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## DEPARTMENT OF ENERGY

### 10 CFR Part 430

**[Docket Number EERE–2011–BT–STD–0011]**

**RIN 1904–AC06**

## Energy Conservation Program: Energy Conservation Standards for Residential Furnaces and Residential Central Air Conditioners and Heat Pumps

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of effective date and compliance dates for direct final rule.

**SUMMARY:** The U.S. Department of Energy (DOE) published a direct final rule to establish amended energy conservation standards for residential furnaces and residential central air conditioners and heat pumps in the **Federal Register** on June 27, 2011. DOE has determined that the adverse comments received in response to the direct final rule do not provide a reasonable basis for withdrawing the direct final rule. Therefore, DOE provides this notice confirming adoption of the energy conservation standards for residential furnaces and residential central air conditioners and heat pumps established in the direct final rule and announcing the effective date of those standards.

**DATES:** The direct final rule published on June 27, 2011 (76 FR 37408) became effective on October 25, 2011. Compliance with the standards in the direct final rule will be required on May 1, 2013 for non-weatherized furnaces and on January 1, 2015 for weatherized furnaces and central air conditioners and heat pumps.

**ADDRESSES:** The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, framework documents, 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. 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*.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Mohammed Khan (furnaces) or Mr. Wesley Anderson (central air conditioners and heat pumps), 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 or (202) 586–7335. E-mail: *Mohammed.Khan@ee.doe.gov* or *Wes.Anderson@ee.doe.gov*.

Mr. Eric Stas or Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507 or (202) 287–6111. Email: *Eric.Stas@hq.doe.gov* or *Jennifer.Tiedeman@hq.doe.gov*.

For further information on how to submit or review public comments or view hard copies of the docket, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Authority and Rulemaking Background

The Energy Policy and Conservation Act of 1975 (EPCA; 42 U.S.C. 6291–6309, as codified), as amended, authorizes DOE to issue a direct final rule (DFR) establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary of Energy (Secretary). EPCA further requires that a statement contain recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). A notice of proposed rulemaking (NOPR) that proposes an identical energy conservation standard must be published simultaneously with the final rule, and DOE must provide a public comment period of at least 110 days on the direct final rule. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published NOPR. DOE must publish in the **Federal Register** the reasons why the direct final rule was withdrawn. *Id.*

During the rulemaking proceeding to consider amending energy conservation standards for residential furnaces and residential central air conditioners and heat pumps, DOE received the ''Agreement on Legislative and Regulatory Strategy for Amending Federal Energy Efficiency Standards, Test Procedures, Metrics and Building Code Provisions for Residential Central Air Conditioners, Heat Pumps, Weatherized and Non-Weatherized Furnaces and Related Matters'' (the ''Joint Petition'' or ''Consensus Agreement''), a comment submitted by representatives of the American Heating and Refrigeration Institute (AHRI), American Council for an Energy-Efficient Economy (ACEEE), Alliance to Save Energy (ASE), Natural Resources Defense Council (NRDC), Appliance Standard Awareness Project (ASAP), Northeast Energy Efficiency Partnerships (NEEP), Northwest Power and Conservation Council (NPCC), California Energy Commission (CEC), Bard Manufacturing Company Inc., Carrier Residential and Light Commercial Systems, Goodman Global Inc., Lennox Residential, Mitsubishi Electric & Electronics USA, National Comfort Products, Rheem Manufacturing Company, and Trane Residential (collectively, the ''Joint Petitioners''). This collective set of comments [1] recommends specific energy conservation standards for residential furnaces, central air conditioners, and

[1] DOE Docket No. EERE–2011–BT–STD–0011, Comment 16.

heat pumps that, in the commenters' view, would satisfy the EPCA requirements at 42 U.S.C. 6295(o). Numerous interested parties, including signatories of the Consensus Agreement, as well as other parties, expressed support for DOE adoption of the Consensus Agreement both at a public hearing and in written comments on the furnaces and central air conditioners rulemakings.

After careful consideration of the Consensus Agreement, the Secretary determined that it was submitted by interested persons who are fairly representative of relevant points of view on this matter. DOE noted in the direct final rule that Congress provided some guidance within the statute itself by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the consensus agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental, energy efficiency, and consumer advocacy organizations. One State entity was a party to the Consensus Agreement, and no State expressed any opposition to the Consensus Agreement from the time of its submission to DOE through the close of the comment period on the direct final rule. Moreover, DOE stated in the direct final rule that it does not interpret the statute as requiring absolute agreement among all interested parties before DOE may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.,* ''as determined by the Secretary''). Accordingly, DOE determined that the consensus agreement was made and submitted by interested persons fairly representative of relevant points of view.

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly submitted recommendation for an energy or water conservation standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. As stated in the direct final rule, this determination is exactly the type of analysis DOE conducts whenever it considers potential energy conservation standards pursuant to EPCA. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy. Upon review, the Secretary determined that the Consensus Agreement submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Accordingly, the Consensus Agreement levels, included as trial standard level (TSL) 4 for both residential furnaces and residential central air conditioners and heat pumps, were adopted as the amended standard levels in the direct final rule.

In sum, as the relevant statutory criteria were satisfied, the Secretary adopted the amended energy conservation standards for residential furnaces and residential central air conditioners and heat pumps set forth in the direct final rule. These standards are set forth in Table I.1 and Table I.2. The standards apply to all products listed in Table I.1 and Table I.2 that are manufactured in, or imported into, the United States on or after May 1, 2013 for non-weatherized gas and oil-fired furnaces and mobile home furnaces and on or after January 1, 2015 for weatherized gas furnaces and central air conditioners and heat pumps. These compliance dates were set forth in the direct final rule published in the **Federal Register** on June 27, 2011. 76 FR 37408. For a detailed discussion of DOE's analysis of the benefits and burdens of the amended standards pursuant to the criteria set forth in EPCA, please see the direct final rule. 76 FR 37408 (June 27, 2011).

As required by EPCA, DOE also simultaneously published a NOPR proposing the identical standard levels contained in the direct final rule. As discussed in this section, DOE considered whether any adverse comment received during the 110-day comment period following the direct final rule provided a reasonable basis for withdrawal of the direct final rule and continuation of this rulemaking under the NOPR. As noted in the direct final rule, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, DOE weighs the substance of any adverse comment(s) received against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

TABLE I.1—AMENDED ENERGY CONSERVATION STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP ENERGY EFFICIENCY

| Product class | National standards (percent) | Northern region ** standards (percent) |
|---|---|---|
| **Residential Furnaces** * | | |
| Non-weatherized gas | AFUE = 80 | AFUE = 90. |
| Mobile home gas | AFUE = 80 | AFUE = 90. |
| Non-weatherized oil-fired | AFUE = 83 | AFUE = 83. |
| Weatherized gas | AFUE = 81 | AFUE = 81. |
| Mobile home oil-fired ‡‡ | AFUE = 75 | AFUE = 75. |
| Weatherized oil-fired ‡‡ | AFUE = 78 | AFUE = 78. |
| Electric‡‡ | AFUE = 78 | AFUE = 78. |

| Product class | National standards | Southeastern region †† | Southwestern region ‡ standards |
|---|---|---|---|
| **Central Air Conditioners and Heat Pumps †** | | | |
| Split-system air conditioners | SEER = 13 | SEER = 14 | SEER = 14.<br>EER = 12.2 (for units with a rated cooling capacity less than 45,000 Btu/h).<br>EER = 11.7 (for units with a rated cooling capacity equal to or greater than 45,000 Btu/h). |
| Split-system heat pumps | SEER = 14<br>HSPF = 8.2 | SEER = 14<br>HSPF = 8.2 | SEER = 14.<br>HSPF = 8.2. |
| Single-package air conditioners ‡‡ | SEER = 14 | SEER = 14 | SEER = 14.<br>EER = 11.0. |
| Single-package heat pumps | SEER = 14<br>HSPF = 8.0 | SEER = 14<br>HSPF = 8.0 | SEER = 14.<br>HSPF = 8.0. |
| Small-duct, high-velocity systems | SEER = 13<br>HSPF = 7.7 | SEER = 13<br>HSPF = 7.7 | SEER = 13.<br>HSPF = 7.7. |
| Space-constrained products—air conditioners ‡‡ | SEER = 12 | SEER = 12 | SEER = 12. |
| Space-constrained products—heat pumps ‡‡ | SEER = 12<br>HSPF = 7.4 | SEER = 12<br>HSPF = 7.4 | SEER = 12.<br>HSPF = 7.4. |

* AFUE is annual fuel utilization efficiency.

** The Northern region for furnaces contains the following States: Alaska, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

† SEER is Seasonal Energy Efficiency Ratio; EER is Energy Efficiency Ratio; HSPF is Heating Seasonal Performance Factor; and Btu/h is British thermal units per hour.

†† The Southeastern region for central air conditioners and heat pumps contains the following States: Alabama, Arkansas, Delaware, Florida, Georgia, Hawaii, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia, and the District of Columbia.

‡ The Southwestern region for central air conditioners and heat pumps contains the States of Arizona, California, Nevada, and New Mexico.

‡‡ DOE is not amending energy conservation standards for these product classes in this rule.

TABLE I.2—AMENDED ENERGY CONSERVATION STANDARDS FOR FURNACE, CENTRAL AIR CONDITIONER, AND HEAT PUMP STANDBY MODE AND OFF MODE *

| Product class | Standby mode and off mode standard levels |
|---|---|
| **Residential Furnaces **** | |
| Non-weatherized gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Mobile home gas | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| Non-weatherized oil-fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Mobile home oil-fired | $P_{W,SB}$ = 11 watts.<br>$P_{W,OFF}$ = 11 watts. |
| Electric | $P_{W,SB}$ = 10 watts.<br>$P_{W,OFF}$ = 10 watts. |
| **Product class** | **Off mode standard levels †† ** |
| **Central Air Conditioners and Heat Pumps ††** | |
| Split-system air conditioners | $P_{W,OFF}$ = 30 watts. |
| Split-system heat pumps | $P_{W,OFF}$ = 33 watts. |
| Single-package air conditioners | $P_{W,OFF}$ = 30 watts. |
| Single-package heat pumps | $P_{W,OFF}$ = 33 watts. |
| Small-duct, high-velocity systems | $P_{W,OFF}$ = 30 watts. |
| Space-constrained air conditioners | $P_{W,OFF}$ = 30 watts. |
| Space-constrained heat pumps | $P_{W,OFF}$ = 33 watts. |

* $P_{W,SB}$ is standby mode electrical power consumption, and $P_{W,OFF}$ is off mode electrical power consumption. For furnaces, DOE is proposing to change the nomenclature for the standby mode and off mode power consumption metrics for furnaces from those in the furnace and boiler test procedure final rule published on October 20, 2010. 75 FR 64621. DOE is renaming the $P_{SB}$ and $P_{OFF}$ metrics as $P_{W,SB}$ and $P_{W,OFF}$, respectively. However, the substance of these metrics remains unchanged.

** Standby mode and off mode energy consumption for weatherized gas and oil-fired furnaces is regulated as a part of single-package air conditioners and heat pumps.

† $P_{W,OFF}$ is off mode electrical power consumption for central air conditioners and heat pumps.

†† DOE is not adopting a separate standby mode standard level for central air conditioners and heat pumps, because standby mode power consumption for these products is already regulated by SEER and HSPF.

## II. Comments Concerning Withdrawal of the Direct Final Rule

### *A. General Comments*

1. Joint Petition

A number of commenters stated that DOE did not consider the views of all relevant parties, including appliance installers and energy suppliers. Some commenters also stated that DOE did not explain its process for determining whether the Joint Petition was submitted by relevant parties, including a determination of which parties are ''not'' relevant.

Specifically, UGI Distributors stated that there was not sufficient participation by interested persons. (UGI, No. 22 at p. 10) The American Public Gas Association (APGA) contended that the Consensus Agreement was not based on the most relevant sectors of the industry. (APGA, No. 24 at pp. 12–13) Metropolitan Utilities District of Omaha Nebraska (MUD) stated that the Consensus Agreement failed to represent consumer interests, because the Joint Petitioners (who submitted the Consensus Agreement) were comprised primarily of appliance manufacturers and various energy conservation groups, not individuals who deal with installation and inspection of these appliances on a daily basis. (MUD, No. 29 at p. 1) AGL Resources (AGL) commented that the petition did not include all relevant parties as required by the legislation granting authority for DFRs, and it recommended DOE should withdraw the DFR in favor of the NOPR process. Specifically, AGL cited appliance installers and energy suppliers as not being involved, noting that appliance installers could have provided more complete information regarding installation costs and that energy suppliers could have provided important information on consumer impacts. (AGL, No. 31 at p. 3) Heating, Air-conditioning and Refrigeration Distributors International (HARDI) stated that the Consensus Agreement excludes the input of U.S. small business owners, who represent two-thirds of the heating, ventilation, and air-conditioning (HVAC) supply chain and 32,264 HVAC contracting and distribution companies and branches nationwide. (HARDI, No. 39 at p. 1) The Air Conditioning Contractors of America (ACCA) stated that the Consensus Agreement represents the view of a minority of stakeholders, is an unsuitable use of the direct final rule process, and directly and adversely impacts several stakeholders not included in the Consensus Agreement. (ACCA, No. 50 at p. 2)

Conversely, the Joint Comment from ASAP, NRDC, ACEEE, ASE, NPCC, NEEP, the Consumer Federation of America (CFA), and EarthJustice (Joint Comment) supported DOE's determination of what constitutes an agreement that is submitted jointly by interested persons that are fairly representative of relevant points of view. (Joint Comment, No. 47 at p. 2) These stakeholders contend that DOE has properly exercised its authority to issue a direct final rule under 42 U.S.C. 6295(p)(4)(A).

As explained above in section I, EPCA authorizes DOE to issue a direct final rule establishing an energy conservation standard on receipt of a statement that, in relevant part, is submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary. While providing some guidance by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation, EPCA affords DOE significant discretion in determining whether this requirement has been met. (42 U.S.C. 6295(p)(4)(A)) DOE notes that EPCA does not require that ''all'' relevant parties be parties to any Consensus Agreement, nor does it allow a small number of interested parties to exercise a veto power over the DFR process. EPCA also does not require DOE to specify parties that it determines are ''not relevant'' to any Consensus Agreement.

In the direct final rule, DOE explained how the Consensus Agreement met the requirement that it be submitted jointly by interested persons that are fairly representative of relevant points of view. DOE noted that the Consensus Agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental and energy efficiency organizations. DOE further noted that one State entity was a party to the Consensus Agreement, and no State expressed any opposition to it. States also did not file any adverse comments during the comment period for the direct final rule.

Moreover, DOE stated in the direct final rule that it does not interpret the statute as requiring absolute agreement among all interested parties before DOE may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has considerable discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.,* ''as determined by the Secretary''). DOE acknowledges that appliance installers and energy suppliers may also be relevant parties within the meaning of 42 U.S.C. 6295(p)(4), but does not believe that the existence of other potentially relevant parties indicates that the Consensus Agreement was not submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates).

For the reasons stated above, DOE affirms its conclusion in the direct final rule that the Joint Petition satisfies the requirement of 42 U.S.C. 6295(p)(4) that it be a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary.

2. Comments on Withdrawal of the Direct Final Rule

As explained more fully below, DOE has determined that none of the comments requesting withdrawal, taken as a whole or individually, may provide a reasonable basis for the Secretary to withdraw the direct final rule. In setting efficiency standards such as those for furnaces, DOE uses a publicly-available, forward-looking model to evaluate the economic impact of several technically feasible energy efficiency levels pursuant to the criteria specified in 42 U.S.C. 6295(o). DOE runs its analysis starting at the most efficient technologically feasible level through progressively lower efficiency levels until its finds the most efficient trial standard level (TSL) that is economically justified. DOE has made its model and the data used in its model public on its Web site.

The American Gas Association (AGA) [2] and APGA submitted comments arguing that DOE used inappropriate data for several parameters in its life-cycle cost (LCC) model for furnaces, including future natural gas prices, the

[2] Philadelphia Gas Works, Nicor, Piedmont, Consolidated Edison of New York, NW Natural Gas Company, Atmos Energy and Alabama Gas submitted comments expressing general support for the comments by the American Gas Association (AGA). (Philadelphia Gas Works, No. 23 at pp. 1–2; Nicor, No. 32 at p. 1; Piedmont, No. 32 at p. 1; Consolidated Edison of New York, No. 32 at p. 1; NW Natural Gas Company, No. 32 at p. 1; Atmos Energy, No. 32 at p. 1; Alabama Gas, No. 32 at p. 1)

lifetime of non-weatherized gas furnaces, installation costs, and future consumer costs for furnaces. DOE explains below why, contrary to these comments, it used appropriate data for each such parameter.

However, even if the commenters were correct with respect to all the data issues they raised, that would still not result in an efficiency standard for furnaces that is different than the one in the DFR. In response to the comments from AGA and APGA, DOE re-ran its model using the data and assumptions provided by those organizations in their comments. DOE's analytical results, which it has made public on its Web site, showed that the standard set for furnaces in the DFR (TSL 4) still has a positive average LCC savings, even using all the commenters' data and assumptions. Because the commenters' objections, even if they were all correct, a scenario DOE does not believe likely, would not have resulted in a change to the efficiency standard for furnaces, they could not possibly provide a reasonable basis for withdrawing the rule.

In their comments, AGA and APGA assert that, taken together, their data assumptions cause the standard for furnaces in the DFR to have an average LCC savings that is slightly negative in the northern region of the United States. However, they have not provided sufficient information to allow DOE to replicate their results. As indicated above, DOE has made its spreadsheet model publicly available on its Web site and no commenter—including AGA and APGA—has questioned the methodology underlying the spreadsheet model (as opposed to the data used in the model). Therefore, notwithstanding the results assertedly reached by AGA and APGA using DOE's model, DOE has concluded that its model (which remains unchallenged in terms of its methodology) supports the efficiency standard in the DFR, even using the data and assumptions provided by the adverse commenters.

Further, as explained in the DFR (76 FR 37524), the consensus agreement represents the effort of diverse stakeholders representing widely varied interested parties to negotiate their differences, reach common ground, and expedite the rulemaking process. Those efforts, and the benefits they entail, were properly considered by the Secretary under 42 U.S.C. 6295(o)(2)(B)(i)(VII). DOE has encouraged stakeholders in all areas to work together to propose consensus agreements that can lead to DFRs where appropriate. Here, the benefits of the consensus agreement, reflected in the DFR, include additional energy savings resulting from accelerated compliance dates for covered products, as well as an increased likelihood for regulatory compliance and a decreased risk of litigation. The Secretary is cognizant of those benefits in analyzing the adverse comments, and in determining whether any of those comments may provide a reasonable basis for withdrawal of the DFR under 42 U.S.C. 6295(o).

*B. Comments on Standards for Residential Furnaces*

1. The Direct Final Rule Would Cause Certain Gas Furnaces in the Northern Region to Become Unavailable in Violation of the Act

The American Gas Association (AGA) stated that: (1) Establishing a minimum efficiency standard of 90-percent AFUE for the northern region would prevent the installation in that region of a Category I [3] gas furnace; (2) the regional standard, therefore, would necessarily result in the unavailability in the northern region of a covered product type with the performance characteristics of a non-positive vent static pressure, non-condensing (*i.e.,* Category I) gas furnace; (3) the Act prohibits DOE from prescribing a standard that is likely to result in the unavailability in the U.S. in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (AGA, No. 27 at p. 5)

AGA further noted that: (1) In light of the requirements of the gas codes, a Category I non-positive vent, non-condensing gas furnace cannot be replaced with a Category IV positive vent, condensing gas furnace without addressing the venting and condensate disposal issues; (2) accordingly, the performance features of a Category I gas furnace (including its ability to be vented through a chimney, common vented with other gas appliances, and common vented in multi-unit, multistory housing, as well as its ability to vent without having to address disposal of flue gas condensate) provide tangible and cost-saving benefits to consumers justifying separate minimum efficiency standards for Category I and Category IV gas furnaces. (AGA, No. 27 at p. 6) AGL made comments similar to those of AGA. (AGL, No. 31 at p. 6)

AGA contends that DOE should withdraw the direct final rule and proceed with the notice of proposed rulemaking in this proceeding to consider establishing separate standards for Category I and Category IV gas furnaces based on their different venting and condensing characteristics. (AGA, No. 27 at p. 6)

Conversely, AHRI stated that the furnace design dictates what types of venting systems are acceptable, not the converse, and any suggestion that a similar natural draft furnace must be provided to replace an old natural draft furnace in order to maintain a unique utility of the furnace reverses the relationship between the furnace and the vent system. AHRI also stated that the function of any furnace is to provide heat for residences, and DOE is required to address the utility or unique features of appliances and equipment only. AHRI noted that a new gas furnace using a different type of venting system can be installed as a replacement without changing the occupants' comfort level or the heating ability of the furnace, and that the venting system concerns are simply a matter of cost and the existence of an appropriate pathway for the venting system, which are issues that have been analyzed by DOE and others in the past. (AHRI, No. 46 at pp. 3–4)

In response to these comments, DOE notes that, in evaluating and establishing energy conservation standards, EPCA directs DOE to divide covered products into classes based on differences including the type of energy used, capacity, or other performance-related feature that justifies a different standard for products having such feature. (42 U.S.C. 6295(q)) In deciding whether a feature justifies a different standard, DOE must consider factors such as the utility of the feature to users. *Id.* In evaluating AGA's suggestion to consider separate product classes for furnaces using Category I and Category IV venting, DOE considered the utility to consumers of being able to use one venting type versus the other. DOE believes that the utility derived by consumers from furnaces is in the form of the space heating function that the furnace performs. DOE notes that a furnace requiring Category I venting and a furnace requiring Category IV venting are both capable of providing the same heating function to the consumer, and, thus, provide virtually the same utility with respect to that primary function. AGA contends that the ability to vent a furnace with Category I venting provides furnace consumers with a special utility, due to the cost-saving benefits as compared to having to

[3] A Category I vented appliance is an appliance that operates with a non-positive vent static pressure and with a vent gas temperature that avoids excessive condensate production in the vent. (National Fuel Gas Code, NFPA54/ANSI Z223.1, American Gas Association, 2006)

retrofit a venting system to accommodate a Category IV furnace. DOE does not agree with the characterization of reduced costs associated with Category I venting in certain installations as a special utility, but rather, it is an economic impact on consumers that must be considered in the rulemaking's cost-benefit analysis. Accordingly, DOE did not establish separate product classes for furnaces utilizing Category I and Category IV venting systems, but instead considered the additional costs of Category IV venting in its analyses performed for the DFR.

2. Causing the Unavailability of Category I Gas Furnaces in the Northern Region May Have Serious Adverse Consequences for Consumers and the Environment

AGA stated that: (1) Causing the unavailability of Category I gas furnaces in the northern region has the potential to increase health and safety risks due to improper venting; (2) customers faced with having to replace an existing Category I non-condensing gas furnace with a Category IV condensing gas furnace may choose to repair the existing furnace to avoid expensive venting and condensate disposal modifications associated with the new furnace; (3) delayed replacement of equipment past their useful life has the potential to increase energy consumption and environmental impacts. (AGA, No. 27 at p. 6) AGL, CenterPoint Energy, Metropolitan Utilities District (MUD), National Fuel Gas Distribution Corporation (NFGD), and Questar Gas made comments similar to those of AGA. (AGL, No. 31 at p. 5; CenterPoint Energy, No. 33 at p. 2; MUD, No. 29 at p. 1; NFGD, No. 28 at p. 1; Questar Gas, No. 48 at p. 1)

On the other hand, AHRI stated that the concerns about safety when establishing a standard at 90-percent annual fuel utilization efficiency (AFUE) are no different that those already present in situations where consumers do not repair faulty equipment or perform unsafe home repairs. (AHRI, No. 46 at p. 4) National Grid stated that the proposed standards would help their customers achieve their heating needs while using less energy and saving money. (National Grid, No. 30 at p. 1)

In response, proper venting of a condensing furnace, which is guided by the National Fuel Gas Code and, in many cases, by local building codes, is designed to alleviate health and safety risks. DOE notes that contractors currently have a legal responsibility to perform repairs according to the requirements of applicable codes. Problems associated with contractors not following proper procedures could occur in the case of replacing a gas furnace with a non-condensing furnace as well.

Failure of the heat exchanger or combustion system is the event that is most likely to create a need for replacement. DOE believes that consumers faced with a furnace replacement situation would be unlikely to opt for repair because of the high cost of replacing these components, along with the possibility that further expensive repairs might be needed in the near future. Therefore, DOE believes that delayed replacement, and the associated environmental impacts, is unlikely.

AGA stated that customers that replace a Category I gas furnace with a Category IV gas furnace may orphan a common-vented gas water heater. It could lead to improperly vented water heaters, which may pose serious health and safety risks. (AGA, No. 27 at p. 7) AGL, CenterPoint Energy and MUD made comments similar to those of AGA. (AGL, No. 31 at pp. 6–7; CenterPoint Energy, No. 33 at p. 5; MUD, No. 29 at p. 1)

AHRI stated that: (1) In the past ten years, nearly 10 million condensing furnaces have been sold in the U.S., of which about 7.5 million units were replacement installations; (2) some of those must have resulted in ''orphaned'' gas water heaters; (3) there is no evidence from the field over that time that consumers are incurring a higher safety risk because they chose to not address the water heater's venting system when the new condensing furnace was installed. (AHRI, No. 46 at p. 4)

In response, proper venting of an orphaned water heater would alleviate the risks mentioned by the commenters. DOE again notes that proper venting of an orphaned water heater is guided by the National Fuel Gas Code and, in many cases, by local building codes. The same points made above about contractors apply in this case as well. DOE also notes that the above comment by AHRI suggests that serious health and safety risks are unlikely and that the service industry already has in place procedures for identifying and rendering unsafe equipment inoperable (red tag) to safeguard the consumer. In addition, DOE believes that through training and experience installing condensing furnaces, installers will become increasingly aware and skilled in the treatment of orphaned water heaters.

AGA argued that the unavailability of Category I, non-condensing gas furnaces could lead customers to make less-efficient appliance choices. Specifically, AGA stated that fuel switching or different initial fuel choice could occur where customers select: (1) Electric furnaces instead of gas furnaces; (2) electric heat pumps instead of gas furnaces, especially where central air conditioning is already installed; (3) electric water heaters instead of gas water heaters; or (4) electric heat pumps and electric water heaters instead of gas furnaces and gas water heaters. AGA stated that by installing electric appliances rather than natural gas appliances, consumers are likely to pay more in annual operating costs while contributing to increased total energy consumption and environmental emissions when measured on a source or full-fuel-cycle basis. (AGA, No. 27 at p. 7)

For the direct final rule, DOE did not explicitly quantify the potential for fuel switching from gas furnaces to electric heating equipment, based upon the following reasoning. DOE reviewed the 2005 Residential Energy Consumption Survey (RECS) [4] to assess the type of space-heating system utilized by consumers as a function of house heating load. Gas furnaces are primarily utilized in households with high heating loads, while electric space heating systems are almost exclusively used in households with low heating loads. Generally, this is because the operating costs of electric space heating systems are relatively high due to the price of electricity, so using an electric system in a cold climate is significantly more expensive than using a gas furnace. Based on the above finding, DOE inferred that few consumers in the northern region would be likely to switch to electric space heating systems as a result of the amended standard for gas furnaces.

In addition, replacing a gas furnace with electric space heating incurs substantial costs, because of the complexity involved in modifying the installation. As described in appendix 9–B of the DFR technical support document (TSD),[5] for a household with a gas furnace to switch to electric space heating, a separate circuit up to 120-amps would be needed, depending on the house heating design requirements.

[4] U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey: 2005 Public Use Data Files, 2008. *http://www.eia.doe.gov/emeu/recs/recspubuse05/pubuse05.html.*

[5] See: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/residential_furnaces_central_ac_hp_direct_final_rule_tsd.html.*

The cost to install such a circuit would vary from approximately $293 to $608, and some installations would require a new panel board to serve this higher amp circuit, at a cost estimated at $985 to $2,625.[6] Given the initial costs involved in replacing a gas furnace with electric space heating, combined with the much higher operating costs of an electric heating system, DOE believes that the approach used for the DFR is reasonable.

With regard to initial fuel choice in new homes, DOE found fuel switching not to apply because the amended standard would not significantly change the situation currently faced by builders. On average, there is no total installed price differential between an 80-percent AFUE gas furnace and a 90-percent AFUE gas furnace, so DOE reasoned that builders are unlikely to alter their current behavior on the basis of amended energy conservation standards.

AGA stated that: (1) Replacing a non-condensing gas furnace with a condensing gas furnace may be infeasible for some homes where side-wall venting is not an option (*e.g.,* in row houses, historic homes, or multi-story housing complexes), may be cost-prohibitive in other homes, may lead to orphaned water heaters, and, in all cases, would increase installation costs and require trained installers to ensure proper venting of all combustion appliances.; (2) DOE's analysis in this proceeding significantly underestimates the costs associated with installation of condensing gas furnaces that consumers would actually incur, both as a result of underestimating specific cost items and of failing to include specific cost items. (AGA, No. 27 at p. 7) MUD made a similar comment. (MUD, No. 29 at pp. 1–2) Questar Gas also stated that with many older homes and multi-family units, the venting modifications and condensate disposal requirements would be cost-prohibitive and, in some cases, impossible. (Questar Gas, No. 48 at p. 1)

DOE acknowledges that there may be increased technical complexity associated with replacing a non-condensing gas furnace with a condensing gas furnace, but DOE disagrees with AGA's contention that replacing a non-condensing gas furnace with a condensing gas furnace may be infeasible for some homes where side-wall venting is not an option. Many condensing furnaces are vented using vertical vents, which provides an additional option to address cases where side-wall access in not available. Moreover, AGA has not demonstrated that trained installers are unavailable in the marketplace to handle installations under the amended standards at the time of compliance. Condensing furnaces have been available for more than 20 years, and in the north condensing furnaces represent 68 percent of the market. The large scale of installations demonstrates the availability of trained installers to handle installations under the amended standards.

Regarding AGA's second point, DOE believes that it has included all relevant cost items. As further described below in section II.B.7, DOE's estimates of specific cost items are similar to those provided by AGA in several instances. Where they are lower, DOE believes that the available evidence (discussed below) supports the costs used by DOE.

3. DOE's Regional Standard Harms Consumers

AGA stated that: (1) DOE's analysis shows that the 90-percent AFUE standard for the northern region would impose a net cost on 10 percent of consumers, have no impact on 71.4 percent of consumers, and have a net benefit for 18.6 percent of consumers; (2) the fact that a significant percentage of customers will experience a net cost reflects the substantial costs associated with replacing a Category I non-condensing gas furnace with a Category IV condensing gas furnace; (3) DOE has failed to explain why the fact that some consumers will see a net benefit justifies imposing net costs on other consumers. (AGA, No. 27 at p. 10)

In selecting the standards in the DFR, DOE needed to determine whether the benefits of the standard exceed its burdens to the greatest extent practicable, in light of the seven statutory factors provided by EPCA. (42 U.S.C. 6295(o)(2)(B)(i)) Impacts on consumers are one of those factors. Under the amended standard for non-weatherized gas furnaces, nearly twice as many consumers would have a net benefit as would have a net cost. Further, the standard would provide average LCC savings of $155 and a median payback period of 10.1 years. DOE believes that on balance, the consumer impacts of the amended energy conservation standard qualify as positive impacts within the context DOE has used in past standards rulemakings.

4. DOE's Analysis of Natural Gas Prices Is Inadequate

AGA and AGL stated that the direct final rule did not consider the impact that the regional standard would have on natural gas prices. (AGA, No. 27 at p. 11; AGL, No. 31 at 5) DOE did consider the impact of the chosen standards on natural gas prices, as described in section IV.G.6 of the DFR. As described in chapter 14 of the DFR TSD, the projected impact on natural gas prices is very small (0.14 to 0.21 percent). Because the impact is so small, DOE did not use a separate price forecast for the selected TSL.

AGA stated that: (1) DOE has not used the most recent version of the Energy Information Administration's (EIA) *Annual Energy Outlook* (*i.e., AEO 2011*) in support of the direct rule; (2) DOE has not explained why it could not have revised its analysis based on the most recent data; (3) EIA's *AEO 2011* forecast of residential natural gas prices through 2030 is substantially reduced from the 2010 forecast; (4) EIA's price forecast has been trending downward over the last several years; (5) DOE's use of the *AEO 2010* Reference Case in analyzing life-cycle-cost savings of gas furnaces overstates potential cost savings. (AGA, No. 27 at p. 11) APGA and MUD also objected to DOE's use of the *AEO 2010* rather than the *AEO 2011* projections. (APGA, No 24 at p. 2; MUD, No. 29 at p. 2)

In contrast, the joint comment from ASAP, NRDC, ACEEE, CFA, ASE, NPCC, NEEP, and EJ (Joint Comment) stated that the furnace standards are cost-effective, even if *AEO 2011* price trends are used in the LCC analysis. The Joint Comment noted that additional analysis published by DOE in response to a request from American Public Gas Association (APGA) showed average positive LCC savings for both replacement and new construction installations even if lower natural gas prices are used in the analysis. (Joint Comment, No. 47 at p. 4–5)

In response, DOE notes that the Department uses the latest available version of *AEO* that is possible under its rulemaking schedule. The *AEO 2011* was not available at the time the original DFR analysis was conducted. However, in response to comments on the DFR, DOE evaluated the impact of using the *AEO 2011* price forecast on the LCC results. In this case, the average LCC benefit decreases from $155 (using the *AEO 2010* forecast) to $127.

AGA contends that: (1) DOE should use a marginal price analysis when evaluating the impact of natural gas prices on the life-cycle-cost savings

[6] Costs estimated using 2010 RS Means Residential Cost Data. (RS Means Company Inc., RS Means Residential Cost Data. 29th Annual Edition ed. 2010: Kingston, MA).

associated with conservation standards; (2) a marginal price analysis reflects the incremental or decremental gas costs most closely associated with changes in the amount of gas consumed when comparing appliances of different efficiencies; (3) DOE uses marginal residential and commercial electricity prices in its life-cycle-cost analysis; (4) technical analysis by the Gas Technology Institute (GTI) includes a marginal price analysis for the 90-percent AFUE regional standard, by using citygate prices [7] as a proxy for marginal price and reducing the residential gas price to reflect a removal of a portion of fixed costs. AGA stated that: (1) The results of GTI's analysis show that the life-cycle-cost savings of replacing a non-condensing gas furnace with a condensing gas furnace are negative in the northern region using citygate prices as a proxy for marginal price, based on *AEO 2011* forecasts of natural gas prices; (2) under the alternative method of removing fixed costs as a proxy for marginal prices, the analysis similarly shows that the life-cycle-cost savings of installations of 90-percent AFUE condensing gas furnaces in the replacement market in the northern region are negative or only barely positive. (AGA, No. 27 at p. 13)

In contrast, the Joint Comment stated that DOE's approach for developing natural gas prices, which incorporates regional and seasonal variations, is appropriate and that the prices DOE derived reflect the prices faced by furnace users. (Joint Comment, No. 47 at pp. 4–5)

In response, DOE believes that average natural gas prices are suitable for evaluating the impacts of furnace standards. DOE also used average natural gas prices in the 2010 final rule for energy conservation standards for residential water heaters, direct heating equipment, and pool heaters. 75 FR 20112, 20158 (April 16, 2010). Although marginal energy prices are in theory preferable when evaluating the life-cycle-cost savings associated with standards, past analysis found that marginal natural gas prices were only 4.4 percent lower than average prices in the winter, when furnaces are used.[8] At the time of the DFR analyses, DOE was unable to obtain marginal gas prices for the following reasons. The RECS 2005 billing data that allow estimation of marginal prices were not available at that time due to EIA's concerns over maintaining confidentiality of the survey respondents. In the alternative, DOE investigated development of marginal prices from gas utility tariffs, but found that, in general, gas tariffs include provisions for modifying consumer prices on a monthly basis to account for changes in commodity price. Therefore, the tariffs themselves do not provide sufficient information to determine the consumer price.

In response to comments on the DFR, DOE estimated marginal natural gas prices using newly-available RECS 2005 billing data. Using this data in DOE's model, the average LCC benefits decrease from $155 (using average energy prices) to $128 (using marginal energy prices).

5. DOE Has Not Justified Its Use of Experience Curve Price Effects

AGA stated that: (1) DOE's use of experience curves to support the direct final rule is premature; and (2) DOE has not yet issued a final rule or policy regarding the use of experience curve or learning curve analyses or responded to the comments submitted in that proceeding. (AGA, No. 27 at p. 14)

To clarify, on February 22, 2011, DOE published a Notice of Data Availability (NODA, 76 FR 9696) in the **Federal Register** stating that DOE may consider changes to how it addresses equipment price trends, as part of DOE's ongoing efforts to keep improving its regulatory analyses. DOE responded to comments on the NODA and outlined its refined policy regarding the use of experience curves in the direct final rule in this proceeding and several other rulemakings mentioned below. In the DFR, DOE presented a range of estimates for product price trends, including trends derived using the experience curve approach.

AGA and APGA stated that DOE's experience curve analysis in the direct final rule is unexplained and unjustified. (AGA, No. 27 at p. 14; APGA, No. 24 at p. 3) AGA stated that DOE has not adequately shown that, based on historical price data, the price trend for Category IV condensing gas furnaces would continue to trend downward over time at the rate that DOE has assumed. Nor is there any justification, according to those commenters, as to why such curves should be so much greater for gas equipment than for electric equipment. (AGA, No. 27 at pp. 14–15) Laclede Gas also stated that the experience rates used by DOE were overstated. (Laclede Gas, No. 27 at pp. 2–3)

On the other hand, the Joint Comment supported DOE's use of learning rates in the analysis. (Joint Comment, No. 47 at p. 3) It stated that the incorporation of learning rates in this rulemaking is consistent with recent DOE final rules on refrigerators, clothes dryers, and room air conditioners, where DOE also applied learning rates. 76 FR 57516, 57548–50 (Sept. 15, 2011); 76 FR 52852–52854 (Aug. 24, 2011).

In response, DOE's derivation of price trends for central air conditioners, heat pumps, and furnaces is described in detail in appendix 8–J of the DFR TSD. The essential justification for using the experience curve approach is that it yields a statistically robust method for analyzing the long-term declining real price trend, based on Producer Price Indexes (PPI), observed for central air conditioners and furnaces. There exists an extensive economic literature on learning and experience curves, based on robust observations spanning many decades.[9] The concept was pioneered for the manufacturing sector, and it has since been applied to a diverse set of products and services.[10] Learning and experience curves are now regularly incorporated into economic modeling, including in the National Energy Modeling System (NEMS). Broader discussion of the reasons why DOE believes use of the experience curve approach is reasonable is provided in the final rule for refrigerators, refrigerator-freezers, and freezers. 76 FR 57516, 57548–50 (Sept. 15, 2011).

DOE did not have historical price data specific to condensing gas furnaces. However, the growing share of condensing furnaces over the past two decades (from approximately 23 percent in 1990 to approximately 50 percent in 2010) [11] is reflected in the PPI series that DOE used to derive an experience rate for furnaces.

[7] The ''city gate'' is generally the point where natural gas is transferred from an interstate or intrastate pipeline to a local natural gas utility. The ''city gate price'' is the sales price of the natural gas at this point; the price reflects the wholesale/wellhead price, as well as the cost of transporting the natural gas by pipeline to the citygate.

[8] Chaitkin, S., J. McMahon, C. Dunham-Whitehead, R. van Buskirk and J. Lutz. 2000. Estimating Marginal Residential Energy Prices in the Analysis of Proposed Appliance Energy Efficiency Standards. Conference Paper, Proceedings of the ACEEE Summer Study on Energy Efficiency in Buildings.

[9] A draft paper, ''Using the Experience Curve Approach for Appliance Price Forecasting,'' posted on the DOE Web site at *http://www.eere.energy.gov/buildings/appliance_standards,* summarizes the data and literature currently available to DOE that is relevant to price forecasts for selected appliances and equipment.

[10] Weiss, M., Junginger, M., Patel, M.K., Blok, K., 2010a. ''A review of experience curve analyses for energy demand technologies.'' Technological Forecasting and Social Change 77, 411–428.

[11] Gas Appliance Manufacturers Association (GAMA). Historical Shipment Data (1987–2003), provided to DOE April 10, 2005. AHRI. Historical Shipment Data (2004–2009), provided to DOE June 20, 2010.

For warm-air furnaces, the medium estimated learning rate (defined as the fractional reduction in price expected from each doubling of cumulative production) is 30.6 percent. For unitary air conditioners, the medium estimated learning rate is 18.1 percent. The higher rate for furnaces results from the steeper decline in the inflation-adjusted historic price index for warm air furnaces.[12]

In response to comments on the DFR, DOE evaluated the impact of not using the learning rate on the LCC results. Using this input in DOE's model, the average LCC benefits decrease from $155 (using medium estimated learning rates) to $148 (not using the learning rates).

6. DOE's Estimate of Expected Furnace Lifetime Is Unsupported

AGA stated that: (1) DOE's estimate of a 23.68 year lifetime for a gas furnace is contradicted by other DOE and manufacturer estimates; (2) in its latest DOE Multi-Year Program Plan, updated in October 2010, DOE estimated that the lifetime of a non-weatherized gas furnaces is 16 years; (3) according to GTI's recent technical analysis, the 16-year useful life estimate is consistent with other manufacturer estimates of useful life; (4) GTI's analysis shows that using a 16-year useful life estimate substantially reduces the life-cycle-cost savings for the 90-percent AFUE gas furnace in the northern region. (AGA, No. 27 at pp. 15–16) Laclede Gas Company made a similar comment. (Laclede, No. 27 at p. 4)

The Joint Comment stated that the fixed 16-year lifetime was unreasonable for non-weatherized gas furnaces. It noted that DOE used a distribution of lifetimes to reflect expected failure rates in the field and that DOE derived the average lifetime of 23.7 years for non-weatherized gas furnaces from a combination of sources. (Joint Comment, No. 47 at pp. 4–5)

In response, the value in DOE's 2010 Multi-Year Program Plan [13] was an estimate from the published literature, rather than the result of empirical analysis. DOE's DFR methodology utilized a more rigorous product lifetime analysis, including historical data on appliance shipments, total appliance stock, and the fraction of surviving appliances to estimate the mean life and mortality shape factor using the best-fitting Weibull survival function.[14] Changing the average lifetime to 16 years results in projected shipments that are approximately 30 percent to 40 percent greater than the forecast in the DFR. In this case, the NIA model's 'backcast' diverges significantly from historical shipments. That is, a 16-year average lifetime is inconsistent with historical data on furnace shipments. Consequently, DOE has confirmed that the DFR's estimated average lifetime of 23.7 years for non-weatherized gas furnaces remains the best estimate of that value. However, in response to comments on the DFR, DOE evaluated the impact of using the average fixed 16-year lifetime on the LCC results. Using that input in DOE's model, the average LCC benefits decrease from $155 (using DOE's lifetime methodology) to $72 (using a 16-year lifetime).

7. DOE Has Not Justified Its Assumptions Regarding Installation Costs

AGA stated that: (1) DOE has not adequately supported the specific installation cost adders and distribution of occurrences that it has used; (2) DOE's analysis significantly underestimates the costs associated with installation of condensing gas furnaces that consumers would actually incur, both as a result of underestimating specific cost items and failing to include specific cost items; (3) AGA submitted data in this proceeding showing that the cost for installation of condensing furnaces in commonly-vented systems in total would range from $1,500 to $2,200 (in 2005$) based on a survey of its members. AGA recommended that DOE apply a probability distribution for each installation cost adder and include that variation as an independent variable in the calculation. (AGA, No. 27 at p. 16) ACCA also stated that the standard mandating condensing furnaces in the northern region is based on incomplete or inaccurate assumptions on the costs for retrofitting homes. (ACCA, No. 27 at p. 4) The UGI Distribution Companies commented that DOE's installation cost estimates for accommodating high-efficiency gas furnace and orphaned gas water heater venting issues seem unrealistically low, particularly for row homes, multi-family dwellings, and older urban structures with high masonry chimneys. (UGI Distribution Companies, No. 22 at p. 4)

In contrast, the Joint Comment stated that DOE had considered the comments from interested parties and conducted a thorough analysis of installation costs for both replacement and new construction installations. (Joint Comment, No. 47 at p. 2)

In response to AGA's first point, the sources and methods used to derive the specific installation cost adders and distribution of occurrences are described in detail in appendix 8–B of the DFR TSD. DOE believes that it has included all relevant cost items.

The range of $1,500 to $2,200 mentioned by AGA (in $2005; equivalent to $1,648 to $2,417 in 2009$) refers to the added cost for installation of condensing furnaces in common vented systems.[15] As shown in Table II.1, the range of many of DOE's specific costs are similar to the ranges given in AGA's survey. For the relining of an existing chimney or resizing of a vent to accommodate the remaining appliance, DOE believes that AGA's relining costs are more typical for long vertical vent lengths (households with two floors or more), whereas the costs used by DOE represent a wide range of installations. In terms of installing a drain pan for condensate, DOE's estimate is based on the material cost of the drain pan from two retail Web sites.[16] Despite these differences, DOE's total estimated average cost ($1,596) is close to the lower end of AGA's estimate. (DOE applied the structural modifications and the relining costs in Table II.1 to all commonly-vented systems that require venting modifications to satisfy the safety requirements. DOE estimated that such modifications are required for about 36 percent of all commonly-vented systems.) In summary, DOE concludes that its analysis of installation costs included all relevant items and used an appropriate range of costs for each item. In response to comments on the DFR, DOE evaluated the impact of using AGA's installation costs. Using these inputs in DOE's model, the average LCC benefits increase from $155 (using DOE's installation cost estimates) to $168 (using AGA's installation cost estimates). The main reason why the LCC benefits based on AGA's assumptions increase is that under DOE's estimates, performance of structural modifications is applied to all

[12] See appendix 8–J of the DFR TSD.

[13] U.S. Department of Energy Efficiency and Renewable Energy Building Technologies Program. Multi-Year Program Plan, Building Regulatory Programs: 2010–2015 (Oct. 2010). (*http://apps1.eere.energy.gov/buildings/publications/pdfs/corporate/regulatory_programs_mypp.pdf*)

[14] DOE's lifetime methodology is described in: Lutz, J. A. Hopkins, V. Letschert, V. Franco, and A. Sturges. ''Using national survey data to estimate lifetimes of residential appliances'' published in HVAC&R Research (Volume 17, Issue 5, 2011). (URL: *http://www.tandfonline.com/doi/abs/10.1080/10789669.2011.558166*)

[15] AGA Comment Letter to DOE on NOPR Furnace Rulemaking and TSD (Nov. 10, 2010). (Docket Number: EE–2009–BT–STD–0022)

[16] Alpine Home Air (URL: *http://www.alpinehomeair.com/viewproduct.cfm?productID=453056758*); Comfort Gurus (URL: *http://www.comfortgurus.com/product_info.php/products_id/5368*)

installations and has higher cost, whereas AGA's assumptions regarding relining chimney/resizing vents and condensate installation issues are applied to only a fraction of installations.

TABLE II.1—INSTALLATION COSTS FOR CONDENSING FURNACES IN COMMONLY-VENTED SYSTEMS

| Additional venting system/installation requirements | AGA cost range (average) (2009$) * | DOE cost range for northern region (average) (2009$) |
|---|---|---|
| Perform structural modifications (including boring holes in interior walls, floors, exterior walls for vents and new vent termination kit) | $330–$494 ($412) | $131–$1887 ($518) |
| Reline existing chimney or resize vent to accommodate the remaining appliance (code requirement for proper vent sizing) | $659–$1098 ($879) | $95–$1404 ($548) |
| Install drain pan for condensate from condensing furnace (code requirement to avoid structural damage) | $165–$275 ($220) | $45–$45 ($45) |
| Install freeze protection for condensate line to ensure reliability of disposal (for installation outside of conditioned space) | $220–$220 ($220) | $101–$272 ($184) |
| Install condensate drain, pump, acid neutralizer, etc | $275–$330 ($302) | $216–$455 ($300) |

* Cost adjusted using CPI from 2005$ to 2009$.

AHRI pointed out that the 1994 Gas Research Institute (GRI) Gas Furnace Survey [17] found that as more condensing furnaces were sold in a specific area, the cost of installation became lower, suggesting that this could occur in the case of the standard for the northern region (AHRI, No. 46 at p. 4). DOE agrees that the trend mentioned by AHRI could occur and potentially result in lower installation costs than those estimated for the DFR.

