^3/year) committed. When groundwater extraction exceeds aquifer recharge it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Based upon this and the discussion of groundwater development in the ''Summary of Common Threats'' section above, we have determined there is substantial information in the petition and our files to indicate that listing the bifid duct pyrg may be warranted due to threats from groundwater development.

The petition states that spring development, agricultural development, water pollution, recreation, and grazing are threats to the bifid duct pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding spring development, agricultural development, water pollution, recreation, and grazing as potential threats to the bifid duct pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that spring development, agricultural development, water pollution, recreation, and grazing may be threats to the bifid duct pyrg. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition states that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the bifid duct pyrg. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the bifid duct pyrg. As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to any of the petitioned springsnail species, which includes the bifid duct pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the bifid duct pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the bifid duct pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the Spring Valley hydrographic area currently exceed the average annual recharge (see details under Factor A). Based on this and the discussion of regulatory mechanisms relating to the permitting of groundwater rights and use in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the bifid duct pyrg may be warranted due to the inadequacy of existing regulatory mechanisms relating to the permitting of groundwater rights and use.

Snake Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of bifid duct pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development, and due to inadequacy of existing regulatory mechanisms (Factor D) relating to the permitting of groundwater rights and use.

Steptoe Valley Hydrographic Area Species

Pyrgulopsis landyei (Landyes pyrg) occurs at one rheocrene spring (flowing directly out of the ground, typically under pressure) north-northwest of Steptoe Ranch, White Pine County, Nevada (Hershler 1998, p. 70).

Pyrgulopsis neritella (neritiform Steptoe Ranch pyrg) occurs at two rheocrene springs located on private land north of Steptoe Ranch, White Pine County, Nevada (Hershler 1998, p. 70).

Pyrgulopsis orbiculata (sub-globose Steptoe Ranch pyrg) is restricted to two springs in White Pine County, Nevada (Hershler 1998, p. 68).

Pyrgulopsis planulata (flat-topped Steptoe pyrg) occurs on private land at one spring northwest of Clark Spring, White Pine County, Nevada (Hershler 1998, p. 66).

Pyrgulopsis serrata (northern Steptoe pyrg) occurs at Twin Springs and springs south of Currie in Steptoe Valley, Elko County, Nevada, and at Indian Ranch Spring and Indian Creek in Steptoe Valley, White Pine County (Hershler 1998, p. 71). The species also occurs at 10 springs in northern Steptoe Valley (Sada 2006, p. i).

Pyrgulopsis sulcata (southern Steptoe pyrg) occurs at two spring complexes in White Pine County, Nevada (Hershler 1998, p. 67).

Factor A: The petition asserts that these six Steptoe Valley springsnail species are threatened by groundwater development, spring development, water pollution, recreation, and grazing (Hershler 1998, p. 70; Sada and Vinyard 2002, p. 277). The Steptoe Valley hydrographic area (#179) has been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted groundwater rights approach or exceed the estimated average annual recharge. The perennial yield of Steptoe Valley is 70,000 afy (86,340,000 m^3/year), and approximately 97,000 afy (119,600,000 m^3/year) are committed for use. When groundwater extraction exceeds aquifer recharge, it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Therefore, based on this and the discussion of discussing groundwater development in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the six petitioned springsnail species of the Steptoe Valley may be warranted due to threats from groundwater development.

Within Steptoe Valley, surveys for springsnails were conducted in the early 1990s in springs near Bassett Lake (Sada 2006, p. i). These surveys found all six petitioned Steptoe Valley springsnail species. Due to potential groundwater pumping by the previously proposed White Pine Energy Project (application is no longer active), Sada (2006, p. i) surveyed 44 springs in Steptoe Valley in 2005 that were located within the zone of potential impact by the energy project. It was noted that all of the springs surveyed were moderately to highly disturbed due to spring diversion and livestock trampling (2006, p. 4). Ten of the 44 springs were occupied by northern Steptoe pyrgs, which were scarce at 3 sites, common at 6 sites, and abundant at 1 site (Sada 2006, p. 5 and Table 6). The surveys conducted in the 1990s did not include any of the 44 springs surveyed by Sada in 2005, where 10 previously unrecorded populations of the northern Steptoe pyrg were found. Although Sada (2006, pp. i-27) states that the springs surveyed in 2005 were degraded and had variable

levels of occupation by the northern Steptoe pyrg, it is not clear whether these activities have resulted in the loss of or decline in springsnail populations in the Steptoe Valley. Based on the preceding discussion, we have determined that there is not substantial information in the petition and our files indicating that spring development and grazing may be threats to the six petitioned springsnail species of the Steptoe Valley. However, we will further consider this and any additional information on these activities received during our status review for this species.