AGA stated that: (1) The 2007 Furnace Rule [18] relied on data from a 1994 GRI furnace survey to determine the percentage of homes in which gas appliances were commonly-vented; (2) DOE changed the data set in the direct final rule proceeding, relying instead on an older 1991 GRI water heater survey; [19] (3) DOE has not explained the basis for the change in the data set. (AGA, No. 27 at p. 16)

In response, to determine the fraction of installations with common venting, DOE used both the 1994 GRI furnace survey and a 1991 GRI water heater survey. DOE used the 1990 survey to develop regional fractions of the common venting installations, primarily because it is a larger survey (32,000 data points) compared to the 1994 survey (1,300 data points). On average, both surveys produce similar results: The 1990 survey showed 57 percent of households with a gas water heater had common venting, while the 1994 GRI study showed 52 percent of gas furnaces had common venting. Combining these fractions with the RECS 2005 household sample resulted in a nationwide estimate that 50 percent of gas furnaces are commonly vented with gas water heaters. For the northern region this fraction is 57 percent.

AGA stated that according to GTI, DOE appears to have used a national average figure of the percent of housing stock that would require the chimney to be relined when installing a condensing gas furnace as opposed to a northern regional fraction, potentially understating installation costs associated with chimney relining that would support a regional standard. (AGA, No. 27 at p. 17) DOE used the 1994 GRI furnace survey data to derive the fraction of households with chimney venting for the northern region. This survey showed that 72 percent of the northern installations utilize chimney venting (see TSD, appendix 8–B for details).

8. DOE Failed To Conduct an Adequate Analysis of Fuel Switching Between Natural Gas and Electric Appliances

AGA stated that: (1) DOE's analysis of the potential for fuel switching is cursory and ignores the problems consumers face when having to install a condensing gas furnace; (2) DOE's analysis fails to consider the wide range of options consumers actually face in making appliance choices; (3) consumers are sensitive to the relative differences in the total upfront cost of purchasing the appliance and having it installed, and often undervalue the differences in annual operating costs; (4) even assuming that switching from a gas furnace to an electric furnace will require additional installation costs for electrical circuitry, consumers will be encouraged to fuel switch where the total equipment and installation costs of a 90-percent AFUE condensing gas furnace exceed the total equipment and installation costs of a comparable electric furnace. (AGA, No. 27 at pp. 18–20) Concerns that the condensing furnace standard could lead consumers to switch to electric heating were also raised by AGL, APGA, CenterPoint Energy, the UGI Distribution Companies, City Utilities of Springfield, Laclede Gas Company, and Questar Gas. (AGL, No. 27 at pp. 7–8; APGA, No. 24 at p. 8; CenterPoint Energy, No. 33 at p. 3; UGI Distribution Companies, No. 22 at p. 4; City Utilities of Springfield, No. 26 at p. 1; Laclede, No. 44 at p. 3; Questar Gas, No. 48 at p. 1)

DOE agrees that consumers are sensitive to the relative differences in the total upfront cost of purchasing the appliance and having it installed, and often undervalue the differences in annual operating costs. However, AGA's contention that consumers will be encouraged to fuel switch where the total installed costs of a 90-percent AFUE condensing gas furnace exceed the total equipment and installation costs of a comparable electric furnace seems to take the extreme (and unsubstantiated) view that consumers place little value on differences in operating costs at all. Further, the difference in annual operating costs between a condensing gas furnace and an electric furnace in the northern region are very large. A household using 40 MMBtu/year of natural gas, which is the estimated average for a condensing furnace in the northern region, would incur annual costs of $400 to $600, while an electric furnace satisfying the same heating load would incur costs

[17] Jakob, F. E., J. J. Crisafulli, J. R. Menkedick, R. D. Fischer, D. B. Philips, R. L. Osbone, J. C. Cross, G. R. Whitacre, J. G. Murray, W. J. Sheppard, D. W. DeWirth, and W. H. Thrasher, *Assessment of Technology for Improving the Efficiency of Residential Gas Furnaces and Boilers, Volume I and II—Appendices,* September, 1994. Gas Research Institute. AGA Laboratories, Chicago, IL. Report No. GRI–94/0175.

[18] U.S. Department of Energy—Energy Efficiency & Renewable Energy, *Technical Support Document: Energy Efficiency Standards for Consumer Products: Residential Furnaces and Boilers,* 2007. Washington, DC.

[19] D.D. Paul et al., *Assessment of Technology for Improving the Efficiency of Residential Gas Water Heaters,* December, 1991. Battelle. Columbus. Report No. GRI–91/0298.

ranging from $800 to $1,700. Even in parts of the northern region where the heating load is half of the above average, the operating cost differential is still significant.

Given the initial costs involved in replacing a gas furnace with electric space heating, combined with the much higher operating costs of an electric heating system, DOE believes that the approach used for the DFR is reasonable.

AGA stated that: (1) DOE acknowledges but fails to address the possibility that requiring the replacement of a non-condensing gas furnace with a 90-percent AFUE condensing gas furnace will lead to an orphaned water heater, thereby encouraging consumers to replace the gas water heater with an electric resistance water heater; (2) consumers will be encouraged to switch to an electric water heater where the costs of addressing the venting issues associated with an orphaned gas water heater exceed the total equipment and installation costs of an electric water heater. (AGA, No. 27 at p. 19)

DOE believes that consumers are unlikely to engage in large-scale switching from a gas-fired water heater to an electric water heater. If the gas water heater is near the end of its useful lifetime, the consumer may elect to purchase a new power vent gas water heater rather than incur the expense of re-lining. Some consumers could elect to replace the gas water heater with an electric water heater to avoid the cost of relining, but estimates of electric water heater installation cost plus electrical service installation plus the extra energy cost indicate that the total is higher than the cost of relining, so this possibility is unlikely.[20]

9. DOE Has Not Considered the Costs of Enforcement

AGA stated that: (1) The technical support documents in this proceeding do not contain any analysis of the impacts of enforcement costs on consumers, manufacturers, or other market participants, including other entities that may additionally be required to enforce the regional standard, such as equipment distributor or installers; and (2) without an assessment of enforcement costs, the economic justification of the standards in this proceeding is incomplete. (AGA, No. 27 at p. 21) Concerns that DOE did not consider enforcement costs were also expressed by ACCA, AGL, HARDI, Laclede Gas Company, and NPGA. (ACCA, No. 50 at p. 5; AGL, No. 31 at p. 4; HARDI, No. 39 at p. 2; Laclede, No. 44 at p. 12; NPGA, No. 49 at p. 3)

In contrast, AHRI stated that: (1) DOE should act quickly to open a rulemaking on regional standards enforcement; and (2) the fact that DOE has not yet considered standards enforcement is not a defect in the final rule. (AHRI, No. 46 at p. 5) The Joint Comment stated that the enforcement plan proceeding, required after adoption of a regional standard, would be an appropriate time for consideration of a DOE Office of Hearings and Appeals (OHA) waiver process designed to address any special hardship situations. (Joint Comment, No. 47 at pp. 4–5)

In response, DOE does not believe that the cost of enforcement of regional standards impacts the life-cycle cost, payback period, or other factors considered in the establishment of energy conservation standards differently than the costs of enforcement of national energy conservation standards. Rather, enforcement costs will depend on the specific enforcement framework mechanism that is put in place. EPCA requires DOE to ''initiate'' an enforcement rulemaking not later than 90 days after the issuance of a final rule establishing regional standards and to complete the rulemaking not later than 15 months following the issuance of the rule. (42 U.S.C. 6295(o)(6)(G)(ii)). Clearly, the express provisions of the statute contemplate the rulemaking on enforcement of regional standards commencing after the energy conservation standards rulemaking has been completed. Having the standards in place is a necessary precursor to evaluating potential enforcement efforts. DOE plans to incorporate all feedback from this standards rulemaking process into the enforcement rulemaking, and will assess the impact of that enforcement regime in the context of the enforcement rulemaking.

10. Impact on Low-Income Consumers

UGI and CenterPoint Energy stated that the standard for the northern region could harm low-income consumers due to the higher first cost of installing a condensing furnace. (CenterPoint Energy, No. 33 at p. 6; UGI, No. 22 at p. 4)

On the other hand, CFA and NCLC highlighted the benefits that higher furnace standards would bring to low-income households, who are predominately renters. They stated that heating bills place a large burden on moderate-income and low-income families, and the standard would reduce their energy bills and reduce the demand for natural gas, thereby moderating future price increases for consumers. (CFA and NCLC, No. 36 at p. 2)

DOE's consumer subgroup analysis (described in chapter 11 of the DFR TSD) estimated that low-income households show somewhat higher LCC savings from more-efficient furnaces than the general population. Regarding the first cost, DOE agrees that because many low-income consumers are renters, the cost of replacing a furnace would be incurred by the landlord and would likely be passed on to the consumer gradually in the form of increased rent. DOE believes that these factors moderate the impacts of amended standards on low-income consumers.

11. Sensitivity Analysis of the Standard for Residential Gas Furnaces in the Northern Region

DOE believes that the analysis documented in the DFR and the accompanying TSD provides sufficient justification for its determination that TSL 4 achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy. DOE further notes that it did not receive comments critical of the models it used in its analysis. However, because some of the commenters devoted considerable effort to developing recommendations for alternatives to some of the inputs that DOE used in its DFR analysis, DOE conducted a new analysis to assess the impact on consumers from using the recommended alternatives. The assumptions that DOE used in this sensitivity analysis were the same as the assertions made by AGA in its comment as follows: (1) A furnace lifetime of 16 years for all households; (2) no decline in furnace prices based on experience curve analysis; (3) the ranges for the added cost for installing condensing furnaces in commonly-vented systems recommended by AGA (see Table II.1); (4) a natural gas price forecast based on the *AEO 2011* Reference case; and (5) use of marginal natural gas prices (based on analysis of RECS 2005 billing data).[21] These assumptions reflect key comments made by AGA (described above) and a request made by APGA. (APGA, No. 20 at pp. 1–2)

[20] See Appendix C of the final rule TSD for the 2007 furnace and boiler rulemaking. *http://www1.eere.energy.gov/buildings/appliance_standards/residential/fb_tsd_0907.html.*

[21] Documentation of the sensitivity analysis may be found at DOE's Residential Furnaces and Boilers Web site—APGA Life-Cycle Cost Scenarios at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/residential_furnaces_cac_hp_direct_final_rule.html.*

Under the sensitivity analysis, the average LCC savings for consumers in the Northern region are $44. This value is less than the average cited in the DFR ($155), but is still positive. Regardless, this lower, but still positive, LCC savings value is sufficient to demonstrate economic justification of TSL 4 under the criteria in 42 U.S.C. 6295(o). Thus, even under the assumptions favored by AGA and APGA, even if they were all correct, a scenario DOE does not believe likely, the amended standard still have a positive impact on consumers in the northern region.

*C. Comments on Standards for Residential Central Air Conditioners and Heat Pumps*

The People's Republic of China (China) commented that the EER standards should be cancelled and that DOE should only adopt the SEER as the air conditioner's energy efficiency evaluation ratio. China noted that SEER reflects an air conditioner's efficiency over a whole season and in varying conditions, while EER only reflects performance under specific conditions and, therefore, cannot reflect the energy efficiency over an entire season. (China, No. 8 at p. 3) For this reason, China suggested that DOE only use SEER as the regulating metric. (China, No. 8 at p. 3)

As noted in the direct final rule, DOE believes that it has the authority to set dual metrics when considering a consensus agreement, and consequently, DOE analyzed setting an EER standard in the Hot-Dry region. 76 FR 37408, 37423 (June 27, 2011). DOE agrees with China that SEER is more representative of seasonal performance, but DOE also believes that there is merit to having an EER standard, because the conditions at which EER is measured are common for the Hot-Dry region. By using both SEER and EER as metrics, DOE will have standards for both seasonal efficiency and peak efficiency, which it believes will lead to additional energy savings in the Hot-Dry region. Therefore, DOE will not withdraw the EER standard levels from the Hot-Dry region.

China further commented that differences between DOE and international standards for definitions and test methods for off mode, as well the classification of air conditioners, will lead to increased costs for manufacturers, and suggested that DOE should harmonize its regulations with international standards. Specifically, China referenced International Standards IEC 62301,[22] ISO 5151 and ISO 13253.[23] (China, No. 8 at p. 3)

IEC Standard 62301 is a test method for measuring standby mode and off mode energy consumption of household appliances. As discussed in detail in the April 1, 2011 central air conditioner and heat pump test procedure SNOPR (76 FR 18105, 18108), DOE believes that the IEC 62301 definitions and test method are too broad to be applicable to residential central air conditioners and heat pumps. In response to China's concern about how DOE classifies air conditioners as compared to ISO 5151 and ISO 13253, DOE notes its definitions of residential ''central air conditioner'' and ''heat pump'' are determined by EPCA. (42 U.S.C. 6291(21) and 42 U.S.C. 6291(24)) DOE determines the product classes for central air conditioners and heat pumps subject to the criteria in 42 U.S.C. 6295(q) and cannot alter these criteria to align its definitions with international standards.

*D. Comments on Standby Mode and Off Mode Standard Levels*

1. Standby Mode and Off Mode Levels for Residential Furnaces

In response to the standby mode and off mode energy conservation standards promulgated for residential furnaces, DOE received several comments.

AHRI supported the standby mode and off mode standards for residential furnaces. (AHRI, No. 46 at p. 5) AHRI, EarthJustice, and ACEEE commented there is consensus agreement for the standby mode and off mode standards for furnaces promulgated in the DFR. (AHRI and EarthJustice, No. 52 at p. 1; ACEEE, No. 53 at p. 1)

Conversely, Horizon Plastics stated that the standby mode and off mode energy consumption requirements for residential furnaces are too high and will not drive any meaningful energy conservation. (Horizon Plastics, No. 15 at p. 1) Further, Horizon Plastics referenced Lawrence Berkeley National Laboratory (LBNL) test data on 16 residential furnaces that showed standby mode and off mode energy consumption values ranging from 0 to 9.8 watts (W) as evidence that lower levels are readily achievable. (Horizon Plastics, No. 15 at p. 1) Horizon Plastics also described an innovation developed by their company that requires only an additional capacitor, relay, and proprietary code to reduce standby mode and off mode power to 0 W, while adding minimal cost to the furnace. Given that their new technology would significantly reduce standby mode and off mode power consumption, Horizon Plastics asserted that the standby mode and off mode requirements for furnaces should be removed from the subject standard and moved to a separate rulemaking. (Horizon Plastics, No. 15 at pp. 2–3)

DOE agrees with Horizon Plastics that many furnace models already available on the market are capable of meeting the standby mode and off mode standards promulgated in the DFR. In preparation for the DFR, DOE tested a number of furnaces, many of which met the standby mode and off mode requirements in the DFR. However, DOE found that products with lower standby mode and off mode power consumption typically have less sophisticated designs and controls and are often less efficient when operating in active mode. Removing certain components, such as an electronically-commutated motor or sophisticated control systems (if equipped) will allow a furnace to achieve lower standby mode and off mode energy consumption, but it may also increase active mode energy consumption and reduce consumer utility (in the form of reduced comfort if certain controls are eliminated), which is contrary to the purpose of the DFR. In its analysis of standby mode and off mode levels, DOE did not consider levels that would limit manufacturer design choices when trying to achieve greater efficiency in the active mode, or that would reduce consumer utility. DOE started at the baseline (*i.e.,* the highest standby mode and off mode energy consuming) level, and implemented design options of which DOE was aware at the time of the analysis that would not impact the ability of the furnace to achieve greater active mode efficiency and would not reduce consumer utility.

Regarding the new design presented by Horizon Plastics, DOE is encouraged by innovations that reduce standby mode and off mode energy consumption to 0 W, and hopes that the minimum standards for standby mode and off mode consumption promulgated by the DFR spur further innovation in reducing standby mode and off mode consumption. However, DOE notes that it generally does not consider proprietary designs in its analysis, as it may unfairly skew the market to give one company an advantage over

[22] The comment from China references ''IEC 60321.'' However, DOE believes this was an error and that the comment was intended to reference IEC 62301, *Household Electrical Appliances—Measurement of Standby Power.*

[23] ISO 5151: *Non-ducted air conditioners and heat pumps—testing and rating for performance,* and ISO 13253: *Ducted air-conditioners and air to air heat pumps—Testing and rating for performance.*

competitors. For this reason, DOE believes that although the technology presented by Horizon Plastics may be a viable technology, it cannot be considered in DOE's rulemaking analysis, and does not provide a reasonable basis for withdrawal of the standby mode and off mode standards for residential furnaces.

2. Off Mode Levels for Central Air Conditioners and Heat Pumps

On August 24, 2011, AHRI, EarthJustice, and ACEEE submitted letters to DOE urging DOE to sever the central air conditioner and heat pumps off mode standards from the DFR for several reasons. (AHRI and EarthJustice, No. 52 at pp. 1–4; ACEEE, No. 53 at p. 1) Specifically, the commenters asserted that the test procedure had not yet been finalized, which was in violation of EPCA section 325(gg)(3), and consequently, DOE had not done the necessary background work for inclusion of these standards in the direct final rule. (AHRI and EarthJustice, No. 52 at pp. 2–3) AHRI and EarthJustice also commented that EPCA section 336(b)(3) provides DOE with the authority to partially withdraw a direct final rule and referenced several direct final rules from other Federal agencies that were partially withdrawn. (AHRI and EarthJustice, No. 52 at pp. 3, 5–10) In a supporting comment, ACEEE noted that off mode standards were not included in the Consensus Agreement which was submitted to DOE, and that while consensus among stakeholders had subsequently been reached for the furnace standby mode and off mode standards, no similar agreement had been reached on the central air conditioner and heat pump off mode standards. Consequently, ACEEE recommended that the off mode standards for central air conditioners and heat pumps be severed from the DFR and withdrawn pending further rulemaking. (ACEEE, No. 53 at p.1) Similarly, ACCA argued that this direct final rule is an unsuitable use of the direct final rule process, because it includes standby mode and off mode standards which were not part of the submitted Consensus Agreement. (ACCA, No. 50 at p. 2)

AHRI submitted a supplemental comment, which reiterated their concerns about the lack of a finalized test procedure for central air conditioners and heat pumps address standby mode and off mode energy consumption, and it also wrote that the off mode standards levels were too stringent and would eliminate the majority of products on the market by effectively outlawing crankcase heaters. Crankcase heaters are used to prevent lubrication oil from mixing with liquid refrigerant and are responsible for the bulk of an air conditioner or heat pumps off mode power consumption. AHRI believes that without crankcase heaters, the reliability of units will be decreased because this mixing will result in compressors seizing due to a lack of lubrication, and noted that according to EPCA, DOE cannot prescribe standards which would decrease the utility or performance of a product (42 U.S.C. 6295(o)(2)(B)(i)(IV)). (AHRI, No. 46 at pp. 5–7)

DOE published a supplementary notice of proposed rulemaking (SNOPR) for the residential central air conditioner and heat pump test procedure in the **Federal Register** on October 24, 2011. 76 FR 65616. DOE believes that AHRI's concerns regarding off mode would be addressed by adoption after public comment of the SNOPR. Regarding AHRI's comments about crankcase heaters, DOE believes that its proposed test procedure (as detailed in the October 2011 SNOPR) and energy conservation standards will not disallow the use of crankcase heaters. DOE notes that there is potential confusion because a 40-watt crankcase heater is commonly used in the industry, and the standard is lower than 40 watts. However, because the proposed method for calculating off mode energy consumption in DOE's test procedure is an average of the off mode energy consumption at multiple operating conditions, it is possible for a unit with a 40-watt crankcase heater to achieve a rating lower than 40 watts if the crankcase heater is controlled such that it is not always on when the unit is in off mode. Testing conducted by DOE for this SNOPR indicated that there are products with controlled crankcase heaters, which can already meet the proposed standard levels. 76 FR 65616, 65620 (Oct. 24, 2011). Therefore, DOE believes that the off-mode testing procedures proposed in the SNOPR would, if adopted in final, alleviate AHRI's concerns about product reliability stemming from not being able to find a crankcase heater that allows manufacturers to meet the standard. Further, DOE notes that the issues brought up by AHRI pertain specifically to the test method rather than to the standard levels promulgated in the direct final rule. As a result, these issues are better suited to be addressed in the test procedure rulemaking, and DOE is, in fact, doing so. DOE encourages AHRI, EarthJustice and ACEEE to submit written comments on the October 2011 SNOPR so that DOE can consider any additional issues with the off mode test procedure and resolve them as a part of that rulemaking process. As a result, DOE is confirming the off mode standard levels for central air conditioners and heat pumps that were originally promulgated in the direct final rule.

*E. Other Comments*

1. Adverse Impacts on States

AGL stated that by adopting the standards set forth in the DFR, States and local jurisdictions would be preempted from adopting more-stringent restrictions on less-efficient technology, thereby penalizing progressive local jurisdictions and discouraging them from being proactive and innovative. AGL further stated that the minimum efficiency for electric furnaces will preempt States/localities from restricting less-efficient technologies, specifically electric furnaces. (AGL, No. 31 at p. 10) Although DOE agrees that Federal energy efficiency standards preempt State regulations under 42 U.S.C. 6297, DOE does not believe that the requirements in the DFR will penalize States and local authorities. This situation is typical of all EPCA rulemakings calling upon DOE to consider amended energy conservation standards, not only for residential furnaces, central air conditioners, and heat pumps. However, DOE would remind interested parties that it is authorized to grant waivers from preemption for particular State laws or regulations, if such action is warranted in accordance with the procedures and provisions set forth in section 327(d) of EPCA. (42 U.S.C. 6297(d)) Therefore, DOE does not consider the inability of States to adopt regulations for the products subject to this rulemaking to be a significant adverse impact that would necessitate withdrawal of the direct final rule.

APGA stated that the adverse safety impacts from requiring condensing furnaces place a burden on local governments, because there may be additional costs imposed upon the cities (*e.g.,* for training of staff in codes and enforcements and the costs of additional inspections) to address the potential serious harm presented by improper venting. APGA contends that this represents an unfunded mandate that will have an impact on the cities/communities served by its members. (APGA, No. 24 at p. 9) In response, DOE notes that enforcement of building codes currently falls to local authorities, which is unchanged by the DFR. Further, DOE notes that a significant

portion of furnace installations in the northern region are already condensing furnaces, and as such, local inspectors should already be well trained in the venting code requirements for those products and should not require additional training from local jurisdictions as a result of the DFR. As a result, the 90-percent AFUE minimum standard in the northern region promulgated by the DFR would not add any additional burden on local authorities, beyond what is already required in terms of enforcing building codes.

2. Evaluation of Adverse Comments

AGL asserted that DOE has stated that ''adverse'' impacts will be weighed against benefits of the DFR in its evaluation of whether to withdraw the DFR, and it believes that DOE does not have the statutory authority to weigh ''adverse'' impacts against the benefit of minimum efficiencies because the statutory language does not grant this power. AGL contends that the statute requires DOE to weigh adverse comments independent of other outcomes anticipated from the rule. AGL also argued that adverse comments may present issues previously unaddressed by DOE. AGL believes that weighing new issues against DOE's current analysis would be inappropriate, because the issues may not have been examined by the DOE. AGL stated that DOE must evaluate the ''adverse'' nature of all comments raised outside of the current analysis, except where the comments conflict with the current analysis as published by DOE. (AGL, No. 31 at p. 3)

In reviewing the statute, DOE notes that EPCA directs the Secretary to withdraw the direct final rule if one or more adverse public comments is received and, based on the rulemaking record, the Secretary determines that such adverse public comments provide a reasonable basis for withdrawing the direct final rule. (42 U.S.C. 6295(p)(4)(C)) DOE believes, therefore, that EPCA provides DOE the discretion to weigh the significance and credibility of the adverse comments received. When evaluating adverse comments, DOE weighed the significance of each comment individually and all comments cumulatively to determine whether they provided a reasonable basis for withdrawal of the final rule. DOE considered each adverse comment based on its merits and the background data and information that supported that comment. DOE notes that this weighting is done separately from the weighting of the benefits and burdens imposed by minimum efficiency standards, which weight the adverse impacts (*i.e.,* burdens) of standards against the benefits to consumers in determining which standard level is justified, as directed by EPCA (42 U.S.C. 6295(o)(2)(B)(i)) .

3. Time Allowed for Public Input

MUD commented that the rulemaking process was conducted too quickly to allow for input from the general public and the jurisdictions responsible for furnace installation. (MUD, No. 29 at p. 1)

In response, DOE notes that the Consensus Agreement was submitted to DOE on January 15, 2010. DOE subsequently posted the document on its Web site [24] and requested comment on the agreement in its March 2010 rulemaking analysis plan for residential furnaces [25] and in its March 2010 preliminary analysis for central air conditioners and heat pumps (75 FR 14368). After considering comments received in response to the rulemaking analysis plan for furnaces and preliminary analysis for central air conditioners and heat pumps, DOE performed an in depth analysis of the Consensus Agreement efficiency levels and other efficiency levels, and ultimately proposed the levels contained in the agreement as Federal energy conservation standard levels in the DFR. Then, as directed by EPCA, DOE accepted comments for 110 days. (42 U.S.C. 6295(p)(4)(B)) DOE notes that in the typical standards rulemaking procedure, the statute requires and DOE provides a 60-day comment period. Thus, the 110-day comment period was longer than usual for a similar rulemaking. Moreover, at the time of the close of the 110-day DFR comment period, the Consensus Agreement had been publicly available on DOE's Web site for more than one and a half years, and DOE has formally requested comments on the agreement in three separate rulemaking notices. Therefore, DOE believes that there has been ample opportunity for input from the general public and other interested parties on the Consensus Agreement and does not agree with MUD's assertion that it was implemented too quickly to allow for input from the general public or other interested parties.

In addition, the National Propane Gas Association (NPGA) and APGA requested that DOE extend the comment period on the DFR. NPGA cited delayed access to the technical support document, difficulties obtaining the software used to run the LCC analysis and lack of an enforcement plan as reasons that DOE should extend the comment period. (NPGA, No. 6 at pp. 1–2; APGA, No. 24, pp. 14–15).

DOE notes that EPCA provides that not later than 120 days after issuance of the DFR, DOE must publish a determination in the **Federal Register** whether the rule should take effect or be withdrawn based upon significant adverse comment. (42 U.S.C. 6295(p)(4)(C)) Given the statutory limitation on the time period provided in EPCA, DOE could not extend the comment period to allow interested parties additional time without jeopardizing its ability to meet the requirements of EPCA. As such, DOE was not able to extend the comment period on the DFR.

## III. Department of Justice Analysis of Competitive Impacts

EPCA directs DOE to consider any lessening of competition that is likely to result from new or amended standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE published a NOPR containing energy conservation standards identical to those set forth the direct final rule and transmitted a copy of the direct final rule and the accompanying TSD to the Attorney General, requesting that the U.S. Department of Justice (DOJ) provide its determination on this issue. DOE has published DOJ's comments at the end of this notice.

DOJ reviewed the amended standards in the direct final rule and the final TSD provided by DOE. As a result of its analysis, DOJ concluded that the amended standards issued in the direct final rule are unlikely to have a significant adverse impact on competition. DOJ further noted that the amended standards established in the direct final rule were the same as recommended standards submitted in the Consensus Agreement, which was

[24] For more information see: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnaces_framework_jointstakeholdercomments.pdf*

[25] The rulemaking analysis plan was published on DOE's Web site and announced through the publication of a notice of public meeting in the **Federal Register**. 75 FR 12144 (March 15, 2010).

For more information see: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/furnaces_framework_rap.pdf.*

signed by a broad cross-section of industry participants.

## IV. National Environmental Policy Act

Pursuant to the National Environmental Policy Act and the requirements of 42 U.S.C. 6295(o)(2)(B)(i)(VI), DOE prepared an environmental assessment (EA) of the impacts of the standards for residential furnaces, central air conditioners, and heat pumps in the direct final rule, which was included as chapter 15 of the direct final rule TSD. DOE found that the environmental effects associated with the standards for furnaces and central air conditioners and heat pumps were not significant. Therefore, after consideration of the comments received on the direct final rule, DOE issued a Finding of No Significant Impact (FONSI) pursuant to NEPA, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and DOE's regulations for compliance with NEPA (10 CFR part 1021). The FONSI is available in the docket for this rulemaking at *http://www.regulations.gov*.

## V. Conclusion

In summary, based on the discussion above, DOE has determined that the comments received in response to the direct final rule for amended energy conservation standards for residential furnaces, central air conditioners, and heat pumps do not provide a reasonable basis for withdrawal of the direct final rule. As a result, the amended energy conservation standards set forth in the direct final rule become effective on October 25, 2011. Compliance with these standards is required on May 1, 2013 for non-weatherized gas and oil-fired furnaces and mobile home gas furnaces and on January 1, 2015 for weatherized gas furnaces and central air conditioners and heat pumps.

Issued in Washington, DC, on October 24, 2011.

**Kathleen B. Hogan,**

*Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.*

**U.S. Department of Justice**

Antitrust Division

Sharis A. Pozen,
Acting Assistant Attorney General,
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(202) 514–24011 (202) 616–2645 (Fax)

August 25, 2011

Mr. Eric Fygi, Deputy General Counsel, Department of Energy, Washington, DC 20585

Dear Deputy General Counsel Fygi: I am responding to your June 27, 2011 letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for residential furnaces, central air conditioners, and heat pumps. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(5) and 42 U.S.C. 6316(a), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice, by placing certain manufacturers at an unjustified competitive disadvantage, or by inducing avoidable inefficiencies in production or distribution of particular products. A lessening of competition could result in higher prices to consumers, and perhaps thwart the intent of the revised standards by inducing substitution to less efficient products.

We have reviewed the proposed standards contained in the Direct Final Rule (76 Fed. Reg. 37408, June 27, 2011). We have also reviewed supplementary information submitted to the Attorney General by the Department of Energy. Based on this review, our conclusion is that the proposed energy conservation standards for residential furnaces, residential central air conditioners and heat pumps are unlikely to have a significant adverse impact on competition. In reaching our conclusion, we note that these proposed energy standards were adopted from a Consensus Agreement signed by a broad cross-section of industry participants.

Sincerely,

Sharis A. Pozen

[FR Doc. 2011–28146 Filed 10–28–11; 8:45 am]

BILLING CODE 6450–01–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2011–1041; Directorate Identifier 2010–SW–109–AD; Amendment 39–16821; AD 2010–26–52]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron, Inc. Model 204B, 205A, 205A–1, 205B, 210, 212, 412, 412CF, 412EP Helicopters

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

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

**SUMMARY:** We are publishing in the **Federal Register** an amendment which was sent previously to all known U.S. owners and operators that supersedes an existing airworthiness directive (AD) for the specified Bell Helicopter Textron, Inc. (BHT) Model helicopters with certain tail rotor blades (blades). The superseded AD requires, before further flight, replacing certain blades with airworthy blades. This AD retains the requirements of the superseded AD but adds new blade part numbers (P/Ns) and serial numbers (S/Ns) to the applicability. This AD was prompted by another incident in which the blade tip weight separated from a blade during flight, causing vibration. This incident led to the determination that additional blades could be affected, and should be added to the applicability. We are issuing this AD to prevent loss of the blade tip weight, loss of a blade, and subsequent loss of control of the helicopter.

**DATES:** This AD is effective November 15, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2010–26–52, issued on December 10, 2010, which contained the requirements of this amendment.

We must receive comments on this AD by December 30, 2011.

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

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

For service information identified in this AD, contact Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/.*

### 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:* 1 (800) 647–5527) is in the

**ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

You may review copies of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Martin R. Crane, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; fax (817) 222–5783; *email: 7-AVS-ASW-170@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Discussion

We are publishing in the **Federal Register** an amendment adopting Emergency AD 2010–26–52, issued December 10, 2010 (EAD 2010–26–52), which was sent to all known owners and operators of BHT Model 204B, 205A, 205A–1, 205B, 210, 212, 412, 412CF, and 412EP helicopters with certain blades installed. EAD 2010–26–52 supersedes AD 2007–19–53, Amendment 39–15265 (72 FR 65224, November 20, 2007) issued October 31, 2007 (AD 2007–19–53). AD 2007–19–53 required, before further flight, replacing certain blades with airworthy blades. That action was prompted by three reports of blade tip weights being slung from the blades during flights, causing significant vibration. We issued AD 2007–19–53 on a limited number of blades to address this unsafe condition, which could result in the loss of the blade tip weight, loss of a blade, and subsequent loss of control of the helicopter.

## Actions Since AD was Issued

Since we issued AD 2007–19–53, another incident occurred in which the blade tip weight separated from a blade during flight, causing vibration. This incident led to the determination that additional blades could be affected and these blade numbers should be added to the applicability section of the AD. We issued superseding EAD 2010–26–52 which retains the same requirements of AD 2007–19–53, but adds new blade P/Ns and S/Ns to the applicability.

## Relevant Service Information

We have reviewed the following revised BHT Alert Service Bulletins (ASBs), all dated November 22, 2010 except for ASB No. 204–07–61. Each ASB contains a Rotor Blades Inc. (RBI) letter that adds blade P/Ns and S/Ns to the RBI list.

- No. 204–07–61, Revision A, dated September 19, 2007, for Model 204 helicopters;
- No. 205–07–95, Revision B, for Model 205 helicopters;
- No. 205B–07–46, Revision B, for Model 205B helicopters;
- No. 212–07–125, Revision B, for Model 212 helicopters;
- No. 412CF–07–30, Revision B, for Model 412CF helicopters;
- No. 412–07–123, Revision B, for Model 412 and 412EP helicopters.

## FAA's Determination

We are issuing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop on other helicopters of the same type designs. We have also determined that Emergency AD 2010–26–52 contained an incorrect Alert Service Bulletin (ASB) number for the Model 412CF helicopters in the preamble discussion. Therefore, we are making a change to this AD to correct the ASB number. We have also made other minor editorial changes to this AD, including reorganizing the Applicability table. We have determined that these changes do not increase the economic burden on any AD operator nor do they increase the scope of the AD.

## AD Requirements

This AD requires, before further flight, unless already accomplished, replacing any affected blade with an airworthy blade. An airworthy blade is one that has a P/N and S/N not included in the Applicability section of this AD. Affected blades are those having a P/N and S/N as follows:

| Part No. | Serial No. |
|---|---|
| 204–011–702–015 | AFS–12703, AFS–12893, AFS–23525, or AFS–23573. |
| 204–011–702–121 | A–22020. |
| 212–010–750–105 | *A–11923. |
| 212–010–750–105FM | A–10090, A–10836, *A–10857, A–11207, A–11332, *A–11617, *A–11828, *A–12043, or *A–12091. |
| 212–010–750–113 | A–14953, A–15090, or CS–12702. |
| 212–010–750–113FM | A–12240, *A–12286, A–12296, *A–12398, A–12640, A–12670, A–12789, A–13033, *A–13088, A–13096, *A–13106, A–13134, A–13199, A–13264, A–13366, or *A–13539. |
| 212–010–750–133 | A–15602. |

The * indicates the newly added serial-numbered blades.

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

An unsafe condition exists that requires the immediate adoption of this AD. The short compliance time of before further flight justifies waiving notice and comment prior to adoption of this rule because the unsafe condition described previously is likely to exist or develop on other helicopters of the same type designs. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

## Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1041 and Directorate Identifier 2010–SW–109–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

## Costs of Compliance

We estimate that this AD affects 265 helicopters of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per helicopter | Cost on U.S. operators |
|---|---|---|---|---|
| Inspect for S/N affectivity | 2.0 hrs × $85 hr = $170 | $ 0 | $170 | $45,050 |
| Remove and replace blade | 6.0 hrs × $85 hr = $510 | 38,000 | 38,510 | 1,347,850 |

This cost estimate is based on the assumption that all affected helicopters will be inspected, and 35 helicopters will have a blade replaced. The manufacturer has indicated that some of the costs associated with this AD may be covered under a warranty program, but this AD has not considered this warranty program when calculating total costs on U.S. operators.

## Authority for This Rulemaking

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

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

## Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2010–26–52 Bell Helicopter Textron, Inc.:** Amendment 39–16821; Docket No. FAA–2011–1041; Directorate Identifier 2010–SW–109–AD; Supersedes AD 2007–19–53, Amendment 39–15265, Docket No. FAA–2007–0180, Directorate Identifier 2007–SW–37–AD.

**Effective Date**

(a) This AD is effective November 15, 2011 to all persons except those persons to whom it was made immediately effective by Emergency AD 2010–26–52, issued on December 10, 2010, which contained the requirements of this amendment.

**Other Affected ADs**

(b) This AD supersedes AD 2007–19–53 (72 FR 65224, November 20, 2007).

**Applicability**

(c) Model 204B, 205A, 205A–1, 205B, 210, 212, 412, 412CF, and 412EP helicopters, certificated in any category, with a tail rotor blade (blade) having a part number and serial number, as follows:

| Part No. | Serial No. |
|---|---|
| 204–011–702–015 | AFS–12703, AFS–12893, AFS–23525, or AFS–23573. |
| 204–011–702–121 | A–22020. |
| 212–010–750–105 | *A–11923. |
| 212–010–750–105FM | A–10090, A–10836, *A–10857, A–11207, A–11332, *A–11617, *A–11828, *A–12043, or *A–12091. |
| 212–010–750–113 | A–14953, A–15090, or CS–12702. |
| 212–010–750–113FM | A–12240, *A–12286, A–12296, *A–12398, A–12640, A–12670, A–12789, A–13033, *A–13088, A–13096, *A–13106, A–13134, A–13199, A–13264, A–13366, or *A–13539. |
| 212–010–750–133 | A–15602. |

**Note 1:** The * indicates the newly added serial-numbered blades.

**Unsafe Condition**

(d) This AD was prompted by another incident in which the blade tip weight separated from a blade during flight, causing vibration. This incident led to the determination that additional blades could be affected and should be added to the applicability. The actions specified by this AD are intended to prevent loss of the blade tip weight, loss of a blade, and subsequent loss of control of the helicopter.

**Compliance**

(e) Before further flight, unless accomplished previously.

(f) Replace any affected blade with an airworthy blade. An airworthy blade is one that has a part number and a serial number that is not listed in the Applicability section of this AD.

**Note 2:** Bell Helicopter Textron Alert Service Bulletin No. 204–07–61, Revision A, dated September 19, 2007, contains additional information about the subject of this AD. Bell Alert Service Bulletin No. 205–07–95, No. 205B–07–46, No. 212–07–125, No. 412CF–07–30, and No. 412–07–123, all Revision B and all dated November 22, 2010, also contain additional information about the subject of this AD. These Alert Service Bulletins are not incorporated by reference.

**Special Flight Permit**

(g) Special flight permits will not be issued.

**Alternative Methods of Compliance (AMOCs)**

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

**Note 3:** Before using any approved AMOC, we request that you notify your appropriate principal inspector, or lacking a principal inspector, your local Flight Standards District Office.

**Additional Information**

(i)(1) For more information about this AD, contact: Martin R. Crane, Aerospace Engineer, Rotorcraft Directorate, Rotorcraft Certification Office, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5170; fax (817) 222–5783; *email: 7-AVS-ASW-170@faa.gov*.

(2) For service information identified in this AD, contact: Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*.

(3) You may review copies of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas during normal business hours.

**Subject**

(j) The Joint Aircraft System Component Code is: 6410 Tail Rotor Blade.

Issued in Fort Worth, Texas, on September 21, 2011.

**Kim Smith,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 2011–27769 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0559; Airspace Docket No. 11–ASO–23]**

## Amendment of Class E Airspace; Fayette, AL

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E Airspace at Fayette, AL, as the Fayette Non-Directional Beacon (NDB) has been decommissioned and new Standard Instrument Approach Procedures have been developed at Richard Arthur Field. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also updates the airport's geographic coordinates and notes the name change to Richard Arthur Field.

**DATES:** Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### History

On July 25, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Fayette, AL (76 FR 44285) Docket No. FAA–2011–0559. Subsequent to publication, the FAA found that the geographic coordinates needed to be adjusted. This action makes that adjustment. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

### The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface at Fayette, AL to accommodate the new Standard Instrument Approach Procedures developed for Richard Arthur Field. The Fayette NDB has been decommissioned, and the NDB approach cancelled. The existing Class E airspace extending upward from 700 feet above the surface is being modified for the safety and management of IFR operations. This action also updates the geographic coordinates to be in concert with the FAAs aeronautical database, and notes the airport's name change from Richard Arthur Field Airport to Richard Arthur Field.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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. Since 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 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.

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 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 amends controlled airspace at Richard Arthur Field, Fayette, AL.

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 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 7400.9V, Airspace

Designations and Reporting Points, dated August 9, 2011, 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.*

* * * * *

**ASO AL E5 Fayette, AL [Amended]**

Richard Arthur Field, AL
(Lat. 33°42′33″ N., long. 87°48′55″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of the Richard Arthur Field.

Issued in College Park, Georgia, on October 19, 2011.

**Michael Vermuth,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2011–27805 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0605; Airspace Docket No. 11–AGL–13]**

## Amendment of Class E Airspace; Valley City, ND

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace for Valley City, ND. Decommissioning of the Valley City non-directional beacon (NDB) at Barnes County Municipal Airport, Valley City, ND, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

### History

On July 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Valley City, ND, reconfiguring controlled airspace at Barnes County Municipal Airport (76 FR 43613) Docket No. FAA–2011–0605. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Valley City, ND area. Decommissioning of the Valley City NDB and cancellation of the NDB approach at Barnes County Municipal Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 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 U.S. 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace at Barnes County Municipal Airport, Valley City, ND.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 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.*

* * * * *

**AGL ND E5 Valley City, ND [Amended]**

Valley City, Barnes County Municipal Airport, ND
(Lat. 46°56′28″ N., long. 98°01′05″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Barnes County Municipal Airport, and that airspace extending upward from 1,200 feet above the surface within a 7.9-mile radius of the airport, and within 4 miles southwest and 8.3 miles northeast of the 133° bearing from the airport extending from the 7.9-mile radius to 21.8 miles southeast of the airport.

Issued in Fort Worth, Texas, on October 11, 2011.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–27940 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–0606; Airspace Docket No. 11–AGL–14]**

### Amendment of Class E Airspace; Bryan, OH

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace for Bryan, OH. Decommissioning of the Bryan non-directional beacon (NDB) at Williams County Airport, Bryan, OH, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

#### History

On July 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Bryan, OH, reconfiguring controlled airspace at Williams County Airport (76 FR 43614) Docket No. FAA–2011–0606. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

#### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Bryan, OH, area. Decommissioning of the Bryan NDB and cancellation of the NDB approach at Williams County Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 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 U.S. 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace at Williams County Airport, Bryan, OH.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 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.*

* * * * *

**AGL OH E5 Bryan, OH [Amended]**

Bryan, Williams County Airport, OH
(Lat. 41°28′02″ N., long. 84°30′24″ W.)

Bryan, Community Hospital of Williams County Heliport, OH
Point in Space Coordinates
(Lat. 41°27′47″ N., long. 84°33′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Williams County Airport, and within a 6-mile radius of the Point in Space serving Community Hospital of Williams County Heliport.

Issued in Fort Worth, Texas, on October 11, 2011.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–27926 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–0556; Airspace Docket No. 11–ASO–21]**

### Amendment of Class E Airspace; Jacksonville, NC

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E Airspace at Jacksonville, NC, to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures serving Albert J. Ellis Airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System. This action also makes a minor adjustment to the geographic coordinates of the airport.

**DATES:** Effective 0901 UTC, December 15, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order

7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

## History

On August 22, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Jacksonville, NC (76 FR 52291). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found that the geographic coordinates for Albert J. Ellis Airport needed to be adjusted. This action makes that adjustment. Class E airspace designations are published in paragraphs 6002 and 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 designations listed in this document will be published subsequently in the Order.

## The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E surface area airspace and Class E airspace extending upward from 700 feet above the surface at Jacksonville, NC, to provide the controlled airspace required to accommodate the new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures developed for Albert J. Ellis Airport. This action is necessary for the safety and management of IFR operations at the airport. This action also adjusts the geographic coordinates of the airport to be in concert with the FAAs aeronautical database

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. 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. Since 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 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.

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 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 amends controlled airspace at Albert J. Ellis Airport, Jacksonville, NC.

## Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 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 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

*Paragraph 6002 Class E airspace designated as surface areas.*

* * * * *

**ASO NC E2 Jacksonville Albert J. Ellis Airport, NC [Amended]**

Jacksonville, Albert J. Ellis Airport, NC
(Lat. 34°49′75″ N., long. 77°36′73″ W.)

Within a 4.2-mile radius of Albert J. Ellis Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO NC E5 Jacksonville, NC [Amended]**

Jacksonville, New River MCAS, NC
(Lat. 34°42′31″ N., long. 77°26′23″ W.)

Albert J. Ellis Airport
(Lat. 34°49′75″ N., long. 77°36′73′ W.)

Onslow Memorial Hospital
Point In Space Coordinates
(Lat. 34°45′36″ N., long. 77°22′28″ W.)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of New River MCAS, and within a 6.7-mile radius of Albert J. Ellis Airport, and within a 6-mile radius of the point in space (lat. 34°45′36″ N., long. 77°22′28″ W.) serving Onslow Memorial Hospital.

Issued in College Park, Georgia, on October 21, 2011.

**Michael Vermuth,**

*Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2011–27930 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2011–0429; Airspace Docket No. 11–AGL–9]**

## Amendment of Class E Airspace; Evansville, IN

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace for Evansville, IN, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Evansville Regional Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On July 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Evansville, IN, creating controlled airspace at Evansville Regional Airport (76 FR 43615) Docket No. FAA–2011–0429. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating additional Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Evansville Regional Airport, Evansville, IN. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 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 U.S. 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace for Evansville Regional Airport, Evansville, IN.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 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.*

* * * * *

**AGL IN E5 Evansville, IN [Amended]**

Evansville Regional Airport, IN
(Lat. 38°02′18″ N., long. 87°31′51″ W.)
Pocket City VORTAC
(Lat. 37°55′42″ N., long. 87°45′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Evansville Regional Airport, and within 2.2 miles each side of the 001° bearing from the airport extending from the 6.8-mile radius to 11.2 miles north of the airport, and within 2.2 miles each side of the 181° bearing from the airport extending from the 6.8-mile radius to 11.3 miles south of the airport, and within 4 miles each side of the Pocket City VORTAC 060° radial extending from the 6.8-mile radius to the VORTAC.

Issued in Fort Worth, Texas, on October 11, 2011.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–27948 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–0430; Airspace Docket No. 11–AGL–10]**

## Amendment of Class E Airspace; Sturgis, SD

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

**ACTION:** Final rule.

**SUMMARY:** This action amends Class E airspace for Sturgis, SD, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Sturgis Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

**DATES:** Effective date: 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

**SUPPLEMENTARY INFORMATION:**

**History**

On July 21, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Sturgis, SD, creating controlled airspace at Sturgis Municipal Airport (76 FR 43612) Docket No. FAA–2011–0430. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

**The Rule**

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating additional Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Sturgis

Municipal Airport, Sturgis, SD. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this 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 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 U.S. 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 I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 amends controlled airspace for Sturgis Municipal Airport, Sturgis, SD.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 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 Part 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.*

* * * * *

**AGL SD E5 Sturgis, SD [Amended]**

Sturgis Municipal Airport, SD
(Lat. 44°25′05″N., long. 103°22'32''W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Sturgis Municipal Airport, and within 1.7 miles each side of the 302 degree bearing from the airport extending from the 7-mile radius to 9 miles northwest of the airport.

Issued in Fort Worth, Texas, on October 11, 2011.

**David P. Medina,**

*Manager, Operations Support Group, ATO Central Service Center.*

[FR Doc. 2011–27960 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

## 15 CFR Part 744

**[Docket No. 100804325–0351–01]**

**RIN 0694–AE97**

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

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

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Export Administration Regulations (EAR) by adding fifteen persons to the Entity List (Supplement No. 4 to Part 744) on the basis of section 744.11 of the EAR. The persons who are added to the Entity List have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These fifteen persons will be listed under the following four destinations on the Entity List: China, Hong Kong, Iran and Singapore.

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

**DATES:** *Effective Date:* This rule is effective October 31, 2011. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis.

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

**SUPPLEMENTARY INFORMATION:**

### Background

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

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

*ERG Entity List Decisions*

Additions to the Entity List

The ERC made a determination to add fifteen persons under twenty-five entries to the Entity List on the basis of section 744.11 (License Requirements that Apply to Entities Acting Contrary to the National Security or Foreign Policy Interests of the United States) of the EAR. The twenty-five entries added to the Entity List consist of five new entries in China, seven new entries in Hong Kong, three new entries in Iran, and ten new entries in Singapore. Ten of the entries are for persons with addresses in more than one of the countries (Iran, China, Hong Kong, and Singapore) at issue.

The ERC reviewed the criteria for revising the Entity List (section 744.11(b) of the EAR) in making the determination to add these persons to the Entity List. These criteria establish how to add to the Entity List those entities that, based on specific and articulable facts there is reasonable cause to believe, have been involved, are involved, or pose a significant risk

of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities. (section 744.11 of the EAR). Paragraphs (b)(1)–(b)(5) of section 744.11 of the EAR (detailed below) include an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. The persons being added to the Entity List under this rule have been determined by the ERC to be involved in activities that could be contrary to the national security or foreign policy interests of the United States.

Examples of the specific activities these persons were involved in that are contrary to the national security or foreign policy interests of the United States pursuant to section 744.11 are, as follows: Eight of the fifteen persons are being added based on evidence that they have engaged in actions that could enhance the military capability of Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism, and of militant insurgents operating in Iraq against the U.S. military. These persons are also added because their overall conduct poses a risk of ongoing EAR violations. These persons are as follows: Corezing International, Hia Soo Gan Benson, Hossein Ahmad Larijani, Lim Kow Seng, Lim Yong Nam, NEL Electronics Pte Ltd, Paya Electronic Complex, and Wong Yuh Lan. These parties participate in a complex and layered network that has engaged in complicated and long-term schemes to divert U.S.-origin items through deceptive actions, including shifting/circuitous routes and false or omitted information on shipping documentation, and to conceal these deceptive activities. The parties, while not all under the same ownership and management, are interrelated and work toward the same objective: Obtaining items that are subject to the Export Administration Regulations (EAR) for shipment to Iran and/or to China without the required Department of Commerce licenses, and obtaining items subject to the International Traffic in Arms Regulations (ITAR), which require licenses to all foreign destinations, for shipment without license. Among other activities, this procurement network arranged for the transhipment of EAR-controlled radio frequency modules from the United States through Singapore to Iran, for use in Improvised Explosive Devices (IED) found in Iraq. The procurement network also obtained ITAR-controlled antennas, designed for use in military radars and aircraft, and exported them to Singapore and Hong Kong. Additionally, the procurement network transhipped a range of U.S.-origin goods, including acrylic polymers and fiberglass tape, through Hong Kong to Iran. In the case of many of the eight individuals, they engaged in the described activities despite information indicating that they had knowledge of U.S. export control laws and regulations.

The remaining seven persons (Action Global, Amaze International, Luo Jie, OEM Hub Co Ltd., Parto System Tehran, Surftech Electronics, and Zhou Zhenyong) are being added based on evidence that they have engaged in actions facilitating the activities of the procurement network, as described in the paragraph above. Specific examples of each of the eight persons' activities are described in the paragraphs below.

Action Global, Amaze International and OEM Hub Co., Ltd., all Hong Kong entities, are being added based on specific information indicating that they serve as front companies for other entities named in this rule, including Corezing International, and therefore pose an imminent risk of violating the EAR. Action Global is also being added on the basis of information indicating that it was involved with the diversion of U.S.- origin items from Hong Kong to Iran.

Luo Jie, a Chinese national and a director of Corezing International, Action Global and Amaze International, is being added on the basis of information indicating that she was specifically involved in the procurement and attempted procurement of U.S. power amplifiers intended for end-users in China, as well as in the diversion of various U.S.-origin goods through Hong Kong to Iran. Luo's involvement in these activities is in contrast to her demonstrated knowledge of U.S. export control laws and regulations.

Parto Systems Tehran, an Iranian freight forwarder, is being added based on information indicating that it was involved in the diversion of U.S.-origin items to Iran. BIS also has information indicating that Parto Systems Tehran is closely associated with Hossein Ahmad Larijani.

Surftech Electronics, a Singapore corporation established by Hia Soo Gan Benson, is co-located with Corezing International. BIS has information indicating that Surftech Electronics sought to purchase certain U.S.-origin items for shipment to Iran, a country designated by the U.S. Secretary of State as having repeatedly provided support for acts of international terrorism. The illustrative criteria included in section 744.11 under paragraph (b)(2) for adding persons to the Entity List includes actions that could enhance the military capability of, or the ability to support terrorism of governments that have been designated by the Secretary of State as having repeatedly provided support for acts of international terrorism.

Zhou Zhenyong, who is believed to be a Chinese national or from Hong Kong and a director of Corezing International, is being added based on information that he was specifically involved in the procurement and attempted procurement of U.S.-origin items, including U.S.-origin munitions items destined for end-users in China and/or Iran, and contrary to the national security or foreign policy interests of the United States. BIS's information indicates that Zhou engaged in these activities despite knowledge of U.S. export control laws and regulations.

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

Specifically, this rule adds the following fifteen persons under twenty-five entries to the Entity List:

China

(1) *Corezing International, (a.k.a. CoreZing Electronics, Corezing International Group Company, Corezing International Pte Ltd, Corezing Technology Pte Ltd and Core Zing),* Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; *and* Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China (See alternate addresses under Hong Kong and Singapore);

(2) *Lim Yong Nam, (a.k.a. Lin Rongnan, Steven Lim and Yong Nam*

*Lim),* YuJingHuaCheng Huaqiang South Road Futian, Shenzhen, China 518033; *and* Room 2613, NanGuangJieJia Building ShenNan Road, FuTian, Shenzhen, China 518033 (See alternate addresses under Singapore);

(3) *Luo Jie, (a.k.a. Cherry, Ivy Luo and Jie Luo),* Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; *and* Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China (See alternate addresses under Hong Kong);

(4) *NEL Electronics, (a.k.a. NEL Electronics Pte Ltd),* 14K Block 2 YuJingHuaCheng Huaqiang South Road FuTian, Shenzhen, China 518033; *and* Room 2613, NanGuangJieJia Building ShenNan Road, FuTian, Shenzhen, China 518033 (See alternate addresses under Singapore); and

(5) *Zhou Zhenyong, (a.k.a. Benny Zhou and Zhenyong Zhou),* Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; *and* Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China (See alternate addresses under Hong Kong).

Hong Kong

(1) *Action Global, (a.k.a. Action Global Co., Limited),* C/O Win Sino Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay, KLN, Hong Kong; *and* Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok KL, Hong Kong (See alternate address under Singapore);

(2) *Amaze International,* Flat/Rm D, 11/F 8 Hart Avenue 8–10 Hart Avenue, Tsim Sha Tsui KL, Hong Kong (See alternate address under Singapore);

(3) *Corezing International, (a.k.a. CoreZing Electronics, Corezing International Group Company, Corezing International Pte Ltd, Corezing Technology Pte Ltd and Core Zing),* G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road KL, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under China and Singapore);

(4) *Lim Kow Seng, (a.k.a. Alvin Stanley, Eric Lim, James Wong, Mike Knight and Seng Lim Kow),* Flat/Rm 3208 32/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under Singapore);

(5) *Luo Jie, (a.k.a. Cherry, Ivy Luo and Jie Luo),* Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok KL, Hong Kong; *and* C/O Win Sino Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay, KLN, Hong Kong; *and* Flat/Rm D, 11/F 8 Hart Avenue, 8–10 Hart Avenue, Tsim Sha Tsui KL, Hong Kong; *and* G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; *and* Flat/Rm 3208 32/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong (See alternate addresses under China);

(6) *OEM Hub Co Ltd,* Rm 3208 32/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong; and

(7) *Zhou Zhenyong, (a.k.a. Benny Zhou and Zhenyong Zhou),* G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under China).

Iran

(1) *Hossein Ahmad Larijani,* No. 3 Mirza Kochak Ave., Jomhori Street, Tehran, Iran; *and* No. 5 Mirzakuchanhan Street, Jomhori Ave., Tehran, Iran; *and* No. 5 Mirza Kochak Ave., Jomhori Street, Tehran, Iran; *and* No. 5, Near to Flower Shop Mirza KoochakKhan Jangali St, 30-Tir Junction, Jomhori St, Tehran, Iran; *and* Unit 6, No. 37, Goharshad Alley After 30 Tir Jomhori Street, Tehran, Iran; *and* Forghani Passage, Before 30 Tir, After Havez, Jomhori Ave., Tehran, Iran (See alternate addresses under Singapore);

(2) *Parto System Tehran, (a.k.a. Rayan Parto System Tehran and Rayane Parto System Tehran),* Unit 7, Floor 4 No. 51 around Golestan Alley End of Shahaneghi Ave., Sheikh Bahaee Str., Molasadra, Tehran, Iran; *and* No. 83 Around of Shanr Tash Ave. After Cross of ABAS ABAD North Sohrevadi Str., Tehran, Iran; and

(3) *Paya Electronics Complex, (a.k.a. Paya Complex),* No. 3 Mirza Kochak Ave. Jomhori Street, Tehran, Iran; *and* No. 5 Mirzakuchanhan Street Jomhori Ave., Tehran, Iran; *and* No. 5 Mirza Kochak Ave. Jomhori Street, Tehran, Iran; *and* No. 5, Near to Flower Shop Mirza Koochak-Khan Jangali St, 30-Tir Junction, Jomhori St., Tehran, Iran; *and* Unit 6, No. 37 Goharshad Alley After 30 Tir Jomhori Street, Tehran, Iran; *and* Forghani Passage, Before 30 Tir, After Havez, Jomhori Ave., Tehran, Iran.

Singapore

(1) *Action Global, (a.k.a. Action Global Co., Limited),* 520 Sims Avenue, #02–04, Singapore 387580 (See alternate addresses under Hong Kong);

(2) *Amaze International,* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate address under Hong Kong);

(3) *Corezing International, (a.k.a. CoreZing Electronics, Corezing International Group Company, Corezing International Pte Ltd, Corezing Technology Pte Ltd and Core Zing),* 2021 Bukit Batok Street 23, #02–212, Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate addresses under China, and Hong Kong);

(4) *Hia Soo Gan Benson, (a.k.a. Benson, Soo Gan Benson Hia and Thomas Yan),* Blk 8 Empress Road, #07–05, Singapore 260008; *and* 2021 Bukit Batok Street 23, #02–212, Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848;

(5) *Hossein Ahmad Larijani,* 24 Semei Street 1, #06–08, Singapore 529946; and 10 Jalan Besar, #11–08 Sim Lim Tower, Singapore 208787 (See alternate addresses under Iran);

(6) *Lim Kow Seng, (a.k.a. Alvin Stanley, Eric Lim, James Wong, Mike Knight and Seng Lim Kow),* Blk 751 Woodlands Circle, #10–592, Singapore 730751; *and* 520 Sims Avenue, #02–04, Singapore 387580; *and* 2021 Bukit Batok Street 23, #02–212, Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate addresses under Hong Kong);

(7) *Lim Yong Nam, (a.k.a. Lin Rongnan, Steven Lim and Yong Nam Lim),*170 Bukit Batok, West Avenue 8, #13–369, Singapore 650170; *and* 158 Kallang Way, #02–505 Kallang Basin, Singapore 349245; *and* 158 Kallang Way #03–511, Singapore 349245; *and* Blk 1001 Tai Seng Ave. #01–2522, Singapore 534411 (See alternate addresses under China);

(8) *NEL Electronics, (a.k.a. NEL Electronics Pte Ltd),* 158 Kallang Way, #02–505 Kallang Basin, Singapore 349245; *and* 158 Kallang Way, #03–511, Singapore 349245; *and* Blk 1001 Tai Seng Ave. #01–2522, Singapore 534411 (See alternate addresses under China);

(9) *Surftech Electronics,* Block 1057 Eunos Avenue 3, #02–85 Singapore 409848; and

(10) *Wong Yuh Lan, (a.k.a. Huang Yulan, Jancy Wong and Yuh Lan Wong),* Blk 109B Edgedale Plains, #14–115, Singapore 822109; *and* 10 Jalan Besar, #11–08 Sim Lim Tower, Singapore 208787.

*Savings Clause*

Shipments of items removed from eligibility for a License Exception or export or reexport without a license (NLR) as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting or reexporting carrier, or en route aboard a carrier to a port of export or reexport, on October 31, 2011, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or reexport without a license (NLR) so long as they are exported or reexported before November 15, 2011. Any such items not actually exported or reexported before midnight, on November 15, 2011, require a license in accordance with this rule.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as extended by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act.

**Rulemaking Requirements**

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

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 43.8 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. (*see* 5 U.S.C. 553(a)(1)). BIS implements this rule to prevent items from being exported, reexported or transferred (in country) to the persons being added to the Entity List. If this rule were delayed to allow for notice and comment and a delay in effective date, then entities being added to the Entity List by this action would continue to be able to receive items without a license and to conduct activities contrary to the national security or foreign policy interests of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* are not applicable.

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

Exports, Reporting and recordkeeping requirements, Terrorism.

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

## PART 744—[AMENDED]

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

**Authority:** 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011); Notice of November 4, 2010, 75 FR 68673 (November 8, 2010): Notice of January 13, 2011, 76 FR 3009, January 18, 2011.

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

■ a. By adding under China, People's Republic of, in alphabetical order, five Chinese entities;

■ b. By adding under Hong Kong, in alphabetical order, seven Hong Kong entities;

■ c. By adding under Iran, in alphabetical order, three Iranian entities; and

■ d. By adding under Singapore, in alphabetical order, ten Singaporean entities.

The additions read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
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| * | * | * | * | * |
| **CHINA, PEOPLE'S REPUBLIC OF** | | | | |

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

| Country | Entity | License requirement | License review policy | Federal Register citation |
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| * | * * | * * | * | * |
| | Corezing International, (a.k.a., CoreZing Electronics, Corezing International Group Company, Corezing International Pte Ltd, Corezing Technology Pte Ltd and Core Zing), Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; *and* Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China (See alternate addresses under Hong Kong and Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Lim Yong Nam, (a.k.a. Lin Rongnan, Steven Lim and Yong Nam Lim), YuJingHuaCheng Huaqiang South Road Futian, Shenzhen, China 518033; *and* Room 2613, NanGuangJieJia Building ShenNan Road, FuTian, Shenzhen, China 518033 (See alternate addresses under Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Luo Jie, (a.k.a. Cherry, Ivy Luo and Jie Luo), Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; and Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China (See alternate addresses under Hong Kong) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | NEL Electronics, (a.k.a., NEL Electronics Pte Ltd), 14K Block 2 YuJingHuaCheng Huaqiang South Road FuTian, Shenzhen, China 518033; *and* Room 2613, NanGuangJieJia Building ShenNan Road, FuTian, Shenzhen, China 518033 (See alternate address under Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
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| | Zhou Zhenyong, (a.k.a., Benny Zhou and Zhenyong Zhou), Room 1007, Block C2, Galaxy Century Bldg., CaiTian Rd., FuTian District, Shenzhen, China; and Room 1702, Tower B, Honesty Building, Humen, Dongguan, Guangdong, China (See alternate addresses under Hong Kong) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
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| **HONG KONG** | | | | |
| * | * * | * * | * | * |
| | Action Global, (a.k.a., Action Global Co., Limited), C/O Win Sino Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay, KLN, Hong Kong; *and* Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok KL, Hong Kong (See alternate address under Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Amaze International, Flat/Rm D, 11/F 8 Hart Avenue 8–10 Hart Avenue, Tsim Sha Tsui KL, Hong Kong (See alternate address under Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |

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

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
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| * | * * | * * | * | * |
| | Corezing International, (a.k.a., CoreZing Electronics, Corezing International Group Company, Corezing International Pte Ltd, Corezing Technology Pte Ltd and Core Zing), G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road KL, Hong Kong; *and* FlatiRM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under China and Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Lim Kow Seng, (a.k.a., Alvin Stanley, Eric Lim, James Wong, Mike Knight and Seng Lim Kow), Flat/Rm 3208 32/F, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Luo Jie, (a.k.a., Cherry, Ivy Luo and Jie Luo), Flat/RM 1510A, 15/F Ho King COMM Ctr, 2–16 Fa Yuen Street, Mongkok KL, Hong Kong; *and* C/O Win Sino Flat 12, 9/F, PO Hong Centre, 2 Wang Tung Street, Kowloon Bay, KLN, Hong Kong; *and* Flat/Rm D, 11/F 8 Hart Avenue, 8–10 Hart Avenue, Tsim Sha Tsui KL, Hong Kong; and G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong, 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; *and* Flat/Rm 3208 32/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong (See alternate addresses under China) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | OEM Hub Co Ltd, Rm 3208 32/F Central Plaza, 18 Harbour Road, Wanchai, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Zhou Zhenyong, (a.k.a., Benny Zhou and Zhenyong Zhou), G/F, No. 89, Fuyan Street, Kwun Tong, Hong Kong; *and* Flat 12, 9F Po Hong Kong 2 Wang Tung Street, Kowloon Bay, Hong Kong; *and* Flat/RM B 8/F, Chong Ming Bldg., 72 Cheung Sha Wan Road, KL, Hong Kong; *and* Flat/RM 2309, 23/F, Ho King COMM Center, 2–16 Fa Yuen Street, Mongkok KLN, Hong Kong (See alternate addresses under China) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
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| **IRAN** | | | | |

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

| Country | Entity | License requirement | License review policy | Federal Register citation |
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| * | * * | * * | * | * |
| | Hossein Ahmad Larijani, No 3 Mirza Kochak Ave., Jomhori Street, Tehran, Iran; *and* No. 5 Mirzakuchanhan Street, Jomhori Ave., Tehran, Iran; *and* No. 5 Mirza Kochak Ave., Jomhori Street, Tehran, Iran; *and* No. 5, Near to Flower Shop Mirza Koochak- Khan Jangali St, 30–Tir Junction, Jomhori St, Tehran, Iran; *and* Unit 6, No. 37, Goharshad Alley After 30 Tir Jomhori Street, Tehran, Iran; *and* Forghani Passage, Before 30 Tir, After Havez, Jomhori Ave., Tehran, Iran (See alternate addresses under Singapore) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Parto System Tehran, (a.k.a., Rayan Parto System Tehran and Rayane Parto System Tehran), Unit 7, Floor 4 No. 51 around Golestan Alley End of Shahaneghi Ave., Sheikh Bahaee Str., Molasadra, Tehran, Iran; *and* No. 83 Around of Shanr Tash Ave. After Cross of ABAS ABAD North Sohrevadi Str., Tehran, Iran | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Paya Electronics Complex, (a.k.a., Paya Complex), No 3 Mirza Kochak Ave. Jomhori Street, Tehran, Iran; *and* No. 5 Mirzakuchanhan Street Jomhori Ave., Tehran, Iran; *and* No. 5 Mirza Kochak Ave. Jomhori Street, Tehran, Iran; *and* No. 5, Near to Flower Shop Mirza Koochak-Khan Jangali St, 30–Tir Junction, Jomhori St., Tehran, Iran; *and* Unit 6, No. 37 Goharshad Alley After 30 Tir Jomhori Street, Tehran, Iran; *and* Forghani Passage, Before 30 Tir, After Havez, Jomhori Ave., Tehran, Iran | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| **SINGAPORE** | | | | |
| | Action Global, (a.k.a., Action Global Co.), Limited, 520 Sims Avenue, #02–04, Singapore 387580 (See alternate addresses under Hong Kong) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Amaze International, Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate address under Hong Kong) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Corezing International, (a.k.a., CoreZing Electronics, Corezing International Group Company, Corezing International Pte Ltd, Corezing Technology Pte Ltd and Core Zing), 2021 Bukit Batok Street 23, #02–212, Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #2–85, Singapore 409848 (See alternate addresses under China, and Hong Kong) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |

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

| Country | Entity | License requirement | License review policy | **Federal Register** citation |
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| * | * * | * * | * | * |
| | Hia Soo Gan Benson, (a.k.a., Benson, Soo Gan Benson Hia and Thomas Yan), Blk 8 Empress Road, #0705, Singapore 260008; *and* 2021 Bukit Batok Street 23, #02–212, Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Hossein Ahmad Larijani, 24 Semei Street 1, #06–08, Singapore 52996; *and* 10 Jalan Besar, #11–08 Sim Lim Tower, Singapore 208787 (See alternate addresses under Iran) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Lim Kow Seng, (a.k.a., Alvin Stanley, Eric Lim, James Wong, Mike Knight and Seng Lim Kow), Blk 751 Woodlands Circle, #10–592, Singapore 730751; *and* 520 Sims Avenue, #02–04, Singapore 387580; *and* 2021 Bukit Batok Street 23, #02–212 Singapore 659626; *and* 111 North Bridge Road, #27–01 Peninsula Plaza, Singapore 179098; *and* 50 East Coast Road, #2–70 Roxy Square, Singapore 428769; *and* Block 1057 Eunos Avenue 3, #02–85, Singapore 409848 (See alternate addresses under Hong Kong) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| | Lim Yong Nam, (a.k.a., Lin Rongnan, Steven Lim and Yong Nam Lim),170 Bukit Batok, West Avenue 8, #13–369, Singapore 650170; *and* 158 Kallang Way, #02–505 Kallang Basin, Singapore 349245; *and* 158 Kallang Way #03–511, Singapore 349245; *and* Blk 1001 Tai Seng Ave. #01–2522, Singapore 534411 (See alternate addresses under China) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | NEL Electronics, (a.k.a., NEL Electronics Pte Ltd),158 Kallang Way, #02–505 Kallang Basin, Singapore 349245; *and* 158 Kallang Way, #03–511, Singapore 349245; *and* Blk 1001 Tai Seng Ave. #01–2522, Singapore 534411(See alternate addresses under China) | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Surftech Electronics, Block 1057 Eunos Avenue 3, #02–85 Singapore 409848 | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |
| | Wong Yuh Lan, (a.k.a., Huang Yulan, Jancy Wong and Yuh Lan Wong), Blk 109B Edgedale Plains, #14115, Singapore 822109; *and* 10 Jalan Besar, #11–08 Sim Lim Tower, Singapore 208787 | For all items subject to the EAR. (See § 744.11 of the EAR) | Presumption of denial | 76 FR [INSERT FR PAGE NUMBER] 10/31/2011. |
| * | * * | * * | * | * |

Dated: October 25, 2011.

**Kevin J. Wolf,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2011–28057 Filed 10–28–11; 8:45 am]

**BILLING CODE 3510–33–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2011–0470, FRL–9484–5]**

## Approval and Promulgation of Implementation Plans; Iowa: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving an Iowa State Implementation Plan (SIP) revision relating to regulation of Greenhouse Gases (GHGs) under Iowa's Prevention of Significant Deterioration (PSD) program. This revision was submitted by the Iowa Department of Natural Resources (IDNR) to EPA on December 22, 2010. It is designed to align Iowa's regulations with the ''PSD and Title V Greenhouse Gas Tailoring Final Rule'' published June 3, 2010, in the **Federal Register**. EPA is approving the revision because the Agency has determined that the SIP revision, already adopted by Iowa as a final effective rule, is in accordance with the Clean Air Act (CAA) and EPA regulations regarding PSD permitting for GHGs.

**DATES:** *Effective Date*: This final rule will be effective November 30, 2011.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R07–OAR–2011–0470. All documents in the docket are listed on the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Iowa SIP, contact Mr. Larry Gonzalez, Air Planning and Development Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101. Mr. Gonzalez's telephone number is (913) 551–7041, and his email address is: *gonzalez.larry@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Table of Contents

I. What final action is EPA taking in this final rule?
II. What is the background for the PSD SIP approval by EPA in this final rule?
III. Final Action
IV. Statutory and Executive Order Reviews

### I. What final action is EPA taking in this final rule?

On December 22, 2010, IDNR submitted a request to EPA to approve revisions to the State's SIP and Title V program to incorporate recent rule amendments adopted by the Iowa Environmental Protection Commission. These amendments establish thresholds for GHG emissions in Iowa's PSD and Title V regulations at the same emissions thresholds and in the same time-frames as those specified by EPA in the ''PSD and Title V Greenhouse Gas Tailoring Final Rule'' (75 FR 31514), hereafter referred to as the ''Tailoring Rule,'' ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements for GHGs that they emit. The amendments to the SIP clarify the applicable thresholds in the Iowa SIP, address the flaw discussed in the ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans Final Rule,'' 75 FR 82536 (December 30, 2010) (the ''PSD SIP Narrowing Rule''), and incorporate state rule changes adopted at the state level into the Federally-approved SIP.

On August 11, 2011, EPA published a proposed rulemaking to approve Iowa's SIP revision. *See* 76 FR 49708. EPA did not receive any public comments on this proposal. In this final rule, pursuant to section 110 of the CAA, EPA is approving these revisions into the Iowa SIP.[1]

### II. What is the background for the PSD SIP approval by EPA in this final rule?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for this final action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the PSD SIP Narrowing Rule,[2] and in the preambles to the actions cited therein.

*A. GHG-Related Actions*

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for this final action on the Iowa SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[3] the ''Johnson Memo Reconsideration,''[4] the ''Light-Duty Vehicle Rule,''[5] and the ''Tailoring Rule.'' Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

In many states, such as Iowa, PSD is implemented through the SIP and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to

[1] As stated in the proposal, EPA intends to address Iowa's December 22, 2010, request to approve revisions to the Title V program relating to greenhouse gases in a subsequent rulemaking.

[2] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[3] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[4] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[5] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

GHGs, EPA issued a SIP Call and, for some of these states, a Federal Implementation Plan (FIP).[6] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

*B. Iowa's Actions*

On July 20, 2010, Iowa provided a letter to EPA, in accordance with a request to all states from EPA in the Tailoring Rule, with confirmation that the State of Iowa has the authority to regulate GHGs in its PSD program. The letter also confirmed Iowa's intent to amend its air quality rules for the PSD program for GHGs to match the thresholds set in the Tailoring Rule. See the docket for this final rulemaking for a copy of Iowa's letter.

In the PSD SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of Iowa's SIP (among other SIPs) to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[7] As a result, Iowa's current approved SIP provides the State with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a Federal PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

The basis for this SIP revision is that limiting PSD applicability to GHG sources at the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that require assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the PSD SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that states provide ''necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP].'' In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[8] and no state, including Iowa, asserted that it did have adequate resources to do so.[9] In the PSD SIP Narrowing Rule, EPA found that the affected states, including Iowa, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[10] Accordingly, for each affected state, including Iowa, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[11] EPA recommended that states adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under state law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.[12]

IDNR's December 22, 2010, SIP submission establishes thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under Iowa's PSD program. Specifically, the SIP revision includes changes—which are already effective—to Iowa's Administrative Code, revising the subrule 33.3(1) definition of ''regulated New Source Review (NSR) pollutant'' to specifically define the term ''subject to regulation'' for the PSD program, and to define ''greenhouse gases (GHGs)'' and ''tpy $CO_2$ equivalent emissions ($CO_2e$).'' Additionally, the amendments to subrule 33.3(1) specify the methodology for calculating an emissions increase for GHGs, the applicable thresholds for GHG emissions subject to PSD, and the schedule for when the applicability thresholds take effect.

Iowa is currently a SIP-approved State for the PSD program, and has previously incorporated EPA's 2002 NSR reform revisions for PSD into its SIP. *See* 72 FR 27056 (May 14, 2007).[13] The changes to Iowa's PSD program regulations are substantively the same as the Federal provisions amended in EPA's Tailoring Rule.

As part of its review of Iowa's submittal, EPA performed a line-by-line review of Iowa's proposed revision and has determined that it is consistent with the Tailoring Rule.

## III. Final Action

Pursuant to section 110 of the CAA, EPA is approving Iowa's December 22, 2010 revisions to the Iowa SIP, relating to PSD requirements for GHG-emitting sources. EPA has made the determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs. The detailed rationale for this action is set forth in the proposed rulemaking referenced above, and in this final rule.

Since EPA is finalizing its approval of Iowa's changes to its air quality regulations to incorporate appropriate thresholds for GHG permitting applicability into Iowa's SIP, then section 52.822(b) of 40 CFR part 52, added in EPA's PSD SIP Narrowing Rule to codify the limitation of its approval of Iowa's PSD SIP to exclude the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds, is no longer necessary. In this action, EPA is also amending section 52.822(b) of 40 CFR part 52 to remove this unnecessary regulatory language.

[6] Specifically, by notice dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (December 13, 2010). EPA made findings of failure to submit in some states which were unable to submit the required SIP revision by their deadlines, and finalized FIPs for such states. *See, e.g.* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (December 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (December 30, 2010). Because Iowa's SIP already authorizes Iowa to regulate GHGs once GHGs became subject to PSD requirements on January 2, 2011, Iowa is not subject to the SIP Call or FIP.

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (December 30, 2010).

[8] Tailoring Rule, 75 FR at 31517.

[9] PSD SIP Narrowing Rule, 75 FR at 82540.

[10] *Id.* at 82542.

[11] *Id.* at 82544.

[12] *Id.* at 82540.

[13] This rulemaking does not act on any other revisions to the Iowa PSD rules occurring after the PSD rules approved by EPA in 2007. Therefore this rulemaking only addresses the 2010 revisions discussed herein, relating to the State's adoption of the Tailoring Rule provisions.

## IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Greenhouse gases, Incorporation by reference, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: October 20, 2011.

**Karl Brooks,**

*Regional Administrator, Region 7.*

40 CFR part 52 is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart Q—Iowa

■ 2. Section 52.820(c) is amended by revising the entry for ''567–33.3'' under Chapter 33 to read as follows:

### § 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Chapter 33—Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality. | | | | |
| * | * | * | * | * |
| 567–33.3 ..... | Special construction permit requirement for major stationary sources in areas designated attainment or unclassified (PSD). | 12/22/2010 | 10/31/2011 [Insert citation of publication]. | |
| * | * | * | * | * |

* * * * *

**§ 52.822 [Amended]**

■ 3. Section 52.822 is amended by removing and reserving paragraph (b).

[FR Doc. 2011–27991 Filed 10–28–11; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 25 and 27

**[WT Docket No. 07–293; IB Docket No. 95–91; GEN Docket No. 90–357; RM–8610; FCC 10–82]**

### Operation of Wireless Communications Services in the 2.3 GHz Band; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; announcement of effective date.

**SUMMARY:** In this document, the Commission announces that certain rules adopted in the Operation of Wireless Communications Services in the 2.3 GHz Band, WT Docket No. 07–293; Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band (WCS and SDARS) proceeding, to the extent it contained information collection requirements that required approval by the Office of Management and Budget (OMB) was approved, September 26, 2011.

**DATES:** Sections 27.14(p)(7), 27.72(b), 27.72(c), 27.73(a), and 27.73(b) of the Commission's rules published at 75 FR 45058, August 2, 2010, are effective October 31, 2011.

Sections 25.202(h)(3), 25.214(d)(2), and 27.53(a)(10) will be enforced beginning October 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Linda Chang, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St. SW., Washington, DC 20554 at (202) 418–1339.

**SUPPLEMENTARY INFORMATION:**

1. On May 20, 2010, the Commission published in the **Federal Register**, the summary of a Report and Order and Second Report and Order, which stated that upon OMB approval, it would publish in the **Federal Register** a document announcing the effective date. On September 26, 2011 the OMB approved, for a period of three years, the information collection requirements contained in sections 25.202(h)(3), 25.214(d)(2), 27.14(p)(7), 27.53(a)(10), 27.72(b), 27.72(c), 27.73(a), and 27.73(b) of the Commission's rules.[1]

2. On September 26, 2011, OMB approved the public information collection associated with these rule changes under OMB Control No. 3060–1159.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 2011–27454 Filed 10–28–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CG Docket No. 10–51; FCC 11–155]**

### Structure and Practices of the Video Relay Service Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; clarification.

**SUMMARY:** In this document, the Commission addresses three petitions for clarification or reconsideration of a previous order, and amends and clarifies the Commission's rules regarding Internet-based Telecommunications Relay Services (iTRS) applicants for certification.

**DATES:** Effective October 31, 2011, except for 47 CFR 64.606(a)(2)(ii)(A)(*4*) through (*8*) and (a)(2)(ii)(E) contains new or modified information collection requirements that require approval by the Office of Management and Budget (OMB). The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

**ADDRESSES:** Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 559–5158 (VP) or email at *Gregory.Hlibok@fcc.gov.* For additional information concerning the information collection requirements contained in this document, contact Cathy Williams at (202) 418–2918.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program,* Memorandum and Opinion and Order (MO&O) and Order (*Order*), document FCC 11–155, adopted October 17, 2011, and released October 17, 2011 in CG Docket number 10–51.

The full text of document FCC 11–155 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document FCC 11–155 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, BCPI, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via its Web site *http://www.bcpiweb.com* or by calling (202) 488–5300. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document FCC 11–155 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

**Synopsis**

In the *MO&O* in document FCC 11–155, the Commission addresses three petitions:

*A. Sprint Nextel Corporation, Expedited Petition for Clarification, CG Docket No. 10–51 (Filed September 6, 2011) (Sprint Petition)*

1. Definition of Employees

Sprint requests that the Commission clarify that communications assistants (CAs) who are trained by the provider, who are stationed at the facilities of the provider and who are directly under the provider's supervision should be deemed to be employees of the provider, in satisfaction of the requirement that video relay service (VRS) providers employ their own CAs, regardless of whether or not they are hired directly by the provider. The Commission denies Sprint's requested clarification. The Commission has consistently distinguished ''employees'' from ''subcontractors'' and ''contractors'' in adopting rules and requirements governing the provision of VRS, and the Commission finds that Sprint's proposed clarification would render

[1] The summary of the Report and Order and Second Report and Order, published August 2, 2010, did not list 47 CFR 25.202(h)(3), 47 CFR 25.214(d)(2), and 47 CFR 27.53(a)(10) among the rules requiring OMB approval. However, because 47 CFR 25.202(h)(3), 25.214(d)(2), and 27.53(a)(10) contain information collection requirements that can not be enforced without OMB approval, the Commission sought OMB clearance for these rules.

those recognized distinctions meaningless. An entity seeking certification or already certified by the Commission must ensure that each of its VRS CAs who relays calls for which the entity will seek reimbursement from the Interstate TRS Fund (Fund) is a full or part-time employee of that entity. A CA cannot be an independent contractor or a temporary worker assigned by an agency, on a non-employment basis, to handle VRS calls. The Commission also clarifies that this restriction should not preclude a provider from hiring a CA to handle VRS calls on a temporary or part-time basis so long as the CA is an actual, demonstrable employee, not a contractor or other temporary, non-employed worker, of the provider.

2. Roll-Over VRS Traffic

Sprint further requests that the Commission clarify that certified VRS providers will be able to send traffic to other certified VRS providers ''when they are unable to immediately handle that traffic due to factors outside of their control, *e.g.,* a sudden surge in traffic due to an earthquake,'' and still be able to bill and receive compensation from the Fund for such traffic under § 64.604(c)(5)(iii)(F)(*1–4*) of the Commission's rules.

The Commission grants Sprint's request for clarification that certified VRS providers may roll-over VRS traffic to another eligible provider when unable to handle an unexpected and temporary surge in call traffic, and finds this request generally to be consistent with the goals and policies of the Commission's VRS rules. The Commission clarifies that a certified provider may seek reimbursement from the Fund for minutes of use that it routes to another certified VRS provider where exigent circumstances warrant such routing to handle an unexpected and temporary increase in the certified provider's incoming traffic. Exigent circumstances do not include events that result in increases in traffic that, in the ordinary course of business, could reasonably have been anticipated, such as a surge in traffic occurring during a holiday period.

The Commission also reiterates that § 64.604(c)(5)(iii)*(N)(1)(iii)* of its rules only allows an *eligible provider* to subcontract for CA services or call center functions with, or otherwise authorize the provision of such services or functions from, *another eligible provider.* The Commission therefore clarifies that this rule does not apply to non-certified applicants for certification; as such, non-certified applicants for certification may not rely on the ability to subcontract for or otherwise authorize the provision of CA services or call center functions on their behalf after they are certified, to demonstrate their *eligibility* for certification.

3. ACD Platform Leasing From Third-Party Non-Provider

Sprint's final request is that the Commission clarify that a VRS provider leasing an automatic call distribution (ACD) platform from a vendor not affiliated with any VRS provider need not locate such ACD on its premises or use its own employees to manage such platform. The Commission grants Sprint's request insofar as it confirms that a VRS provider leasing an ACD platform from a vendor not affiliated with any VRS provider need not locate such ACD on its premises or use its own employees to manage such a platform. However, regardless of the location of the ACD, each provider is responsible for the oversight of all the core operations associated with such ACD platform, and shall be held accountable for compliance with all pertinent Commission rules and policies.

*B. Sorenson Communications, Inc., Petition for Reconsideration of Two Aspects of the Certification Order, CG Docket No. 10–51 (Filed September 6, 2011) (Sorenson Petition)*

In its petition for reconsideration, Sorenson maintains that the Commission did not adequately justify the burdensomeness of requirements that VRS providers submit, as part of their certification applications and, as applicable, in annual reports regarding their compliance with the TRS rules: (1) ''Proofs of purchase or license agreements for all equipment and/or technologies, including hardware and software, used for the applicant's VRS call center functions''; and (2) all written sponsorship agreements relating to iTRS. The Commission grants Sorenson's petition to the extent discussed below.

The Commission modifies the documentation requirements for proofs of purchase, leases, or license agreements for technology and equipment used to support call center functions, to apply only to the technologies and equipment for a representative sampling of five of a provider's domestic call centers, where the provider has more than five such centers. However, the Commission requires applicants to retain proofs of purchase for all technology and equipment used to support call center functions for all of their call centers, and to furnish such documentation to the Commission upon the Commission's request. In addition, the Commission continues to require providers to submit documentation for all technology and equipment used to support call center functions for VRS providers that maintain five or fewer domestic call centers, and for all international call centers regardless of the provider's size. Furthermore, the Commission continues to require all VRS applicants, regardless of size, to describe in their submissions the technology and equipment used to support their call center functions—including, but not limited to, ACD, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration. However, in response to Sorenson's stated concerns, the Commission modifies the requirement that the applicant state whether the technology and equipment for each call center function is owned or leased to pertain only to the maximum of five call centers for which, as described above, the applicant must provide proofs of purchase, license agreements, or leases. Finally, in light of the particular documentation requirements applicable to leased ACD platforms, the Commission will continue to require that VRS applicants provide a *complete copy* of all ACD leases or license agreements. The Commission also clarifies that applicants need only to submit a list of all sponsorship arrangements, and to describe on that list any associated written agreements relating to iTRS—applicants need not furnish the actual copies of the arrangements and associated agreements, but must retain copies of all such arrangements and agreements for a period of three years from the date of the application and submit them to the Commission upon request.

*C. AT&T Services, Inc., Petition for Reconsideration of AT&T, CG Docket No. 10–51 (Filed September 6, 2011) (AT&T Petition)*

In its petition for reconsideration, AT&T generally seeks reconsideration of the requirements that applicants for certification operate their own call centers and employ their own CAs. In addition, AT&T seeks reconsideration of the prohibition against VRS providers subcontracting these core VRS functions to another certified VRS provider. The Commission denies the AT&T Petition, and finds that there is ample evidence in the record that allowing VRS providers that operate without their own facilities to seek reimbursement from the Fund has contributed to the serious fraud that has plagued the VRS program.

*D. Sua Sponte Order*

In the *Order,* the Commission clarifies, on its own motion, its policies and rules regarding on-site visits to the premises of iTRS certification applicants and certified iTRS providers. The Commission clarifies that such visits to both applicants for certification and certified providers may be announced or unannounced. Applicants for certification and certified providers must comply with a request by an authorized representative of the Commission to conduct either announced or unannounced on-site visits. In the case of applicants, the failure to allow complete access to inspect areas of the premises and documents related to the provision of iTRS, and to observe live iTRS calls, at the time of an authorized on-site visit will be cause for application denial. In the case of certified providers subject to an on-site visit to ensure continued compliance with the Commission's rules and requirements, such failure will result in the suspension of payments from the Fund until such access to iTRS-related areas, documents and activities is allowed. In addition, a certified provider's failure to cooperate with an announced or unannounced on-site visit will be deemed a violation of the Commission's rules governing provider audits and thus, may also lead to a Commission proceeding imposing appropriate sanctions, including the suspension or revocation of the provider's certification or forfeiture proceedings.

**Paperwork Reduction Act Analysis of 1995**

This document contains new and modified information collection requirements. The Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' In this present document, the Commission has assessed the effects of the modified rules for certification by the Commission of eligibility for payments from the Fund and finds that the modified information collection requirements will not have a significant impact on small business concerns with fewer than 25 employees. The Commission received comments on the information collection requirements contained in the *iTRS Certification Order,* under OMB Control No. 3060–1150. *See, Structure and Practices of the Video Relay Service Program,* CG Docket No. 10–51, Second Report and Order, published at 76 FR 47469, August 5, 2011 (*iTRS Certification Order*). *See also,* Paperwork Reduction Act Comments of Sorenson Communications, Inc. (filed September 6, 2011). By the *MO&O,* the Commission addresses OMB's and Sorenson's concerns by revising the language in the rules to require that providers that operate five or more domestic call centers only submit copies of proofs of purchase, leases or license agreements for technology and equipment used to support their call center functions for a representative sampling of five call centers, rather than requiring copies for all call centers. Further, the Commission clarifies that the rule requiring submission of a list of all sponsorship arrangements relating to iTRS only requires that a certification applicant describe on the list associated written agreements relating to iTRS, and does not require the applicant to provide copies of all written agreements. The Commission believes that these two rule modifications significantly alleviate the burdens associated with the subject information collections requirements, and address the concerns Sorenson raised in its PRA comments filed with OMB. Both the Administrative Procedures Act and the Commission's rules require notice of substantive rules issued by the Commission, with limited exceptions, to be made not less than 30 days before such rules goes into effect, absent good cause shown and published with the rule. In this case, the Commission finds good cause to make these rule modifications effective upon publication in the **Federal Register** of notice of the approval of the modified rule by OMB under the PRA.

**Final Regulatory Flexibility Certification**

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' *See* 5 U.S.C. 605(b). The RFA generally defines ''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 which: (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). In the *MO&O,* in response to a VRS provider's petition, the Commission amends its rules to modify the documentation requirements for eligible iTRS providers for proofs of purchase, leases, or license agreements for technology and equipment used to support call center functions, to apply only to the technologies and equipment for a representative sampling of five of a provider's domestic call centers, where the provider has more than five such centers. In addition, the Commission amends its rules to clarify that applicants need only to submit a list of all sponsorship arrangements, and to describe on that list any associated written agreements relating to iTRS—applicants need not furnish the actual copies of the arrangements and associated agreements. The Commission will revise § 64.606(a)(2)(ii)(E) of its rules accordingly.

These amendments result in a significant reduction in costs and other burdens on any iTRS provider, large or small, to comply with these rules. Thus, the discussion of whether there is a significant economic impact on a substantial number of small entities is moot.

Therefore, the Commission certifies that the requirements of the *MO&O* will not have a significant adverse economic impact on a substantial number of small entities, because there will be no adverse impact on any entities, large or small.

The Commission will send a copy of the *MO&O,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, and in a report to Congress pursuant to the Congressional Review Act.

**Congressional Review Act**

The Commission will send a copy of document FCC 11–155 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).

**Ordering Clauses**

Pursuant to the authority contained in sections 1, 4(i), (j) and (o), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), and § 1.429 of the Commission's rules, 47 CFR 1.429, document FCC 11–155 *is adopted.*

Sprint's Expedited Petition for Clarification *is granted in part* and *denied in part,* to the extent provided in FCC 11–155.

Sorenson's Petition for Reconsideration *is granted,* to the extent provided in FCC 11–155. AT&T's Petition for Reconsideration *is denied.*

Part 64 of the Commission's rules *is amended.*

The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of document FCC 11–155, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Final Rules**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254(k), 227; secs. 403(b)(2)(B), (c), Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, 254(k), 616, and 620, unless otherwise noted.

## Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

■ 2. The authority citation for subpart F is revised to read as follows:

**Authority:** 47 U.S.C. 151–154; 225, 255, 303(r), 616 and 620.

■ 3. Section 64.606 is amended by revising paragraphs (a)(2)(ii)(A)(*4*) and (*5*), by adding paragraphs (a)(2)(ii)(A)(*6*) through (*8*), and by revising paragraph (a)(2)(ii)(E) to read as follows:

**§ 64.606 Internet-based TRS provider and TRS program certification.**

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(*4*) A description of the technology and equipment used to support their call center functions—including, but not limited to, automatic call distribution, routing, call setup, mapping, call features, billing for compensation from the TRS Fund, and registration—and for each core function of each call center for which the applicant must provide a copy of technology and equipment proofs of purchase, leases or license agreements in accordance with paragraphs (a)(2)(ii)(A)(*5*) through (*7*) of this section, a statement whether such technology and equipment is owned, leased or licensed (and from whom if leased or licensed);

(*5*) Operating five or fewer call centers within the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant within the United States;

(*6*) Operating more than five call centers within the United States, a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions for a representative sampling (taking into account size (by number of communications assistants) and location) of five call centers operated by the applicant within the United States; a copy of each proof of purchase, lease or license agreement for technology and equipment used to support their call center functions for all call centers operated by the applicant within the United States must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

(*7*) Operating call centers outside of the United States, a copy of each proof of purchase, lease or license agreement for all technology and equipment used to support their call center functions for each call center operated by the applicant outside of the United States; and

(*8*) A complete copy of each lease or license agreement for automatic call distribution.

* * * * *

(E) For all applicants, a list of all sponsorship arrangements relating to Internet-based TRS, including on that list a description of any associated written agreements; copies of all such arrangements and agreements must be retained by the applicant for three years from the date of the application, and submitted to the Commission upon request;

* * * * *

[FR Doc. 2011–28135 Filed 10–28–11; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Railroad Administration

## 49 CFR Part 228

**[Docket No. FRA–2009–0042, Notice No. 2]**

**RIN 2130–AC13**

## Safety and Health Requirements Related to Camp Cars

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** To carry out a 2008 Congressional rulemaking mandate, FRA is creating regulations prescribing minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, and dispatching service employees (covered-service employees) and individuals employed to maintain its right of way.

Under separate but related statutory authority, FRA is also amending its regulations regarding construction of employee sleeping quarters. In particular, FRA's existing guidelines with respect to the location, in relation to switching or humping of hazardous material, of a camp car that is occupied exclusively by individuals employed to maintain a railroad's right of way are being replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, FRA is making miscellaneous changes clarifying its provision on applicability, removing an existing provision on the preemptive effect of the regulations as unnecessary, and moving, without changing, an existing provision on penalties for violation.

**DATES:** This final rule is effective December 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Alan Misiaszek, Certified Industrial Hygienist, Staff Director, Industrial Hygiene Division, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6002), *alan.misiaszek@dot.gov* or Ann M. Landis, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., Mail Stop 10, Washington, DC 20590 (telephone: (202) 493–6064), *ann.landis@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background Information

### *A. Statutory, Regulatory, and Factual Background*

Having considered the public comments on FRA's January 3, 2011, proposed rule in this rulemaking, FRA is issuing this final rule primarily to help satisfy the requirements of section 420 of the Rail Safety Improvement Act of 2008 (RSIA), Pub. L. 110–432, Div. A, 122 Stat. 4848, October 16, 2008 (amending a provision of the hours of service laws at 49 U.S.C. 21106). See notice of proposed rulemaking (NPRM), 76 FR 64. RSIA requires the Secretary of Transportation (Secretary) to adopt regulations no later than April 1, 2010, establishing minimum standards for ''employee sleeping quarters'' in the form of ''camp cars'' that are provided by railroads. 49 U.S.C. 21106(a)(1), (c). Specifically, RSIA instructs the Secretary to prescribe regulations ''to implement [49 U.S.C. 21106(a)(1)] to protect the safety and health of any employees and individuals employed to maintain the right of way of a railroad carrier that use camp cars * * *'' 49 U.S.C. 21106(c). The statutory term ''employee'' is defined in 49 U.S.C. 21101(3) to include a train employee, a signal employee, and a dispatching service employee, who as a group are sometimes referred to as ''covered-service employees.'' As amended through 2008, 49 U.S.C. 21106(a)(1) provides that such camp cars must be—

> clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees.

49 U.S.C. 21106(a)(1). RSIA requires the Secretary to conduct this rulemaking ''in coordination with the Secretary of Labor,'' and to ''assess the action taken by any railroad carrier to fully retrofit or replace its camp cars * * *'' 49 U.S.C. 21106(c).

In addition, RSIA directly requires that railroads using camp cars ''fully retrofit or replace such cars in compliance with [49 U.S.C. 20106(a)]'' by December 31, 2009. 49 U.S.C. 21106(b). As will be further explained below, FRA interprets 49 U.S.C. 21106(b) as (1) Applying the prohibition in 49 U.S.C. 21106(a)(2) against beginning construction or reconstruction of employee sleeping quarters near switching or humping operations, to camp cars provided by railroads as sleeping quarters for individuals employed to maintain the railroad right of way (MOW workers) and (2) setting a compliance date of December 31, 2009, with respect to such camp cars exclusively for MOW workers.

The Secretary has delegated the responsibility to carry out his responsibilities under RSIA to the Administrator of FRA. 74 FR 26981, 26982 (June 5, 2009), codified at 49 CFR 1.49(oo). See also 49 CFR 1.49(d), delegating the Secretary's authority to carry out the hours of service laws to the Administrator of FRA, and 49 U.S.C. 103.

Subpart E is based extensively on FRA guidelines already in place, which, in turn, were based on the U.S. Department of Labor's Occupational Safety and Health Administration (''OSHA'') standards for sanitation and temporary labor camps at 29 CFR 1910.141 and 1910.142, modified as appropriate for the railroad environment. See FRA's Guidelines for Clean, Safe, and Sanitary Railroad Provided Camp Cars (1990 Guidelines), 55 FR 30892 (July 27, 1990), codified at 49 CFR part 228, app. C. In developing new subpart E, FRA coordinated with the U.S. Department of Labor, as required by the Congressional mandate.