The petition also claims that the springsnails of Steptoe Valley are threatened by the proposed White Pine Energy Station (BLM 2008, Volumes 1 through 4); however, the White Pine Energy project application is currently withdrawn, and the future of the project is uncertain; therefore, there is not substantial information indicating that this project may threaten these six Steptoe Valley springsnail species.

The petition does not present any specific information, nor is there any information in our files regarding water pollution and recreation as potential threats to the six Steptoe Valley springsnail species. Therefore, based on this and the discussion in the ''Summary of Common Threats'' section above, we have determined that there is not substantial information in the petition and our files indicating that water pollution, and recreation may be threats to the six Steptoe Valley springsnail species. However, we will further consider this and any additional information on these activities received during our status review for this species.

Factors B, C, and E: The petition states that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats that may impact the six Steptoe Valley springsnail species. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the six Steptoe Valley springsnail species. As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, invasive species, and global climate change as potential threats to the six Steptoe Valley springsnail species. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the six Steptoe Valley springsnail species. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the six Steptoe Valley springsnails due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic area currently exceed the average annual recharge (see details under Factor A). Therefore, based on this and discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats'' section above, we have determined there is substantial information in the petition and our files to indicate that listing the six Steptoe Valley springsnail species may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Steptoe Valley Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Landyes pyrg, neritiform Steptoe Ranch pyrg, sub-globose Steptoe Ranch pyrg, flat-topped Steptoe pyrg, northern Steptoe pyrg, and southern Steptoe pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of their habitat or range (Factor A) resulting from groundwater development, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Upper Muddy River Springs Hydrographic Area Species

Pyrgulopsis avernalis (Moapa pebblesnail) is documented at more than five spring locations in Moapa Valley, Clark County, Nevada (Hershler 1994, pp. 19–21; Service 1995, pp. 15–16; Hershler 1998, pp. 29–30; Sada 2008, p. 60). The documented spring locations in the Moapa Valley are found within an approximately 1.5-km (0.9-mi) radius (Hershler 1994, p. 19).

Pyrgulopsis carinifera (Moapa Valley pyrg) occurs at more than five spring locations in Moapa Valley, Clark County, Nevada (Hershler 1994, pp. 26–27; Hershler 1998, p. 31; Sada 2008, p. 60). The documented spring locations are found in an approximately 1.5-km (0.9-mi) radius.

Factor A: Potential threats to the Moapa pebblesnail and Moapa Valley pyrg identified in the petition are groundwater development, spring development, water pollution, recreation, and grazing. The Upper Muddy River Springs hydrographic area (#219) has been classified as a ''Designated Groundwater Basin'' by the NSE in which permitted ground water rights exceed the estimated average annual recharge. The perennial yield of the Upper Muddy River Springs is 100–36,000 afy (123,300–44,410,000 m^3/year), while approximately 14,558 afy (17,960,000 m^3/year) are committed for use. Since 1998, there has been a small and widespread decline in carbonate aquifer water levels in the Upper Muddy River Springs area because of groundwater pumping (Mayer and Congdon 2007, p. 13). When groundwater extraction exceeds aquifer recharge, it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Regarding spring development, Sada (2008, p. 69) reported that reduced habitat quality and heterogeneity caused by diversions, channelization, and siltation resulted in reductions of springsnails (including the Moapa pebblesnail and Moapa Valley pyrg) such that they were scarce or absent at 85 percent of the springbrooks where they historically occurred at Warm Springs.

The Service and other partnering agencies have completed, and continue to implement extensive efforts to restore the spring systems in the Upper Muddy River Springs area and to reduce or eliminate past spring diversion impacts to aquatic species including springsnails; however, not all of the impacts of spring diversion have been removed or reduced. Therefore, based on the preceding discussion, we have determined there is substantial information in the petition and our files to indicate that listing the Moapa pebblesnail and Moapa Valley pyrg may be warranted due to threats from groundwater development and spring development.

The petition states that water pollution, recreation, and grazing are potential threats to the Moapa pebblesnail and Moapa Valley pyrg. As discussed in the ''Summary of Common Threats'' section, above the petition does not present any specific

information, nor is there any information in our files regarding water pollution, recreation, and grazing as potential threats to the Moapa pebblesnail and Moapa Valley pyrg. Therefore, we have determined there is not substantial information in the petition and our files indicating that water pollution, recreation, and grazing may be threats to the Moapa pebblesnail and Moapa Valley pyrg.