In addition, FRA consulted with officials of the only American railroad currently known to be regularly utilizing camp cars as sleeping quarters, Norfolk Southern Railway Company (NS), to determine what actions it has taken to conform to the statutory requirements that the cars be not only clean, safe, and sanitary and provide an opportunity for rest uninterrupted by noise under the control of the railroad, but also have ''indoor toilet facilities, potable water, and other features to protect the health'' of employees and MOW workers and not be placed in the immediate vicinity of certain ''switching or humping operations'' as defined in FRA regulations at 49 CFR 228.101(c)(3). NS assured FRA that all of its camp cars comply with statutory requirements; NS disagrees with FRA's conclusion that camp cars exclusively occupied by MOW workers are subject to 49 U.S.C. 21106(a)(2).

MOW workers have been given protection by limits of how close their sleeping quarters are to switching and humping operations. That protection formerly only applied to train employees, signal employees, and dispatching service employees. In 1976, Congress required that all sleeping quarters, ''including crew quarters, camp or bunk cars, and trailers,'' provided by a railroad to its ''employees'' be ''clean, safe, and sanitary'' and provide an opportunity for rest without interruptions caused by noise under the control of the railroad. Pub. L. 94–348, sec. 4, adding subsection (a)(3) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(3) (1976) and now codified as amended at 49 U.S.C. 21106(a)(1).[1] Again, the term ''employees'' included only those who, in the terminology of the present statute, are called ''train employees,'' ''signal employees,'' or ''dispatching service employees,'' and did not include MOW workers. In the same legislation, Congress prohibited railroads from beginning, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for ''employees'' ''within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area where railroad switching or humping operations are performed.'' Pub. L. 94–348, sec. 4, adding subsection (a)(4) to section 2 of the Hours of Service Act, then codified at 45 U.S.C. 62(a)(4) (1976) and now codified as amended at 49 U.S.C. 21106(a)(2).

To carry out the 1976 statutory amendment at section 2(a)(3) of the Hours of Service Act, FRA published interpretative guidance and a statement of policy regarding the provision requiring ''clean, safe, and sanitary'' sleeping quarters for employees free from railroad-controlled noise that would interrupt rest. Amendment to appendix A to 49 CFR part 228, 43 FR 30803 (July 18, 1978).

To carry out the 1976 amendment at section 2(a)(4) of the Hours of Service Act, FRA published regulations codified at 49 CFR part 228, subpart C (subpart C). 43 FR 31012 (July 19, 1978). As stated in the preamble to those regulations,

> [t]he primary impetus of this amendment to the Hours of Service Act was the accident that occurred at Decatur, Illinois, on July 19, 1974. (H.R. Report No. 94–1166 (1976) at page 11.) Seven employees were killed and another 33 were injured when an explosion demolished crew quarters that were located between and adjacent to two classification yards and did other extensive damage in the middle of the Norfolk and Western yard. Three hundred sixteen persons who lived or worked in the surrounding area were also injured. The explosion resulted from accidental release of product which occurred during the switching of hazardous materials. * * *

In enacting the 1976 amendment to the law, Congress determined that additional

[1] In the 1994 recodification of Federal transportation laws, the Hours of Service Act was repealed, and its provisions were reenacted as revised, and recodified as positive law primarily in 49 U.S.C. chapter 211. Pub. L. 103–272, July 5, 1994.

protection from accidents such as the one that occurred at Decatur, Illinois, is required for crew quarters.

43 FR 31009.

Subpart C defines key terms in section 2(a)(4) of the Hours of Service Act, permits railroads to request a determination by FRA that a particular proposed site is not within the ''immediate vicinity,'' and states the criteria by which FRA will make the determination. See 49 CFR 228.101(a). FRA approval is necessary before a railroad may begin the ''construction or reconstruction'' of sleeping quarters for employees within the distance of switching or humping operations specified in the regulations. 49 CFR 228.101. The distance triggering the need for approval is one-half mile ''as measured from the nearest rail of the nearest trackage where switching or humping operations are performed to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.'' 49 CFR 228.101(b). ''Switching or humping operations'' is defined to include ''the classification of placarded railroad cars according to commodity or destination, assembling of placarded cars for train movements * * *'' 49 CFR 228.101(c)(3). ''Placarded car'' is defined to mean ''a railroad car required to be placarded by DOT hazardous materials regulations (49 CFR 172.504).'' 49 CFR 228.101(c)(4). ''Construction'' includes the ''[p]lacement of a mobile or modular facility,'' which includes placement of a camp car. 49 CFR 228.101(c)(1)(iii). On or after July 8, 1976, any railroad placing a camp car occupied by an employee near switching or humping operations must obtain FRA approval before doing so. 49 CFR 228.101(a).

In 1988, Congress redefined ''employee'' for purpose of section 2(a)(3) of the Hours of Service Act (now codified at 49 U.S.C. 21106(a)(1)) so as to include MOW workers, thereby making all sleeping quarters provided by a railroad to MOW workers subject to the same statutory standard. Pub. L. 100–342, sec. 19(b). It should be noted, however, that the 1988 amendment did not make MOW workers ''employees'' for purposes of the ''location'' requirement at section 2(a)(4) of the Hours of Service Act. Consequently, a camp car occupied only by employees or by both employees and MOW workers is subject to subpart C, but a camp car occupied only by MOW workers is not subject to subpart C.

To carry out the 1988 statutory amendment, FRA issued an interpretation in 1990 of the terms ''clean,'' ''safe,'' and ''sanitary'' as applied to railroad-provided camp cars occupied by employees, MOW workers, or both based on standards established by OSHA. 49 CFR part 228, app. C. In FRA's 1990 Guidelines, the agency noted that—

> FRA believes that camp cars, either because of express limitations of local codes, or by virtue of their physical mobility, are generally not subject to state or local housing, sanitation, health, electrical or fire codes. Therefore, FRA is unable to rely upon state or local authorities to ensure that persons covered by the [Hours of Service] Act who reside in camp cars are afforded an opportunity for rest in 'clean,' 'safe,' and 'sanitary' conditions. Accordingly, FRA must determine what adverse conditions might reasonably be expected to interfere with the ordinary person's ability to rest, so as to enunciate policy guidelines to be applied by FRA in enforcing the words 'clean,' 'safe,' and 'sanitary' for purposes of the Act.

55 FR 30892, 30893, July 27, 1990.

Twenty years after the 1988 statutory amendment, Congress enacted section 420 of RSIA. Congress added requirements that all sleeping quarters provided by railroads to employees or MOW workers have ''indoor toilets, potable water, and other features to protect the health of [employees and MOW workers]'' (amending 49 U.S.C. 21106(a)(1)); that any railroad that uses camp cars must ''fully retrofit or replace'' such cars to be in compliance with 49 U.S.C. 21106(a) by December 31, 2009 (see new 49 U.S.C. 21106(b)); and that the Secretary prescribe regulations to implement 49 U.S.C. 21106(a)(1), requiring compliance by December 31, 2010 (see new 49 U.S.C. 21106(c)).

FRA has considered whether Congress intended for railroad-provided camp cars occupied by MOW workers to be subject to the restrictions of 49 U.S.C. 21106(a)(2) on their location. Clearly, by the express text of 49 U.S.C. 21106(c), the regulations mandated by that subsection are intended ''to implement subsection (a)(1)'' (*i.e.,* 49 U.S.C. 21106(a)(1), and not to implement both 49 U.S.C. 21106(a)(1) and 49 U.S.C. 21106(a)(2)). Just as clearly, Congress did not amend 49 U.S.C. 21106(a)(2) itself, which bars beginning such construction or reconstruction of sleeping quarters for covered-service employees on or after July 8, 1976; Congress did not, for example, add language to subsection (a)(2) to prohibit beginning construction or reconstruction of railroad-provided camp cars used as sleeping quarters for MOW workers, with a new effective date in subsection (a)(2) itself.

In the end, however, FRA concludes that Congress did intend such location restrictions in subsection (a)(2) to apply to camp cars exclusively occupied by MOW workers, based primarily on the language of subsection (b), which reads as follows:

> (b) Camp cars.—Not later than December 31, 2009, any railroad carrier that uses camp cars shall fully retrofit or replace such cars in compliance with *subsection (a).*

(Emphasis added). 49 U.S.C. 21106(b). Congress could have written that the camp cars must be in compliance with ''subsection (a)(1),'' but it did not; instead Congress required compliance with subsection (a) as a whole, a two-paragraph provision that includes the prohibition on placing camp cars (and other forms of sleeping quarters) near certain switching or humping operations. It is a basic canon of statutory construction that all words of a statute should be given effect.

To give subsection (b) meaning, with respect to requiring camp cars to be in compliance with the old mandate of subsection (a)(2), some act must be required that is possible to perform in the future, specifically not later than the December 31, 2009, date stated in subsection (b). FRA reads that extra requirement imposed by subsection (b) to be that camp cars exclusively occupied by MOW workers be subject to subsection (a)(2). With respect to subsection (a)(2), which contains a compliance date about 32 years before the enactment of subsection (a)(2), a new compliance date would be necessary in order to avoid creating an unconstitutional, ex post facto law, and that is what Congress provided with the new statutory deadline for compliance of December 31, 2009. FRA does not read subsection (b) as supplanting the July 8, 1976, effective date of the prohibition in subsection (a)(2) with respect to construction or reconstruction of sleeping quarters occupied by train employees, signal employees, or dispatching service employees. Rather, FRA reads the text of section 21106(b) as a direct, statutory requirement that railroads using camp cars as sleeping quarters see to it that the cars exclusively occupied by MOW workers comply with the statutory requirements of not only subsection (a)(1), but also subsection (a)(2), and to do so by December 31, 2009.

Of course, it could be argued that Congress simply made a technical error in requiring that camp cars comply with all of subsection (a) and that it meant to say ''subsection (a)(1),'' particularly given that the requirement is to ''retrofit or replace'' the cars, not to ''retrofit or replace and position'' the cars. FRA thinks that the legislative history of

section 420 of RSIA argues against such a strict interpretation. That legislative history indicates that Congress invited FRA to take a new, more protective look at camp cars. The House precursor to section 420 of RSIA would have directly prohibited the use of camp cars entirely by statute, effective one year after the date of enactment. See section 202 of H.R. 2095 as reported by the House Committee on Transportation and Infrastructure in H.R. Rep. No. 110–336 and analysis at p. 39. The Senate precursor to section 420 of RSIA would have authorized FRA to prohibit railroads' use of camp cars as sleeping quarters (*i.e.,* by regulation or order) ''if necessary to protect the health and safety of the employees.'' See section 410 of S. 1889 as reported by the Senate Committee on Commerce, Science, and Transportation in S. Rep. No. 110–270. Based on the plain meaning of 49 U.S.C. 21106 and the legislative history of section 420 of RSIA, FRA believes its interpretation applying the location requirement of subsection (a)(2) to camp cars occupied exclusively by MOW workers is both correct and appropriate.

To carry out this statutory interpretation, FRA is proposing an amendment to subpart C. The statutory authority to conduct this aspect of the rulemaking is FRA's authority under 49 U.S.C. 21106(a)(2) to prescribe regulations to implement that statutory provision, which reads (as revised during the 1994 recodification of the rail safety laws effected by Public Law No. 103–272) as follows:

> A railroad carrier * * * (2) may not begin, after July 7, 1976, construction or reconstruction of sleeping quarters * * * in an area or in the immediate vicinity of an area, *as determined under regulations prescribed by the Secretary of Transportation,* in which railroad switching or humping operations are performed.

[Emphasis added.] This is the authority under which FRA originally prescribed subpart C. 41 FR 53070, Dec. 3, 1976.

*B. Comments on the NPRM*

FRA received two sets of comments on the NPRM, one from the Brotherhood of Maintenance of Way Employes Division of the International Brotherhood of Teamsters (BMWED) and one from the Association of American Railroads (AAR). FRA appreciated and carefully considered both of these sets of comments. The final rule differs from the proposed rule in part because of the concerns raised by the commenters. FRA, however, believes that its lacks the authority to address all of the issues raised. Comments are addressed thematically.

1. Statutory Limitations

BMWED requested a prohibition on the use of railroad-provided camp cars as sleeping quarters for employees and MOW workers within five years of the effective date of the rule. FRA does not believe Congress intended to give FRA such authority. The statutory section requiring FRA to regulate camp cars begins, ''A railroad carrier and its officers and agents may provide sleeping quarters * * * for employees, and any individuals employed to maintain the right of way of a railroad carrier * * *'' 49 U.S.C. 21106(a)(1). With this language, Congress has expressly given permission to railroads to provide sleeping quarters as long as they meet the applicable statutory or regulatory standard, or both. FRA may not prohibit by regulation what Congress has explicitly permitted by statute.

FRA has also attempted to comply with the statutory language by limiting the applicability section of subpart C. Congress was specifically concerned with sleeping quarters provided to employees by a railroad and camp car sleeping quarters provided to MOW workers by a railroad. As a result, FRA stated that subpart C applies to railroads but not subcontractors or contractors, something BMWED commented on. If a railroad provides a substandard camp car to an employee or MOW worker, however, the railroad will be held liable, whether the camp car was directly provided by the railroad or whether the railroad was leasing a camp car from a contractor. See 49 CFR 228.303(b) and 228.305. FRA is concerned that including contractor-provided sleeping quarters would inadvertently encompass rooms in commercial motels or hotels open to the general public that a railroad provided to its employees. To further clarify FRA's position, however, FRA has modified the language of § 228.303 to expressly state that the requirements of this subpart apply to contractors and subcontractors that provide camp cars.

BMWED also took issue with another matter in which FRA was, in part, trying to comply with the statute. BMWED argued that the temporary labor camps regulations of the Occupational Safety and Health Administration (OSHA) should not be a basis for subpart E. FRA did not extensively rely on temporary labor camp regulations in creating subpart E; however, they did provide the basic framework for the previous camp car guidelines, and FRA found it necessary to use those guidelines in creating this subpart. FRA was also required by section 420 of the RSIA to work in consultation with the Department of Labor in creating these regulations, and FRA found its regulations helpful. FRA does recognize that there are significant differences between temporary labor camps and the current way that NS uses camp cars, but found OSHA's regulations to be helpful, as there are few other Federal regulations regarding employer-provided sleeping quarters. The only other comment in which statutory provisions were at issue came from AAR. As mentioned in the NPRM, NS disagreed with FRA's statutory interpretation that sleeping quarters provided to MOW workers were, like those provided to covered-service employees, restricted on how close they may be to switching and humping operations. AAR stated that it supports NS's interpretation. There is ample discussion regarding FRA's position on this issue stated above and in the NPRM.

For its part, BMWED expressed its support for FRA's interpretation on this issue, but expressed concerns that the rights of MOW workers were not adequately protected. Specifically, BMWED wanted FRA to expressly say that the recognized representatives of the MOW workers be given the same notice when a railroad attempts to obtain permission to begin to construct or reposition a camp car too close to switching and humping operations. Under § 228.103(d), representatives of railroad employees of camp cars must be given such notice. BMWED's request is unnecessary, as the proposed rule states that for the purposes of § 228.103, ''employees'' ''shall be read to include MOW workers.'' With this language found in § 228.102(b), FRA is requiring that the same rights and notice given to the employees and their recognized representatives under § 228.103 is given to MOW workers and their recognized representatives.

2. Life Safety Issues

a. Smoke Alarms and Fire Extinguishers

BMWED recommended that each camp car be equipped ''with a portable fire extinguisher(s) meeting the requirements of 29 CFR 1910.157, a fire detection system meeting the requirements of 29 CFR 1910.164, and permanently wired, with battery backup, smoke detector(s) and carbon monoxide detector(s).''

FRA agrees in principle with the desire for these life safety protection items; however, some of the proposed devices are not practical. Requiring smoke detectors and carbon monoxide detectors to be hard-wired may result in

added cost and complexity where simple battery-powered detectors can be used with little difference in protection. Many newer model smoke detectors are equipped with 10-year lithium batteries.

A fire detection system meeting the requirements of 29 CFR 1910.164 is not appropriate. The standard cited by BMWED is a performance specification for systems intended to meet other specific OSHA standards such as those for fuel or flammable materials storage areas. While meeting this OSHA standard is not necessary for camp cars, FRA will add paragraph (c) to § 228.331 as set forth in the regulatory text of this final rule.

b. Weather and Medical Information

BMWED also recommended requiring each camp car to have emergency evacuation instructions and information regarding the nearest hospital and have a weather radio. FRA agrees that camp car occupants need to have access to information in case of weather and medical emergencies, but has decided to address these needs by adding paragraph (d) to § 228.331 as set forth in the regulatory text of this final rule.

c. First Aid Kits (Proposed § 228.331)

AAR objected to FRA's proposed § 228.331, which specified and listed the minimum contents of first aid kits. AAR urged FRA to take a consistent approach to first aid kits. FRA's proposed § 228.331 differed from its regulation on passenger train emergency preparedness at 49 CFR 239.101(a)(6) by adding the requirements of a first aid booklet, aspirin, antibiotic ointment packages, and hydrocortisone ointment packets. FRA agrees that it should be consistent. As a result, FRA has changed the requirements for the first aid kit required by this subpart to conform with those of 49 CFR 239.101(a)(6).

3. Camp Car Environment

BMWED requested that FRA restrict the locations where camp cars are located to avoid standing water and other potential hazards. Specifically, it requested the following requirements:

All camp car locations must be adequately drained, graded, and rendered free from depressions that pose a tripping hazard or allow water to collect. Camp car locations shall not be subject to periodic flooding, nor located within 200 feet of swamps, pools, sink holes, or other surface collections of water. The discharge of ''gray water'' from camp car lavatories and showers shall be prohibited unless permitted by local laws and ordinances; however, in no case shall ''gray water'' from lavatories and showers be discharged closer than 200 feet of any camp car. Camp cars shall be located so the drainage from and through the location will not endanger any domestic or public water supply.

FRA recognizes that the issues identified in this comment may arise in some circumstances; however, they are not within the scope of the mandate nor within the agency's scope of regulatory expertise. The mandate language at 49 U.S.C. 21106(c) clearly is intended to address the camp cars themselves, not the conditions of the railroad property or adjacent private property on or near which they are located.

BMWED asked FRA to require gender-separated camp car facilities for ''sleeping, showering, washing, urination and defecation.'' FRA does not believe that this provision is necessary at this time, nor is FRA aware of any problems stemming from a lack of such gender-separated facilities. FRA is, however, concerned about the possibility that a married couple might be working together, and the railroad might want to respect that couple's wish to stay in the same camp car. If FRA learns of problems stemming from the lack of gender-separated facilities, it will take appropriate action.

4. Furnishings (Proposed § 228.311)

BMWED also had suggestions on the furnishings provided to camp car occupants. It recommended, among other things, a prohibition against cots, multi-deck bunks (which are built into or against a wall, such as in a Pullman car), and multi-level bunk beds (which are movable). FRA agrees that a prohibition on multi-deck bunks and multi-level bunk beds is a reasonable prohibition, given that falls from multi-deck bunks and multi-level bunk beds are possible and falls from an upper deck would obviously tend to cause more severe injury than falls from an ordinary, single-level bunk or single-level bed. The U.S. Consumer Product Safety Commission determined that multi-level bunks and multi-level bunk beds provided a sufficient hazard so as to require regulations to limit their hazards. See 16 CFR part 1213 *et seq.* FRA also notes that BMWED states that this prohibition would not have any cost, as NS does not currently use multi-level bunks or multi-level bunk beds in its camp cars for employees and MOW workers.

FRA, however, disagrees with BMWED's suggested prohibition on ''cots'' at this time. FRA realizes that cots can vary widely, and FRA expects any bed or cot provided under § 228.311 to be a unit for sleeping, consisting of a base and mattress. NS, the only railroad that uses camp cars as sleeping quarters for employees or MOW workers, uses beds only and does not use a cot in the sense of a unit used for sleeping made of canvas over a frame that can be folded up and lacking a mattress. If NS or another railroad chooses to use a cot that does not have a mattress in a camp car that it provides as sleeping quarters, FRA will revisit this issue.

BMWED also requested that the lockers provided to the employees and MOW workers be lockable. FRA finds this to be a reasonable request, as the cost of locks should be minimal. Employees and MOW workers live in these camp cars for days or weeks at a time, and being able to secure their valuables could help alleviate stress and anxiety regarding the potential theft.

5. Minimum Lateral Spacing Requirement (Proposed § 228.311)

FRA's proposed § 228.31(b) would have required that beds not be closer than 36 inches laterally, with modular units subject to a 30-inch minimum and double-deck bunks no closer than 48 inches laterally. AAR objected that the provision would be problematic for some in-service camp cars. It mentioned that the width of highway-capable camp cars is limited by existing DOT restrictions. AAR suggested, and FRA adopts, the following change: ''Except where partitions are provided, such beds or similar facilities must be spaced not closer than 36 inches laterally (except in rail-mounted modular units, where the beds shall be spaced not closer than 30 inches, and highway trailer units, where the beds shall be spaced not closer than 26 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor.''

6. Cleaning (Proposed § 228.329)

BMWED also commented on cleaning requirements. For example, BMWED suggested that FRA change the requirement in § 228.329(a) from simply stating that a camp car must be kept ''clean'' to use the phrase ''clean, healthful, and sanitary,'' and include a short explanation of the division of responsibility between the railroad and camp car occupants. FRA agrees that railroads are responsible for the regular and thorough cleaning of all camp car facilities, and that camp car occupants should use good housekeeping practices. FRA, however, does not believe that this suggestion substantively changes the proposed requirements, and so refrains from altering the proposed language of the regulation itself. FRA believes that the requirements of this subpart ensure that camp cars will be kept clean, healthful, and sanitary.

BMWED also requested that FRA require railroads to provide each occupant with two sets of clean bed linens and also exchange them, upon request, for clean linens when they are soiled. NS has notified FRA that, under the terms of two differing collective bargaining agreements, railroad employees either currently receive reimbursement for providing and laundering linens or are given reimbursement for providing their own linens. FRA will not interfere regarding linens when they are being provided under the terms of a collective bargaining agreement. FRA recognizes, however, that sweat and body fluids can accumulate on linens, posing a health hazard from potential viruses and bacteria growing in them. Health risks are compounded if someone sleeps on the unwashed sheets of another. FRA believes a collective bargaining agreement is the most appropriate method to ensure that occupants have clean sheets, but has added a requirement that clean linens be provided if a provision on the subject of linens in the applicable collective bargaining agreement does not exist.

Inspections

BMWED asked for a regulatory right for a representative of the employee labor organization to accompany FRA inspectors during a camp car inspection. It points out that OSHA allows for a representative of employee labor organizations to accompany OSHA inspectors. FRA declines to create such a right. FRA prefers to have unannounced inspections. If a camp car occupant has a concern that these regulations are not being adhered to, that employee or an employee's representative may alert FRA. When an individual contacts FRA regarding a railroad's failure to adhere to the law, FRA investigates the complaints and makes every effort to comply with statutory prohibitions and agency policy not to reveal the identity of that individual unless the individual has consented to the release. *See* 49 U.S.C. 20109(i).

7. Definitions (Proposed § 228.5)

a. ''Camp Car'' Definition

In its comment, AAR recommended that FRA modify the definition of ''camp car'' to explicitly exclude office cars, inspection cars, and specialized maintenance equipment. FRA does not intend to include any cars in this subpart that are not used as sleeping quarters or ancillary to such sleeping quarters. FRA does not consider track geometry cars and similar cars to ''house or accommodate'' MOW workers in the way that sleeping and dining room cars do. For clarity, however, FRA has amended the definition of ''camp car'' to make this intent explicit.

b. ''MOW Worker'' Definition in Proposed § 228.5

In the NPRM, FRA proposed a definition of ''MOW worker'' as someone who was ''an individual employed to maintain the right of way of a railroad,'' which is the singular language of the hours of service laws, slightly shortened. *See* 49 U.S.C. 21106(a)(1) (''any individuals employed to maintain the right of way of a railroad carrier''). BMWED suggested that definition be elaborated to say ''an individual employed to inspect, install, construct, repair or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and right of way of a railroad.'' To clarify the scope of the definition, FRA has accepted this change in the definition intact except to add a comma after ''repair.'' It is not necessary for the individual to be employed by a railroad; the individual may be employed by a contractor or subcontractor to a railroad.

8. Minimum Space Standards and Bathroom Requirements (Proposed §§ 228.311, 228.317 to 228.321)

Proposed § 228.311 suggested a minimum amount of 50 square feet of floor space for each occupant of a camp car used for sleeping. BMWED disputed that this amount of space was sufficient, and suggested that more appropriate standards included a minimum of 80 square feet with a maximum occupancy of four people per car. The organization pointed out that the cost of compliance for this standard is essentially zero, as NS already provides this minimum amount of space. FRA agrees that this suggested change is reasonable and will prevent overcrowding.

In addition, for camp cars that are used for general living as well as cooking, BMWED recommended that the minimum square feet per occupant be increased from 90 to 120 square feet. FRA also agrees with this change to help prevent overcrowding. FRA notes that adopting this amendment should present no current cost to any railroad, as NS does not presently use camp cars in which occupants both sleep and cook.

In the NPRM, FRA proposed a minimum of two toilet rooms and two showers in each camp car that provides sleeping facility and an additional toilet room and shower for every one to five more people after ten occupants. The NPRM suggested only two lavatories per camp car. BMWED recommended that if a camp car has more than four occupants, an additional toilet room and shower and lavatory should be required for every one or two more people. For its part, AAR requested requiring a fewer number of showers, lavatories, and toilets when there were fewer than four occupants. FRA sees the value in each of these proposals, and notes that the projected cost of this change from the NPRM is zero, as NS already complies with BMWED's proposal. FRA has lowered the minimum number of these fixtures required when a camp car has fewer than four occupants. The final rule requires one functional lavatory, shower, and toilet per camp car for up to two occupants, and one additional functional lavatory, shower, and toilet if there are three or four occupants in the camp car.

9. Lighting (Proposed § 228.309)

BMWED requested that the minimum lighting for toilet and shower rooms be increased from the 10 foot-candles required in the proposed § 228.309(f)(2) to 30 foot-candles. OSHA standards require only 10 foot-candles for indoor toilets; 30 foot-candles are required for areas, such as offices, where more visually demanding tasks are done. 29 CFR 1926.56(a). Because of the limited size of toilet rooms, FRA does not believe that it is necessary for the requirements for lighting in bathrooms to be increased to the same level as an office.

10. Temperature of Camp Car (Proposed § 228.309)

The NPRM proposed that each car must have equipment so that it can maintain a minimum temperature of 68 degrees Fahrenheit (°F) in cold weather and a maximum temperature of 75 °F in hot weather. § 228.309(g). BMWED requested that the minimum temperature be changed to 70 °F. FRA declines to do so, as it is likely that such a small difference is within the reading error of some thermometers. AAR also objected to FRA's proposed temperature requirement.

AAR requested that FRA prescribe a maximum temperature of 78 °F, as was set forth in appendix C to part 228. AAR stated that it was unaware of any problems with the 78 °F threshold. It also objected to a change proposed by FRA that was different from the guidelines of appendix C and allowed the maximum temperature to be only 20 °F below the ambient temperature. AAR stated that

differential cooling systems are limited by what they can achieve relative to the ambient temperature. FRA declines to make these changes.

FRA believes that modern air conditioning equipment on these cars is capable of providing the requisite cooling to offer the workers a respite from warm conditions that could interfere with the ability to get adequate rest. If a temperature of 78 °F is achievable by these systems, it seems unlikely that 75 °F would not be. With respect to the absence of the 20 °F differential from ambient as an alternative cooling standard, FRA believes this could lead to permitting significantly higher allowable temperatures that would have an adverse impact on the workers' ability to get adequate rest, particularly in some of the warmer climates in which these cars operate.

11. Emergency Egress (Proposed § 228.309)

AAR requested that doors for emergency egress not be required at each end, as would be required by the proposed § 228.309(e). FRA agrees that the NPRM language is needlessly specific and agrees to amend that section.

In addition, AAR suggested that FRA modify its proposed requirement of § 228.309(f) for illumination of exit pathways. AAR stated,

> [p]roposed paragraph 228.309(f)(1) requires that pathways not immediately accessible to occupants should be illuminated at all times. However, literally interpreted, this requirement could be read as requiring that lights be kept on in sleeping quarters, which would, of course, disturb the sleep of occupants. If the sleeping quarters are at opposite ends of a camp car, under this paragraph the sleeping quarters would have to be illuminated because the occupants would have to pass through the sleeping quarters to get to the secondary exits, *i.e.,* an occupant in one end of the car would have to pass through sleeping quarters to get to the exit at the other end of the car.

FRA agrees that the NPRM language is somewhat ambiguous and agrees to adopt the AAR's proposed change, with two additional commas, as follows:

> § 228.309(f)(1) When occupants are present, the pathway to any exit not immediately accessible to occupants, such as through an interior corridor, shall be illuminated at all times to values of at least 1 foot-candle measured at the floor, provided that where the pathway passes through a sleeping compartment, the pathway up to the compartment will be illuminated, but illumination is not required inside the sleeping compartment.

12. Water Issues

a. Potability (Proposed §§ 228.319–228.323)

In its comment, BMWED stated its opposition to allowing non-potable water to be used for the washing and showering of persons. See proposed §§ 228.319–228.323. It pointed to OSHA's regulation, 29 CFR 1910.141(b)(1)(i), which requires potable water for the washing of the person in places of employment. FRA will follow OSHA's lead in requiring that water used for personal cleansing in the sinks and showers of camp cars be potable. FRA has changed the rule text accordingly.

For its part, AAR objected to the requirement of proposed § 228.323 that a railroad must obtain a certificate of compliance with EPA drinking water regulations every time potable water is drawn from a different local source. AAR stated that this was impractical and is unnecessary. It argued that, most of the time, water for camp cars came from a municipal community water system via spigots on the outside of buildings.

FRA does not agree with AAR's arguments. Its assertions that water drawn from a municipal community water system must be assumed to be potable, even after being conveyed through a portable, removable system of connections, pipes, and tanks, is not credible. In fact, during a visit to a NS camp, the water system was connected to a municipal building through a series of pipes and hoses on the surface of a parking lot. This circumstance could easily lead to a compromised system that could introduce contamination into the water, rendering it non-potable.

FRA agrees that community water sources are regulated and the water is potable when leaving the water supplier. However, FRA has no means of assurance that the water from the taps AAR mentions is in fact of the same quality. Further, the minority of circumstances where the water is not drawn from a community water system source are minimally addressed in the AAR comments. While the materials and systems components used by NS may be made of FDA-approved materials, that does not preclude the introduction of contamination into the system due to improper procedures setting up the connections, nor through damage to the components after they have been set up.

FRA's desire for either a certificate of conformance, or a similar certificate from a laboratory is to ensure that the water entering the camp car system is, at the source, of potable quality. The other testing requirements contained in the section are intended to ensure that once potable water is introduced into the system, it is delivered in that form to the users. The FDA has specific regulations regarding the source quality of potable water for use on ''a conveyance engaged in interstate traffic'' at 21 CFR 1240.80, 1240.83, and, for treatment once aboard the conveyances, at 21 CFR 1240.90. FRA is simply restating these precepts.

b. Cleaning of Potable Water Systems (Proposed § 228.323)

AAR also objected to the requirement of proposed § 228.323(c)(4) that potable water systems be drained and flushed regularly and after any complaint. As discussed above, however, the introduction of contaminants into a water system can occur through any of a number of sources, both through damage to the system connections, as well as through back flow through any of the system's internal outlets. Even under normal circumstances of use, where the water is consumed and refilled on a frequent basis, quarterly disinfection and flushing have been used, under an FDA-approved process, on Amtrak passenger cars for a number of years. By AAR's own admission, camp cars may move on a frequent basis, thus the opportunities for introduction of contaminants into the potable water system exist. The two procedures established by this regulation thus parallel those used to protect Amtrak passengers and crews and should be no more burdensome, and in fact are likely less so, for NS since its fleet and movement frequency are much less.

c. Water Temperature (Proposed § 228.319)

In addition, BMWED also stated that there was no reason for § 228.319 to allow for only tepid water—as opposed to both hot and cold water—to be provided in lavatories. It stated that the water for sinks came from a plumbing system that provided both hot and cold water. Since this is a reasonable request that apparently can be provided with minimal or no cost to the only railroad actively using camp cars, FRA has changed § 228.319 to require hot and cold water in lavatories.

d. Training (Proposed § 228.323)

BMWED also requested that any individual who fills a potable water system as required by this subpart be ''properly trained, qualified and designated by the employer.'' FRA's proposed § 228.323(b)(5) required only that the person filling the potable water

system be trained. FRA does not see the value of BMWED's suggestion.

e. Response to Failed Test of Water (Proposed § 228.323)

The organization also requested that FRA prohibit the return to service of a camp car whose water system failed a total coliform test until test samples from that system show a satisfactory result. Proposed § 228.323(c)(5) simply states that the system needs to be resampled and then it may be returned to service. The original language of the proposed regulation follows FDA-approved protocols currently used for water systems on conveyances in interstate commerce. The recommended change is not necessary.

13. Waste Disposal From a Food Service Facility (Proposed § 228.325)

BMWED requested in its comment more stringent controls on waste disposal methods to protect the safety and health of occupants. It requested changes to be added to § 228.325(c). FRA agrees with these changes and has adopted them in this final rule.

14. Repairs (§ 228.333)

In the NPRM, FRA asked for comments regarding the amount of time that a railroad should be given to repair significant noncomplying conditions in a camp car under proposed § 228.333, which gave the railroad 72 hours after notice of noncompliance with this subpart from FRA. In response, BMWED recommended the following substitute:

A railroad shall, within 24 hours after receiving a good faith notice from a camp car occupant or an employee labor organization representing camp car occupants or notice from the Federal Railroad Administration of noncompliance with this subpart, correct each non-complying condition on the camp car or cease use of the camp car as sleeping quarters for each occupant. In the event that such a condition affects the safety or health of an occupant, such as, but not limited to, water, cooling, heating, or eating facilities, sanitation issues related to food storage, food handling or sewage disposal, vermin or pest infestation, electrical hazards, etc., the railroad must immediately upon notice provide alternative arrangements for housing and providing food to the employee or MOW worker until the condition adverse to the safety or health of the occupant(s) is corrected. As used in this section ''immediately'' means prompt, expeditious and without delay.

While FRA does not believe a definition of ''immediately'' is necessary, it otherwise agrees with the recommended changes and has adopted them.

## II. Section-by-Section Analysis

*Part 228*

Section 228.1 Scope

FRA is revising the heading of 49 CFR part 228 to reflect all of its contents more explicitly. The name of the part is being changed from ''HOURS OF SERVICE OF RAILROAD EMPLOYEES'' to ''HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS''.

*Subpart A of Part 228*

FRA is tailoring § 228.1, Scope, to reflect the addition of new subpart E, Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters, such as by adding new paragraph (c).

Section 228.3 Application

FRA also is amending § 228.3, Application. Currently, paragraph (a) of that section says that, except as provided in paragraph (b), part 228 applies to all railroads and contractors and subcontractors of railroads. FRA is revising the section to indicate that although subparts B and D of part 228 apply to railroads and contractors and subcontractors of railroads, subparts C and E of part 228 apply only to railroads. (Subpart A contains no duties that apply to any entity.) In addition, § 228.3 is being amended to clarify that plant railroads are exempt from the requirements of subparts B–E of part 228. The section is also being amended to note that tourist, scenic, historic, and excursion railroads that are not part of the general system are generally excepted from subparts B–E except as provided in § 228.413(d)(2). *See* 76 FR 50360, 50400 (August 12, 2011). Section 228.3 also is being amended to move its existing reference to § 228.401 as the applicability section for subpart F, Substantive Hours of Service Regulations for Train Employees Engaged in Commuter or Intercity Rail Passenger Transportation, from paragraph (b) to paragraph (c). *Id.*

Section 228.5 Definitions

Finally, FRA is amending § 228.5, Definitions, by adding definitions of four terms. The terms ''plant railroad'' and ''tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation'' are used in the proposed ''application'' provisions of subpart A and the new subpart E, and both terms refer to types of operations that have traditionally been excluded from FRA regulations because they are not part of the general railroad system of transportation. (Note, however, that, *e.g.,* all tourist railroads are subject to the substantive hours of service requirements of subpart F of part 228 as provided in 49 CFR 228.401 and the hours of service recordkeeping and reporting requirements of subpart B as provided in 49 CFR 228.413(d)(2).) There is a more extensive explanation of the general railroad system of transportation in appendix A to 49 CFR part 209, and it is explicitly defined there as ''the network of standard gage track over which goods may be transported throughout the nation and passengers may travel between cities and within metropolitan and suburban areas.''

The terms ''camp car'' and ''MOW worker'' are used in subparts C and E. ''Camp car'' is, in § 228.5, defined as a trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee or MOW worker. An office car, inspection car, specialized maintenance equipment, and a wreck train is not included.

The longstanding definition of ''camp car'' in the guidelines of 49 CFR part 228, app. C is clarified by adding ''or any other mobile vehicle or mobile structure'' as catch-all language. For example, a recreational vehicle used to accommodate or house an employee or MOW worker is a camp car within the meaning of § 228.5. In addition, the phrase ''railroad employees'' in the existing definition of camp car is replaced with ''an employee or MOW worker.'' The term ''employee'' is already defined in existing § 228.5 and means a train employee, signal employee, or dispatching service employee. The term ''MOW worker'' is defined as ''an individual employed to inspect, install, construct, repair, or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and right of way of a railroad.''

*Subpart B of Part 228*

Section 228.13 [Removed and Reserved]

FRA is removing and reserving § 228.13, Preemptive effect, for two reasons. First, the section is unnecessary because it is duplicative of statutory law at 49 U.S.C. 20106 and case law. Second, the section is incomplete because it omits reference to the preemptive effect of the hours of service laws (49 U.S.C. ch. 211), (the authority for 49 CFR part 228, subparts C, E, and F). The hours of service laws have been

interpreted by the Supreme Court as preempting State regulation of the hours of railroad employees. *See Hill* v. *State of Florida ex rel. Watson,* 325 U.S. 538, 553 (1945).

Section 228.6 Penalty

In addition, FRA is redesignating two provisions in subpart B that are intended to apply to the entire part in order to move them to subpart A, General. In particular, FRA is redesignating § 228.21, Civil penalty, and § 228.23, Criminal penalty, as § 228.6, Penalty.

*Subpart C of Part 228*

Heading of Subpart C

FRA is changing the heading of subpart C from ''Construction of Employee Sleeping Quarters'' to ''Construction of Railroad-Provided Sleeping Quarters.'' ''Railroad-Provided'' is added to emphasize that the regulations apply only to sleeping quarters that are provided by a railroad, and the word ''Employee'' is deleted since the amended subpart applies not only to sleeping quarters occupied by an employee but also to sleeping quarters in the form of a camp car that are provided by a railroad to an MOW worker.

Section 228.101 Distance Requirement for Employee Sleeping Quarters; Definitions Used in This Subpart

In § 228.101, the heading is changed from ''Distance requirement; definitions'' to ''Distance requirement for railroad-provided employee sleeping quarters; definitions used in this subpart.'' This revision is intended to reflect that paragraph (a) applies only to sleeping quarters for employees (not for MOW workers). That section reflects the 1976 statutory amendment discussed earlier in the preamble that carries a July 8, 1976, compliance date.

In addition, some typographical errors in paragraph (b) are corrected. Specifically, ''Except as determined in accordance with the provisions of this subpart. 'The immediate vicinity' '' is replaced with ''Except as determined in accordance with the provisions of this subpart, the 'immediate vicinity' '' instead.

§ 228.102 Distance Requirement for Camp Cars Provided by Railroads as Sleeping Quarters Exclusively for MOW Workers

In new § 228.102, FRA is restating the statutory language at 49 U.S.C. 21106(b) and 21106(a)(2) by saying that a railroad that uses camp cars must comply by December 31, 2009, with the prohibition in 49 U.S.C. 21106(a)(2) with respect to those camp cars that are provided as sleeping quarters exclusively to MOW workers. (Camp cars for train employees, signal employees, or dispatching service employees and camp cars occupied by both covered-service employees and MOW workers are already subject to the July 8, 1976, compliance date in 49 U.S.C. 21106(a)(2) and 49 CFR 228.101.) In other words, under the statute, starting December 31, 2009, a railroad must not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping is performed. (Of course, compliance with the regulation itself would not be due until the date established in the final rule.) The key terms in new § 228.102 are already defined in the subpart or at § 228.5. In effect, absent FRA's special approval in accordance with subpart C, a railroad may not begin construction or reconstruction of a camp car (including the placement of a camp car) as sleeping quarters solely for MOW workers in or within the distance specified in the regulations at § 228.101(b) (one-half mile from the location where such switching or humping of placarded cars takes place). Procedures on requesting FRA's special approval are found within that subpart and at 49 CFR part 211. Section 228.102 notes that references to ''employees'' in the sections on procedures in §§ 228.103–228.107 must be read to include MOW workers.

*Subpart E of Part 228*

FRA is adding new subpart E entitled, ''Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters.''

Section 228.301 Purpose and Scope

This section is a basic restatement of the legal mandate in section 420 of RSIA that is codified at 49 U.S.C. 21106(c), which requires the issuance of regulations to implement 49 U.S.C. 21106(a)(1) with respect to certain camp cars. Section 21106(a)(1) of title 49 of the U.S. Code provides that sleeping quarters provided by a railroad to its covered-service employees and MOW workers must be—

> clean, safe, and sanitary, give those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the carrier, and provide indoor toilet facilities, potable water, and other features to protect the health of employees * * *

Subpart E replaces the outdated guidelines at 49 CFR part 228, app. C consistent with RSIA's requirements.

Section 228.303 Application and Responsibility for Compliance

This section defines the railroads that are covered by the new subpart. All railroads are covered, with the exception of three types of railroad operations. The three listed exceptions are for operations that are not part of the general railroad system of transportation: (1) Railroads that operate exclusively on track that is not part of that system (plant railroads, as that term is defined in § 228.5); (2) tourist, scenic, historic, or excursion railroads that are not part of the general railroad system of transportation, a term also defined in § 228.5 (tourist railroads); and (3) rapid transit operations in an urban area that are not connected to the general railroad system of transportation. *See* 49 CFR part 209, app. A for a discussion of ''general railroad system of transportation.'' As a matter of policy, FRA almost never exercises its statutory jurisdiction over plant railroads and generally does not exercise its statutory jurisdiction over tourist railroads that operate only off the general system. (*But see, e.g.,* 49 CFR part 228, subpart F, including § 228.401, and the Bridge Safety Standards at 49 CFR part 237). FRA lacks statutory jurisdiction over urban rapid transit operations not connected to the general system. *See* 49 U.S.C. 20102, 20103.

In addition, paragraph (b) explains that even though subpart E of part 228 applies only to railroads, a railroad may not avoid fulfilling the requirements of this subpart by using contractors or subcontractors. If, for example, a railroad uses a contractor to provide dining services for the occupants of a camp car, FRA will still enforce the provisions of § 228.325 against the railroad to ensure that the food service is safe and sanitary.

Section 228.305 Compliance Date

This section establishes the deadline for compliance. A December 31, 2010, deadline for compliance with the regulations was set by Congress in section 420 of RSIA, but the final rule may not become effective until 60 days after it is published. The compliance date for this rule is December 30, 2011.

Section 228.307 Definitions

This section defines key terms used in subpart E. Many of these definitions were originally set forth in FRA's 1990 Guidelines. In addition, many of these definitions have been taken from standards issued by OSHA.

Section 228.309 Structure, Emergency Egress, Lighting, Temperature, and Noise-Level Standards

This section sets forth a series of requirements for camp cars provided by a railroad as sleeping quarters to employees or MOW workers or both. First, the section requires that the camp cars are constructed so as to provide protection from the elements. Second, the section requires that the camp cars provide an opportunity for rest free from interruptions caused by noise under the control of the railroad that provides the camp cars. The limit of 55 dB(A) is based on FRA's longstanding interpretation of an hours of service statutory provision related to sleeping quarters. 49 U.S.C. 21106(a)(1); 49 CFR part 228, app. A and C. It is notable that the 55 dB(A) level is typical of semi-urban and suburban neighborhood outside ambient noise during the evening hours with minimal street traffic. Levels such as these have also been measured in the same neighborhoods on side streets during daylight hours; thus, the 55 dB(A) limit should not be difficult to achieve. Third, this section requires that the camp cars be able to maintain a minimum temperature during cold weather (68 °F) and a maximum temperature during hot weather (75 °F). Fourth, the section requires that camp cars provide an adequate means of egress in the event of an emergency situation. There must be at least two emergency exits. Finally, FRA is also establishing minimum lighting standards, including provisions requiring the interior pathway to an emergency exit not immediately accessible to the occupants to be illuminated at all times for emergency egress purposes, except that illumination of emergency pathways is not required inside sleeping compartments.

Section 228.311 Minimum Space Requirements, Beds, Storage, and Sanitary Facilities

This section requires that, to prevent overcrowding, the camp car's occupants have at least 80 square feet each; in a camp car where occupants cook, live, and sleep, a minimum of 120 square feet per occupant must be provided. The section also requires certain types of furniture. This section also creates a limit of four occupants per car.

Section 228.313 Electrical System Requirements

This section sets forth requirements regarding the safety of all electrical systems in the camp car, including, but not limited to, heating, cooking, ventilation, air conditioning, and water heating equipment. While the NPRM stated that these systems must be installed in accordance with all applicable provisions of the National Fire Protection Association's NFPA 70 (2008), ''National Electrical Code'' (NEC 2008), approved by the National Fire Protection Association (NFPA) Standards Council on July 26, 2007, with an effective date of August 15, 2007, FRA realizes that this code is not the only industry standard that could be used to ensure safe and working electrical equipment. To allow greater flexibility, FRA has decided to allow railroads to utilize industry-recognized standards other than those set forth in NEC 2008. These may include State-modified NEC Standards, other nationally-recognized standards, or internationally-recognized standards. FRA expects all electrical systems installed to be compliant with whichever industry-recognized standard the railroad utilizes.

This section of the rule does not specify any certain code that must be used for heating, ventilation, and air conditioning (HVAC) systems, but does require that all such systems be safe and working. FRA anticipates that, to ensure that these systems are safe and operable, railroads will require HVAC systems in their camp cars to meet widely-adopted standards, such as those of the standards of the Sheet Metal and Air Conditioning Contractors National Association; the American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and the American National Standards Institute.

Section 228.315 Vermin Control

This section sets forth requirements related to the prevention and resolution of vermin infestations.

Section 228.317 Toilets

This section represents a substantial revision of the parallel provision in FRA's 1990 Guidelines to reflect a more appropriate number of toilets required. Further, the section requires that there be at least one toilet room located within a camp car that has sleeping facilities for a total of one or two occupants. If the camp car has three or four occupants, then at least two toilet rooms are required. FRA believes that this requirement provides an adequate standard for the minimum number of toilets. A toilet room must have a door that latches, one that is capable of being and staying securely closed, and the toilet room must be sufficient to assure privacy. Certain construction and cleanliness standards are also included in this section.

Section 228.319 Lavatories

This section requires every camp car that provides a sleeping facility to have a basin with hot and cold potable running water, soap, and hand-drying equipment or towels. It also requires at least one basin per car with sleeping facilities.

Section 228.321 Showering Facilities

The section mandates a minimum number of showers, construction requirements for the showers, and the provision of showering supplies.

Section 228.323 Potable Water

This lengthy section sets forth requirements to ensure that the water provided to the occupants of camp cars is safe. Water uses such as personal oral hygiene, washing of the person, drinking as well as food washing, preparation, and cooking, and cleaning of the cooking utensils, cooking surfaces, and eating surfaces—all require the use of water that is potable. If the water supplied for these uses is provided by means of a system of tanks, lines, and other plumbing, the integrity and cleanliness of such systems need to be maintained.

To facilitate these objectives, FRA has established a series of requirements in this section. Individuals who fill potable water systems servicing a camp car must be trained. The source for water provided to the occupants of a camp car must meet minimum standards put forth by the Environmental Protection Agency under 40 CFR part 141, National Primary Drinking Water Regulations. A railroad must obtain a certificate indicating this fact. Section 228.323 does not require that the water as it flows from any faucet within the camp be certified as potable, but rather that the source of the water itself be potable. A railroad may obtain the certificate even before a camp reaches any given location to avoid interrupting operations. Of course the expected connection must be somewhat imminent: a railroad could not, for example, legally rely on a certification that is six months old. The certificate must be kept with the camp car for the duration of the connection, after which the certificate must be sent to a centralized location, such as the railroad's system headquarters. This location must be the depository for all water certification records for the railroad. Further, equipment and construction employed to provide potable water to a camp car must be approved by the Food and Drug Administration. The water itself must be stored in sanitary containers and be

dispensed so that sanitary conditions are maintained. Distribution lines must have adequate pressure for simultaneous use. Potable water systems must be flushed and disinfected regularly, and the steps that are taken to do so must be recorded. Those records must be kept within the camp for the duration of the connection and then sent to a centralized location. Certain procedures must be followed in response to a report of a problem with the taste of the water or a report of a health problem because of the water.

Section 228.325 Food Service in a Camp Car or Separate Kitchen or Dining Car

The section prohibits the presence of food and beverages in toilet rooms and toxic material areas, imposes requirements applicable when a central dining operation is provided, and requires that food service facilities and operations will operate hygienically. The limitations of paragraphs (c) and (d) do not apply to food service from nearby restaurants that are subject to State law.

Section 228. 327 Sewage and Waste Collection and Disposal

This section addresses the necessity of wastes being disposed to ensure a sanitary environment. Timely removal of all kinds of waste is mandated by § 228.329(a). Camp cars must be equipped with a method to dispose of sewage according to § 228.329(b). Appropriate waste containers for both general waste and food waste are required by § 228.329(c) and (d), respectively.

Section 228.329 Housekeeping

This section requires that each camp car be kept as clean as is practicable given the type of work performed by the occupants of the car. Railroads and camp car occupants share the obligation to keep the camp car facilities clean and in good care, meaning that railroads are responsible for the regular and thorough cleaning of all camp car facilities, and that camp car occupants should use good housekeeping practices. The section also requires elimination of splinters, unnecessary holes, and other conditions or features that impede cleaning.

Section 228.331 First Aid and Life Safety

This section requires a first aid kit in each camp car with specified contents. This list is based on the requirements for first aid kits in passenger trains set forth in FRA's regulations on passenger train emergency preparedness at 49 CFR 239.101(a)(6). Railroads should add items to the first-aid kit as conditions warrant, for example, increasing the minimum number of bandages for a larger crew than normal or providing additional items if the occupants of the camp car regularly deal with hazardous material. Additional items that railroads may consider providing include ammonia inhalants, aspirin, and a splint.

Each occupied sleeping room in a camp car must be equipped with a functional smoke alarm and carbon monoxide alarm or a combination device that incorporates both types of alarms, and there must be a functional fire extinguisher in each sleeping room of the camp car. The fire extinguisher must be ''Type ABC,'' a classification put forth by National Fire Protection Association and widely used. In addition, each camp car consist must have an emergency preparedness plan prominently displayed.

Section 228.333 Remedial Action

As a reflection of FRA's enforcement policy, the section gives a limited amount of time for a railroad to take action after receiving specified notice to repair a camp car that does not comply with these regulations. The section also requires that a railroad provide alternate accommodations when a camp car does not provide the essential services such as proper cooling or heating. In addition, if a camp car is noncompliant with the requirements of this subpart, and the railroad otherwise would have provided meals for occupants, it must provide for alternate arrangement for meals.

Section 228.335 Electronic Recordkeeping

This section provides for electronic recordkeeping of records required by this subpart.

*Appendix A and Appendix C of Part 228*

Finally, conforming changes are being made to appendix A to part 228, and appendix C to part 228 is being removed. Appendix A is revised (FRA's statement of agency policy and interpretation of the hours of service laws) by removing the paragraph discussing the 1990 Guidelines, codified in appendix C to part 228, and the rationale for establishing those guidelines because appendix C is eliminated and superseded by new 49 CFR part 228, subparts C and E. Appendix C is removed to reflect that the guidelines with respect to camp cars are being revised and converted into regulations at 49 CFR part 228, subparts C and E, which become effective upon the compliance date.

## III. Regulatory Impact and Notices

*A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures*

This rule has been evaluated in accordance with existing policies and procedures under Executive Orders 12866 and 13563 as well as and DOT policies and procedures and determined to be non-significant. FRA has prepared and placed in the docket a regulatory evaluation addressing the economic impact of this final rule. Document inspection and copying facilities are available at U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Docket material is also available for inspection on the Internet at *http://www.regulations.gov.* Photocopies may also be obtained by submitting a written request to the FRA Docket Clerk at the Office of Chief Counsel, RCC–10, Mail Stop 10, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; please refer to Docket No. FRA–2009–0042, Notice No. 2.

To carry out a 2008 Congressional rulemaking mandate, FRA is creating a new Subpart E to title 49 Code of Federal Regulations (CFR) part 228. The new subpart prescribes minimum safety and health requirements for camp cars that railroads provide as sleeping quarters to train employees, signal employees, dispatching service employees, and individuals employed to maintain its right-of-way. The new regulation supplants existing guidelines that interpret previously enacted statutory requirements. The previous guidelines required railroad-provided camp cars to be clean, safe, and sanitary; and afford those employees and individuals an opportunity for rest—free from the interruptions caused by noise under the control of the railroad. In further response to the congressional mandate, the regulations include the additional statutory requirements that camp cars provide indoor toilets, potable water, and other features to protect the health of such workers.

Under separate but related statutory authority, FRA is amending subpart C to 49 CFR part 228, Construction of Employee Sleeping Quarters. In accordance with the RSIA, FRA applies the location restrictions to include camp cars occupied exclusively for individuals employed to maintain the right-of-way.

Finally, FRA is making conforming changes to part 228, clarifying its provision on applicability, removing an existing provision on the preemptive effect of part 228 as unnecessary; and moving, without changing, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

FRA estimates costs and benefits for the final rule. In this case, only one railroad will be affected, NS. Since NS has already taken action to address the safety and health issues in an acceptable manner, this final rule will add only minimal costs. Some new requirements that will add costs are certification of the potable water source, lab tests when necessary, draining and flushing of the water system, and carbon monoxide detectors. As described in the regulatory evaluation, FRA estimates the annual costs of this rule will range between $61,000 and $80,000. The main benefit of this rule is the assurance that current safety and health levels of camp cars will be maintained in the future.

*B. Regulatory Flexibility Act and Executive Order 13272*

To ensure potential impacts of rules on small entities are properly considered, FRA developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The Regulatory Flexibility Act requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities.

As discussed earlier, FRA has initiated this rulemaking as a requirement of the RSIA. FRA is promulgating new regulations in a new Subpart E to part 228, prescribing minimum safety and health requirements for camp cars that a railroad provides as sleeping quarters to any of its train employees, signal employees, dispatching service employees, and individuals employed to maintain its right-of-way. The new regulations supplant existing guidelines that interpret existing statutory requirements, enacted decades earlier, that railroad-provided camp cars be clean, safe, sanitary, and afford those employees and individuals an opportunity for rest free from the interruptions caused by noise under the control of the railroad. In further response to the rulemaking mandate, the new regulations include the additional statutory requirements, enacted in 2008, that camp cars be provided with indoor toilets, potable water, and other features to protect the health of such workers. In developing this final rule, FRA coordinated with the U.S. Department of Labor, as required by the congressional mandate.

Under separate but related statutory authority, FRA is amending subpart C to 49 CFR part 228, Construction of Employee Sleeping Quarters. This subpart contains FRA's longstanding regulations implementing the statutory provision that prohibits railroads, effective July 8, 1976, from beginning the construction or reconstruction of railroad-provided sleeping quarters for train employees, signal employees, and dispatching service employees in an area or in the immediate vicinity of an area where railroad switching or humping of hazardous material occurs. Previously, these regulations affecting the location of sleeping quarters for covered service employees did not apply to sleeping quarters exclusively for individuals employed to maintain the right-of-way of a railroad. In particular, FRA is implementing a 2008 statutory amendment that, on and after December 31, 2009, camp cars provided by a railroad as sleeping quarters exclusively for individuals employed to maintain the right-of-way of a railroad are within the scope of the prohibition against beginning construction or reconstruction of employee sleeping quarters near railroad switching or humping of hazardous material. FRA's existing guidelines with respect to the location of a camp car that is occupied exclusively by individuals employed to maintain a railroad's right-of-way will be replaced with regulatory amendments prohibiting a railroad from positioning such a camp car in the immediate vicinity of the switching or humping of hazardous material.

Finally, the final rule makes conforming changes to Appendix A to part 228 and removes Appendix C to part 228. The rule also clarifies its provision on applicability, removes an existing provision on the preemptive effect of part 228 as unnecessary, and moves, without change, an existing provision on penalties for violation of part 228 from subpart B to subpart A.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), FRA certifies that this final rule would not have a significant impact on a substantial number of small entities.

i. Description of Regulated Entities and Impacts

This rule applies to railroads that provide camp cars to employees or MOW workers as sleeping quarters, contractors and subcontractors of railroads. ''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a small entity in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than $7 million. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes small entities or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR § 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[2] The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR § 1201.1–1.

This final rule does not affect any small entities.

Criteria for Substantial Number

There is only one railroad that will be affected by this regulation. It is a Class I railroad that is not a small entity. Consequently, this regulation does not burden a substantial number of small entities.

Criteria for Significant Economic Impacts

The factual basis for the certification that this final rule, if promulgated, will not have a significant economic impact on a substantial number of small entities is that no railroads that are considered small entities will be affected by the regulation. This regulation does not

[2] See 68 FR 24891, May 9, 2003, codified at Appendix C to 49 CFR Part 209.

disproportionately place any small railroads that are small entities at a significant competitive disadvantage. There are no small railroads that house employees or MOW workers in camp cars.

Outreach to Small Entities

Outreach to small entities is not necessary since the final rule does not affect any small entities. FRA requested comments on this assumption in the NPRM and received none.

ii. Certification

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. § 605(b), the FRA Administrator certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

*C. Federalism Implications*

Executive Order 13132, ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rule will not have a substantial effect on the States or their political subdivisions; it will not impose any direct compliance costs on State and local governments; and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. FRA has also determined that this rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, this rule may have preemptive effect by operation of law under a provision of the former Federal Railroad Safety Act of 1970, 49 U.S.C. 20106 (Section 20106), and case law interpreting the statutory predecessor of the hours of service laws at 49 U.S.C. ch. 211 (the Hours of Service Act). *See* Pub. L. 103–272. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to Section 20106. The Hours of Service Act has been interpreted by the Supreme Court as preempting State regulation of the hours of railroad employees. *See Hill* v. *State of Florida ex rel. Watson,* 325 U.S. 538, 553 (1945).

In sum, FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. As explained above, FRA has determined that this rule has no federalism implications, other than the possible preemption of State laws. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this rule is not required.

*D. International Trade Impact Assessment*

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

*E. Paperwork Reduction Act*

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| **228.323—Potable water** | | | | |
| Water Hydrants (Inspections) | 1 Railroad | 740 inspections | 3 minutes | 37 |
| Water Hydrants (Records) | 1 Railroad | 740 records | 2 minutes | 24.67 |
| Inspection Records—Copy to Central Location | 1 Railroad | 740 record copies | 10 seconds | 2.06 |
| Training—For Individuals to Fill Potable Water Systems | 1 Railroad | 37 trained employees | 15 minutes | 9.25 |
| Training Materials/Records | 1 Railroad | 1 set of training materials | 4 hours | 4 |
| Certification from State/local Health Authority | 1 Railroad | 666 certificates | 1 hour | 666 |
| Certification by Laboratory | 1 Railroad | 74 certificates | 20 minutes | 24.67 |
| Copy of Certificate when Connection Is Terminated | 1 Railroad | 740 certification copies | 10 seconds | 2.06 |
| Draining, Flushing and Record | 1 Railroad | 111 records | 30 minutes | 55.5 |
| Occupant Reports of Taste Problem | 1 Railroad | 10 taste reports | 10 seconds | 0.03 |
| Draining/Flushing and Record, when Taste Report | 1 Railroad | 10 records | 30 minutes | 5 |
| Lab Tests from Taste Report | 1 Railroad | 10 tests/certificates | 20 minutes | 3.33 |
| Lab Report Copies | 1 Railroad | 10 lab copies | 2 minutes | 0.33 |
| Signage (for non-potable Water) | 1 Railroad | 740 signs | 2.5 minutes | 30.83 |

| CFR Section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours |
|---|---|---|---|---|
| **228.331—First aid and life safety** | | | | |
| Master Emergency Plan | 1 Railroad | 1 master emergency plan | 1.5 hours | 1.5 |
| Master Emergency Plan Copies | 1 Railroad | 292 copies | 3 seconds | 0.24 |
| Emergency Plan (at each Location) | 1 Railroad | 740 modified plans | 15 minutes | 185 |
| Emergency Plan Copies | 1 Railroad | 5,840 copies | 3 seconds | 4.87 |
| **228.333—Remedial actions** | | | | |
| Oral Report of Needed Repair | 1 Railroad | 30 oral reports | 10 seconds | 0.083 |
| **Total** | **11,532 responses** | **1,056.42 hours** | | |

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning the following: whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Office of Railroad Safety, at (202) 493–6292, or Ms. Kimberly Toone, Office of Information Technology, at (202) 493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St. NW., Washington, DC 20503, attn: FRA Desk Officer. Comments may also be sent via email to OMB at the following address: *oira_submission@omb.eop.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

*F. Unfunded Mandates Reform Act of 1995*

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. For the year 2010, this monetary amount of $100,000,000 has been adjusted to $140,800,000 to account for inflation. This final rule will not result in the expenditure of more than $140,800,000 by the public sector in any one year, and thus preparation of such a statement is not required.

*G. Environmental Assessment*

FRA has evaluated this rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547, May 26, 1999. Section 4(c)(20) reads as follows:

> (c) Actions categorically excluded. Certain classes of FRA actions have been determined to be categorically excluded from the requirements of these Procedures as they do not individually or cumulatively have a significant effect on the human environment.
>
> * * * * *
>
> The following classes of FRA actions are categorically excluded:
>
> * * * * *
>
> (20) Promulgation of railroad safety rules and policy statements that do not result in significantly increased emissions or air or water pollutants or noise or increased traffic congestion in any mode of transportation.

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this rule is not a major Federal action significantly affecting the quality of the human environment.

*H. Energy Impact*

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355, May 22, 2001. Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed

rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this rule in accordance with Executive Order 13211. FRA has determined that this rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this rule is not a ''significant energy action'' within the meaning of Executive Order 13211.

*I. Privacy Act*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket 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 (65 FR 19477–78).

**List of Subjects in 49 CFR Part 228**

Administrative practice and procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

**The Final Rule**

For the reasons discussed in the preamble, FRA is amending part 228 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

## PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES; RECORDKEEPING AND REPORTING; SLEEPING QUARTERS

■ 1. The authority citation for part 228 is revised to read as follows:

**Authority:** 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 4860–4866, 4893–4894; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49; and 49 U.S.C. 103.

■ 2. The heading of part 228 is revised to read as set forth above.

■ 3. Section 228.1 is amended by—

■ a. Removing the word ''employee'' from paragraph (b); and

■ b. Adding paragraph (c) to read as follows:

**§ 228.1 Scope.**

* * * * *

(c) Establishes minimum safety and health standards for camp cars provided by a railroad as sleeping quarters for its employees and individuals employed to maintain its rights of way; and

* * * * *

■ 4. Section 228.3 is revised to read as follows:

**§ 228.3 Application and responsibility for compliance.**

(a) Except as provided in paragraph (b) of this section, subparts B and D of this part apply to all railroads, all contractors for railroads, and all subcontractors for railroads. Except as provided in paragraph (b) of this section, subparts C and E of this part apply only to all railroads.

(b) Subparts B through E of this part do not apply to:

(1) A railroad, a contractor for a railroad, or a subcontractor for a railroad that operates only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* a plant railroad as defined in § 228.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 228.5, except as provided in § 228.413(d)(2); or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(c) The application of subpart F of this part is set forth in § 228.401.

■ 5. Section 228.5 is amended by adding definitions for ''Camp car,'' ''MOW worker,'' ''Plant railroad,'' and ''Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation'' in alphabetical order to read as follows:

**§ 228.5 Definitions.**

* * * * *

*Camp car* means a trailer and/or on-track vehicle, including an outfit, camp, bunk car, or modular home mounted on a flatcar, or any other mobile vehicle or mobile structure used to house or accommodate an employee or MOW worker. An office car, inspection car, specialized maintenance equipment, or wreck train is not included.

* * * * *

*MOW worker* means an individual employed to inspect, install, construct, repair, or maintain track, roadbed, bridges, buildings, roadway facilities, roadway maintenance machines, electric traction systems, and right of way of a railroad.

* * * * *

*Plant railroad* means a plant or installation that owns or leases a locomotive, uses that locomotive to switch cars throughout the plant or installation, and is moving goods solely for use in the facility's own industrial processes. The plant or installation could include track immediately adjacent to the plant or installation if the plant railroad leases the track from the general system railroad and the lease provides for (and actual practice entails) the exclusive use of that trackage by the plant railroad and the general system railroad for purposes of moving only cars shipped to or from the plant. A plant or installation that operates a locomotive to switch or move cars for other entities, even if solely within the confines of the plant or installation, rather than for its own purposes or industrial processes, will not be considered a plant railroad because the performance of such activity makes the operation part of the general railroad system of transportation.

* * * * *

*Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation* means a tourist, scenic, historic, or excursion operation conducted only on track used exclusively for that purpose (*i.e.,* there is no freight, intercity passenger, or commuter passenger railroad operation on the track).

* * * * *

■ 6. Section 228.6 is added to subpart A to read as follows:

**§ 228.6 Penalties.**

(a) *Civil penalties.* Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650 and not more than $25,000 per violation, except that: penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a

violation continues shall constitute a separate offense. See appendix B to this part for a statement of agency civil penalty policy. Violations of the hours of service laws themselves (*e.g.,* requiring an employee to work excessive hours or beginning construction of sleeping quarters subject to approval under subpart C of this part without prior approval) are subject to penalty under 49 U.S.C. 21303.

(b) *Criminal penalties.* Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully violates any requirement of this part may be liable for criminal penalties of a fine under title 18 of the U.S. Code, imprisonment for up to two years, or both, in accordance with 49 U.S.C. 21311(a).

**§ 228.13 [Removed and Reserved]**

■ 7. Section 228.13 is removed and reserved.

**§ 228.21 [Removed and Reserved]**

■ 8. Section 228.21 is removed and reserved.

**§ 228.23 [Removed and Reserved]**

■ 9. Section 228.23 is removed and reserved.

■ 10. The heading of subpart C of part 228 is revised to read as follows:

## Subpart C—Construction of Railroad-Provided Sleeping Quarters

■ 11. Section 228.101 is amended by—

■ a. Revising the section heading to read as set forth below; and

■ b. In paragraph (b), by removing ''Except as determined in accordance with the provisions of this subpart. 'The immediate vicinity' '' and inserting in its place, ''Except as determined in accordance with the provisions of this subpart, the 'immediate vicinity'.''

**§ 228.101 Distance requirement for employee sleeping quarters; definitions used in this subpart.**

* * * * *

■ 12. Section 228.102 is added to subpart C to read as follows:

**§ 228.102 Distance requirement for camp cars provided as sleeping quarters exclusively to MOW workers.**

(a) The hours of service laws at 49 U.S.C. 21106(b) provide that a railroad that uses camp cars must comply with 49 U.S.C. 21106(a) no later than December 31, 2009. Accordingly, on or after December 31, 2009, a railroad shall not begin construction or reconstruction of a camp car provided by the railroad as sleeping quarters exclusively for MOW workers within or in the immediate vicinity of any area where railroad switching or humping of placarded cars is performed.

(b) This subpart includes definitions of most of the relevant terms (§ 228.101(b) and (c)), the procedures under which a railroad may request a determination by the Federal Railroad Administration that a particular proposed site for the camp car is not within the ''immediate vicinity'' of railroad switching or humping operations (§§ 228.103 and 228.105), and the basic criteria utilized in evaluating proposed sites. *See* § 228.5 for definitions of other terms. For purposes of this § 228.102, references to ''employees'' in §§ 228.103 through 228.107 shall be read to include MOW workers.

■ 13. Subpart E is added to read as follows:

**Subpart E—Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters**

Sec.
228.301 Purpose and scope.
228.303 Application and responsibility for compliance.
228.305 Compliance date.
228.307 Definitions.
228.309 Structure, emergency egress, lighting, temperature, and noise-level standards.
228.311 Minimum space requirements, beds, storage, and sanitary facilities.
228.313 Electrical system requirements.
228.315 Vermin control.
228.317 Toilets.
228.319 Lavatories.
228.321 Showering facilities.
228.323 Potable water.
228.325 Food service in a camp car or separate kitchen or dining facility in a camp.
228.327 Waste collection and disposal.
228.329 Housekeeping.
228.331 First aid and life safety.
228.333 Remedial action.
228.335 Electronic recordkeeping.

## Subpart E—Safety and Health Requirements for Camp Cars Provided by Railroads as Sleeping Quarters

**§ 228.301 Purpose and scope.**

The purpose of this subpart is to prescribe standards for the design, operation, and maintenance of camp cars that a railroad uses as sleeping quarters for its employees or MOW workers or both so as to protect the safety and health of those employees and MOW workers and give them an opportunity for rest free from the interruptions caused by noise under the control of the railroad, and provide indoor toilet facilities, potable water, and other features to protect the health and safety of the employees and MOW workers.

**§ 228.303 Application and responsibility for compliance.**

(a) This subpart applies to all railroads except the following:

(1) Railroads that operate only on track inside an installation that is not part of the general railroad system of transportation (*i.e.,* plant railroads, as defined in § 228.5);

(2) Tourist, scenic, historic, or excursion operations that are not part of the general railroad system of transportation as defined in § 228.5; or

(3) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

(b) Although the duties imposed by this subpart are generally stated in terms of the duty of a railroad, each person, including a contractor or subcontractor for a railroad, who performs any task or provides camp cars covered by this subpart, shall do so in accordance with this subpart.

**§ 228.305 Compliance date.**

On and after December 30, 2011, a railroad shall not provide a camp car for use as sleeping quarters by an employee or MOW worker unless the camp car complies with all requirements of this subpart.

**§ 228.307 Definitions.**

As used in this subpart—

*dB(A)* means the sound pressure level in decibels measured on the A-weighted scale.

*Decibel (dB)* means a logarithmic unit of measurement that expresses the magnitude of a physical quantity (usually power or intensity) relative to a specified reference level. For the measurement of noise in this subpart, the reference level for the intensity of sound pressure in air is 20 micropascals.

*Foot-candle* means a one lumen of light density per square foot.

*HVAC* means heating, ventilation, and air conditioning.

*Lavatory* means a basin or similar vessel used primarily for washing of the hands, arms, face, and head.

$L_{eq}(8)$ means the equivalent steady state sound level that in 8 hours would contain the same acoustic energy as the time-varying sound level during the same time period.

*Nonwater carriage toilet* means a toilet not connected to a sewer.

*Occupant* means an employee or an MOW worker (both as defined in § 228.5) whose sleeping quarters are a camp car.

*Ppm* means parts per million.

*Potable water* means water that meets the quality standards prescribed in the U.S. Environmental Protection Agency's National Primary Drinking Water Standards set forth in 40 CFR part 141.

*Potable water system* means the containers, tanks, and associated plumbing lines and valves that hold, convey, and dispense potable water within a camp car.

*Toilet* means a chemical toilet, a recirculating toilet, a combustion toilet, or a toilet that is flushed with water; however, a urinal is not a toilet.

*Toilet room* means a room containing a toilet.

*Toxic material* means a material in concentration or amount of such toxicity as to constitute a recognized hazard that is causing or is likely to cause death or serious physical harm.

*Watering* means the act of filling potable water systems.

**§ 228.309 Structure, emergency egress, lighting, temperature, and noise-level standards.**

(a) *General.* Each camp car must be constructed in a manner that will provide protection against the elements.

(b) *Floors.* Floors must be of smooth and tight construction and must be kept in good repair.

(c) *Windows and other openings.* (1) All camp cars must be provided with windows the total area of which must be not less than 10 percent of the floor area. At least one-half of each window designed to be opened must be so constructed that it can be opened for purposes of ventilation. Durable opaque window coverings must be provided to reduce the entrance of light during sleeping hours.

(2) All exterior openings must be effectively screened with 16-mesh material. All screen doors must be equipped with self-closing devices.

(d) *Steps, entry ways, passageways, and corridors.* All steps, entry ways, passageways, and corridors providing normal entry to or between camp cars must be constructed of durable weather-resistant material and properly maintained. Any broken or unsafe fixtures or components in need of repair must be repaired or replaced promptly.

(e) *Emergency egress.* Each camp car must be constructed in a manner to provide adequate means of egress in an emergency situation. At a minimum, a means of emergency egress must be located in at least two places in camp car for emergency exits.

(f) *Lighting.* Each habitable room in a camp car including but not limited to a toilet room, that is provided to an occupant must be provided with adequate lighting as specified below:

(1) When occupants are present, the pathway to any exit not immediately accessible to occupants, such as through an interior corridor, shall be illuminated at all times to values of at least 1 foot-candle measured at the floor, provided that where the pathway passes through a sleeping compartment, the pathway up to the compartment will be illuminated, but illumination is not required inside the sleeping compartment.

(2) Toilet and shower rooms shall have controlled lighting that will illuminate the room to values of at least 10 foot-candles measured at the floor.

(3) Other areas shall have controlled lighting that will illuminate the room area to values of at least 30 foot-candles measured at the floor.

(g) *Temperature.* Each camp car must be provided with equipment capable of maintaining a temperature of at least 68 degrees Fahrenheit (F.) during cold weather and no greater than 75 degrees F. during hot weather. A temperature of at least 68 degrees F. during cold weather and no greater than 75 degrees F. during hot weather must be maintained within an occupied camp car unless the equipment is individually controlled by its occupant(s).

(h) *Noise control.* Noise levels attributable to noise sources under the control of the railroad shall not exceed an $L_{eq}(8)$ value of 55 dB(A), with windows and doors closed and exclusive of noise from cooling, heating, and ventilating equipment, for any 480-minute period during which the facility is occupied.

**§ 228.311 Minimum space requirements, beds, storage, and sanitary facilities.**

(a) Each camp car used for sleeping purposes must contain at least 80 square feet of floor space for each occupant, with a maximum of four occupants per car. At least a 7-foot ceiling, measured at the entrance to the car, must be provided.

(b) A bed, cot, or bunk for each occupant and suitable lockable storage facility, such as a lockable wall locker, or space for a lockable foot locker for each occupant's clothing and personal articles must be provided in every room used for sleeping purposes. Except where partitions are provided, such beds or similar facilities must be spaced not closer than 36 inches laterally (except in rail-mounted modular units, where the beds shall be spaced not closer than 30 inches, and highway trailer units, where the beds shall be spaced not closer than 26 inches) and 30 inches end to end, and must be elevated at least 12 inches from the floor. Multi-deck bunks, multi-deck bunk beds, and multi-deck similar facilities may not be used.

(c) Unless otherwise provided by a collective bargaining agreement, clean linens must be provided to each occupant.

(d) In a camp car where occupants cook, live, and sleep, a minimum of 120 square feet of floor space per occupants must be provided. Sanitary facilities must be provided for storing and preparing food. *See also* § 228.325.

**§ 228.313 Electrical system requirements.**

(a) All heating, cooking, ventilation, air conditioning, and water heating equipment must be installed in accordance with an industry-recognized standard. Upon request by FRA, the railroad must identify the industry-recognized standard that it utilizes and establish its compliance with that standard.

(b) All electrical systems installed, including external electrical supply connections, must be compliant with an industry-recognized standard. Upon request by FRA, the railroad must identify the industry-recognized standard that it utilizes and establish its compliance with that standard.

(c) Each occupied camp car shall be equipped with or serviced by a safe and working HVAC system.

**§ 228.315 Vermin control.**

Camp cars shall be constructed, equipped, and maintained to prevent the entrance or harborage of rodents, insects, or other vermin. A continuing and effective extermination program shall be instituted where the presence of vermin is detected.

**§ 228.317 Toilets.**

(a) *Number of toilets provided.* Each individual camp car that provides sleeping facilities must have one room with a functional toilet for a total of one or two occupants, and one additional room with a functional toilet if there are a total of three or four occupants.

(b) *Construction of toilet rooms.* Each toilet room must occupy a separate compartment with a door that latches and have walls or partitions between fixtures sufficient to assure privacy.

(c) *Supplies and sanitation.* (1) An adequate supply of toilet paper must be provided in each toilet room, unless provided to the occupants individually.

(2) Each toilet must be kept in a clean and sanitary condition and cleaned regularly when the camp car is being used. In the case of a non-water carriage toilet facility, it must be cleaned and changed regularly when the camp car is being used.

(d) *Sewage disposal facilities.* (1) All sanitary sewer lines and floor drains

from a camp car toilet facility must be connected to a public sewer where available and practical, unless the car is equipped with a holding tank that is emptied in a sanitary manner.

(2) The sewage disposal method must not endanger the health of occupants.

(3) For toilet facilities connected to a holding tank, the tank must be constructed in a manner that prevents vermin from entry and odors from escaping into the camp car.

**§ 228.319 Lavatories.**

(a) *Number.* Each camp car that provides a sleeping facility must contain at least one functioning lavatory for a total of one or two occupants and an additional functional lavatory if there is a total of three or four occupants.

(b) *Water.* Each lavatory must be provided with hot and cold potable running water. The water supplied to a lavatory must be from a potable water source supplied through a system maintained as required in § 228.323.

(c) *Soap.* Unless otherwise provided by a collective bargaining agreement, hand soap or similar cleansing agents must be provided.

(d) *Means of drying.* Unless otherwise provided by a collective bargaining agreement, individual hand towels, of cloth or paper, warm air blowers, or clean sections of continuous cloth toweling must be provided near the lavatories.

**§ 228.321 Showering facilities.**

(a) *Number.* Each individual camp car that provides sleeping facilities must contain a minimum of one shower for a total of one or two occupants and an additional functional shower if the camp car contains a total of three or four occupants.

(b) *Floors.* (1) Shower floors must be constructed of non-slippery materials;

(2) Floor drains must be provided in all shower baths and shower rooms to remove waste water and facilitate cleaning;

(3) All junctions of the curbing and the floor must be sealed; and

(4) There shall be no fixed grate or other instrument on the shower floor significantly hindering the cleaning of the shower floor or drain.

(c) *Walls and partitions.* The walls and partitions of a shower room must be smooth and impervious to the height of splash.

(d) *Water.* An adequate supply of hot and cold running potable water must be provided for showering purposes. The water supplied to a shower must be from a potable water source supplied through a system maintained as required in § 228.323.

(e) *Showering necessities.* (1) Unless otherwise provided by a collective bargaining agreement, body soap or other appropriate cleansing agent convenient to the showers must be provided.

(2) Showers must be provided with hot and cold water feeding a common discharge line.

(3) Unless otherwise provided by a collective bargaining agreement, each occupant who uses a shower must be provided with an individual clean towel.

**§ 228.323 Potable water.**

(a) *General requirements.* (1) Potable water shall be adequately and conveniently provided to all occupants of a camp car for drinking, personal oral hygiene, washing of person, cooking, washing of foods, washing of cooking or eating utensils, and washing of premises for food preparation or processing.

(2) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, whether or not they are fitted with a cover, are prohibited.

(3) A common drinking cup and other common utensils are prohibited.

(b) *Potable water source.* (1) If potable water is provided in bottled form, it shall be stored in a manner recommended by the supplier in order to prevent contamination in storage. Bottled water shall not be provided as a substitute for the hot and cold running potable water required to be supplied in lavatories, showers, and sinks under this section. Bottled water shall contain a label identifying the packager and the source of the water.

(2) If potable water is drawn from a local source, the source must meet the drinking water standards established by the U.S. Environmental Protection Agency under 40 CFR part 141, National Primary Drinking Water Regulations.

(3) All equipment and construction used for supplying potable water to a camp car water system (*e.g.,* a hose, nozzle, or back-flow prevention) shall be approved by the Food and Drug Administration.

(4) *Water hydrants.* Each water hydrant, hose, or nozzle used for supplying potable water to a camp car water system shall be inspected prior to use. Each such hose or nozzle used shall be cleaned and sanitized as part of the inspection. A signed, dated record of this inspection shall be kept within the camp for the period of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(5) *Training.* Only a trained individual is permitted to fill the potable water systems. Each individual who fills a potable water system shall be trained in—

(i) The approved method of inspecting, cleaning, and sanitizing hydrants, hoses, and nozzles used for filling potable water systems; and

(ii) The approved procedures to prevent contamination during watering.

(6) *Certification.* Each time that potable water is drawn from a different local source, the railroad shall obtain a certificate from a State or local health authority indicating that the water from this source is of a quality not less than that prescribed in 40 CFR part 141, National Primary Drinking Water Regulations promulgated by the U.S. Environmental Protection Agency, or obtain such a certificate by a certified laboratory following testing for compliance with those standards. The current certification shall be kept within the camp for the duration of the connection. When the connection is terminated, a copy of each of these records must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(c) *Storage and distribution system.* (1) *Storage.* Potable water shall be stored in sanitary containers that prevent external contaminants from entering the potable water supply. Such contaminants include biological agents or materials and substances that can alter the taste or color or are toxic.

(2) *Dispensers.* Potable drinking water dispensers shall be designed, constructed, and serviced so that sanitary conditions are maintained, must be capable of being closed, and shall be equipped with a tap.

(3) *Distribution lines.* The distribution lines must be capable of supplying water at sufficient operating pressures to all taps for normal simultaneous operation.

(4) *Flushing.* Each potable water system shall be drained and flushed with a disinfecting solution at least once every 120 days. The railroad shall maintain a record of the draining and flushing of each separate system within the camp for the last two drain and flush cycles. The record shall contain the date of the work and the name(s) of the individual(s) performing the work. The original record shall be maintained with the camp. A copy of each of these records shall be sent to a centralized location for the railroad and maintained for one year.

(i) The solution used for flushing and disinfection shall be a 100 parts per million by volume (ppm) chlorine solution.

(ii) The chlorine solution shall be held for one hour in all parts of the system to ensure disinfection.

(iii) The chlorine solution shall be purged from the system by a complete refilling and draining with fresh potable water.

(iv) The draining and flushing shall be done more frequently if an occupant reports a taste or health problem associated with the water, or following any plumbing repair.

(5) *Reported problems.* Following any report of a taste problem with the water from a system or a health problem resulting from the water in a system, samples of water from each tap or dispensing location on the system shall be collected and sent to a laboratory approved by the U.S. Environmental Protection Agency for testing for heterotrophic plate counts, total coliform, and fecal coliform. If a single sample fails any of these tests, the system must be treated as follows:

(i) Heterotrophic plate count. Drain and flush the system within two days, and then return it to service.

(ii) Total coliform. Remove the system from service, drain and flush system, resample the system, and then return the system to service.

(iii) Fecal coliform. Remove the system from service, drain and flush the system, resample the system, and do not return the system to service until a satisfactory result on the test of the samples is obtained from the laboratory.

(6) *Reports.* All laboratory reports pertaining to the water system of the camp car shall be maintained with the car. Within 15 days of the receipt of such a laboratory report, a copy of the report shall be posted for a minimum of 10 calendar days at a conspicuous location within the camp car or cars affected for review by occupants. The report shall be maintained in the camp for the duration of the same connection. When the connection is terminated, the certification must be submitted promptly to a centralized location for the railroad and maintained for one year from the date the connection was terminated.

(d) *Signage.* Any water outlet/faucet within the camp car facility that supplies water not from a potable source or that is from a potable source but supplied through a system that is not maintained as required in this section, the outlet/faucet must be labeled with a sign, visible to the user and bearing a message to the following effect: ''The water is not suitable for human consumption. Do not drink the water.''

**§ 228.325 Food service in a camp car or separate kitchen or dining facility in a camp.**

(a) *Sanitary storage.* No food or beverage may be stored in a toilet room or in an area exposed to a toxic material.

(b) *Consumption of food or beverage on the premises.* No occupant shall be allowed to consume a food or beverage in a toilet room or in any area exposed to a toxic material.

(c) *Kitchens, dining halls, and feeding facilities.* (1) In each camp car where central dining operations are provided by the railroad or its contractor(s) or subcontractor(s), the food handling facilities shall be maintained in a clean and sanitary condition. *See* § 228.323, Potable water, generally.

(i) All surfaces used for food preparation shall be disinfected after each use.

(ii) The disinfection process shall include removal of chemical disinfectants that would adulterate foods prepared subsequent to disinfection.

(2) All perishable food shall be stored either under refrigeration or in a freezer. Refrigeration and freezer facilities shall be provided with a means to monitor temperature to ensure proper temperatures are maintained. The temperature of refrigerators shall be maintained at 40 °F or below; the temperature of freezers shall be maintained at 0 °F or below at all times.

(3) All non-perishable food shall be stored to prevent vermin and insect infestation.

(4) All food waste disposal containers shall be constructed to prevent vermin and insect infestation.

(i) All food waste disposal containers used within a camp car shall be emptied after each meal, or at least every four hours, whichever period is less.

(ii) All food waste disposal containers used outside a camp car shall be located to prevent offensive odors from entering the sleeping quarters.

(iii) All kitchen area camp car sinks used for food washing and preparation and all kitchen area floor drains shall be connected to a public sewer where available and practicable, unless the car is equipped with a holding tank that is emptied in a sanitary manner. For kitchen area sinks and floor drains identified in this paragraph (c)(4)(iii) connected to a holding tank, the tank must be constructed in a manner that prevents vermin from entry into the tank or odors from escaping into any camp car.

(iv) The sewage disposal method must not endanger the health of occupants.

(5) When a separate kitchen or dining hall car is provided, there must be a closeable door between the living or sleeping quarters into a kitchen or dining hall car.

(d) *Food handling.* (1) All food service facilities and operations for occupants of a camp car by the railroad or its contractor(s) or subcontractor(s) shall be carried out in accordance with sound hygienic principles. In all places of employment where all or part of the food service is provided, the food dispensed must be wholesome, free from spoilage, and must be processed, prepared, handled, and stored in such a manner as to be protected against contamination. See *§ 228.323,* Potable water, generally.

(2) No person with any disease communicable through contact with food or a food preparation item may be employed or permitted to work in the preparation, cooking, serving, or other handling of food, foodstuffs, or a material used therein, in a kitchen or dining facility operated in or in connection with a camp car.

(e) The limitations of paragraphs (c) and (d) of this section do not apply to food service from restaurants near the camp car consist that are subject to State law.

**§ 228.327 Waste collection and disposal.**

(a) *General disposal requirements.* All sweepings, solid or liquid wastes, refuse, and garbage in a camp must be removed in such a manner as to avoid creating a menace to health and as often as necessary or appropriate to maintain a sanitary condition.

(b) *General waste receptacles.* Any exterior receptacle used for putrescible solid or liquid waste or refuse in a camp shall be so constructed that it does not leak and may be thoroughly cleaned and maintained in a sanitary condition. Such a receptacle must be equipped with a solid tight-fitting cover, unless it can be maintained in a sanitary condition without a cover. This requirement does not prohibit the use of receptacles designed to permit the maintenance of a sanitary condition without regard to the aforementioned requirements.

(c) *Food waste disposal containers provided for the interior of camp cars.* An adequate number of receptacles constructed of smooth, corrosion resistant, easily cleanable, or disposable materials, must be provided and used for the disposal of waste food. Receptacles must be provided with a solid, tight-fitting cover unless sanitary conditions can be maintained without use of a cover. The number, size, and location of such receptacles must

encourage their use and not result in overfilling. They must be emptied regularly and maintained in a clean, safe, and sanitary condition.

**§ 228.329 Housekeeping.**

(a) A camp car must be kept clean to the extent allowed by the nature of the work performed by the occupants of the camp car.

(b) To facilitate cleaning, every floor, working place, and passageway must be kept free from protruding nails, splinters, loose boards, and unnecessary holes and openings.

**§ 228.331 First aid and life safety.**

(a) An adequate first aid kit must be maintained and made available for occupants of a camp car for the emergency treatment of an injured person.

(b) The contents of the first aid kit shall be placed in a weatherproof container with individual sealed packages for each type of item, and shall be checked at least weekly when the camp car is occupied to ensure that the expended items are replaced. The first aid kit shall contain, at a minimum, the following:

(1) Two small gauze pads (at least 4 x 4 inches);

(2) Two large gauze pads (at least 8 x 10 inches);

(3) Two adhesive bandages;

(4) Two triangular bandages;

(5) One package of gauge roller bandage that is at least 2 inches wide;

(6) Wound cleaning agent, such as sealed moistened towelettes;

(7) One pair of scissors;

(8) One set of tweezers;

(9) One roll of adhesive tape;

(10) Two pairs of latex gloves; and

(11) One resuscitation mask.

(c) Each sleeping room shall be equipped with the following:

(1) A functional portable Type ABC fire extinguisher; and

(2) Either a functional smoke alarm and a carbon monoxide alarm, or a functional combined smoke-carbon-monoxide alarm.

(d) Each camp car consist shall have an emergency preparedness plan prominently displayed so all occupants of the camp car consist can view it at their convenience. The plan shall address the following subjects for each location where the camp car consist is used to house railroad employees or MOW workers:

(1) The means used to be aware of and notify all occupants of impending weather threats, including thunderstorms, tornados, hurricanes, floods, and other major weather-related risks;

(2) Shelter-in-place and emergency and evacuation instructions for each of the specific threats identified; and

(3) The address and telephone number of the nearest emergency medical facility and directions on how to get there from the camp car consist.

**§ 228.333 Remedial action.**

A railroad shall, within 24 hours after receiving a good faith notice from a camp car occupant or an employee labor organization representing camp car occupants or notice from a Federal Railroad Administration inspector, including a certified State inspector under part 212 of this chapter, of noncompliance with this subpart, correct each non-complying condition on the camp car or cease use of the camp car as sleeping quarters for each occupant. In the event that such a condition affects the safety or health of an occupant, such as, but not limited to, water, cooling, heating, or eating facilities, sanitation issues related to food storage, food handling or sewage disposal, vermin or pest infestation, or electrical hazards, the railroad must immediately upon notice provide alternative arrangements for housing and providing food to the employee or MOW worker until the condition adverse to the safety or health of the occupant(s) is corrected.

**§ 228.335 Electronic recordkeeping.**

(a) Each railroad shall keep records as required by § 228.323 either—

(1) On paper forms provided by the railroad, or

(2) By electronic means that conform with the requirements of subpart D of this part.

(b) Records required to be kept shall be made available to the Federal Railroad Administration as provided by 49 U.S.C. 20107.

**Appendix A to Part 228 [Amended]**

■ 14. The last paragraph of the discussion headed ''Sleeping Quarters'' in Appendix A to part 228 is removed.

**Appendix C to Part 228 [Removed and Reserved]**

■ 15. Appendix C to part 228 is removed and reserved.

Issued in Washington, DC, on October 24, 2011.

**Joseph C. Szabo,**

*Administrator.*

[FR Doc. 2011–27818 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

**[Docket No. 100804324–1265–02]**

**RIN 0648–BB47**

## Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures; Inseason Adjustments

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

**ACTION:** Final rule; inseason adjustments to biennial groundfish management measures; request for comments.

**SUMMARY:** This final rule announces inseason changes to management measures in the commercial Pacific Coast groundfish fisheries. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to allow fisheries to access more abundant groundfish stocks while protecting overfished and depleted stocks.

**DATES:** Effective 0001 hours (local time) November 1, 2011. Comments on this final rule must be received no later than November 30, 2011.

**ADDRESSES:** You may submit comments, identified by FDMS docket number NOAA–NMFS–2010–0194 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*
- *Fax:* (206) 526–6736, Attn: Gretchen Hanshew.
- *Mail*: William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, Attn: Gretchen Hanshew.

*Instructions:* All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain

anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Gretchen Hanshew (Northwest Region, NMFS), (206) 526–6147, fax: (206) 526–6736, *gretchen.hanshew@noaa.gov.*

**SUPPLEMENTARY INFORMATION:**

## Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

## Background

The Pacific Coast Groundfish FMP and its implementing regulations at title 50 in the Code of Federal Regulations (CFR), part 660, subparts C through G, regulate fishing for over 90 species of groundfish off the coasts of Washington, Oregon, and California. Groundfish specifications and management measures are developed by the Pacific Fishery Management Council (Council), and are implemented by NMFS. On November 3, 2010, NMFS published a proposed rule to implement the 2011–2012 harvest specifications and management measures for the Pacific Coast groundfish fishery (75 FR 67810). The final rule to implement the 2011–2012 harvest specifications and management measures for the Pacific Coast Groundfish Fishery was published on May 11, 2011 (76 FR 27508). This final rule was subsequently amended by inseason actions on June 30, 2011 (76 FR 38313). Additional changes to the 2011–2012 specifications and management measures were made in a final rule on May 19, 2011 (76 FR 28897), an interim final rule on June 15, 2011 (76 FR 34910), and in a correcting amendment on September 2, 2011 (76 FR 54713). These specifications and management measures are codified in the CFR (50 CFR part 660, subparts C through G).

Changes to current groundfish management measures implemented by this action were recommended by the Council at its September 12–19, 2011 meeting in San Mateo, California. The Council recommended adjustments to current groundfish management measures to respond to updated fishery information and other inseason management needs. The adjustments to fishery management measures are not expected to result in greater impacts to overfished species than originally projected through the end of 2011. Estimated mortality of overfished and target species are the result of management measures designed to achieve, to the extent possible, but not exceed, ACLs of target species while fostering the rebuilding of overfished stocks by remaining within their rebuilding ACLs.

*Sablefish Daily Trip Limit Fishery South of 36° N. lat.*

The Council recommended and NMFS is implementing a modest increase for the open access sablefish fishery trip limits south of 36° N. lat.

There is no formal allocation of sablefish between the limited entry fixed gear and open access sablefish daily trip limit (DTL) fisheries south of 36° N. lat. The Council designed 2011 trip limits for these two commercial groundfish non-trawl fisheries south of 36° N. lat. that were anticipated to allow slightly more overall harvest of sablefish by the limited entry fixed gear fishery. 2011 trip limits were also designed so that, when catches in each sector are combined, total impacts of these two fisheries are anticipated to approach but not exceed the 2011 non-trawl allocation for sablefish south of 36° N. lat.

Catch of sablefish in the limited entry fixed gear sablefish DTL fishery south of 36° N. lat. has been higher than anticipated. Based on the most recent fishery information, if no action is taken and catch remains higher than expected, landings of sablefish in this fishery through the end of the year would be 440 mt. This level of catch would exceed the sablefish harvest target of 373 mt for this fishery by approximately 12 percent. However, catch of sablefish in the open access sablefish DTL fisheries south of 36° N. lat. has been lower than anticipated. Based on the most recent fishery information, if no action is taken and catch remains lower than expected, landings of sablefish through the end of the year would be 203 mt. This level of catch would be approximately 64 percent below the sablefish harvest target for this fishery of 319 mt.

The Council considered several combinations of trip limit changes in the limited entry fixed gear and open access sablefish DTL fisheries south of 36° N. lat. to maintain fishing opportunities through the remainder of 2011 where possible, while keeping catch within the 2011 sablefish ACL for the area south of 36° N. lat.

Since there is no formal allocation between the limited entry fixed gear and open access sablefish DTL fisheries south of 36° N. lat. and since one fishery had a small projected overage and the other had a large projected underage, the Council recommended a modest increase in the open access sablefish DTL fishery trip limits for the end of 2011. With this increase in sablefish trip limits for Period 6 (November–December) for the open access sablefish DTL fishery, and retention of the current trip limits in the limited entry fixed gear sablefish DTL fishery, projected catches in these two fisheries combined is 652 mt, 60 mt below the 2011 non-trawl allocation for sablefish south of 36 N. lat. of 712 mt adjusted for discard mortality.

West Coast Groundfish Observer data indicate that impacts to overfished species in the commercial fixed gear sablefish fisheries south of 36° N. lat. are extremely low. Therefore, increases to trip limits to raise projected impacts closer to the 2011 sablefish non-trawl allocation and the ACL are not anticipated to result in changes to impacts to co-occurring overfished groundfish species.

Therefore, the Council recommended and NMFS is implementing an increase for the open access fishery trip limits south of 36° N. lat. from ''300 lb (136 kg) per day, or 1 landing per week of up to 1,200 lb (544 kg), not to exceed 2,400 lb (1089 kg) per 2 months'' to ''300 lb (136 kg) per day, or 1 landing per week of up to 1,500 lb (680 kg), not to exceed 3,000 lb (1361 kg) per 2 months'' beginning in period 6, on November 1, through the end of the year.

*Shallow Nearshore Rockfish South of 40°10′ N. lat.*

The Council recommended and NMFS is implementing trip limit increases for shallow nearshore rockfish in the limited entry fixed gear and open access fishery south of 40°10′ N. lat.

At its September meeting, the Council considered how catches in the nearshore fishery as a whole south of 40°10′ N. lat. have been lower in 2011 than in previous years, and considered modest increases to allow additional harvest opportunities for shallow nearshore rockfish while keeping total catch within the applicable harvest guidelines.