Factors B and C: The petition asserts collection for scientific or educational purposes and disease or predation as potential threats to the Moapa pebblesnail and Moapa Valley pyrg. The petition did not present any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, and disease or predation as potential threats to the Moapa pebblesnail and Moapa Valley pyrg. Therefore, we have determined that there is not substantial information in the petition and our files indicating that collection for scientific or educational purposes and disease or predation may be threats to the Moapa pebblesnail and Moapa Valley pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat to the Moapa pebblesnail and Moapa Valley pyrg due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the hydrographic area currently approach the average annual recharge (see details under Factor A). Based on this and the discussion of regulatory mechanisms related to the permitting of groundwater rights and use in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the Moapa pebblesnail and Moapa Valley pyrg may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Factor E: The petition asserts that invasive species, inherent vulnerability of isolated populations, and global climate change are potential threats to the Moapa pebblesnail and Moapa Valley pyrg. Specifically regarding invasive species, a study in the thermal, Upper Muddy River spring system of competition from the invasive red-rimmed melania suggests that this may not be a threat because there is only a minor niche overlap between nonnative snails and the native Moapa pebblesnail and Moapa Valley pyrg (Sada 2008, p. 69). The petition does not provide any specific information regarding other invasive species in the springs occupied by the Moapa pebblesnail and Moapa Valley pyrg. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the Moapa pebblesnail and Moapa Valley pyrg. The petition does not provide any specific information, nor is there any information in our files regarding global climate change as a potential threat to the Moapa pebblesnail and Moapa Valley pyrg. Therefore, based on the preceding discussion, we have determined that there is not substantial information in the petition and our files indicating that invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the Moapa pebblesnail and Moapa Valley pyrg. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Upper Muddy River Springs Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the Moapa pebblesnail and Moapa Valley pyrg may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and spring development, and due to the inadequacy of existing regulatory mechanisms (Factor D) permitting groundwater rights and use.

Upper Muddy River Springs, White River Valley, and Pahranagat Valley Hydrographic Areas Species

Tryonia clathrata (grated tryonia) is found in approximately 12 spring systems in Clark, Lincoln, and Nye Counties, Nevada (Hershler, 1999, pp. 331–332).

Factor A: The petition proposes that groundwater development, spring development, water pollution, recreation, and grazing are threats to the grated tryonia. The grated tryonia occurs in springs in the Upper Muddy River Springs hydrographic area (#219), which has been classified as a ''Designated Groundwater Basin'' by the NSE where permitted groundwater rights exceed the estimated average annual recharge. The perennial yield of the Upper Muddy River Springs area is 100–36,000 afy (123,300–44,410,000 m^3/year), while approximately 14,558 afy (17,960,000 m^3/year) are committed for use. Since 1998, there has been a small and widespread decline in carbonate aquifer water levels in the Upper Muddy River Springs area because of groundwater pumping (Mayer and Congdon 2007, p. 13). When groundwater extraction exceeds aquifer recharge, it may result in surface water level decline, spring drying, and degradation or loss of aquatic habitat (Zektser *et al.* 2005, pp. 396–397). Based on the preceding discussion, we have determined there is substantial information in the petition and our files to indicate that listing the grated tryonia may be warranted due to threats from groundwater development.

Regarding spring development, Sada (2008, p. 69) reported that reduced habitat quality and habitat heterogeneity caused by diversions, channelization, and siltation resulted in reductions of springsnails (including the grated tryonia) such that they were scarce or absent at 85 percent of the springbrooks where they historically occurred at Warm Springs. The Service and other partnering agencies have completed and continue to implement extensive efforts to restore the spring systems in the Upper Muddy River Springs Area and reduce or eliminate past spring diversion impacts to aquatic species including springsnails; however, not all of the impacts of spring diversion have been removed or reduced. Golden *et al.* (2007, p. 200) observed that Crystal Springs, where grated tryonia are also found, was highly disturbed by diversion. Golden *et al.* (2007, p. 197) did not document grated tryonia at Crystal Springs during their surveys. Therefore, based on the preceding discussion, we have determined there is substantial information in the petition and our files to indicate that listing the grated tryonia may be warranted due to threats from spring development.

The petition asserts that water pollution, recreation, and grazing are threats to the grated tryonia. As discussed in the ''Summary of Common Threats'' section above, the petition does not present any specific information, nor is there any information in our files regarding water pollution, recreation, and grazing as potential threats to the grated tryonia. Therefore, we have determined there is not substantial information in the petition and our files indicating that water pollution, recreation, and grazing may be threats to the grated tryonia. However, we will further consider this and any additional information on these

activities received during our status review for this species.