Modest increases to the shallow nearshore rockfish trip limits in the limited entry fixed gear and open access fisheries in Period 6 (November 1 through December 31) are not projected to increase impacts to co-occurring overfished rockfish.

Therefore, the Council recommended and NMFS is implementing trip limit changes for shallow nearshore rockfish in the limited entry fixed gear and open access fishery south of 40°10.00′ N. lat.:

from ''600 lb (272 kg) per 2 months'' south of 40°10.00′ N. lat. in Period 6 (November–December) to ''1,000 lb (454 kg) per 2 months'' beginning in Period 6, on November 1, through the end of the year.

**Classification**

This final rule makes routine inseason adjustments to groundfish fishery management measures based on the best available information and is taken pursuant to the regulations implementing the Pacific Coast Groundfish FMP.

These actions are taken under the authority of 50 CFR 660.60(c) and are exempt from review under Executive Order 12866.

These inseason adjustments are taken under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and are in accordance with 50 CFR part 660, subparts C through G, the regulations implementing the FMP. These actions are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

For the following reasons, NMFS finds good cause to waive prior public notice and comment on the revisions to biennial groundfish management measures under 5 U.S.C. 553(b)(B) because notice and comment would be impracticable and contrary to the public interest. Also, for the same reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as quickly as possible.

The recently available data upon which these recommendations were based was provided to the Council, and the Council made its recommendations, at its September 12–19, 2011, meeting in San Mateo, California. The Council recommended that these changes be implemented by November 1, 2011 or as quickly as possible thereafter. There was not sufficient time after that meeting to draft this document and undergo proposed and final rulemaking before these actions need to be in effect. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the Agency from managing fisheries using the best available science to approach, without exceeding, the ACLs for federally managed species in accordance with the FMP and applicable laws. The adjustments to management measures in this document affect commercial fisheries off Washington, Oregon, and California.

Changes to trip limits for sablefish in the open access sablefish DTL fishery south of 36° N. lat. and for shallow nearshore rockfish in the limited entry fixed gear and open access fisheries south of 40° 10′ N. lat. will allow fishermen additional harvest opportunities for sablefish and for species within the shallow nearshore rockfish complex. These changes are necessary to relieve a restriction by allowing additional harvest opportunities, while staying within ACLs. These changes must be implemented in a timely manner, as quickly as possible, so that fishermen are allowed increased opportunities to harvest available healthy stocks while preventing stocks from exceeding their ACLs. These changes are intended to meet the goal of the Pacific Coast Groundfish FMP to achieve maximum biological yield while keeping within the constraints of overfished species rebuilding requirements. It would be contrary to the public interest to wait to implement these changes until after public notice and comment, because that would prevent fishermen from taking these fish at the time they are available, preventing additional harvest in fisheries that are important to coastal communities.

**List of Subjects in 50 CFR Part 660**

Fisheries, Fishing, Indian fisheries.

Dated: October 25, 2011.

**Galen R. Tromble,**

*Acting Director, Office of Sustainable Fisheries, 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.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 2. Table 2 (South) to part 660, subpart E, is revised to read as follows:

BILLING CODE 3510–22–P

**Table 2 (South) to Part 660, Subpart E -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table** 11012011

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** | | | | | | |
| 1 | 40°10' - 34°27' N. lat. | 30 fm line[5/] - 150 fm line[5/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[5/] - 150 fm line[5/] (also applies around islands) | | | | | |
| | **See § 660.60 and § 660.230 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[2/] & Darkblotched rockfish** | 40,000 lb/ 2 months | | | | | |
| 4 | **Splitnose** | 40,000 lb/ 2 months | | | | | |
| 5 | **Sablefish** | | | | | | |
| 6 | 40°10' - 36° N. lat. | 1,900 lb per week, not to exceed 6,500 lb/ 2 months[6/] | 2,000 lb/ week, not to exceed 7,000 lb/ 2 months | | 2,000 lb/ week, not to exceed 3,500 lb/ 2 months | | |
| 7 | South of 36° N. lat. | 2,000 lb per week[6/] | 2,100 lb/ week | | | | |
| 8 | **Longspine thornyhead** | 10,000 lb / 2 months | | | | | |
| 9 | **Shortspine thornyhead** | | | | | | |
| 10 | 40°10' - 34°27' N. lat. | 2,000 lb/ 2 months | | | | | |
| 11 | South of 34°27' N. lat. | 3,000 lb/ 2 months | | | | | |
| 12 | **Dover sole** | 5,000 lb/ month<br>South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 13 | **Arrowtooth flounder** | | | | | | |
| 14 | **Petrale sole** | | | | | | |
| 15 | **English sole** | | | | | | |
| 16 | **Starry flounder** | | | | | | |
| 17 | **Other flatfish[1/]** | | | | | | |
| 18 | **Whiting** | 10,000 lb/ trip | | | | | |
| 19 | **Minor shelf rockfish[2/], Shortbelly, Widow rockfish, and Bocaccio (including Chilipepper between 40°10' - 34°27' N. lat.)** | | | | | | |
| 20 | 40°10' - 34°27' N. lat. | Minor shelf rockfish, shortbelly, widow rockfish, bocaccio & chilipepper: 2,500 lb/ 2 months, of which no more than 500 lb/ 2 months may be any species other than chilipepper. | | | | | |
| 21 | South of 34°27' N. lat. | 3,000 lb/ 2 months | CLOSED | 3,000 lb/ 2 months | | | |
| 22 | **Chilipepper rockfish** | | | | | | |
| 23 | 40°10' - 34°27' N. lat. | Chilipepper included under minor shelf rockfish, shortbelly, widow and bocaccio limits - - See above | | | | | |
| 24 | South of 34°27' N. lat. | 2,000 lb/ 2 months, this opportunity only available seaward of the nontrawl RCA | | | | | |
| 25 | **Canary rockfish** | CLOSED | | | | | |
| 26 | **Yelloweye rockfish** | CLOSED | | | | | |
| 27 | **Cowcod** | CLOSED | | | | | |
| 28 | **Bronzespotted rockfish** | CLOSED | | | | | |

TABLE 2 (South)

*Table 2 (South). Continued*

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC | |
|---|---|---|---|---|---|---|---|---|
| 32 | **Minor nearshore rockfish & Black rockfish** | | | | | | | |
| 33 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 1,000 lb/ 2 months | |
| 34 | Deeper nearshore | | | | | | | |
| 35 | 40°10' - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | 900 lb/ 2 months | | | |
| 36 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | | |
| 37 | California scorpionfish | 1,200 lb/ 2 months[7/] | CLOSED | 1,200 lb/ 2 months | 1,200 lb/ 2 months | | | |
| 38 | **Lingcod**[3/] | CLOSED | | 800 lb/ 2 months | | | 400 lb/ month | CLOSED |
| 39 | **Pacific cod** | 1,000 lb/ 2 months | | | | | | |
| 40 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | | |
| 41 | **Other fish**[4/] | Unlimited | | | | | | |

**TABLE 2 (South)**

1/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.

2/ POP is included in the trip limits for minor slope rockfish. Yellowtail is included in the trip limits for minor shelf rockfish. Bronzespotted rockfish have a species specific trip limit.

3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.

4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (except longnose skates), ratfish, morids, grenadiers, and kelp greenling. Cabezon and longnose skate are included in the trip limits for "other fish."

5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower than the depth contour. Vessels that are subject to RCA restrictions may not fish in the RCA, or operate in the RCA for any purpose other than transiting.

6/ The trip limit that was in place for sablefish north of 36° N. Lat. in Jan-Feb 2011 was "1,750 lb per week, not to exceed 7,000 lb per 2 months". The trip limit that was in place for sablefish south of 36° N. Lat. in Jan-Feb 2011 was "400 lb per week, not to exceed 1,500 lb per 2 months".

7/ The trip limit that was in place for California scorpionfish south of 40°10' N. Lat. in Jan-Feb 2011 was "600 lb per 2 months".

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

■ 3. Table 3 (South) to part 660, subpart F, is revised to read as follows:

**Table 3 (South) to Part 660, Subpart F -- Non-Trawl Rockfish Conservation Areas and Trip Limits for Open Access Gears South of 40°10' N. Lat.**

**Other Limits and Requirements Apply -- Read § 660.10 - § 660.399 before using this table** 11012011

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| | **Rockfish Conservation Area (RCA)[5/]:** | | | | | | |
| 1 | 40°10' - 34°27' N. lat. | 30 fm line[5/] - 150 fm line[5/] | | | | | |
| 2 | South of 34°27' N. lat. | 60 fm line[5/] - 150 fm line[5/] (also applies around islands) | | | | | |
| | **See § 660.60, § 660.330, and § 660.333 for Additional Gear, Trip Limit, and Conservation Area Requirements and Restrictions. See §§ 660.70-660.74 and §§ 660.76-660.79 for Conservation Area Descriptions and Coordinates (including RCAs, YRCA, CCAs, Farallon Islands, Cordell Banks, and EFHCAs).** | | | | | | |
| | State trip limits and seasons may be more restrictive than federal trip limits, particularly in waters off Oregon and California. | | | | | | |
| 3 | **Minor slope rockfish[1/] & Darkblotched rockfish** | | | | | | |
| 4 | 40°10' - 38° N. lat. | Per trip, no more than 25% of weight of the sablefish landed | | | | | |
| 5 | South of 38° N. lat. | 10,000 lb/ 2 months | | | | | |
| 6 | **Splitnose** | 200 lb/ month | | | | | |
| 7 | **Sablefish** | | | | | | |
| 8 | 40°10' - 36° N. lat. | 300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months | 300lb/ day, or 1 landing per week of up to 950 lb, not to exceed 1,900 lb/ 2 months | | 300 lb/ day, or 1 landing per week of up to 1,050 lb, not to exceed 2,100 lb/ 2 months | | |
| 9 | South of 36° N. lat. | 400 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 6,000 lb/ 2 months[6/] | 300 lb/ day, or 1 landing per week of up to 1,200 lb, not to exceed 2,400 lb/ 2 months | | | | 300 lb/ day, or 1 landing per week of up to 1,500 lb, not to exceed 3,000 lb/ 2 months |
| 10 | **Thornyheads** | | | | | | |
| 11 | 40°10' - 34°27' N. lat. | CLOSED | | | | | |
| 12 | South of 34°27' N. lat. | 50 lb/ day, no more than 1,000 lb/ 2 months | | | | | |
| 13 | **Dover sole** | 3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. South of 42° N. lat., when fishing for "other flatfish," vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to two 1 lb (0.45 kg) weights per line are not subject to the RCAs. | | | | | |
| 14 | **Arrowtooth flounder** | | | | | | |
| 15 | **Petrale sole** | | | | | | |
| 16 | **English sole** | | | | | | |
| 17 | **Starry flounder** | | | | | | |
| 18 | **Other flatfish[2/]** | | | | | | |
| 19 | **Whiting** | 300 lb/ month | | | | | |
| 20 | **Minor shelf rockfish[1/], Shortbelly, Widow & Chilipepper rockfish** | | | | | | |
| 21 | 40°10' - 34°27' N. lat. | 300 lb/ 2 months | CLOSED | 200 lb/ 2 months | | 300 lb/ 2 months | |
| 22 | South of 34°27' N. lat. | 750 lb/ 2 months | | 750 lb/ 2 months | 1,000 lb/ 2 months | | |
| 23 | **Canary rockfish** | CLOSED | | | | | |
| 24 | **Yelloweye rockfish** | CLOSED | | | | | |

TABLE 3 (South)

*Table 3 (South). Continued*

| | | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 30 | **Minor nearshore rockfish & Black rockfish** | | | | | | |
| 31 | Shallow nearshore | 600 lb/ 2 months | CLOSED | 800 lb/ 2 months | 900 lb/ 2 months | 800 lb/ 2 months | 1,000 lb/ 2 months |
| 32 | Deeper nearshore | | | | | | |
| 33 | 40°10' - 34°27' N. lat. | 700 lb/ 2 months | CLOSED | 700 lb/ 2 months | 900 lb/ 2 months | | |
| 34 | South of 34°27' N. lat. | 500 lb/ 2 months | | 600 lb/ 2 months | | | |
| 35 | California scorpionfish | 1,200 lb/ 2 months | CLOSED | 1,200 lb/ 2 months | | | |
| 36 | **Lingcod**[3/] | CLOSED | | 400 lb/ month | | | CLOSED |
| 37 | **Pacific cod** | 1,000 lb/ 2 months | | | | | |
| 38 | **Spiny dogfish** | 200,000 lb/ 2 months | | 150,000 lb/ 2 months | 100,000 lb/ 2 months | | |
| 39 | **Other Fish**[4/] | Unlimited | | | | | |
| 40 | **RIDGEBACK PRAWN AND, SOUTH OF 38°57.50' N. LAT., CA HALIBUT AND SEA CUCUMBER NON-GROUNDFISH TRAWL** | | | | | | |
| 41 | **NON-GROUNDFISH TRAWL Rockfish Conservation Area (RCA) for CA Halibut, Sea Cucumber & Ridgeback Prawn:** | | | | | | |
| 42 | *40° 10' - 38° N. lat.* | *100 fm line - 200 fm line* [6/] | *100 fm line* [5/] *- 150 fm line* [5/] | | | | *100 fm line* [5/] *- 200 fm line* [5/ 6/] |
| 43 | *38° - 34° 27' N. lat.* | *100 fm line* [5/] *- 150 fm line* [5/] | | | | | |
| 44 | *South of 34° 27' N. lat.* | *100 fm line* [5/] *- 150 fm line* [5/] *along the mainland coast; shoreline - 150 fm line* [5/] *around islands* | | | | | |
| 45 | | Groundfish: 300 lb/trip. Species-specific limits described in the table above also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57.50' N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 31). | | | | | |
| 46 | **PINK SHRIMP NON-GROUNDFISH TRAWL GEAR** *(not subject to RCAs)* | | | | | | |
| 47 | South | **Effective April 1 - October 31:** Groundfish: 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of all groundfish species count toward the per day, per trip or other species-specific sublimits described here and the species-specific limits described in the table above do not apply. The amount of groundfish landed may not exceed the amount of pink shrimp landed. | | | | | |

**TABLE 3 (South) con't**

1/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish. POP is included in the trip limits for minor slope rockfish. Bronzespotted rockfish have a species specific trip limit.
2/ "Other flatfish" are defined at § 660.11 and include butter sole, curlfin sole, flathead sole, Pacific sanddab, rex sole, rock sole, and sand sole.
3/ The commercial mimimum size limit for lingcod is 24 inches (61 cm) total length South of 42° N. lat.
4/ "Other fish" are defined at § 660.11 and include sharks (except spiny dogfish), skates (including longnose skates), ratfish, morids, grenadiers, and kelp greenling.
5/ The Rockfish Conservation Area is an area closed to fishing by particular gear types, bounded by lines specifically defined by latitude and longitude coordinates set out at §§ 660.71-660.74. This RCA is not defined by depth contours (with the exception of the 20-fm depth contour boundary south of 42° N. lat.), and the boundary lines that define the RCA may close areas that are deeper or shallower

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**BILLING CODE 3510–22–C**

# Proposed Rules

Federal Register
Vol. 76, No. 210
Monday, October 31, 2011

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

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review

### 8 CFR Parts 1208 and 1240

**[EOIR Docket No. 173; AG Order No. 3307–2011]**

**RIN 1125–AA65**

## Forwarding of Asylum Applications to the Department of State

**AGENCY:** Executive Office for Immigration Review, Department of Justice.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Justice is planning to amend its regulations to alter the process by which the Executive Office for Immigration Review (EOIR) forwards asylum applications for consideration by the Department of State (DOS). Currently, EOIR forwards to DOS all asylum applications that are submitted initially in removal proceedings before an immigration judge. The proposed rule would amend the regulations to provide for sending asylum applications to DOS on a discretionary basis. For example, EOIR could forward an application in order to ascertain whether DOS has information relevant to the applicant's eligibility for asylum. This change would increase the efficiency of DOS's review of asylum applications and is consistent with similar changes already made by U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**DATES:** Written comments must be postmarked and electronic comments must be submitted on or before December 30, 2011. Comments received by mail will be considered timely if they are postmarked on or before that date. The electronic Federal Docket Management System will accept comments until Midnight Eastern Time at the end of that day.

**ADDRESSES:** You may submit comments, identified by EOIR Docket No. 173, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Mail: Robin M. Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. To ensure proper handling, please reference EOIR Docket No. 173 on your correspondence. This mailing address may also be used for paper, disk, or CD–ROM submissions.
- Hand Delivery/Courier: Robin M. Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041. Contact Telephone Number (703) 305–0470.

**FOR FURTHER INFORMATION CONTACT:** Robin M. Stutman, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470.

**SUPPLEMENTARY INFORMATION:**

### I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule. EOIR also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to EOIR in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

All submissions received should include the agency name and EOIR Docket No. 173 for this rulemaking. Please note that all comments received are considered part of the public record and made available for public inspection at *http://www.regulations.gov.* Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on *http://www.regulations.gov.*

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. To inspect the agency's public docket file in person, you must make an appointment with agency counsel. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph above for agency counsel's contact information.

### II. Background

The EOIR regulations pertaining to asylum applications, at 8 CFR 1208.11(a), currently state: ''The Service shall forward to the Department of State a copy of each completed application it receives. At its option, the Department of State may provide detailed country conditions information relevant to eligibility for asylum or withholding of removal.'' The EOIR regulations for removal proceedings, at 8 CFR 1240.11(c)(2), currently state: ''Upon receipt of an application that has not been referred by an asylum officer, the Immigration Court shall forward a copy to the Department of State pursuant to § 1208.11 of this chapter.'' That statement is repeated in 8 CFR 1240.33(b) and 1240.49(c)(3) (providing the same procedure for exclusion and deportation proceedings, respectively, that were initiated before April 1, 1997). In addition, the regulations at 8 CFR 1208.11(c) provide that ''immigration judges may request specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as they deem appropriate.''

EOIR receives and adjudicates asylum applications [1] where aliens in immigration proceedings submit the asylum application directly to the immigration judge (known as defensive asylum applications). EOIR also receives and adjudicates asylum applications that are referred for consideration in proceedings before an immigration judge after being initially adjudicated through DHS USCIS's affirmative asylum process (known as affirmative asylum applications).

Currently, the Immigration Court is required to send a copy of each defensively filed asylum application to DOS for review. In fiscal years 2008 (15,367), 2009 (14,509), and 2010 (14,210), EOIR received, on average 14,695 defensively filed asylum applications and forwarded a copy of each application to DOS.[2] Similarly, USCIS received 25,680 affirmative asylum applications in fiscal year 2007, 25,497 in fiscal year 2008, and 11,322 from October 1, 2008, until March 31, 2009. USCIS forwarded a copy of each of these affirmative applications to DOS.[3]

## III. Reasons for Change

DOS has indicated that it does not have the resources to review many of the asylum applications forwarded to it. DOS has determined that the current process of forwarding every asylum application to DOS is not an efficient method because it does not provide a means for the agencies to identify particular cases for which DOS review might be expected to yield the most value.

To address this problem, DOS has requested EOIR to alter the process by which EOIR forwards asylum applications to DOS. This proposed rule would change the process to permit the immigration judge, in his or her discretion, to send asylum applications for consideration by DOS. For instance, an immigration judge could forward those applications where DOS could potentially have information relevant to the applicant's eligibility for asylum, withholding of removal under 241(b)(3) of the Immigration and Nationality Act (Act), or withholding of removal under the Convention Against Torture. DOS may have information helpful to the adjudication of the application, including information that confirms publicly available information or information that is not otherwise available.

EOIR notes that USCIS has already made similar changes to its corresponding regulations at 8 CFR 208.11, with respect to affirmative asylum applications filed with USCIS. *See* 74 FR 15367 (Apr. 6, 2009).

As noted earlier, the EOIR regulations at 8 CFR 1208.11(c) already provide that the immigration judges may forward to DOS for review and comment select applications as the judges deem appropriate. This process, which has been in place for years, has been a productive means by which immigration judges obtain country conditions information on specific cases. EOIR and DOS intend to maintain this process, as provided in the amended regulations at 8 CFR 1208.11(a).

DOS's Bureau of Democracy, Human Rights and Labor (DRL), the Bureau to which the asylum applications are forwarded, brings its country conditions expertise to asylum matters in a variety of ways, which as a whole are referred to as DRL's asylum function. Consistent with the regulations currently at 8 CFR 1208.11(c), and with USCIS's corresponding regulations at 8 CFR 208.11, DRL may, at its discretion, respond to requests for comments on cases specifically brought to its attention by EOIR immigration judges and USCIS's Asylum Division. Under the amended regulations at 8 CFR 1208.11(a), DRL will continue to fill this role with respect to requests from immigration judges.[4] DRL also produces updated issue papers or ''country profiles'' for use in asylum adjudications, and it responds to certain DHS Immigration and Customs Enforcement requests for document verification in asylum cases before EOIR. Additionally, DRL produces annual Country Reports on Human Rights Practices and annual International Religious Freedom Reports, which provide country conditions information useful to the adjudication of asylum applications. The amendments to the regulations being made in this proposed rule will not alter these functions.

## IV. Description of the Proposed Rule

This proposed rule amends the regulations at 8 CFR 1208.11, 1240.11, 1240.33, and 1240.49 as follows. This rule revises the sentence in each of those sections requiring the Immigration Court to forward each asylum application to DOS. Under this proposed rule, the Immigration Court may forward asylum applications to DOS, but is not required to do so. This change will permit EOIR to exercise discretion to forward those applications. For instance, EOIR might wish to ascertain whether DOS has information relevant to the adjudication of a particular case or types of claims.

By consolidating certain paragraphs, the proposed rule also removes redundant references to the types of information that DOS may provide to EOIR.

This proposed change in the regulations will not require additional resources, either in the training or hiring of personnel at EOIR or DOS or in the expenditure of material or financial resources. In fact, altering the regulations will permit both EOIR and DOS to conserve resources. EOIR will no longer be required to expend resources on mailing to DOS every properly filed defensive asylum application it receives. Although EOIR will discontinue mailing to DOS every properly filed defensive asylum application EOIR receives, EOIR will maintain the practice of permitting an immigration judge to request, in his or her discretion, specific comments from DOS regarding individual cases or types of claims under consideration, or other such information as he or she deems appropriate. As noted earlier, this practice is currently provided by the regulations at 8 CFR 1208.11(c). It will be covered by the amended regulations at 8 CFR 1208.11(a). By focusing on

[1] We note that the regulations at 8 CFR 1208.1(a)(1) provide, in part, that subpart A of part 1208 ''shall apply to all applications for asylum under section 208 of the Immigration and Nationality Act (Act) or for withholding of deportation or withholding of removal under section 241(b)(3) of the Act, or under the Convention Against Torture.'' Thus, the terms ''asylum application'' or ''application for asylum,'' as used in the current regulations and in this proposed rule, refer to an application for: (1) Asylum under section 208 of the Act; (2) withholding of removal under section 241(b)(3) of the Act; (3) withholding or deferral of removal under the Convention Against Torture as provided in 8 CFR 1208.16 and 1208.17; and (4) withholding of deportation under former section 243(h) of the Act.

[2] These fiscal year receipt numbers for defensively filed asylum cases are based on the date that the Form I–589, Application for Asylum and for Withholding of Removal, is filed with the EOIR Immigration Courts. These numbers differ from the data contained in the Statistical Year Books prepared by EOIR, which is tied to the date the removal case was filed at EOIR.

[3] As noted later in this preamble, USCIS has already made similar changes to its corresponding regulations at 8 CFR 208.11. *See* 74 FR 15367 (Apr. 6, 2009). USCIS's revised regulations took effect on April 6, 2009. Since that date, USCIS has no longer been forwarding to DOS a copy of each affirmative asylum application it receives.

[4] DRL continues to fill this role with respect to requests from USCIS as well. As noted earlier in the preamble, USCIS has already made similar changes to its corresponding regulations at 8 CFR 208.11. *See* 74 FR 15367 (Apr. 6, 2009). Prior to these changes, USCIS requests for information on particular cases were authorized by 8 CFR 208.11(c). Currently, such requests are provided for in 8 CFR 208.11(a).

select cases forwarded by EOIR, DRL's officers will be able to best utilize their time and resources toward accomplishing their asylum responsibilities. A change in the regulations will also result in resource savings for asylum applicants, as applicants will no longer be required to make an extra copy of their application for EOIR to forward to DOS, as currently required by the instructions to the Form I–589 asylum application.

The types of comments that DOS may provide will not change. At its option, DOS may provide detailed country conditions information relevant to the applicant's eligibility for asylum and for withholding of removal. DOS may also provide an assessment of the accuracy of the applicant's assertions about conditions in the applicant's country of nationality or habitual residence and the applicant's particular situation, information about whether persons who are similarly situated to the applicant are persecuted or tortured in their respective country of nationality or habitual residence and the frequency of such persecution or torture, or such other information as DOS deems relevant.

Additionally, this proposed rule makes additional amendments in order to be consistent with changes that have occurred with the implementation of the Homeland Security Act of 2002. The Homeland Security Act authorized the creation of DHS and transferred the functions of the former Immigration and Naturalization Service (INS) to DHS, while retaining EOIR under the authority of the Attorney General. In order to accommodate these changes, title 8 of the Code of Federal Regulations was reorganized into separate chapters, chapter I for DHS and chapter V for the Department of Justice. *See* 68 FR 9824, 9834 (Feb. 28, 2003). The provisions of part 208, on procedures for asylum and withholding of removal, were duplicated into a new part 1208. As a result, part 208 governs asylum adjudications before DHS's USCIS and part 1208 governs asylum adjudications before EOIR. As this proposed rule only addresses submissions of asylum applications from EOIR to DOS, it is limited to amending 8 CFR 1208.11, 1240.11, 1240.33, and 1240.49. To be consistent with changes that have occurred with implementation of the Homeland Security Act, it removes references in EOIR's regulations to ''The Service'' and USCIS ''asylum officers'' forwarding asylum applications to DOS, as those matters are now governed by the DHS regulations at 8 CFR 208.11.

Finally, this proposed rule also amends part 1240 to cite to the correct regulatory provision regarding filing of an asylum application as provided in 8 CFR 1208.4(b). The regulations at 8 CFR 1240.11(c)(2) and 8 CFR 1240.33(b) currently cite incorrectly to 8 CFR 1208.4(c) and will be corrected to cite to 8 CFR 1208.4(b). This change is consistent with 8 CFR 1240.49(c)(3). These amendments are technical corrections and do not make any substantive changes to part 1240.

## V. Regulatory Requirements

### *A. Regulatory Flexibility Act*

The Department has reviewed this regulation in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) and has determined that this rule will not have a significant economic impact on a substantial number of small entities for the following reason: This rule affects only the process by which EOIR forwards and DOS receives asylum applications. The rule will not regulate ''small entities'' as that term is defined in 5 U.S.C. 601(6).

### *B. Unfunded Mandates Reform Act of 1995*

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

### *C. Small Business Regulatory Enforcement Fairness Act of 1996*

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

### *D. Executive Order 12866*

The Department has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, this rule has not been submitted to the Office of Management and Budget for review. Nevertheless, the Department certifies that this regulation has been drafted in accordance with the principles of Executive Order 12866, section 1(b).

The benefits of this proposed rule to the United States include a significant reduction of money spent (1) by EOIR to process and mail a copy of each asylum application to DOS, (2) by DOS to receive each asylum application, and (3) by asylum applicants to include an extra copy of their asylum application in their application packet. Currently, the total estimated cost to EOIR, DOS, and the public for this process of forwarding all defensive asylum applications is $246,014.00 (rounded to the nearest whole number) per year. This amount is based on the estimated cost to asylum applicants of $0.10 per photocopied page for an average of 14,695 defensive asylum applications filed in fiscal years 2008, 2009, and 2010, with an approximate 125 pages per asylum application (including supporting documentation), which comes to a total of $183,688.00 (rounded to the nearest whole number). Thus, altering the regulation will result in significant cost savings to the public by eliminating the cost to asylum applicants of submitting the third copy of the asylum application to EOIR.

Additionally, the cost of EOIR mailing each application to DOS is estimated at $2.54 per application. This figure is based on the cost per application of $1.00 for postage, $1.44 in employee costs, and $0.10 per envelope. EOIR's total annual cost of mailing asylum applications to DOS is $37,326.00 (rounded to the nearest whole number). The annual cost in human labor of DOS's receipt, storage, and disposition of files is estimated at $25,000. This figure includes $20,000 spent annually on GS–9, step 5 employees handling received asylum applications by unpacking, sorting, removing staples, and processing asylum applications for disposal for 3 hours per day, 52 days per year. It also includes $5,000 spent annually on the incineration of asylum applications, based on an estimate of personnel hours, materials, and transportation to the incinerators.

With the amendments made by this proposed rule, EOIR would discontinue forwarding every defensive asylum application to DOS. Instead, the Immigration Courts would continue to forward select individual applications where the immigration judges wish to ascertain whether DRL may have information relevant to the applicant or the applicant's situation. This process involves EOIR employees forwarding the asylum application and supplemental material to the appropriate person within DRL. DRL's

officers would review the file, conduct research, and have the option of responding, including with relevant country conditions information. The immigration judges would then take the relevant information into account in determining eligibility for asylum in individual cases. This commenting process already occurs and is already authorized in the regulations, so it is not included in the costs that an amended regulation would eliminate. Hence, altering the regulations will permit EOIR and DOS to save approximately $62,326.00 a year on the forwarding of all defensive asylum applications received by EOIR.

Once a final rule is issued, it is anticipated that EOIR and USCIS will work to modify the instructions to the Form I–589 asylum application to reflect the changes.

*E. Executive Order 13132: Federalism*

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

*F. Executive Order 12988: Civil Justice Reform*

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

*G. Paperwork Reduction Act*

The information collection requirement (Form I–589) contained in this rule has been previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. This rule does not contain a new or revised information collection.

**List of Subjects**

*8 CFR Part 1208*

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

*8 CFR Part 1240*

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, part 1208 and part 1240 of chapter V of title 8 of the Code of Federal Regulations are proposed to be amended as follows:

## PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

1. The authority citation for part 1208 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1158, 1225, 1231, 1282.

2. Section 1208.11 is revised to read as follows:

### § 1208.11 Comments from the Department of State.

(a) The immigration judge may request, in his or her discretion, specific comments from the Department of State regarding individual cases or types of claims under consideration, or such other information as an immigration judge deems appropriate.

(b) With respect to any asylum application, the Department of State may provide, at its discretion, to the Immigration Court:

(1) Detailed country conditions information relevant to eligibility for asylum, withholding of removal under section 241(b)(3) of the Act, and withholding of removal under the Convention Against Torture;

(2) An assessment of the accuracy of the applicant's assertions about conditions in the applicant's country of nationality or habitual residence and the applicant's particular situation;

(3) Information about whether persons who are similarly situated to the applicant are persecuted or tortured in their respective country of nationality or habitual residence and the frequency of such persecution or torture; or

(4) Such other information as it deems relevant.

(c) Any comments received pursuant to paragraph (b) of this section shall be made part of the record. Unless the comments are classified under the applicable Executive Order, the applicant shall be provided an opportunity to review and respond to such comments prior to the issuance of any decision to deny the application.

* * * * *

## PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

3. The authority citation for part 1240 continues to read:

**Authority:** 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

4. Amend § 1240.11 by revising paragraph (c)(2) to read as follows:

### § 1240.11 Ancillary matters, applications.

* * * * *

(c) * * *

(2) An application for asylum or withholding of removal must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the alien and to DHS counsel and shall be included in the record.

* * * * *

5. Amend § 1240.33 by revising paragraph (b) to read as follows:

### § 1240.33 Applications for asylum or withholding of deportation.

* * * * *

(b) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, from the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to DHS counsel and shall be included in the record.

* * * * *

6. Amend § 1240.49 by revising paragraph (c)(3) to read as follows:

### § 1240.49 Ancillary matters, applications.

* * * * *

(c) * * *

(3) An application for asylum or withholding of deportation must be filed with the Immigration Court, pursuant to § 1208.4(b) of this chapter. Upon receipt of an application, the Immigration Court may forward a copy to the Department of State pursuant to § 1208.11 of this chapter and shall calendar the case for a hearing. The reply, if any, of the Department of State, unless classified under the applicable Executive Order, shall be given to both the applicant and to DHS counsel and shall be included in the record.

* * * * *

Dated: October 21, 2011.

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

*Attorney General.*

[FR Doc. 2011–28117 Filed 10–28–11; 8:45 am]

BILLING CODE 4410–10–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2011–0610; Airspace Docket No. 11–AWP–10]**

## Proposed Revision of Class D and Class E Airspace; Hawthorne, CA

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

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

**SUMMARY:** This action proposes to revise Class D and E airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA. Additional controlled airspace is needed to accommodate aircraft departing and arriving under Instrument Flight Rules (IFR) at the airport. Also, the airspace designations would be revised to show a new city location. This action is a result of the FAA's biennial review, along with a study of the Jack Northrop Field/Hawthorne Municipal Airport airspace area that would further enhance the safety and management of aircraft operations at the airport.

**DATES:** Comments must be received on or before December 15, 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–2011–0610; Airspace Docket No. 11–AWP–10, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**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 2011–0610 and Airspace Docket No. 11–AWP–10) 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–2011–0610 and Airspace Docket No. 11–AWP–10''. 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 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/.*

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 NPRMs 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 revising Class D airspace and Class E airspace designated as an extension to Class D surface area at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA, creating additional airspace necessary for IFR departures and arrivals at the airport. This action, initiated by FAA's biennial review of the Jack Northrop Field/Hawthorne Municipal Airport airspace area, and based on results of a study conducted by the Los Angeles Visual Flight Rules (VFR) Task Force, and the Los Angeles Class B Workgroup, would enhance the safety and management of aircraft operations at the airport. This action also would revise the airspace designation for Class D and Class E airspace, changing the city location from Los Angeles, CA, to Hawthorne, CA.

Class D airspace and Class E airspace designations are published in paragraph 5000 and 6004, respectively, 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 D airspace and 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 revises controlled airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne CA.

**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 part 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 5000 Class D airspace.*

* * * * *

**AWP CA D Hawthorne, CA [Revised]**

Jack Northrop Field/Hawthorne Municipal Airport, CA
(Lat. 33°55′22″ N., long. 118°20′07″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within 2.6-mile radius of the Jack Northrop Field/Hawthorne Municipal Airport, and that airspace 1.5 miles north and 2 miles south of the 229° bearing from the airport extending from the 2.6-mile radius to 3.8 miles southwest, and that airspace 2 miles north and 1.5 miles south of the 096° bearing from the airport extending from the 2.6-mile radius to 3.9 miles east of the airport, excluding the Los Angeles Airport Class D airspace. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.*

* * * * *

**AWP CA E4 Hawthorne, CA [Revised]**

Jack Northrop Field/Hawthorne Municipal Airport, CA
(Lat. 33°55′22″ N., long. 118°20′07″ W.)

That airspace extending upward from the surface within 2 miles north and 1.5 miles south of the 096° bearing from Jack Northrop Field/Hawthorne Municipal Airport, beginning 3.9 miles east of the airport extending to 6.3 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on October 21, 2011.

**John Warner,**

*Manager, Operations Support Group, Western Service Center.*

[FR Doc. 2011–28166 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF LABOR

## Wage and Hour Division

## 29 CFR Parts 570 and 579

**RIN 1235–AA06**

## Child Labor Regulations, Orders and Statements of Interpretation; Child Labor Violations—Civil Money Penalties

**AGENCY:** Wage and Hour Division, Labor.

**ACTION:** Notice and Extension of comment period.

**SUMMARY:** This document extends the period for filing written comments for an additional 30 days on the proposed revisions to the child labor regulations published on September 2, 2011. The Department of Labor (Department or DOL) is taking this action in order to provide interested parties additional time to submit comments.

**DATES:** The agency must receive comments on or before December 1, 2011. The period for public comments, which was to close on November 1, 2011, will be extended to December 1, 2011.

**ADDRESSES:** You may submit comments, identified by RIN 1235–AA06, by either one of the following methods:

*Electronic comments:* Through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

*Mail:* Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210.

*Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name (Wage and Hour Division) and Regulatory Information Number identified above for this rulemaking (1235–AA06). All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Consequently, prior to including any individual's personal information such as Social Security Number, home address, telephone number, email addresses and medical data in a comment, the Department urges commenters carefully to consider that their submissions are a matter of public record and will be publicly accessible on the Internet. It is the commenter's responsibility to safeguard his or her information. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* or to submit them by mail early. For additional information on submitting comments and the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Arthur M. Kerschner, Jr., Division of Enforcement Policy and Procedures, Branch of Child Labor and Special Employment, Wage and Hour Division, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue NW., Washington, DC 20210; *telephone:* (202) 693–0072 (this is not a toll free number). Copies of this notice of proposed rulemaking may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023. TTY/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling the Wage and Hour Division's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: *http://www.dol.gov/whd/america2.htm.*

**SUPPLEMENTARY INFORMATION:**

### I. Electronic Access and Filing Comments

*Public Participation:* This notice of proposed rulemaking is available

through the **Federal Register** and the *http://www.regulations.gov* Web site. You may also access this document via the Department's Web site at *http://www.dol.gov/federalregister.* To comment electronically on federal rulemakings, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register**. Please identify all comments submitted in electronic form by the RIN docket number (1235–AA06). Because of delays in receiving mail in the Washington, DC area, commenters should transmit their comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov,* or submit them by mail early to ensure timely receipt prior to the close of the comment period. Submit one copy of your comments by only one method.

**II. Request for Comment**

The Department is proposing to revise the child labor regulations issued pursuant to the Fair Labor Standards Act, which set forth the criteria for the permissible employment of minors under 18 years of age in agricultural and nonagricultural occupations. The proposal would implement specific recommendations made by the National Institute for Occupational Safety and Health, increase parity between the agricultural and nonagricultural child labor provisions, and also address other areas that can be improved, which were identified by the Department's own enforcement actions. The proposed agricultural revisions would impact only hired farm workers and in no way compromise the statutory child labor parental exemption involving children working on farms owned or operated by their parents.

In addition, the Department proposes to revise the exemptions which permit the employment of 14- and 15-year-olds to perform certain agricultural tasks that would otherwise be prohibited to that age group after they have successfully completed certain specified training.

The Department is also proposing to revise subpart G of the child labor regulations to incorporate all the regulatory changes to the agricultural child labor provisions made since that subpart was last revised. Finally, the Department is proposing to revise its civil money penalty regulations to incorporate into the regulations the processes the Department follows when determining both whether to assess a child labor civil money penalty and the amount of that penalty.

In the **Federal Register** of September 2, 2011 (76 FR 54836), the Department of Labor published a proposed notice of rulemaking requesting public comments on proposed revisions to the child labor regulations issued pursuant to the Fair Labor Standards Act, which set forth the criteria for the permissible employment of minors under 18 years of age in agricultural and nonagricultural occupations. Interested parties were requested to submit comments on or before November 1, 2011.

The Department has received requests to extend the period for filing public comments from members of Congress and various agricultural business organizations, including, but not limited to: American Sheep Industry Association; National Cattlemen's Beef Association; National Pork Producers Council; National Turkey Federation; California Farm Bureau Federation; National Association of State Departments of Agriculture; National Association of Agricultural Employers; National FFA Organization; and the American Farm Bureau Federation. Because of the interest that has been expressed in this matter, the Department has decided to extend the period for submitting public comment for 30 additional days.

Dated: October 26, 2011.

**Nancy J. Leppink,**

*Deputy Administrator, Wage and Hour Division.*

[FR Doc. 2011–28075 Filed 10–28–11; 8:45 am]

BILLING CODE 4510–27–P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4001, 4022, 4041, and 4044

**RIN 1212–AB17**

### Cash Balance Plans; Benefit Determinations and Plan Valuations for Statutory Hybrid Plans; Pension Protection Act of 2006

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement provisions of the Pension Protection Act of 2006 (PPA 2006) that change the rules for determining benefits upon the termination of a statutory hybrid plan, such as a cash balance plan. PPA 2006 provides that, when such a plan terminates, a variable rate used under the plan to determine accrued benefits will be equal to the average of the rates of interest used under the plan during the five-year period ending on the termination date. Further, the amount of the benefit payable in the form of an annuity payable at normal retirement age will be determined using the interest rate and mortality table specified under the plan for that purpose as of the termination date (or an average interest rate if the plan rate is a variable rate). For a plan terminated and trusteed by PBGC, the proposed rule would amend PBGC's regulations to conform the rules for determining the allocation of assets and the amount of benefits payable under Title IV of ERISA to the PPA 2006 changes in the benefit determination rules for statutory hybrid plans. The proposed rule would also implement a PPA 2006 change for determining the present value of the accrued benefit under a statutory hybrid plan. Finally, the proposed rule would provide guidance on benefits payable under a statutory hybrid plan that terminates in a standard termination.

**DATES:** Comments must be submitted on or before December 30, 2011.

**ADDRESSES:** Comments, identified by Regulatory Information Number (RIN 1212–AB17) may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the Web site instructions for submitting comments.
- *E-mail: reg.comments@pbgc.gov*.
- *Fax:* (202) 326–4224.
- *Mail or Hand Delivery:* Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026.

Comments received, including personal information provided, will be posted to *http://www.pbgc.gov*. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–(800) 877–8339 and ask to be connected to (202) 326–4040.)

**FOR FURTHER INFORMATION CONTACT:** John H. Hanley, Director, or Constance Markakis, Attorney; Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; (202) 326–4024. (TTY and TDD users may call the Federal relay service toll free at 1–(800) 877–8339 and ask to be connected to (202) 326–4024.)

**SUPPLEMENTARY INFORMATION:**

**Background**

When Pension Benefit Guaranty Corporation (PBGC) becomes trustee of a plan that terminates in a distress termination under section 4041 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), or an involuntary termination (one initiated by PBGC) under section 4042 of ERISA, PBGC determines the amount of the annuity benefit that will be paid to a participant or beneficiary and whether the participant or beneficiary is eligible for a *de minimis* lump-sum payment. Guaranteed benefit determinations are made under section 4022 of ERISA. PBGC also values the benefits payable under the plan for purposes of allocating the plan's assets to priority categories in accordance with section 4044 of ERISA, determines employer liability under sections 4062 through 4064 of ERISA, and determines the amount of any unfunded nonguaranteed benefits payable under section 4022(c) of ERISA. These benefit determinations and plan valuations are generally made as of the plan's termination date.[1]

The termination of a cash balance plan presents unique issues for PBGC.[2] In contrast to a traditional defined benefit plan, which defines a participant's benefit under the plan as an annuity commencing at normal retirement age, a cash balance plan defines a participant's benefit as the balance of a hypothetical account maintained for the participant. The balance of a participant's hypothetical account consists generally of annual pay credits (*e.g.,* a percentage of the participant's pay for the year) and annual interest credits (*i.e.,* the hypothetical earnings on the account balance) at rates specified under the plan. The plan also provides an interest rate and mortality table (or factor) used for converting the participant's hypothetical account balance into a benefit payable as an annuity. Upon the termination of a cash balance plan (or an earlier freeze), the pay credits to a participant's hypothetical account cease, but interest credits generally continue to be added to the participant's hypothetical account until the participant begins to receive benefits.

If a cash balance plan uses a fixed interest rate as of the plan's termination date to determine accrued benefits or the amount of a benefit payable in the form of an annuity payable at normal retirement age, PBGC uses the plan's fixed rate when calculating benefits for valuation and payment purposes. PBGC has encountered difficult payment and valuation issues, however, when a cash balance plan uses a variable interest rate—*e.g.,* a rate that changes annually under the plan based on changes in an underlying index plus a margin. Many plans using variable rates adopted the standard indices and associated margins set forth in IRS Notice 96–8 (1996–1 C.B. 359)—which are based on the yields on Department of the Treasury (Treasury) constant maturities of various durations—to determine the plan's interest crediting rate or annuity conversion rate.

Under PBGC's operating policy on cash balance plans (established pre-PPA 2006), when PBGC performs its plan valuation under ERISA section 4044 of ERISA (for plans that terminated before the effective date of the relevant PPA 2006 changes), it fixes the plan's variable index at the plan's termination date. To calculate the value, as of the plan's termination date, of a participant's annuity commencing at the expected retirement age, PBGC derives a fixed rate equal to the average of the annual yields for 30-year Treasury constant maturities for the month specified in the plan, decreased by the associated margin in IRS Notice 96–8 for the variable index used by the plan, and adjusted by any plan margin.[3]

Under this operating policy, however, PBGC does not derive a fixed interest rate from a variable rate to determine benefits for payment purposes. Instead, PBGC pays a participant's pension benefit using the actual interest crediting rates in effect under the plan's variable index for periods after the plan's termination date. Until a participant commences benefits, PBGC estimates annuity payments using the most recent interest rate under the variable index used by the plan to determine the participant's projected benefit. The fact that a participant's exact benefit can be determined only when the participant begins receiving benefits has frequently resulted in benefit calculations for payment purposes that vary both from previously provided estimates and from benefit calculations for valuation purposes.

PBGC pays benefits in a single installment if the lump sum value of a benefit payable by PBGC is *de minimis* (currently $5,000 or less). See § 4022.7(b). In the case of cash balance plans, the payment of *de minimis* lump sums has posed difficult issues for PBGC due to PBGC's policy of determining lump sums using a present value calculation of the participant's benefit. Cash balance plans typically pay benefits in the form of a lump sum and often pay an amount equal to the hypothetical account balance.[4] In contrast, in accordance with its operating policy on cash balance plans, PBGC uses the present value methodology in § 4022.7(d) to determine the lump sum value of a benefit, and, if either the present value or the participant's hypothetical account balance (or accumulated percentage of final average compensation) as of the termination date is *de minimis,* PBGC generally pays the greater of the two amounts.

**Pension Protection Act of 2006**

In the Pension Protection Act of 2006, Pub. L. 109–280 (PPA 2006), which became law on August 17, 2006, Congress sought to address, among other things, the problems encountered by terminating plans that use a variable interest rate. Under sections 701(a)(1) and 701(b)(1) of PPA 2006, which added section 411(b)(5)(B)(vi) of the Internal Revenue Code (Code) and section 204(b)(5)(B)(vi) of ERISA, an applicable defined benefit plan must include the following provisions that would apply upon termination of the plan:

- If the interest crediting rate (or equivalent amount) is a variable rate, the rate of interest used to determine accrued benefits under the plan will equal the average of the rates of interest used under the plan during the five-year period ending on the termination date.
- The interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age is the rate and table

[1] As described below, section 404 of PPA 2006 added sections 4022(g) and 4044(a)(3) of ERISA, which treat the date the sponsor's bankruptcy petition was filed as the termination date of the plan for specified purposes. These changes apply for plan terminations that occur during the bankruptcy of the plan sponsor, if the bankruptcy filing date is on or after September 16, 2006. For convenience, this preamble generally refers to the plan's termination date, although in some cases this reference will instead apply to the bankruptcy filing date.

[2] Statutory hybrid plans other than cash balance plans, such as pension equity plans, also raise unique issues. For convenience, and because cash balance plans are the most common type of underfunded statutory hybrid plan trusteed by PBGC, this preamble generally refers to cash balance plans, although the regulatory changes would apply to all statutory hybrid plans.

[3] This policy applied only for plans that used a variable interest rate based on an index specified in IRS Notice 96–8, and that used either no plan margin or a plan margin that is constant.

[4] Under IRS Notice 96–8, plans that use the standard indices to determine their interest crediting rates were permitted to pay the hypothetical account balance, even if this amount was less than the present value of the participant's life annuity payable at normal retirement age determined using the applicable interest rate and the applicable mortality table under section 417(e) of the Code.

specified under the plan for such purpose as of the termination date. If the interest rate is a variable rate, the rate used must be the average of the rates used under the plan during the five-year period ending on the termination date.

This change was intended to facilitate the calculation of benefits and provide participants with greater certainty about their benefit amounts when a plan terminates. This change is part of a more general interest rate requirement imposed by sections 701(a)(1) and 701(b)(1) of PPA 2006, which treats an applicable defined benefit plan as failing to meet accrual requirements related to age if the terms of the plan provide for an interest credit (or an equivalent amount) for any plan year that is greater than a market rate of return.

Sections 701(a)(2) and 701(b)(2) of PPA 2006 also create special rules for computing benefits under an applicable defined benefit plan by reference to the hypothetical account balance. Under new sections 411(a)(13)(A) of the Code and 203(f)(1) of ERISA, a plan is not treated as failing to meet the present value requirements of sections 417(e) of the Code or 205(g) of ERISA (and certain other vesting and accrued benefit rules) if the present value of the accrued benefit of any participant is equal to the amount expressed as the balance in the hypothetical account or as an accumulated percentage of the participant's final average compensation.

New sections 411(a)(13)(C) of the Code and 203(f)(3) of ERISA define an ''applicable defined benefit plan'' as a defined benefit plan under which the accrued benefit (or any portion thereof) for a participant is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. The term also describes any plan that has an effect similar to an applicable defined benefit plan under regulations issued by Treasury.

The changes to the plan termination requirements made by sections 701(a)(1) and 701(b)(1) of PPA 2006 are effective for years beginning after December 31, 2007, unless the plan sponsor elects the earlier application of such requirements for any period after June 29, 2005.[5] A special rule for collectively bargained plans provides a delayed effective date.[6] The changes to the present value rules made by sections 701(a)(2) and 701(b)(2) of PPA 2006 are effective for distributions made after August 17, 2006.

Treasury issued final regulations on Hybrid Retirement Plans (2010 final Treasury regulations), 75 FR 64123 (Oct. 19, 2010), and simultaneously issued proposed Additional Rules Regarding Hybrid Retirement Plans (2010 proposed Treasury regulations), 75 FR 64197 (Oct. 19, 2010). These regulations provide guidance on changes made by PPA 2006 under sections 411(a)(13) and 411(b)(5) of the Code.

The other PPA 2006 provisions relevant to this proposed rule are in section 404, which added sections 4022(g) and 4044(e) of ERISA. These provisions provide that, when an underfunded pension plan terminates during the bankruptcy of the plan sponsor, the date that the sponsor's bankruptcy petition was filed is treated as the plan's termination date for purposes of determining (1) The amount of benefits PBGC guarantees, and (2) the amount of benefits in priority category 3 in the section 4044 asset allocation. These changes apply for plan terminations that occur during the bankruptcy of the plan sponsor, if the bankruptcy filing date was on or after September 16, 2006. On June 14, 2011 (at 76 FR 34590), PBGC published a final rule on Bankruptcy Filing Date Treated as Plan Termination Date for Certain Purposes that implements section 404 of PPA 2006.

**Overview of Proposed Rule**

This proposed rule would amend PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) to implement the above-described changes made by PPA 2006 upon the termination of a statutory hybrid plan. This proposed rule is intended to be consistent with the proposed Treasury rules under section 411(b)(5) of the Code that apply upon termination of a statutory hybrid plan (included in the 2010 proposed Treasury regulations at Treas. Reg. 1.411(b)(5)–1(e)(2)). No inference should be drawn from the language in this proposed rule as to any changes that may be made to the Treasury rules when the 2010 proposed Treasury regulations are issued as final regulations. After the 2010 proposed Treasury regulations are finalized, PBGC intends to take those final Treasury regulations into account, so that the rules that finalize these proposed regulations are consistent with the final rules in the Treasury regulations.

Under the proposed rule, PBGC would generally determine plan benefits based on plan terms as of the plan's termination date; if, however, the plan used a variable rate during the five-year period ending on the termination date, PBGC would take into account the plan's provisions for determining and applying an average rate of interest in accordance with section 411(b)(5)(B)(vi) of the Code and proposed Treas. Reg. 1.411(b)(5)–1(e)(2). In addition, the proposed rule sets forth certain default rules that PBGC would apply to the extent that the terms of the plan do not satisfy the plan termination requirements under PPA 2006 or Treasury regulations thereunder, or fail to specify provisions necessary to implement those requirements. Except in the case of certain involuntary plan terminations, PBGC would generally apply its rules to determine the benefits of any participant with an annuity starting date after the plan's termination date or, in the case of a distress termination under ERISA section 4041(c), the plan's proposed termination date. The proposed rule also addresses the interest crediting rules that apply to a plan that terminates during the bankruptcy of the plan sponsor.

In addition, the proposed rule would amend PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) to conform the rules for valuing benefits and allocating plan assets to the changes in the benefit determination rules. Under the proposed rule, certain benefits would be calculated differently for valuation purposes than for payment purposes. For example, *de minimis* benefits would continue to be calculated as annuities for valuation purposes, as under the current regulation, but the method of calculating such benefits for payment purposes would change under the proposed rule. The proposed rule would also amend part 4044 to provide that the priority category 3 benefits of a participant who is eligible but does not retire three years before a plan's termination date (or bankruptcy filing date, if applicable) would be determined based on the participant's account balance and the interest rates under the plan as if the participant had retired three years before the termination date (or bankruptcy filing date, if applicable).

The proposed rule would amend PBGC's regulation on Termination of

[5] In the case of a new plan not in existence on June 29, 2005, these requirements are effective for periods beginning on or after June 29, 2005.

[6] Section 701(e)(4) of PPA 2006 provides that, for a plan maintained under one or more collective bargaining agreements between employee representatives and one or more employers that is ratified on or before August 17, 2006, the interest and three-year vesting requirements will not apply to plan years before—

- The earlier of the date on which the last of the collective bargaining agreements terminates (determined without regard to any extension made on or after August 17, 2006), or January 1, 2008, or
- January 1, 2010.

Single-Employer Plans (29 CFR part 4041) to provide that, for purposes of part 4041, a plan that terminates in a standard termination (or a distress termination where the plan is sufficient for guaranteed benefits) will be deemed to satisfy the plan termination requirements under section 204(b)(5)(B)(vi) of ERISA and section 411(b)(5)(B)(vi) of the Code and Treasury regulations if the plan calculates and pays benefits consistent with the provisions for statutory hybrid plans under part 4022.

A detailed discussion of the proposed rule follows.

**Proposed Regulatory Changes**

*Definition of Statutory Hybrid Plan*

Under section 411(a)(13)(C) of the Code,[7] an ''applicable defined benefit plan'' is a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation; the definition includes any plan that has an effect similar to an applicable defined benefit plan. Treasury's final regulations on Hybrid Retirement Plans use the term ''statutory hybrid plan'' to describe plans that are subject to the provisions of sections 411(a)(13) and 411(b)(5)(B) of the Code. To maintain a uniform and consistent application of PPA 2006 changes to the rules in this area, PBGC is proposing to amend § 4001.2 to add a definition of a ''statutory hybrid plan'' that cross-references the definition of a statutory hybrid plan under Treasury regulations.[8]

*PBGC Benefit Determinations—In General*

PBGC proposes to amend part 4022 to add a new subpart H that would specifically address the determination of benefits payable under a terminating statutory hybrid plan. Subpart H would supplement the general rules in part 4022 for purposes of determining a participant's benefit under the provisions of a statutory hybrid plan and the amount and form of benefits guaranteed or otherwise payable under Title IV of ERISA.

When PBGC trustees a terminated plan (including a statutory hybrid plan), as a first step in determining the benefits payable under Title IV, it determines a participant's benefit in accordance with the terms of the plan on the termination date. As described in proposed new § 4022.121, for statutory hybrid plans, this includes provisions relating to the interest rate(s) and mortality table used by the plan, such as the rate used to determine interest credits and the timing for determining such rate, the frequency at which interest credits are applied, and the interest rate and mortality table (or annuity conversion factor) used to determine the participant's benefit payable in the form of an annuity payable at normal retirement age—provided the plan's provisions satisfy the requirements of section 204(b)(5)(B) of ERISA and section 411(b)(5)(B) of the Code and implementing regulations.

Because statutory hybrid plans use various methods for determining a participant's annuity benefit, PBGC would follow the plan's terms for this purpose. For example, a cash balance plan that defines the accrued benefit as an annuity commencing at normal retirement age, and that—for purposes of sections 411(a)(13) and 411(b)(5)—expresses the accrued benefit as the balance of the participant's hypothetical account, may under its terms determine the participant's annuity by projecting interest credits to the participant's normal retirement date. In that case, PBGC would add interest credits to the participant's hypothetical account balance each interest crediting period beginning after the plan's termination date through the participant's normal retirement date (or the current date, if later) and then use the conversion factors (or the interest rate and the mortality table) specified under the plan as of the termination date to determine the benefit payable as an annuity. Alternatively, if such plan provides for the use of immediate annuity conversion factors, PBGC would add interest credits to the participant's hypothetical account balance through the participant's annuity starting date, then use the conversion factors (or the interest rate and mortality table) specified under the plan as of the termination date to determine the benefit payable as an annuity at the participant's age on the annuity starting date. In the case of a pension equity plan that provides for the use of deferred annuity conversion factors (or an interest rate and mortality table), PBGC would determine the current value of the accumulated percentage of an active participant's final average compensation as of the plan's termination date and apply the conversion factors specified under the plan as of the termination date to determine the benefit payable as an annuity at different future ages to the participant.

If the mortality table specified under the plan as of the termination date used to determine the amount of any benefit payable in the form of an annuity (*i.e.,* the table used to convert a hypothetical account balance to an annuity) is a table that is updated automatically in future years to reflect expected improvements in mortality experience (*e.g.,* the applicable mortality table provided under Code section 417(e)(3)), PBGC would determine benefits payable under the plan based on the mortality table as of the termination date taking into account future adjustments for expected mortality improvements through the annuity starting date.

The provisions of proposed new subpart H would be used to determine the benefits of any participant or beneficiary in a plan covered by the subpart with an annuity starting date after the plan's termination date or, in the case of a distress termination under ERISA section 4041(c), after the proposed termination date. A plan administrator's failure to apply an average interest rate as of the proposed termination date would require benefits to be re-determined using an average rate of interest. The proposed termination date would also be the relevant date if a plan provides a notice of intent to terminate in a distress termination and subsequently terminates under section 4042, and the termination date is the same as the proposed termination date under section 4041(c). If the proposed termination date is moved to a later date in a distress termination case (or in a distress termination that becomes an involuntary termination), benefits determined using an average interest rate between the proposed termination date and the final termination date would be recalculated using the interest rate that would have applied under the plan prior to the plan's final termination date.

Proposed new § 4022.121(a)(3)(ii) provides a special rule for a plan that terminates in an involuntary termination where the termination date is earlier than the date on which PBGC institutes termination proceedings pursuant to section 4042. In that

[7] References to Code provisions used hereinafter should be read to include parallel provisions of ERISA.

[8] Under § 1.411(a)(13)–1(d), a statutory hybrid plan means a defined benefit plan that contains a statutory hybrid benefit formula, which is defined as a benefit formula used to determine all or any part of a participant's accumulated benefit that is either a lump sum-based benefit formula (under which the benefit is expressed as the current balance of a hypothetical account maintained for the participant or as the current value of an accumulated percentage of the participant's final average compensation) or a benefit formula that has an effect similar to a lump sum-based benefit formula.

situation, in determining benefits under part 4022, PBGC generally would not change the interest rate(s) (or the mortality table or conversion factor) used by the plan under its provisions to calculate a benefit payable for a participant or beneficiary whose annuity starting date is after the termination date but on or before the date on which PBGC institutes termination proceedings or who submits a completed election for an annuity benefit during that time period. This would protect benefit determinations and participant elections when a plan operates in good faith in accordance with its terms prior to any notice of termination proceedings. PBGC would have discretion not to follow this special rule if warranted under the facts and circumstances, *e.g.,* to avoid abuse.

*Variable Rates*

Paragraph (c) of proposed new § 4022.121 describes the averaging methodology PBGC would apply upon termination of a plan in the case of a variable rate. In accordance with proposed Treas. Reg. 1.411(b)(5)–1(e)(2), if the interest crediting rate used to determine a participant's accumulated benefit (or a portion thereof) has been a variable rate during the interest crediting periods in the five-year period ending on the plan's termination date (including a rate that was not the same fixed rate during all such periods), PBGC would determine an average of the interest crediting rates used under the plan during the five-year period. For this purpose, the interest crediting rates used under the plan would include each rate that applied under the terms of the plan during an interest crediting period for which the interest crediting date is within the five-year period ending on the plan's termination date.[9] The average rate would be determined as the arithmetic average of the rates used, expressed as an annual rate.

PBGC would apply the plan's average interest crediting rate to determine the participant's accumulated benefit[10] under the plan beginning after the plan's termination date through the participant's normal retirement date (or annuity starting date, as applicable under the plan). If the plan's termination date occurs in the middle of an interest crediting period, PBGC would credit interest based on the plan's interest crediting rate (on a pro rata basis) for the portion of the interest crediting period ending on the plan's termination date; such rate would not be included in the determination of the average rate. For any subsequent partial interest crediting period (*e.g.,* the portion of the interest crediting period following the plan's termination date), PBGC would credit a pro rata amount of the plan's average interest crediting rate. This approach is consistent with the statute and would simplify administration for PBGC.

In the event that the plan used a variable rate during the five-year period ending on the plan's termination date to determine the amount of a participant's benefit payable in the form of an annuity payable at normal retirement age, PBGC would determine the arithmetic average of the interest rates (or tabular adjustment factors) that applied during periods for which the date of each rate (or factor) change was within the five-year period ending on the plan's termination date.

Under Code section 411(b)(5)(B)(vi)(II), the average rate is used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age. PBGC would apply an average rate to determine a benefit under the plan that is payable in the form of a life annuity (*i.e.,* an annuity that continues at least as long as the life of the annuitant, such as a straight-life annuity, joint-and-50%-survivor annuity, or 10-year certain and continuous annuity) payable at normal retirement age. In the case of an immediate annuity conversion plan that uses a variable interest rate to determine the amount of a benefit, PBGC would apply an average rate to determine a benefit under the plan payable in the form of a life annuity payable at the annuity starting date. In either case, the averaging requirement would apply only to determine the amount of the benefit in the automatic PBGC form under § 4022.8(b) of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, *e.g.,* the form a married participant or an unmarried participant (as applicable) would be entitled to receive from the plan in the absence of an election. If the participant or beneficiary elects an optional PBGC form under § 4022.8(c), PBGC would convert the benefit amount from the automatic PBGC form in accordance with that section.

Paragraph (c) of proposed new § 4022.121 also provides that, consistent with Treasury regulations, if the interest crediting rate in any interest crediting period during the five-year period ending on the termination date is based on a variable rate that is not described in proposed Treas. Reg. 1.411(b)(5)–1(e)(2)(ii)(B) (*e.g.,* the rate of return on plan assets), PBGC would replace such rate with the third segment rate under Code section 430(h)(2)(C)(iii) for the last calendar month ending before the beginning of the interest crediting period for purposes of determining the average interest crediting rate. In accordance with proposed Treas. Reg. 1.411(b)(5)–1(e)(2)(ii)(C), PBGC generally would adjust the third segment rate by any maximums or minimums applicable to the interest crediting rate in the period under the plan's terms, but would not adjust the third segment rate to account for any other adjustments under the plan to the interest crediting rate.

*Default Rules and Other Rules*

Paragraph (d) of proposed new § 4022.121 describes the default rules that PBGC would apply to the extent that plan provisions do not satisfy section 204(b)(5)(B) of ERISA and section 411(b)(5)(B) of the Code and implementing regulations, or that the plan fails to specify provisions necessary to implement applicable statutory and regulatory requirements. In the case of a plan that uses a variable rate but does not provide for the determination of an average rate or an arithmetic averaging methodology to be used upon termination of the plan, PBGC would determine an arithmetic average in the manner described above. If a plan does not specify a mortality table (or otherwise indicate the table or annuity conversion factor to be used), PBGC would use the mortality table provided under section 417(e) of the Code that would apply if the annuity starting date were the plan's termination date (*i.e.,* future adjustments for expected mortality improvements under the mortality table would not be taken into account). If a plan fails to specify an interest crediting rate or annuity conversion interest rate (or otherwise indicate the rate or factor to be used), PBGC would compute an average rate as the arithmetic mean of the 30-year Treasury Constant Maturity rates in effect for the calendar month in which the plan terminates and for the same calendar month in each of the preceding four years.

[9] An interest crediting rate that applied under the terms of the plan only with respect to a date that is distinct from the plan's regular interest crediting date, such as the date of separation from employment or plan termination, would not be included in determining an average of the interest crediting rates that applied under the terms of the plan during the five-year period.

[10] Under Treas. Reg. 1.411(a)(13)–1(d)(2), a participant's accumulated benefit at any date means the participant's benefit, as expressed under the terms of the plan, accrued to that date. Thus, for example, for a cash balance plan the accumulated benefit is expressed as the current balance of a hypothetical account, and for a pension equity plan the accumulated benefit is expressed as the current value of an accumulated percentage of the participant's final average compensation.

Under the proposed regulation, PBGC would apply a single average interest crediting rate to determine the benefits of all similarly situated participants under the plan (*i.e.,* the same average interest crediting rate would apply to the extent the same rates applied under the plan to determine all participants' benefits). In the case of a plan that terminates within five years after the effective date of the PPA 2006 termination requirements with respect to the plan, PBGC would determine the average rate by including interest crediting rates used by the plan before the effective date but within the five-year period ending on the termination date. In the case of a plan (or the statutory hybrid benefit formula under a plan) that is in effect for less than five years, PBGC would determine the average rate based on the interest crediting periods during the time the plan (or the statutory hybrid benefit formula) was in effect.

*PPA 2006 Bankruptcy Terminations*

Paragraph (e) of proposed new § 4022.121 provides a special rule for determining interest credits in the case of a plan that terminates while the sponsor is in bankruptcy (a PPA 2006 bankruptcy termination, as defined in § 4001.2). PBGC would project the amount of the participant's hypothetical account balance as of the bankruptcy filing date using the following interest rates:

- To credit interest beginning after the bankruptcy filing date and ending on the plan's termination date, the actual interest crediting rate(s) used under the plan during each interest crediting period.
- To credit interest beginning after the plan's termination date and ending on the participant's normal retirement date or, in some cases, annuity starting date, the rate in effect under the plan as of the plan's termination date, including the average interest crediting rate as determined under subpart H if the plan used a variable rate during the five-year period ending on the plan's termination date.

*De Minimis Lump Sums*

The proposed rule would add a new § 4022.122 to describe how PBGC would make determinations regarding *de minimis* lump sum payments (currently $5,000 or less under § 4022.7) under a statutory hybrid plan. Consistent with section 411(a)(13)(A) of the Code, if a plan provides for a single sum form of payment equal to the amount expressed as the balance in a hypothetical account, PBGC generally would determine whether the lump sum value of a benefit payable by PBGC is *de minimis* based on the participant's hypothetical account balance as of the plan's termination date, and, if so, would pay that amount to the participant.

However, regardless of plan provisions, if after August 17, 2006, a plan made lump sum payments based on participants' hypothetical account balances without regard to the present value rules under section 417(e) of the Code, or stated in writing its intent to make lump sum payments on that basis (*e.g.,* through communications to affected participants), PBGC would make *de minimis* lump sum determinations on that same basis. *I.e.,* PBGC would treat the plan as if it had been amended to reflect plan operation in accordance with section 411(a)(13)(A) of the Code, pursuant to the amendatory period provided under section 1107 of PPA 2006. PBGC would also make *de minimis* lump sum determinations based on the participants' hypothetical account balances without regard to the section 417(e) rules if there is no single sum form of payment under the plan or no description of the calculation for such a payment.

In the case of a plan that provides for use of section 417(e) of the Code in determining lump sums and that, after August 17, 2006, has *not* made lump sum payments based solely on participants' hypothetical account balances or stated in writing its intent to make lump sum payments on that basis (*e.g.,* through communications to affected participants), PBGC would make *de minimis* lump sum determinations in accordance with § 4022.7(d) and its operating policy on cash balance plans.

*Phase-In of Guarantee of Benefit Increases*

The proposed rule would add a new § 4022.123 to PBGC's regulations to describe changes in the terms of a statutory hybrid plan resulting in a benefit increase that would be subject to the phase-in limitations on the PBGC guarantee (*i.e.,* a benefit increase that has been in effect for less than five years on the plan's termination date). Such changes include, but are not limited to, a change in the plan's mortality table, timing or method for crediting interest, or basis for crediting interest or determining the annuity conversion factor (*e.g.,* a change from a fixed rate to a variable rate, or from one variable index to another variable index).

The proposed regulation would clarify that certain adjustments in the interest rate would not be subject to the phase-in limitations. These include: (i) A change in the interest rate under a single variable rate index (*e.g.,* a change in the yield on 5-year Treasury Constant Maturities from one date to another); (ii) a change that is required to comply with the termination requirements of ERISA section 204(b)(5)(B)(vi) and Code section 411(b)(5)(B)(vi) (*e.g.,* a change in the plan's interest rate to an average rate of interest at termination); (iii) a change in the plan's interest crediting rate that is permitted, notwithstanding section 411(d)(6) of the Code, pursuant to Treas. Reg. 1.411(b)(5)–1(e)(3) (*e.g.,* an amendment to change under certain circumstances to the long-term investment grade corporate bond rate); (iv) a change permitted during the amendatory period under section 1107 of PPA 2006 or any extension of the amendatory period issued by the Treasury Department; and (v) an automatic future update in a mortality table specified under the plan as of the termination date that reflects expected improvements in mortality experience. PBGC believes that excluding such changes from the phase-in rule is warranted. Changes in rate due to the fluctuations of a variable index or to the averaging under the termination requirements would just as likely result in a benefit decrease as a benefit increase. Furthermore, any increase in benefits that might result from the above changes would be moderated by the requirement to average the plan's rates for the five-year period ending on the termination date, and by the substitution of the third segment rate for any variable rate that is not described in proposed Treasury Regulation 1.411(b)(5)–1(e)(2)(ii)(B) (*e.g.,* the rate of return on plan assets) for purposes of determining the average interest crediting rate. Lastly, updates under a mortality table that automatically reflects age improvements are an inherent aspect of the annuity conversion factor used; by contrast, a change to the conversion factor (*e.g.,* from a fixed mortality table to one that updates automatically) by a plan would be subject to phase-in.

*Allocation of Assets—Distress and Involuntary Terminations*

PBGC proposes to amend part 4044 by adding a new § 4044.52(e) to address the valuation of benefits under a terminating statutory hybrid plan. The proposed regulation provides that benefits should be valued consistent with the general valuation rules of part 4044 and the provisions for the calculation and payment of benefits in subpart H of part 4022.

In two situations, notwithstanding PBGC's calculation of benefits for payment purposes, PBGC would value

the benefits under a cash balance plan in the same manner as all other benefits are valued. First, although proposed new § 4022.122 provides for the determination of *de minimis* lump sums in some cases on the basis of the participant's hypothetical account balance, a benefit payable as a *de minimis* lump sum would nevertheless be required to be valued, for purposes of part 4044, in the form of a benefit payable as an annuity in the absence of a valid election under the terms of the plan (as is the case under current regulations). Second, despite the special rule in proposed new § 4022.121(a)(3)(ii) that would generally require PBGC to use the plan's interest crediting rate and annuity conversion interest rate to determine benefits commencing or elected during the time period between the plan's termination date and the date on which PBGC institutes termination proceedings, these benefits would be valued, for purposes of part 4044, using the interest rates in effect under the plan (including the five-year average rate, if applicable) as of the plan's termination date.

Proposed new § 4044.52(e)(4) describes the calculation of a priority category 3 benefit under a statutory hybrid plan. Priority category 3 benefits generally are benefits in pay status, or that could have been in pay status, three years before the termination date; priority category 3 benefits come ahead of guaranteed benefits in priority category 4 in the section 4044 asset allocation. In a plan termination that is not a PPA 2006 bankruptcy termination, the priority category 3 benefit for a participant eligible to receive an annuity (taking into account PBGC's rules on the Earliest PBGC Retirement Date under § 4022.10) before the beginning of the three-year period ending on the termination date but not in pay status as of that date would be determined based on the balance of the participant's hypothetical account and the interest crediting rate and annuity conversion factor under the plan had the participant retired three years before the termination date.[11] In the case of PPA 2006 bankruptcy termination, the bankruptcy filing date would substitute for the termination date in determining whether a participant or beneficiary is eligible for a priority category 3 benefit, and the amount of benefits in priority category 3. A priority category 3 benefit would in no event exceed the benefit amount payable under the terms of the plan as of the plan's termination date (determined by applying the averaging rules under § 4022.121 if the plan uses a variable rate).

*Standard and Distress Terminations*

The termination requirements under section 411(b)(5)(B)(vi) of the Code, added by PPA 2006, apply to any applicable defined benefit plan upon the termination of the plan. Sections 4041.28(c) and 4041.50 provide that, in general, the plan administrator of a plan that terminates in a standard termination or a distress termination where the plan is sufficient for guaranteed benefits must close out the plan ''in accordance with all applicable requirements under the Code and ERISA.'' These requirements include the new rules for cash balance plans under section 411(b)(5)(B)(vi) of the Code and implementing Treasury regulations.

The proposed rule would amend § 4041.28(c) to provide that for purposes of part 4041 the plan administrator of a statutory hybrid plan would be deemed to satisfy the applicable Code and ERISA requirements if it calculates and pays benefits consistent with the interest and mortality provisions described in proposed new § 4022.121.

*Issues Not Addressed*

This proposed rule does not address issues relating to plans in which the interest crediting rate is determined by participant direction, *e.g.,* where the interest crediting rate depends upon choices made by the participant. PBGC will provide further guidance as appropriate.

**Applicability**

The proposed regulatory changes to implement the plan termination requirements under section 411(b)(5)(B)(vi) of the Code would generally apply to any plan with a termination date in a plan year beginning on or after January 1, 2008. In addition, the proposed changes would apply to any plan that was not in existence on June 29, 2005. Pursuant to sections 701(e)(3) through (e)(5) of PPA 2006, if a plan elected to have these statutory provisions apply for any period after June 29, 2005, and before the plan year beginning on or after January 1, 2008, or if the statutory provisions are first effective for a plan after the first plan year beginning on or after January 1, 2008 (*e.g.,* a collectively bargained plan), these regulatory changes would apply to any plan with a termination date on or after such earlier effective date elected by the plan, or such later effective date provided under PPA 2006. For plans that terminate under part 4041 on or after the effective date of these statutory provisions and pending the issuance of final Treasury regulations, compliance with PPA 2006 would constitute compliance with the new rules for Title IV purposes.[12]

The proposed regulatory changes to implement the lump sum provisions under section 411(a)(13) of the Code would apply to distributions made from a terminated plan with a termination date in a plan year beginning on or after January 1, 2008.

**Regulatory Impact Analysis**

*Regulatory Procedures*

Executive Order 12866 ''Regulatory Planning and Review'' and Executive Order 13563 ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Orders 12866 and 13563 require a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, defined as an action that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts. In accordance with OMB Circular A–4, the Department has examined the economic and policy implications of this proposed rule and has concluded that the action's benefits justify its costs.

Under Section 3(f)(1) of Executive Order 12866, a proposed rule is economically significant if ''it is likely to result in a rule that may * * * [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of

[11] Benefits in priority category 3 are limited to the lowest annuity benefit payable under the plan provisions at any time during the five-year period ending on the termination date (or bankruptcy filing date, if applicable). This limitation also affects the benefits of participants who retired between three and five years before the termination date (or bankruptcy filing date, if applicable).

[12] The 2010 final Treasury regulations provide that, for periods after the statutory effective date and before the regulatory effective date, a plan is permitted to rely on the provisions of the 2010 final Treasury regulations, the 2010 proposed Treasury regulations, the 2007 proposed regulations on Hybrid Retirement Plans, 72 FR 73680, 48 (Dec. 28, 2007), and IRS Notice 2007–6 for purposes of satisfying the requirements of sections 411(a)(13) and 411(b)(5) of the Code.

the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' PBGC has determined that this proposed rule does not cross the $100 million threshold for economic significance and is not otherwise economically significant.

The economic effect of the proposed rule is attributable almost entirely to the economic effect of the PPA 2006 changes to terminating cash balance plans. Accordingly, PBGC is basing its determination on its experience with plans subject to these provisions.

PBGC estimates that, to date, the total economic effects of the PPA 2006 changes—in terms of lower benefits paid to participants and associated savings—is less than $4 million. These effects are primarily due to lower lump sum payments to some participants as a result of the PPA 2006 provisions that allow payment of the hypothetical account balance to participants. Because PBGC generally pays lump sums only when the benefit is *de minimis* (currently $5,000 or less), and because only a small percentage of participants in cash balance plans trusteed by PBGC receive benefits in lump sum form, the economic effects are relatively small.

PBGC estimates that there will be little if any economic effect from PPA 2006's averaging provisions. As explained in the Background section, before the PPA 2006 changes went into effect, if a cash balance plan used a variable interest rate at plan termination to determine accrued benefits, for payment purposes PBGC credited interest to a participant's account using the plan's variable index from the termination date until a participant's normal retirement date or annuity starting date. PPA 2006 requires that a cash balance plan that uses a variable rate for calculating benefits use the average of the rates used under the plan during the five-year period ending on the plan termination date. This change could result in larger benefits payable to some participants and smaller benefits payable to other participants as compared to the pre-PPA 2006 methodology, depending on fluctuations in rates. PBGC believes that these losses and gains in benefits for participants will be largely offsetting.

Although, PBGC cannot predict with certainty which cash balance plans will terminate, the funding level of such plans, or the number of participants that will be paid *de minimis* lump sum payments, given the relatively low estimate of the effect of the statutory provisions to date, PBGC has determined that the annual effect of the proposed rule will be less than $100 million.

*Regulatory Flexibility Act*

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. The amendments implement and in some cases clarify statutory changes made in PPA 2006; they do not impose new burdens on entities of any size. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), sections 603 and 604 do not apply.

**Paperwork Reduction Act**

The amendments in the proposed rule would change the information requirements approved by the Office of Management and Budget under the Paperwork Reduction Act under OMB control number 1212–0036 (expires December 31, 2013). PBGC is submitting the information requirements relating to these amendments to part 4041 to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street, NW., Washington, DC 20005, (202) 326–4040; the request is also available on *http://www.reginfo.gov.*

PBGC estimates that 1,379 plan administrators will be subject to the collection of information requirements under 1212–0036 each year, and that the total annual burden of complying with these requirements is 2,161 hours and $3,098,441. Much of the work associated with terminating a plan is performed for purposes other than meeting these requirements. (Detailed information on these burden estimates is included in PBGC's request.)

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Although comments may be submitted through December 30, 2011, the Office of Management and Budget requests that comments be received on or before November 30, 2011 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**List of Subjects**

*29 CFR Part 4001*

Pensions.

*29 CFR Part 4022*

Pension insurance, Pensions.

*29 CFR 4041*

Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR 4044*

Pension insurance, Pensions.

For the reasons given above, PBGC proposes to amend 29 CFR parts 4001, 4022, 4041, and 4044 as follows.

## PART 4001—TERMINOLOGY

1. The authority citation for part 4001 continues to read as follows:

**Authority:** 29 U.S.C. 1301, 1302(b)(3).

2. In § 4001.2, add a new definition in alphabetical order to read as follows:

### § 4001.2 Definitions

*Statutory hybrid plan* means a cash balance plan or other statutory hybrid plan under regulations issued by the Department of the Treasury.

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

3. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

4. In § 4022.2, amend the first paragraph by removing the words ''proposed termination date, substantial owner'' and adding in their place ''proposed termination date, statutory hybrid plan, substantial owner.''

5. Add a new subpart H to read as follows:

## Subpart H—Calculation of Benefits Payable Under Statutory Hybrid Plans

### § 4022.120 Purpose and scope.

(a) *General.* This subpart H supplements the general rules in part 4022. These rules apply for determining the benefit payable under the provisions of a statutory hybrid plan and the amount of the benefit that PBGC will guarantee or that is payable under title IV of ERISA. To the extent the rules and procedures of this subpart H conflict with the rules and procedures in subparts A through G of part 4022, the provisions of subpart H govern.

(b) *Statutory hybrid plan.* In general, a statutory hybrid plan (defined in § 4001.2 of this chapter) includes a hybrid defined benefit pension plan under the terms of which the accumulated benefit of a participant (or any portion thereof) is expressed as the current balance of a hypothetical account maintained for the participant (a cash balance formula), as the current value of an accumulated percentage of the participant's final average compensation (a pension equity formula), or as a formula with an effect similar to a cash balance or pension equity formula. This subpart H applies with respect to all or any portion of a participant's benefit under a defined benefit plan to the extent such benefit is determined under a statutory hybrid benefit formula.

### § 4022.121 Interest and mortality assumptions and other plan terms.

(a) *In general.* PBGC will determine a participant's benefit based on the terms of the plan, including the interest rate and mortality table otherwise applicable for determining that benefit under the plan, as of the plan's termination date. Special rules apply under paragraph (e) of this section for a PPA 2006 bankruptcy termination.

(1) *Plan terms.* PBGC will determine plan benefits using relevant plan provisions in effect as of the plan's termination date (or, for determining the average rate in the case of a variable rate, within the 5-year period ending on the plan's termination date). All relevant plan provisions (including provisions that become applicable upon plan termination) must be consistent with the requirements under section 204(b)(5)(B) of ERISA and section 411(b)(5)(B) of the Code and regulations thereunder. Relevant plan provisions include, but are not limited to, the following:

(i) The basis and the timing for determining the interest crediting rate used by the plan for each plan year (or portion thereof).

(ii) The periodic frequency at which interest credits are applied (monthly, quarterly, etc.).

(iii) The interest rate and mortality table (or conversion factor) used to determine the amount of any benefit payable in the form of an annuity payable at normal retirement age. If a plan uses a mortality table as of the termination date that is updated automatically to reflect expected improvements in mortality experience (*e.g.,* the applicable mortality table provided under Code section 417(e)(3)), PBGC will take into account future adjustments under that table for expected improvements in mortality experience through each participant's annuity starting date.

(iv) The averaging methodology to be used, if the interest crediting rate or the annuity conversion interest rate under the plan is a variable rate, upon the termination of the plan.

(v) The method for determining a participant's annuity benefit.

Examples—

*Example 1.* Immediate annuity conversion plan. A cash balance plan determines immediate annuity benefits by applying immediate annuity conversion factors to the participant's hypothetical account balance as of the annuity starting date. PBGC will add interest credits to the participant's hypothetical account balance each interest crediting period beginning after the plan's termination date through the participant's annuity starting date and convert the balance to an annuity using the immediate annuity conversion factors (specified under the plan as of the termination date) at the participant's age on the annuity starting date.

*Example 2.* Deferred annuity conversion plan. A pension equity plan determines annuity benefits by applying deferred annuity conversion factors to the accumulated percentage of the participant's final average compensation at cessation of accruals. PBGC will determine the current value of the accumulated percentage of an active participant's final average compensation as of the plan's termination date and convert this value to an annuity using the deferred annuity conversion factors specified under the plan as of the termination date (followed by an adjustment, if necessary, in the annuity using the plan's early retirement provisions to reflect the participant's age on the annuity starting date) to determine the benefit payable as an annuity at different future ages to the participant.

*Example 3.* Projected annuity conversion plan. A cash balance plan determines annuity benefits by reference to the accrued benefit, which is determined by projecting the participant's hypothetical account balance with interest credits to the plan's normal retirement age. PBGC will add interest credits to the participant's hypothetical account balance each interest crediting period beginning after the plan's termination date through the participant's normal retirement date (or the current date, if later) and convert the balance to an annuity payable at that age using the immediate conversion factors for that age (or the interest rate and mortality table) specified under the plan as of the termination date (followed by an adjustment, if necessary, in the annuity using the plan's early retirement provisions to reflect the participant's age on the annuity starting date).

(2) *Fixed or variable interest rate and related terms.* If, during the 5-year period ending on the plan's termination date, the plan uses the same fixed interest rate to determine a participant's accumulated benefit or the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age, PBGC will apply the rules in paragraph (b) of this section. If, during the 5-year period ending on the plan's termination date, the plan uses a variable rate (as defined in paragraph (c)(4)) to determine a participant's accumulated benefit or the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age, PBGC will apply the rules in paragraph (c) of this section. To the extent that the terms of the plan do not satisfy section 204(b)(5)(B) of ERISA and section 411(b)(5)(B) of the Code and implementing regulations, or that the plan fails to specify provisions necessary to implement applicable statutory and regulatory requirements, PBGC will determine plan benefits using the rules under paragraph (d) of this section. In the case of a PPA 2006 bankruptcy termination, PBGC will apply the interest crediting rules in paragraph (e) of this section.

(3) *Benefits affected.* (i) *General rule.* The provisions of this § 4022.121 apply to determine the benefits of any participant or beneficiary with an annuity starting date after the plan's termination date. If the plan administrator issues a notice of intent to terminate in a distress termination under ERISA section 4041(c), in compliance with § 4041.42 of this chapter, the plan administrator must apply the provisions of this § 4022.121 as of the proposed termination date specified in the notice of intent to terminate under § 4041.43. (If the plan fails to qualify for distress termination, in accordance with § 4041.42(d), benefits determined using an average interest rate must be recalculated using the interest rate otherwise applicable under the plan, disregarding the proposed termination date.)

(ii) *Special rule for involuntary terminations.* Notwithstanding paragraph (a)(3)(i) of this section, if PBGC initiates termination proceedings under ERISA section 4042 and the

termination date is earlier than the date on which PBGC institutes such proceedings, PBGC generally will not change the interest rate(s), the mortality table, or other conversion factor used by the plan (in accordance with ongoing plan provisions) to calculate a benefit payable to a participant or beneficiary whose annuity starting date is after the termination date but on or before the date on which PBGC institutes termination proceedings. PBGC also generally will not change the interest rate(s), the mortality table, or other conversion factor used by the plan to calculate the benefit of a participant or beneficiary who submits a completed election for an annuity benefit during the period between the termination date and the date on which PBGC initiates termination proceedings. (This special rule does not apply in the case of a plan that issues a notice of intent to terminate in a distress termination under section 4041(c) and subsequently terminates under section 4042, where the termination date is the same as the proposed termination date under section 4041(c).) PBGC may in its discretion apply the general rule in paragraph (a)(3)(i) instead of the special rule in this paragraph (a)(3)(ii) if warranted under the facts and circumstances (*e.g.,* to avoid abuse).

(b) *Fixed interest rate.* If the interest crediting rate used to determine the participant's accumulated benefit (or a portion thereof) under the plan is the same fixed rate during each interest crediting period for which the interest crediting date is within the 5-year period ending on the plan's termination date, PBGC will use the fixed rate to apply interest credits to a participant's hypothetical account beginning after the termination date and ending on the participant's normal retirement date or annuity starting date, as applicable. If the interest rate (or tabular adjustment factor) used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age is the same fixed rate (or factor) for the entire 5-year period ending on the termination date, PBGC will use such fixed rate (or factor) to convert the participant's hypothetical account to an annuity.

(c) *Variable rate.*

(1) *Use of average rate for determining interest credits after termination date.*

(i) If the interest rate used by the plan to determine a participant's accumulated benefit (or a portion thereof) under the plan was a variable rate during the interest crediting periods in the 5-year period ending on the plan's termination date, PBGC will use the average of the interest crediting rates used under the plan during the 5-year period ending on the termination date to apply interest credits to a participant's hypothetical account balance beginning after the termination date and ending on the participant's normal retirement date or annuity starting date, as applicable.

(ii) For purposes of paragraph (c)(1)(i), the average is the arithmetic average, expressed as an annual rate, of the interest crediting rates that applied under the terms of the plan during any interest crediting period for which the interest crediting date is within the 5-year period ending on the termination date (excluding any interest crediting date under the terms of the plan that is distinct from the plan's regular interest crediting date, such as the date of separation from employment or plan termination).

(2) *Use of average rate for determining annuity amount.* If the interest rate (or tabular adjustment factor) used by the plan to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age is a variable rate during the 5-year period ending on the plan's termination date, PBGC will determine the arithmetic average of the interest rates (or factors) that applied under the terms of the plan during periods for which the date of any rate (or factor) change was within the 5-year period ending on the termination date. The average rate will apply to determine the amount of any benefit under the plan payable in the form of a life annuity (*i.e.,* an annuity that continues at least as long as the life of the annuitant) payable at normal retirement age, or, in the case of an immediate annuity conversion plan that uses a variable rate to determine the amount of a benefit, to determine the amount of any benefit under the plan payable in the form of a life annuity payable at the annuity starting date. In either case, the averaging requirement will apply only to determine the amount of the benefit in the automatic PBGC form under § 4022.8(b) of PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans, *e.g.,* the form a married participant or an unmarried participant (as applicable) would be entitled to receive from the plan in the absence of an election. If the participant or beneficiary elects an optional PBGC form under § 4022.8(c), PBGC will convert the benefit amount from the automatic PBGC form in accordance with that section.

(3) *Replacement with 3rd Segment Rate.* If the interest crediting rate in any interest crediting period during the 5-year period ending on the termination date is a variable rate described in § 1.411(b)(5)–1(d)(5) of the Treasury regulations or a variable rate that is impermissible under Treasury regulations, PBGC will replace such rate with the third segment rate under Code section 430(h)(2)(C)(iii) for the last calendar month ending before the beginning of the interest crediting period. Consistent with Treasury regulations, PBGC generally will adjust the third segment rate to account for any maximums or minimums to the interest crediting rate that applied in the period under the plan's terms, but will not adjust the third segment rate with regard to other reductions that applied in the period under the plan.

(4) *Application of average interest rate.* The average interest crediting rate determined under paragraphs (c)(1), (c)(2), and (c)(3) of this section will apply to determine the participant's accumulated benefit beginning after the plan's termination date, and ending on the participant's normal retirement date (or later annuity starting date), or—depending on the terms of the plan—the participant's annuity starting date. If the plan's termination date occurs in the middle of an interest crediting period, the participant's hypothetical account balance will be credited with a pro rata amount of the interest credit the participant would have otherwise received under the terms of the plan for the portion of the interest crediting period ending on the plan's termination date (but this rate will not be included in the average interest crediting rate determined under paragraphs (c)(1), (c)(2), and (c)(3) of this section). For any subsequent partial interest crediting period (*e.g.,* a portion of the interest crediting period following the plan's termination date), the participant's hypothetical account balance will be credited with a pro rata amount of the average interest crediting rate determined under paragraphs (c)(1), (c)(2), and (c)(3).

(5) *Definition of variable rate.* A variable interest rate is a rate of interest that is adjusted at least annually under the plan based on a floating interest rate, yield, or rate of return, and that otherwise satisfies the requirements of section 204(b)(5) of ERISA and section 411(b)(5) of the Code and regulations thereunder. It includes interest credits determined under a plan based on the greater of 2 or more different interest crediting rates (*e.g.,* a fixed rate and a variable rate); a floor applied to certain rates; and a rate that can never be in excess of certain bond-based rates (see Treasury regulations § 1.411(b)(5)–1(d)). Also, for purposes of the averaging rules described in § 4022.121(c), a variable rate includes any rate that was not the

same fixed rate on any interest crediting date during the interest crediting periods in the 5-year period ending on the plan's termination date or, in the case of a variable annuity conversion rate (or factor), on the date of any rate (or factor) change within the 5-year period ending on the termination date.

(d) *Default rules for determining benefits.* To the extent that plan provisions do not satisfy section 204(b)(5)(B) of ERISA and section 411(b)(5)(B) of the Code and implementing regulations, or that the plan fails to specify provisions necessary to implement applicable statutory or regulatory requirements (including requirements in paragraph (d)(5) and (d)(6) of this section), PBGC will apply the rules in paragraphs (d)(1) through (d)(6) of this section.

(1) *Averaging requirement or averaging methodology.* If the plan uses a variable rate to determine the participant's accumulated benefit or the amount of any benefit payable as an annuity at normal retirement age, PBGC will determine a participant's benefits using the arithmetic average of the rates of interest used under the plan, as described in paragraph (c).

(2) *Mortality table.* With respect to the mortality table to be used, PBGC will use the mortality table provided under Code section 417(e) that would apply if the annuity starting date were the plan's termination date (*i.e.,* no future projections to the mortality table).

(3) *Interest crediting rate.* Solely with respect to a plan's failure to specify the interest crediting rate to be used, PBGC will compute an average interest crediting rate as the arithmetic mean of the 30-year Treasury Constant Maturity rates in effect for five calendar months: the calendar month in which the plan terminates, and, for each of the preceding four years, the calendar month that is the same as the calendar month in which the plan terminates. For example, if a plan terminates in July 2009, the relevant months would be July 2009, July 2008, July 2007, July 2006, and July 2005.

(4) *Annuity conversion interest rate.* With respect to an annuity conversion interest rate or conversion factor to be used, PBGC will compute an average annuity conversion interest rate as the arithmetic mean of the 30-year Treasury Constant Maturity rates in effect for five calendar months: the calendar month in which the plan terminates, and, for each of the preceding four years, the calendar month that is the same as the calendar month in which the plan terminates. For example, if a plan terminates in July 2009, the relevant months would be July 2009, July 2008, July 2007, July 2006, and July 2005.

(5) *Five-year period includes plan years before 2008.* PBGC will take into account the interest rates used under the plan prior to the first plan year beginning on or after January 1, 2008 (or the earlier or later effective date described in sections 701(e)(3)–(5) of PPA 2006), if these plan years are part of the 5-year averaging period, for purposes of calculating an average rate of interest. For plans in existence on June 29, 2005, the rates used before the 2008 plan year (or other PPA 2006 effective date for a plan) during the 5-year averaging period are not subject to the requirements of section 204(b)(5)(B) of ERISA and section 411(b)(5)(B) of the Code (except as otherwise provided under Treasury regulations) although PBGC will apply the rules in paragraph (c)(2) of this section to such rates.

(6) *Statutory hybrid benefit formula in effect less than five years.* If the statutory hybrid benefit formula under the plan was in effect for less than five years, PBGC will use the interest rates used under the plan, modified in accordance with this section, during the period the statutory hybrid benefit formula was in effect to calculate the average rate of interest.

(7) *Examples of application of averaging rules.*

*Example 1. Projected annuity conversion plan with replacement of 3rd segment rate.* Upon the termination of a cash balance plan, the plan provides a variable index for purposes of determining the interest crediting rate. The plan credits interest annually at the end of each calendar year through the participant's normal retirement date (or the current date, if later). The plan's termination date is June 30, 2015. For the two immediately preceding interest crediting dates within the 5-year period ending on the termination date, December 31, 2014, and December 31, 2013, the plan used the annual rate of return on plan assets as of the end of the preceding plan year as its interest crediting rate. For the three preceding interest crediting dates within the 5-year period, the plan used the rates under a Treasury bond index described in Treas. Reg. § 1.411(b)(5)–1(d)(4) as of the end of the preceding plan year as its interest crediting rate. Based on these rates, the plan used interest crediting rates of 8.00%, −3.00%, 4.50%, 5.50%, and 6.00%, respectively, for the interest crediting periods ending December 31, 2014, December 31, 2013, December 31, 2012, December 31, 2011, and December 31, 2010. When calculating the average rate of interest, PBGC would replace the rate of return on plan assets with the third segment rate for the last calendar month ended before the beginning of each interest crediting period. Assume these third segment rates are 6.40% and 6.70%, respectively. PBGC would replace the 8.00% interest rate with 6.40% and the −3.00% interest rate with 6.70%. PBGC would then calculate the average rate of interest as the arithmetic average of 6.40%, 6.70%, 4.50%, 5.50%, and 6.00%, which equals 5.82% ((6.40 + 6.70 + 4.50 + 5.50 + 6.00)/5). PBGC thus would use a pro rata amount of the annual rate of return on plan assets for the period ending December 31, 2014, to credit a participant's hypothetical account balance for the period from January 1, 2015 through June 30, 2015, and a rate of 5.82% to apply interest credits to a participant's hypothetical account balance each year for the period from July 1, 2015, through the participant's normal retirement date (pro rated for any partial interest crediting period).

*Example 2. Immediate annuity conversion plan with fixed tabular conversion factor.* The interest crediting rate is the same as in *Example 1,* except that the plan credits interest through the participant's retirement date and provides for immediate annuity conversion factors at any age. Assume a participant has a hypothetical account balance equal to $100,000 as of the plan's termination date on June 30, 2015; this balance includes annual pay credits through December 31, 2014, and a pro rata interest credit through June 30, 2015, based on the plan's interest crediting rate. The participant retires on November 1, 2020, at age 55. PBGC would determine the participant's hypothetical account balance on November 1, 2020, by applying interest credits to the participant's $100,000 hypothetical account balance at an annual rate of 5.82%, credited on December 31 of each year and pro rated for any partial crediting period. The resulting hypothetical account balance at the participant's retirement is $135,216 ($\$100,000 \times 1.0582^{5.33333}$) (this includes pro rata credit for the periods July 1, 2015 through December 31, 2015, and January 1, 2020 through October 31, 2020). PBGC would then determine the amount of the participant's benefit payable as an annuity by converting the hypothetical account balance to an immediate annuity using the plan's immediate annuity conversion factor at age 55. The plan provides for an immediate annuity conversion factor of 14.2 at age 55. Therefore, the resulting monthly annuity benefit for the participant at age 55 is $794 ($\$135,216/(14.2 \times 12)$).