Factors B, C, and E: The petition proposes that collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change are threats to the grated tryonia. Specifically regarding invasives, a study in the thermal, Upper Muddy River spring system of competition from the invasive red-rimmed melania suggests that this may not be a threat because there is only a minor niche overlap between nonnative snails and the native grated tryonia (Sada 2008, p. 69). The petition does not provide any specific information regarding other invasive species in the springs occupied by the grated tryonia. The petition does not provide any specific information regarding the potential threat from isolation and limited distribution, and we do not consider isolation and limited distribution, in and of itself, to be a threat to the grated tryonia. As discussed in the ''Summary of Common Threats'' section above, the petition does not provide any specific information, nor is there any information in our files regarding collection for scientific or educational purposes, disease or predation, and global climate change as potential threats to any of the petitioned springsnails, which includes the grated tryonia. Therefore, we have determined that there is not substantial information in the petition and our files indicating collection for scientific or educational purposes, disease or predation, invasive species, inherent vulnerability of isolated springsnail populations, and global climate change may be threats to the grated tryonia. However, we will further consider this and any additional information on these activities and other potential threats received during our status review for this species.

Factor D: The petition states that inadequate regulatory mechanisms are a threat due to the permitting of groundwater rights by the NSE that exceed perennial yield. Permitted groundwater rights in the Upper Muddy River Springs hydrographic area currently approach the average annual recharge (see details under Factor A). Based on this and additional rationale discussing regulatory mechanisms in the ''Summary of Common Threats,'' we have determined there is substantial information in the petition and our files to indicate that listing the grated tryonia may be warranted due to the inadequacy of existing regulatory mechanisms related to the permitting of groundwater rights and use.

Grated Tryonia Summary: Based on our evaluation of the information provided in the petition and available in our files, we have determined that the petition presents substantial information to indicate that listing of the grated tryonia may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range (Factor A) resulting from groundwater development and spring development, and due to the inadequacy of existing regulatory mechanisms (Factor D) related to the permitting of groundwater rights and use.

Finding

We reviewed and evaluated 39 of the 42 petitioned springsnail species, based on the information in the petition and the literature cited in the petition. We have evaluated the information to determine whether the sources cited support the claims made in the petition relating to the five listing factors. We also reviewed reliable information readily available in our files.

On the basis of our evaluation of the petition under section 4(b)(3)(A) of the Act, we find that the petition does not present substantial scientific or commercial information that listing may be warranted for 7 species: *Pyrgulopsis gracilis* (Emigrant pyrg), *Pyrgulopsis montana* (Camp Valley pyrg), *Pyrgulopsis aloba* (Duckwater pyrg), *Pyrgulopsis anatine* (southern Duckwater pyrg), *Pyrgulopsis lockensis* (Lockes pyrg), *Pyrgulopsis papillata* (Big Warm Spring pyrg), *Pyrgulopsis villacampae* (Duckwater Warm Spring pyrg).

We find that the petition presents substantial scientific or commercial information that listing the remaining 32 of the 39 species that we evaluated as threatened or endangered under the Act may be warranted. Because we have found that the petition presents substantial information that listing these 32 species may be warranted, we are initiating status reviews (12-month findings) to determine whether listing any of these 32 species under the Act is warranted.

We previously determined that emergency listing of any of the 39 species is not warranted. However, if at any time we determine that emergency listing of any of the 39 petitioned species is warranted, we will initiate an emergency listing.

The petition also requests that critical habitat be designated for the species concurrent with final listing under the Act. If we determine in our 12-month finding, following the status review of the species, that listing is warranted, we will address the designation of critical habitat in the subsequent proposed rule.

The ''substantial information'' standard for a 90-day finding differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In 12-month findings, we will determine whether a petitioned action is warranted after we have completed thorough status reviews 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 findings will result in a warranted finding.

References Cited

A complete list of references cited is available on the Internet at Docket No. FWS–R8–ES–2011–0001 at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are the staff members of the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (U.S.C. 1531 *et seq.*).

Dated: August 22, 2011.

Gregory E. Siekaniec,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 2011–23272 Filed 9–12–11; 8:45 am]

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FEDERAL REGISTER

Vol. 76 Tuesday,

No. 177 September 13, 2011

Part IV

The President

Notice of September 9, 2011—Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Federal Register
Vol. 76, No. 177
Tuesday, September 13, 2011

Presidential Documents

Title 3—

The President

Notice of September 9, 2011

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency previously declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks of September 11, 2001, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, and the powers and authorities adopted to deal with that emergency must continue in effect beyond September 14, 2011. Therefore, I am continuing in effect for an additional year the national emergency that was declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
September 9, 2011.

[FR Doc. 2011–23609
Filed 9–12–11; 11:15 am]
Billing code 3195–W1–P

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