*Example 3. Immediate annuity conversion plan with variable conversion interest rate.* The facts are the same as in Examples 1 and 2, except that the plan used a variable annuity conversion rate based on the rates under a Treasury bond index described in Treas. Reg. § 1.411(b)(5)–1(d)(4) at the beginning of each plan year. The plan's average annuity conversion rate would include rates on the date of each rate change that occurred within the 5-year period from July 1, 2010 through June 30, 2015. Assume these rates are 5.25%, 4.75%, 5.50%, 4.50%, and 5.50%, respectively, for the date of each rate change on January 1, 2015, January 1, 2014, January 1, 2013, January 1, 2012, and January 1, 2011. PBGC would calculate the arithmetic average of 5.25%, 4.75%, 5.50%, 4.50%, and 5.50%, which equals 5.10% ((5.25 + 4.75 + 5.50 + 4.50 + 5.50)/5). The plan defines the mortality table used to convert account balances to monthly annuity

benefits to be GAR94. PBGC would then use 5.10% and mortality table GAR94 to calculate an annuity conversion factor of 14.4198 at age 55. Therefore, the resulting monthly annuity benefit for the participant at age 55 is $781 ($135,216/(14.4198 × 12)).

(e) *PPA 2006 bankruptcy termination.* In the case of a PPA 2006 bankruptcy termination, PBGC will apply interest credits to a participant's hypothetical account balance determined as of the bankruptcy filing date by using the following interest rates:

(i) The interest rate(s) in effect under the plan for the period beginning after the bankruptcy filing date and ending on the plan's termination date.

(ii) The interest rate as of the plan's termination date—or if the interest rate under the plan is a variable rate as of the termination date, the average rate of interest as determined under paragraphs (c) or (d) of this section—for the period beginning after the termination date and ending on the participant's normal retirement date (or later annuity starting date), or—depending on the terms of the plan—on the participant's annuity starting date.

**§ 4022.122 Lump sum payment.**

(a) *Lump sum as hypothetical account balance under the plan.* Notwithstanding § 4022.7 of this part, if the plan provides for a single sum payment equal to the balance of the hypothetical account of the participant (or the value of the accumulated percentage of the participant's final average compensation), PBGC will determine whether the benefit is payable as a *de minimis* lump sum payment and the amount of the lump sum payment based on the participant's hypothetical account balance (or the accumulated percentage of final average compensation) as of the plan's termination date, to the extent payable under title IV of ERISA.

(b) *Lump sum based on section 417(e) under the plan.*

(1) *In general.* If paragraph (a) of this section does not apply (*e.g.,* the plan provides that the present value rules of section 417(e) of the Code apply in calculating the amount of a single sum payment), PBGC will use the methodology in § 4022.7 of this part to determine the lump sum value of the benefit. If either this amount or the participant's hypothetical account balance (or accumulated percentage of final average compensation), as of the termination date, is $5,000 or less, PBGC will pay the greater of the two amounts as a *de minimis* lump sum payment, except as provided in paragraph (b)(2) of this section.

(2) *Exception.* If, on or after August 18, 2006, the plan has made any lump sum payments based on the hypothetical account balance (or the current value of the accumulated percentage of the participant's final average compensation) without regard to the present value rules of section 417(e) of the Code, or stated in writing its intent to make lump sum payments on that basis, PBGC will calculate the lump sum value of a benefit, to determine whether the benefit is payable as a lump sum and, if so, the amount of the payment, in accordance with paragraph (a) of this section.

(c) *Plan does not describe determination of lump sum amount.* If the plan does not provide for a single sum payment or *de minimis* lump sum payment, or does not describe the calculation of such a payment, PBGC will calculate the lump sum value of a benefit, to determine whether the benefit is payable as a lump sum and, if so, the amount of the payment, in accordance with paragraph (a) of this section.

**§ 4022.123 Phase-in of guarantee of benefit increases.**

(a) *Changes subject to phase-in limitation.* For purposes of applying § 4022.24 and the phase-in limitations on the guarantee under § 4022.25, except as otherwise provided in subsection (b) of this section, a benefit increase as defined under § 4022.2 includes, but is not limited to, a benefit increase that results from a change in the plan's—

(i) Timing or method for crediting interest;

(ii) Fixed mortality table to another fixed mortality table;

(iii) Fixed mortality table to a mortality table that updates automatically in future years to reflect expected improvements in mortality experience (or such updated mortality table to a fixed mortality table), or other change in the basis on which a participant's hypothetical account balance is converted into a benefit payable as an annuity;

(iv) Fixed interest rate to another fixed interest rate; or

(v) Basis for crediting interest to a participant's hypothetical account or for determining the interest factor used to convert a hypothetical account to an annuity. Such a change includes, but is not limited to, a change from a fixed rate basis to a variable rate basis (or vice versa) or a change from one variable index to another variable index.

(b) *Changes not subject to phase-in limitation.* Changes resulting in a benefit increase under a plan that will not be treated as a benefit increase under § 4022.2 include—

(i) A change that is required to comply with the termination requirements of ERISA section 204(b)(5)(B)(vi) and Code section 411(b)(5)(B)(vi) (*e.g.,* a change in the plan's interest rate to an average rate of interest);

(ii) A change in the interest crediting rate that is permitted, notwithstanding section 411(d)(6) of the Code, pursuant to Treasury regulations (*e.g.,* a change that is permitted under Treas. Reg. 1.411(b)(5)–1(e)(3), including a change under certain circumstances to the long-term investment grade corporate bond rate);

(iii) A change in the interest crediting rate that is permitted during the amendatory period under section 1107 of PPA 2006, or any extension of the amendatory period issued by the Department of the Treasury;

(iv) An adjustment in the interest rate under a specified variable rate index used by the plan; and

(v) An automatic future update in a mortality table specified under the plan as of the termination date that reflects expected improvements in mortality experience (*e.g.,* the applicable mortality table provided under Code section 417(e)(3)).

## PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

6. The authority citation for part 4041 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

7. In § 4041.2, amend the first paragraph by removing the words ''standard termination, termination date'' and adding in their place ''standard termination, statutory hybrid plan, termination date''.

8. In § 4041.28, amend paragraph (c) by redesignating paragraph (4) as paragraph (5), redesignating paragraph (3) as paragraph (4), and adding a new paragraph (3) to read as follows:

**§ 4041.28. Closeout of plan.**

* * * * *

(c) * * *

* * * * *

(3) *Statutory hybrid plans.* This paragraph (c)(3) applies only for purposes of this part. The plan administrator is deemed to comply with section 204(b)(5)(B)(vi) of ERISA and section 411(b)(5)(B)(vi) of the Code and implementing regulations issued by the Department of the Treasury if the plan administrator distributes plan assets in satisfaction of plan benefits consistent

with the provisions in § 4022.121 of this chapter.

9. In § 4041.42, amend paragraph (c) by adding a sentence at the end to read as follows: ''The plan administrator of a statutory hybrid plan must do so consistent with the provisions under part 4022, subpart H, of this chapter.''

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

10. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

11. In § 4044.2, amend paragraph (a) by removing the words ''single-employer plan, substantial owner'' and adding in their place ''single-employer plan, statutory hybrid plan, substantial owner''.

12. In § 4044.52, add a new paragraph (e) to read as follows:

### § 4044.52 Valuation of Benefits.

* * * * *

(e) *Statutory hybrid plans.*

(1) *In general.* Except as provided in paragraphs (e)(2) through (e)(4) of this section, benefits must be valued under a terminating statutory hybrid plan consistent with the general valuation rules of this subpart B of part 4044, and the provisions for the calculation and payment of benefits described in subpart H of part 4022 of this chapter.

(2) *De minimis lump sum exception.* If a benefit is payable as a *de minimis* lump sum under § 4022.122, the form to be valued is the benefit payable as an annuity in the absence of a valid election under the terms of the plan, at the expected retirement age, in accordance with §§ 4044.51 through 4044.57 of this part.

(3) *Involuntary termination exception.* If a benefit payment is calculated pursuant to § 4022.121(a)(3)(ii), the benefit will be valued based on the interest crediting rate and the annuity conversion rate in effect under the plan as of the plan's termination date (subject to the rules of §§ 4022.121 through 4022.123, disregarding § 4022.121(a)(3)(ii)), at the expected retirement age, in accordance with §§ 4044.51 through 4044.57 of this part.

(4) *Priority category 3 benefits.* The amount of the priority category 3 benefit under § 4044.13 of this part with respect to a participant who was eligible to receive a priority category 3 benefit will be determined in accordance with paragraphs (e)(4)(i) through (iii) of this section.

(i) In the case of a termination that is not a PPA 2006 bankruptcy termination, the priority category 3 benefit of a participant who is eligible to receive an annuity before the beginning of the 3-year period ending on the termination date, but whose benefit was not in pay status as of that date, will be determined based on the balance of the participant's hypothetical account, the interest crediting rate, and the annuity conversion factor that the plan would have used had the participant retired three years before the termination date (on the same day and month as the termination date). The interest rates as so determined will be used to apply interest credits from such date through the plan's normal retirement age, and to convert the participant's hypothetical account balance to an annuity. (If the plan provides for immediate annuity conversion factors, the amount of the account balance is determined and converted to an annuity as of the date three years before the termination date, based on the rates in effect as of that date.) The benefits in priority category 3 are generally based on the lowest annuity benefit payable under the plan provisions during the 5-year period ending on the termination date.

(ii) In the case of a PPA 2006 bankruptcy termination, the priority category 3 benefit of a participant who is eligible to receive an annuity before the beginning of the 3-year period ending on the bankruptcy filing date, but whose benefit was not in pay status as of that date, will be determined based on the balance of the participant's hypothetical account, the interest crediting rate, and the annuity conversion rate that the plan would have used had the participant retired three years before the bankruptcy filing date (on the same day and month as the bankruptcy filing date). The interest rates as so determined will be used to apply interest credits from such date through the plan's normal retirement age, and to convert the participant's hypothetical account balance to an annuity. (If the plan provides for immediate annuity conversion factors, the amount of the account balance is determined and converted to an annuity as of the date three years before the bankruptcy filing date, based on the rates in effect as of that date.) The benefits in priority category 3 are generally based on the lowest annuity benefit payable under the plan provisions during the 5-year period ending on the bankruptcy filing date.

(iii) In accordance with § 4044.10, the benefit assigned to priority category 3, as determined under paragraphs (e)(4)(i) or (e)(4)(ii), may not exceed the amount of the benefit determined as of the plan's termination date under the plan provisions as of the termination date (including the use of an average rate of interest in the case of a variable rate under § 4022.121).

(5) *Example:* The plan termination is a PPA 2006 bankruptcy termination with a bankruptcy filing date on August 31, 2008. Because Participant A had reached his Earliest PBGC Retirement Date, as defined in § 4022.10, based on plan provisions in effect on August 31, 2005, on the same day and month as the bankruptcy filing date but three years earlier, Participant A has benefits in priority category 3. The plan used the 1-year Treasury Constant Maturity rate of 3.64% for the calendar month prior to the bankruptcy filing date (July 2005) to determine both the interest crediting rate and the annuity conversion rate on August 31, 2005. PBGC would determine Participant A's priority category 3 benefit based on the balance of Participant A's hypothetical account as of August 31, 2005, by using the interest rate used under the plan on August 31, 2005, to apply interest credits from August 31, 2005, through the normal retirement age (as provided under the plan's terms) and convert the participant's hypothetical account balance to an annuity. The participant's priority category 3 benefit would be limited to the amount of the participant's plan benefit as of the termination date, in accordance with § 4044.10, determined by applying interest credits based on the interest rate(s) in effect under the plan for the period from the bankruptcy filing date through the plan's termination date, and the interest rate as of the plan's termination date (including the average of the rates of interest under a variable index used by the plan during the 5-year period ending on the termination date) for the period from the termination date to the normal retirement age.

13. Add new § 4044.76 to subpart B to read as follows:

### § 4044.76 Statutory hybrid plans.

(a) *Valuation.* This section supplements the general rules in part 4044 for the valuation of benefits payable in a terminated statutory hybrid plan.

(b) *Interest and mortality assumptions.* In determining benefits under the plan, the plan administrator must value benefits consistent with the provisions in § 4022.121 of this chapter.

Issued in Washington, DC, this 24th day of October 2011.

**Joshua Gotbaum,**

*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 2011–28124 Filed 10–28–11; 8:45 am]

**BILLING CODE 7709–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CG Docket No. 10–51; FCC 11–155]**

### Structure and Practices of the Video Relay Service Program

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes to modify its rules to provide that a certified provider may subcontract with another certified provider for, or otherwise authorize the provision by another certified provider of, communications assistants (CA) services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seeks comment on this proposal. The purpose of this rule change is to provide clarity as to the circumstances under which the Commission will deem subcontracting of call handling functions acceptable.

**DATES:** Comments are due on or before November 30, 2011. Reply comments are due on or before December 30, 2011.

**ADDRESSES:** Interested parties may submit comments identified by [CG Docket No. 10–51], by any of the following methods:

- *Federal Communications Commission's Web site:* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Gregory Hlibok, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 559–5158 (VP) or email at *Gregory.Hlibok@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Structure and Practices of the Video Relay Service Program,* Further Notice of Proposed Rulemaking (FNPRM), document FCC 11–155, adopted October 17, 2011, and released October 17, 2011 in CG Docket number 10–51.

The full text of document FCC 11–155 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document FCC 11–155 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. via its Web site *http://www.bcpiweb.com* or by calling (202) 488–5300. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Document FCC 11–155 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html#orders.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); or (2) by filing paper copies. All filings should reference the docket number of this proceeding, CG Docket No. 10–51.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, ECFS filers should include their full name, U.S. Postal Service mailing address, and CG Docket No. 10–51.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes or boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

Pursuant to 47 CFR 1.1200 *et seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) of the Commission's rules or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

**Synopsis**

In document FCC 11–155, the Commission clarifies that certified VRS providers may roll-over VRS traffic to another eligible provider only when unable to handle an unexpected and temporary surge in call traffic due to exigent circumstances, such as in the event of a natural disaster or other comparable emergency that is outside the provider's control. Specifically, the Commission proposes to modify § 64.604(c)(5)(iii)(N)(*1*)(*iii*) of its rules to provide that a certified provider may subcontract with another certified provider for, or otherwise authorize the provision by another certified provider of, communications assistants (CA) services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seeks comment on this proposal. The purpose of this rule change is to better ensure that the integrity of VRS by requiring that it be provided by qualified, stand-alone providers who operate their own call centers and employ their own CAs. In all other circumstances, certified providers must provide the core components of VRS using their owned facilities and their full- or part-time employees. The Commission finds this proposed modification to be consistent with its stated VRS program goals. The Commission further finds this proposed modification to be reasonable and in the public interest, as it will facilitate redundancy, and thus reliability, of VRS services.

The Commission seeks comment on the specific types of exigent circumstances that would warrant subcontracting or similar arrangements between eligible providers. Transfer of call traffic between eligible providers should not routinely occur, but rather should be the rare exception that occurs only in exigent circumstances.

The Commission tentatively concludes that, when a provider seeks to be reimbursed from the Fund for minutes transferred to another eligible VRS provider as a result of exigent circumstances, it should submit such minutes in its monthly submission to the Fund administrator for reimbursement in the normal course, but must identify any such minutes as having been handled by another provider and identify the other provider. The Commission also tentatively concludes that the Fund administrator shall determine whether exigent circumstances exist as part of its normal processes for verifying monthly submissions, and may request additional information to determine whether, in fact, exigent circumstances existed and whether reimbursement is warranted. The Fund administrator may withhold reimbursements for minutes where it finds that no exigent circumstances existed, or otherwise finds that the request for reimbursement is not sufficiently substantiated. The Fund administrator shall reimburse the transferring eligible provider for compensable minutes resulting from transferred call traffic. The Commission seeks comment on these tentative conclusions. The Commission also seeks comment on whether there are any other types of documentation that providers should be required to furnish to the TRS Fund administrator, with their monthly submissions of data to support reimbursement from the Fund, in order to demonstrate that exigent circumstances necessitated the transfer of call traffic, and on the specific information they should be required to provide regarding the minutes handled under such circumstances.

The Commission seeks comment on how the transferring eligible provider may compensate the transferee for handling such call traffic without violating its rule against VRS revenue-sharing agreements. The Commission tentatively concludes that such compensation may not be based on per-minute revenue sharing, and seeks comment on this tentative conclusion. The Commission also seeks comment on whether, in the event the Fund administrator or the Commission determines that no exigent circumstances existed, the Fund administrator should withhold payment for the transferred traffic, or the Fund administrator should be authorized to directly pay the eligible provider that handled the traffic; and whether, in the latter scenario, directly paying the eligible provider that handled the traffic might provide incentives for eligible providers to engage in unauthorized revenue sharing arrangements. Finally, the Commission seeks comment on whether there are any other amendments that should be made to its rules to facilitate the transfer of call traffic between eligible providers in exigent circumstances. Furthermore, the Commission seeks comment on whether there are any other limited exemptions it should recognize to its general prohibition on an eligible provider contracting with or otherwise authorizing any third party from providing interpretation services or call center functions on its behalf, in light of its intention to promote qualified, stand-alone providers operating their own call centers and employing their own CAs.

**Initial Paperwork Reduction Act Analysis of 1995**

Document FCC 11–155 seeks comment on a potential revised information collection requirement and may result in a revised information collection. If the Commission adopts the revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as mandated by the Paperwork Reduction Act of 1995. *See* Public Law 104–13, 44 U.S.C. 3501 *et seq.* In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks specific comment from the public on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' *See* Public Law 107–198, 47 U.S.C. 3506(c)(4).

**Initial Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making (*FNPRM*). *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments to document FCC 11–155. The Commission will send a copy of document FCC 11–155, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). *See* 5 U.S.C. 603(a).

*A. Need for, and Objectives of, the Proposed Rules*

The Commission proposes to modify its rules to provide that a certified VRS provider may subcontract with another certified VRS provider for, or otherwise authorize the provision by another certified provider of, CA services or call center functions only in the event of an unexpected and temporary surge in call traffic due to exigent circumstances, and seeks comment on this proposal. To better ensure the provision of VRS by qualified, stand-alone providers operating their own call centers and

employing their own CAs, the Commission tentatively concludes that it should modify § 64.604(c)(5)(iii)(N)(1)(iii) of its rules to allow an eligible VRS provider to contract with or otherwise authorize another eligible provider to provide CA services or call center functions on its behalf only when necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances, such as in the event of a natural disaster or other comparable emergency that is outside the provider's control. In all other circumstances, certified providers must provide the core components of VRS using their owned facilities and their full- or part-time employees. The Commission finds this proposed modification to be consistent with its stated VRS program goals, and finds this proposed modification to be reasonable and in the public interest, as it will facilitate redundancy, and thus reliability, of VRS services.

*B. Legal Basis*

The legal basis for any action that may be taken pursuant to document FCC 11–155 is contained in sections 1, 4(i), (j) and (o), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), and § 1.429 of the Commission's rules, 47 CFR 1.429.

*C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply*

*Wired Telecommunications Carriers.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.''

In this category, the SBA deems a wired telecommunications carrier to be small if it has 1,500 or fewer employees. Census data for 2007 shows 3,188 firms in this category. Of these 3,188 firms, only 44 had 1,000 or more employees. While the Commission could not find precise Census data on the number of firms within the group with 1,500 or fewer employees, it is clear that at least 3,144 firms with fewer than 1,000 employees would be in that group. On this basis, the Commission estimates that a substantial majority of the wired telecommunications carriers are small.

*All Other Telecommunications.* Under the 2007 U.S. Census definition of firms included in the category ''All Other Telecommunications (NAICS Code 517919)''comprises ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.''

In this category, the SBA deems a provider of ''all other telecommunications'' services to be small if it has $25 million or less in average annual receipts. For this category of service providers, Census data for 2007 shows that there were 2,383 such firms that operated that year. Of those 2,383 firms, 2,346 (approximately 98%) had $25 million or less in average annual receipts and, thus, would be deemed small under the applicable SBA size standard. On this basis, Commission estimates that approximately 98% or more of the providers in this category are small.

*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. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007 shows that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (''PCS''), and Specialized Mobile Radio (''SMR'') Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, the Commission estimates that the majority of wireless firms can be considered small.

The Commission notes that under the standards listed above some current VRS providers and potential future VRS providers would be considered small businesses. There are currently ten eligible VRS providers, five of which may be considered small businesses. In addition, there are several pending applications from entities seeking to become certified to provide VRS that may be considered small businesses.

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

There are no new record keeping or reporting requirements proposed in the *FNPRM* in document FCC 11–155.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered*

The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' 5 U.S.C. 603(c)(1)–(4).

In order to minimize the adverse economic impact on small entities, the Commission seeks comment on the alternative types of exigent circumstances that would warrant subcontracting or similar arrangements between eligible providers. The Commission's goal, in order to prevent small entities from sustaining unwarranted and unjustifiable costs, is to ensure that this proposed rule

modification does not open a window for the routine transfer of call traffic between eligible VRS providers, for example, in order to avoid violation of its VRS speed of answer rule.

Also, in order to minimize the adverse economic impact on small entities, the Commission seeks comment on various ways to implement and compensate for the proposed rule modification. Specifically, the Commission seeks comment on three alternatives: (1) Whether, in the event the Fund administrator or the Commission determines that no exigent circumstances existed, the Fund administrator should withhold payment for the transferred traffic; or (2) the Commission should directly pay the eligible provider that handled the traffic; and (3) whether, in the latter scenario, directly paying the eligible provider that handled the traffic might provide incentives for eligible providers to engage in unauthorized revenue sharing arrangements.

In conclusion, the Commission seeks comment on the alternatives discussed above for such transfer of traffic. The Commission also seeks comment on whether any specific reimbursement policy would minimize the adverse impact on a substantial number of small entities if any small entities would in fact be impacted by this rule modification.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With Proposed Rules*

None.

**Ordering Clauses**

Pursuant to the authority contained in sections 1, 4(i), (j) and (o), 225, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), (j) and (o), 225, and 303(r), and § 1.429 of the Commission's rules, 47 CFR 1.429, the FNPRM in document FCC 11–155 *Is Adopted.* The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of the *FNPRM* in document FCC 11–155, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 254 (k), 227; secs. 403(b)(2)(B), (c), Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 207, 228, 254(k), 616 and 620, unless otherwise noted.

### Subpart F—Telecommunications Relay Services and Related Customer Premises Equipment for Persons With Disabilities

2. The authority citation for subpart F is revised to read as follows:

**Authority:** 47 U.S.C. 151–154; 225, 255, 303(r), 616, and 620.

3. In § 64.604, revise paragraph (c)(5)(iii)(N)(*1*)(*iii*) to read as follows:

**§ 64.604 Mandatory minimum standards.**

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(N) * * *

(*1*) * * *

(*iii*) An eligible VRS provider may not contract with or otherwise authorize any third party to provide interpretation services or call center functions (including call distribution, call routing, call setup, mapping, call features, billing, and registration) on its behalf, unless necessitated by an unexpected and temporary surge in call traffic due to exigent circumstances and the authorized third party also is an eligible provider. Exigent circumstances shall be deemed to include a natural disaster or other comparable emergency that is not reasonably foreseeable and is outside the provider's control, but shall not include events that in the ordinary course of business could reasonably have been anticipated, such as a surge in traffic occurring during a holiday period. When a provider seeks to be reimbursed from the Fund for minutes transferred to another eligible VRS provider as a result of exigent circumstances, it should submit such minutes in its monthly submission to the Fund administrator for reimbursement in the normal course, but must identify any such minutes as having been handled by another provider and identify the other provider. The Fund administrator shall determine whether exigent circumstances exist as part of its normal processes for verifying monthly submissions, and may request additional information regarding the specifics of the exigent circumstances for purposes of determining whether, in fact, exigent circumstances existed and whether reimbursement is warranted. The Fund administrator may withhold reimbursements for minutes where it finds that no exigent circumstances existed, or otherwise finds that the request for reimbursement is not sufficiently substantiated. The Fund administrator shall reimburse the transferring eligible provider for compensable minutes resulting from transferred call traffic, and the transferring eligible provider may compensate the transferee for handling such call traffic so long as such compensation is not on a per-minute basis.

* * * * *

[FR Doc. 2011–28069 Filed 10–28–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 110913585–1625–01]**

**RIN 0648–BB36**

## Atlantic Highly Migratory Species; 2012 Atlantic Shark Commercial Fishing Season

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

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

**SUMMARY:** This proposed rule would establish opening dates and adjust quotas for the 2012 fishing season for the Atlantic commercial shark fisheries. Quotas would be adjusted based on any over- and/or underharvests experienced during the 2010 and 2011 Atlantic commercial shark fishing seasons. In addition, NMFS proposes season openings based on previously implemented adaptive management measures to provide, to the extent practicable, fishing opportunities for commercial shark fishermen in all regions and areas. The proposed measures could affect fishing opportunities for commercial shark

fishermen in the northwestern Atlantic, including the Gulf of Mexico and Caribbean.

**DATES:** Written comments will be accepted until November 30, 2011.

**ADDRESSES:** You may submit comments on this document, identified by 0648–BB36, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter 0648–BB36 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 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comments on the Proposed Rule to Establish Quotas and Opening Dates for the 2012 Atlantic Shark Commercial Fishing Season.''

• *Fax:* (301) 427–8503, *Attn:* Karyl Brewster-Geisz, Guy DuBeck, or Jennifer Cudney.

• *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.

**SUPPLEMENTARY INFORMATION:**

## Background

The Atlantic commercial shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments under the Magnuson-Stevens Act are implemented by regulations at 50 CFR part 635. For the Atlantic commercial shark fisheries, the 2006 Consolidated HMS FMP and its amendments established, among other things, commercial quotas for species and species complexes, accounting measures for under- and overharvests for the shark fisheries, and adaptive management measures such as flexible opening dates for the fishing season and inseason adjustments to shark trip limits, which provide flexibility in management in the furtherance of equitable fishing opportunities, to the extent practicable, for commercial shark fishermen in all regions and areas.

## Accounting for Under- and Overharvests

Consistent with § 635.27(b)(1)(i)(A), if the available non-sandbar Large Coastal Shark (LCS) quota in a particular region or in the research fishery is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the quota in that region or in the research fishery for the following fishing season or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of 5 years, in the specific region or research fishery where the overharvest occurred. If the available quota for sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) is exceeded in any fishing season, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season quota or, depending on the level of overharvest(s), NMFS may deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing seasons to a maximum of 5 years. If the blue shark quota is exceeded, NMFS will deduct an amount equivalent to the overharvest(s) from the following fishing season quota or, depending on the level of overharvest(s), deduct an amount equivalent to the overharvest(s) spread over a number of subsequent fishing years to a maximum of 5 years.

Consistent with § 635.27(b)(1)(i)(B), if an annual quota for sandbar sharks, blacknose sharks, non-blacknose Small Coastal Sharks (SCS), blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) is not exceeded, NMFS may adjust the annual quota, depending on the status of the stock or quota group. If the annual quota for non-sandbar LCS is not exceeded in either region or in the research fishery, NMFS may adjust the annual quota for that region or the research fishery for the following year, depending on the status of the stock or quota group. If the stock/complex (*e.g.,* sandbar sharks, porbeagle sharks, non-sandbar LCS, blue sharks) or specific species within a quota group (*e.g.,* blacktip sharks within the non-sandbar LCS complex) is declared to be overfished, to have overfishing occurring, or to have an unknown status, NMFS will not adjust the following fishing year's quota for any underharvest, and the following fishing year's quota will be equal to the base annual quota (or the adjusted base quota for sandbar sharks and non-sandbar LCS) until December 31, 2012.

Recently, NMFS published new stock determinations for blacknose and sandbar sharks (76 FR 62331; October 7, 2011). The blacknose shark stock was split into regions with the Atlantic stock being determined as overfished with overfishing occurring, while the Gulf of Mexico stock status was determined to be unknown. Sandbar sharks have been determined to be overfished with no overfishing occurring. Porbeagle sharks have been determined to be overfished. Blue sharks and pelagic sharks (other than porbeagle or blue sharks) have an unknown stock status. NMFS recently determined that scalloped hammerhead sharks were overfished with overfishing occurring (76 FR 23794; April 28, 2011). Scalloped hammerhead sharks are included in the non-sandbar LCS complex for the Atlantic and Gulf of Mexico regions. As a result, based on their stock status, no underharvests from the 2011 Atlantic commercial shark fishing season would be applied to the 2012 annual quotas or adjusted base quotas of these species or complexes.

Thus, the 2012 proposed quotas would be equal to the appropriate annual quota minus any overharvests that occurred in the 2010 and 2011 fishing seasons. For blacknose sharks, porbeagle sharks, blue sharks, and pelagic sharks (other than porbeagle or blue sharks), NMFS would use the base annual quota established at § 635.27(b)(1)(iv)(A). For sandbar sharks and non-sandbar LCS, NMFS would use the adjusted base annual quota established at § 635.27(b)(1)(iii).

The non-blacknose SCS complex has been determined to not be overfished and has no overfishing occurring; therefore, any underharvest up to 50 percent of the base quota from the 2011 Atlantic commercial shark fishing season could be applied to the 2012 annual quotas.

### *2012 Proposed Quotas*

This rule proposes adjustments to the base commercial quotas due to over and underharvests that occurred in 2010 and

2011, where allowable, taking into consideration the stock status as required under existing regulations. The proposed 2012 quotas by species and species group are summarized in Table 1.

The quotas in this proposed rule are based on dealer reports received as of August 31, 2011. In the final rule, NMFS will adjust the quotas based on dealer reports received as of October 31, 2011. Thus, all of the 2012 proposed quotas for the respective shark complexes/species are subject to further adjustment for any overharvests reflected after considering the October 31 dealer reports. All dealer reports that are received by NMFS after October 31, 2011, will be used to adjust the 2013 quotas, as appropriate.

TABLE 1—2012 PROPOSED QUOTAS AND OPENING DATES FOR THE ATLANTIC SHARK FISHERIES. ALL QUOTAS AND LANDINGS ARE DRESSED WEIGHT (dw), IN METRIC TONS (mt), UNLESS SPECIFIED OTHERWISE. TABLE INCLUDES LANDINGS DATA THROUGH AUGUST 31, 2011, AND QUOTAS ARE SUBJECT TO CHANGE BASED ON LANDINGS THROUGH OCTOBER 31, 2011

| Species group | Region | 2011 Annual quota (A) | Preliminary 2011 landings [1] (B) | Overharvest/ underharvest (C) | 2012 Base annual quota [2] (D) | 2012 Proposed quota (D + C) | Season opening dates |
|---|---|---|---|---|---|---|---|
| Non-Sandbar Large Coastal Sharks. | Gulf of Mexico. | 351.9 (775,740 lb dw). | 327.0 (720,868 lb dw). | [3] 2.3 (5,167 lb dw) | 390.5 (860,896 lb dw). | 392.8 (866,063 lb dw). | March 1, 2011. |
| | Atlantic | 190.4 (419,756 lb dw). | 79.9 (176,052 lb dw). | [4] −4.6 (−10,135 lb dw). | 187.8 (414,024 lb dw). | 183.2 (403,889 lb dw). | Effective Date for HMS Electronic Reporting System or July 15, 2011.[7] |
| Non-Sandbar LCS Research Quota. | No regional quotas. | 37.5 (82,673 lb dw). | 37.0 (81,627 lb dw). | | 37.5 (82,673 lb dw). | 37.5 (82,673 lb dw). | On or about January 1, 2011. |
| Sandbar Research Quota. | | 87.9 (193,784 lb dw). | 53.0 (116,706 lb dw). | | 87.9 (193,784 lb dw). | 87.9 (193,784 lb dw). | |
| Non-Blacknose Small Coastal Sharks. | | 314.4 (693,257 lb dw). | 132.9 (292,926 lb dw). | [5] 89.0 (196,148 lb dw) | 221.6 (488,539 lb dw). | 310.6 (684,687 lb dw). | |
| Blacknose Sharks | | 19.9 (43,872 lb dw). | 13.1 (28,856 lb dw). | | 19.9 (43,872 lb dw). | 19.9 (43,872 lb dw). | |
| Blue Sharks | | 273 (601,856 lb dw). | 7.2 (15,968 lb dw). | | 273 (601,856 lb dw). | 273 (601,856 lb dw). | |
| Porbeagle Sharks | | 1.6 (3,479 lb dw) | 2.4 (5,350 lb dw) | [6] 0.9 (−2,083 lb dw) | 1.7 (3,748 lb dw) | 0.8 (1,665 lb dw) | On or about January 1, 2011.[8] |
| Pelagic Sharks Other Than Porbeagle or Blue. | | 488 (1,075,856 lb dw). | 85.7 (188,896 lb dw). | | 488 (1,075,856 lb dw). | 488 (1,075,856 lb dw). | |

[1] Landings are from January 1, 2011, until August 31, 2011, and are subject to change.
[2] 2010 annual base quotas for sandbar and non-sandbar LCS are the annual adjusted base quotas that are effective from July 24, 2008, until December 31, 2012 (50 CFR 635.27(b)(1)(iii) and (iv)).
[3] NMFS proposes to adjust the 2012 quota for the Gulf of Mexico non-sandbar LCS to account for the 2.3 mt dw that was over estimated in the landings report in 2011 after the final rule establishing the 2011 quota published.
[4] NMFS proposes to adjust the 2012 quota for Atlantic non-sandbar LCS to account for the 4.6 mt dw overharvest reflected in the landings report in 2011 after the final rule establishing the 2011 quota published.
[5] NMFS proposes to adjust the 2012 quota for non-blacknose SCS to account for the 21.8 mt dw that was over estimated in the landings report in 2011 after the final rule establishing the 2011 quota published and the underharvest of 110.8 mt dw in 2011.
[6] NMFS proposes to adjust the 2012 quota for porbeagle sharks to account for the < 0.1 mt dw overharvest that occurred in 2010 after the 0.1 mt dw overharvest was accounted for in the final rule establishing the 2011 quota and additional overharvest of 0.8 mt dw in 2011.
[7] NMFS proposes to open the Atlantic non-sandbar LCS quota once the HMS electronic reporting system is implemented or July 15, 2011, whichever occurs first. NMFS would closely monitor the quota to ensure equitable fishing opportunities. If the fishery opens sooner than July 15 and the quota is being taken too fast to ensure equitable fishing opportunities across the region, NMFS would reduce the Atlantic non-sandbar LCS retention limits to slow down the fishing rates.
[8] NMFS proposes to open the porbeagle fishery on January 1, 2012. If landings continue to occur in 2011 and the overharvest reaches 80 percent or more of the base quota (1.3 mt dw; 2,988 lb dw), NMFS would not open the fishery in 2012.

### 1. Proposed 2012 Quotas for Non-Sandbar LCS and Sandbar Sharks Within the Shark Research Fishery

The 2012 proposed commercial quotas within the shark research fishery are 37.5 mt dw (82,673 lb dw) for non-sandbar LCS and 87.9 mt dw (193,784 lb dw) for sandbar sharks.

Within the shark research fishery, as of August 31, 2011, preliminary reported landings of non-sandbar LCS were at 99 percent (37.0 mt dw), and sandbar shark reported landings were at 60 percent (53.0 mt dw). Reported landings have not exceeded the 2010 quota to date. Therefore, based on preliminary estimates and consistent with the current regulations at § 635.27(b)(1)(vii), NMFS is not proposing to reduce 2011 quotas in the shark research fishery based on any overharvests.

Under § 635.27(b)(1)(i), because individual species, complexes, or species within a complex have been determined to be either overfished, have overfishing occurring, overfished with overfishing occurring, or have an unknown status, underharvests for these species and/or complexes would not be applied to the 2012 quotas. Therefore, NMFS proposes 2012 quotas for non-sandbar LCS and sandbar sharks within the shark research fishery would be 37.5 mt dw (82,673 lb dw) and 87.9 mt dw (193,784 lb dw), respectively.

### 2. Proposed 2012 Quotas for the Non-Sandbar LCS in the Gulf of Mexico Region

The 2012 proposed quota for non-sandbar LCS in the Gulf of Mexico region is 392.8 mt dw (866,063 lb dw). As of August 31, 2011, preliminary reported landings were at 93 percent (327.0 mt dw) for non-sandbar LCS in the Gulf of Mexico region. In the final rule establishing the 2011 quotas (75 FR 76302, December 8, 2010), NMFS accounted for an overharvest of non-sandbar LCS of 38.6 mt dw (85,156 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, the reported landings dropped by 2.3 mt dw due to normal quality control procedures that occur when updated data are supplied. Thus, in order to reflect the best

available data and in accordance with § 635.27(b)(1)(i), the amount that was deducted from the 2011 annual quota, based on preliminary numbers that were later corrected, would be added to the proposed 2012 non-sandbar LCS quota in the Atlantic region. Thus, the 2012 proposed commercial non-sandbar LCS quota is 392.8 mt dw (866,063 lb dw) (390.5 mt dw annual base quota + 2.3 mt dw 2010 over estimated landings = 392.8 mt dw 2012 adjusted annual quota).

3. Proposed 2012 Quotas for the Non-Sandbar LCS in the Atlantic Region

The 2012 proposed quota for non-sandbar LCS in the Atlantic region is 183.2 mt dw (403,889 lb dw). As of August 31, 2011, preliminary reported landings were at 42 percent (79.9 mt dw) for non-sandbar LCS in the Atlantic region as the commercial season opened on July 15, 2011. In the final rule establishing the 2011 quotas, reported landings as of October 31, 2010, did not exceed the 2011 quota. Between that date and December 31, 2010, the Atlantic non-sandbar LCS quota was overharvested by 4.6 mt dw. As such, the 2012 proposed commercial non-sandbar LCS quota is 183.2 mt dw (403,889 lb dw) (187.8 mt dw annual base quota −4.6 mt dw 2010 over estimated landings = 183.2 mt dw 2012 adjusted annual quota).

4. Proposed 2012 Quotas for SCS and Pelagic Sharks

The 2012 proposed annual commercial quotas for non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle or blue sharks) are 310.6 mt dw (684,687 lb dw), 19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), 0.8 mt dw (1,900 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

As of August 31, 2011, preliminary reported landings of non-blacknose SCS, blacknose sharks, blue sharks, porbeagle sharks, and pelagic sharks (other than porbeagle and blue sharks) were at 42 percent (132.9 mt dw), 66 percent (13.1 mt dw), 2 percent (7.2 mt dw), 154 percent (2.4 mt dw), and 18 percent (85.7 mt dw), respectively. As described above, while NMFS may adjust quotas for underharvests only when allowable depending on the stock status, NMFS will always adjust quotas for overharvests.

Non-blacknose SCS have not been declared to be overfished, to have overfishing occurring, or to have an unknown status. Pursuant to § 635.27(b)(1)(i), any underharvests for the non-blacknose SCS would be applied to the 2011 quotas. In the final rule establishing the 2011 quotas, NMFS accounted for an underharvest of 92.9 mt dw (204,718 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, an additional 21.8 mt dw was reported landed. As such, NMFS proposes to reduce the 2012 non-blacknose SCS to accommodate for the reported landings in 2010 and underharvest in 2011. The proposed 2012 adjusted base annual quota for non-blacknose SCS is 310.6 mt dw (684,687 lb dw) (221.6 mt dw annual base quota −21.8 mt dw 2010 additional reported landings + 110.8 mt dw 2011 underharvest = 310.8 mt dw 2012 adjusted annual quota).

Porbeagle sharks have been declared to be overfished with overfishing occurring. Pursuant to § 635.27(b)(1)(i), any overharvests of porbeagle sharks would be applied to the 2012 quotas. In the final rule establishing the 2011 quotas, NMFS accounted for an overharvest of porbeagle sharks of 0.1 mt dw (269 lb dw) using data that was reported as of October 31, 2010. Between that date and December 31, 2010, porbeagle sharks were overharvested by an additional 0.1 mt dw (212 lb dw). As of August 31, 2011, an additional 0.8 mt dw (1,871 lb dw) was overharvested above the porbeagle shark quota. The proposed 2012 adjusted annual commercial porbeagle quota is 0.8 mt dw (1,665 lb dw) (1.7 mt dw annual base quota −0.1 mt dw 2010 overharvest −0.8 mt dw 201 overharvest = 0.8 mt dw 2012 adjusted annual quota).

Blacknose sharks and other pelagic species are considered overfished, to have overfishing occurring, or to have an unknown status. As of August 31, 2011, the 2011 commercial quota had not been reached or exceeded. Therefore, the 2012 proposed quotas would be the base annual quotas for blacknose sharks, blue sharks, and pelagic sharks (other than blue and porbeagle sharks) (19.9 mt dw (43,872 lb dw), 273 mt dw (601,856 lb dw), and 488 mt dw (1,075,856 lb dw), respectively.

*Proposed Fishing Season Notification for the 2012 Atlantic Commercial Shark Fishing Season*

For each fishery, NMFS considered the seven ''Opening Fishing Season'' criteria listed in § 635.27(b)(1)(ii). These include: ''(A) The available annual quotas for the current fishing season for the different species/complexes based on any over- and/or underharvests experienced during the previous commercial shark fishing seasons; (B) Estimated season length based on available quota(s) and average weekly catch rates of different species/complexes in the Atlantic and Gulf of Mexico regions from the previous years; (C) Length of the season for the different species/complexes in the previous years and whether fishermen were able to participate in the fishery in those years; (D) Variations in seasonal distribution, abundance, or migratory patterns of the different species/complexes based on scientific and fishery information; (E) Effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas; (F) Effects of the adjustment on accomplishing the objectives of the 2006 Consolidated HMS FMP and its amendments; and/or (G) Effects of a delayed opening with regard to fishing opportunities in other fisheries.'' In addition, NMFS also considered other relevant factors, such as general input from the public and management measures before arriving at a proposed opening date for this rulemaking. For more information on these criteria and how they are considered, please review the Environmental Assessment (EA) associated with the 2011 quota specifications rule (75 FR 76302; December 8, 2010).

NMFS proposes that the 2012 Atlantic commercial shark fishing season for the shark research, non-blacknose SCS, blacknose sharks, blue sharks, and pelagic sharks (other than porbeagle and blue sharks) in the northwestern Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, would open on or about January 1, 2012.

NMFS also proposes opening the porbeagle fishery on January 1. However, the 2011 porbeagle fishery landings exceeded the 2011 quota by 54 percent and late reported landings in December 2010 that must be accounted for in 2012. Due to the combined overharvest in 2010 and 2011 for the porbeagle fishery, the porbeagle quota is expected to be 0.8 mt dw (1,665 lb dw). Although the porbeagle fishery closed on August 29, 2011 (76 FR 53343), additional landings could be reported late and fishermen might mistakenly land porbeagle sharks. If overharvest continues to occur and the level reaches 60 percent or more of the 2012 base quota (1.3 mt dw; 2,988 lb dw), then NMFS would not open the fishery in 2012. This decision is based on the availability of the annual quota based on overharvests in the previous fishing seasons (§ 635.27(b)(1)(ii)(A)).

NMFS proposes to open the Gulf of Mexico non-sandbar LCS fishery on

March 1, 2012. Opening the fishing season again on March 1 would provide, to the extent practicable, equitable opportunities across the fisheries management region as it did for the 2011 fishing season. This is consistent with all the criteria listed in § 635.27(b)(1)(ii), but particularly the effects of catch rates in one part of a region precluding vessels in another part of that region from having a reasonable opportunity to harvest a portion of the different species/complexes quotas (§ 635.27(b)(1)(ii)(E)). In the Atlantic region, NMFS delayed the opening of the non-sandbar LCS fishery until July 15 in 2010 and 2011 in order to allow for more equitably distributed shark fishing opportunities as intended by Amendment 2. However, based on public comments received during the rulemaking process for the 2011 season, including from south Atlantic fishermen, NMFS proposes to open the Atlantic non-sandbar LCS fishery on the effective date of the final rule implementing the Atlantic HMS electronic dealer reporting system (76 FR 37750) or July 15, 2011, whichever occurs first. This opening date is also consistent with all the criteria listed in § 635.27(b)(1)(ii), particularly the variations in seasonal distribution, abundance, or migratory patterns of the different species based on scientific and fishery information (§ 635.27(b)(1)(ii)(D)). The proposed opening date could allow fishermen to harvest some of the 2012 quota at the beginning of the year when sharks are more prevalent in the South Atlantic area if the electronic dealer reporting system is operating earlier than July 15. If the season opens before July 15 and the quota is taken too quickly to allow fishermen in the North Atlantic area an opportunity to fish throughout the entire region, then NMFS could reduce the commercial retention limits per § 635.24(a)(8) while being consistent with the opening dates criteria. If that occurs, NMFS would file for publication with the Office of the Federal Register a notice of any inseason adjustments to reduce retention limits to between 0–33 sharks per trip. NMFS could increase the commercial retention limits back to 33 sharks per trip at a later date to provide fishermen in the North Atlantic area an opportunity to retain non-sandbar LCS. Based on the fishing rates in the 2009 fishing season, if NMFS opens the fishery earlier than July 15 and does not adjust the commercial retention limits throughout the season, then fishermen in the South Atlantic area would likely catch the entire Atlantic quota before the sharks could migrate to the North Atlantic area.

All of the shark fisheries would remain open until December 31, 2012, unless NMFS determines that the fishing season landings for sandbar shark, non-sandbar LCS, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) have reached, or are projected to reach, 80 percent of the available quota. At that time, consistent with § 635.28(b)(1), NMFS will file for publication with the Office of the Federal Register a notice of closure for that shark species group and/or region that will be effective no fewer than 5 days from date of filing. From the effective date and time of the closure until NMFS announces, via a notice in the **Federal Register**, that additional quota is available, the fishery for the shark species group and, for non-sandbar LCS, region would remain closed, even across fishing years, consistent with § 635.28(b)(2).

*Request for Comments*

Comments on this proposed rule may be submitted via *http://www.regulations.gov,* mail, or fax. NMFS solicits comments on this proposed rule by *November 30, 2011* (see **DATES** and **ADDRESSES**).

*Public Hearings*

Public hearings on this proposed rule are not currently scheduled. If you would like to request a public hearing, please contact Guy DuBeck, Jennifer Cudney or Karyl Brewster-Geisz by phone at (301) 427–8503.

## Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

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

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. The IRFA analysis follows.

In compliance with section 603(b)(1) of the RFA, the purpose of this proposed rulemaking is, consistent with the Magnuson-Stevens Act and the 2006 Consolidated HMS FMP and its amendments, to adjust the 2012 proposed quotas for non-sandbar LCS, sandbar sharks, blacknose sharks, non-blacknose SCS, blue sharks, porbeagle sharks, or pelagic sharks (other than porbeagle or blue sharks) based on any over- and/or underharvests from the previous fishing year. These adjustments are being implemented according to the regulations implementing the 2006 Consolidated HMS FMP and its amendments. Thus, NMFS would expect few, if any, economic impacts to fishermen other than those already analyzed in the 2006 Consolidated HMS FMP and its amendments, based on the quota adjustments. An additional purpose is to use implemented management measures to delay the opening of the fishing season and allow inseason adjustments in the trip limits to slow the fishery down during the season, as necessary. These management measures would provide, to the extent practicable, equitable opportunities across the fishing management region while also considering the ecological needs of the different species.

In compliance with section 603(b)(2) of the RFA, the objectives of this proposed rulemaking are to: (1) Adjust the annual quotas for non-sandbar LCS in the Gulf of Mexico due to overestimated landings in 2010, non-sandbar LCS in the Atlantic region due to minor overharvests in 2010, porbeagle sharks due to overharvests in 2010 and 2011, and the non-blacknose SCS due to underestimated landings in 2010 and underharvests in 2011; (2) establish the opening dates for all of the shark fisheries in the Atlantic and Gulf of Mexico regions; and (3) consider the need to adjust the trip limits inseason for non-sandbar LCS.

Section 603(b)(3) requires Federal agencies to provide an estimate of the number of small entities to which the rule would apply. NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry.

The commercial shark fisheries are comprised of fishermen who hold shark directed or incidental limited access permits (LAP) and the related

industries, including processors, bait houses, and equipment suppliers, all of which NMFS considers to be small entities according to the size standards set by the SBA. The proposed rule would apply to the approximately 216 directed commercial shark permit holders, 264 incidental commercial shark permit holders, and 114 commercial shark dealers as of August 2011.

This proposed rule does not contain any new reporting, recordkeeping, or other compliance requirements (5 U.S.C. 603(b)(4)). Similarly, this proposed rule would not conflict, duplicate, or overlap with other relevant Federal rules (5 U.S.C. 603(b)(5)). Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the Atlantic Tunas Convention Act, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act, the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act.

In compliance with section 603(c) of the Regulatory Flexibility Act, each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage of the rule for small entities. In order to meet the objectives of this final rule, consistent with the Magnuson-Stevens Act and the Endangered Species Act (ESA), NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act. This rulemaking does not establish management measures to be implemented, but rather implements previously adopted and analyzed measures with adjustments, as specified in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA with the 2011 quota specifications rule (75 FR 76302; December 8, 2010). Thus, in this proposed rulemaking HMS proposes to adjust quotas established and analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP by subtracting the underharvest or adding the overharvest. Similarly, the ranges of management measures are consistent with the requirements of the Magnuson-Stevens Act that were previously analyzed in the EA with the 2011 quota specifications rule. Thus, HMS has limited flexibility that it could exercise on the management measures or quotas in this rule.

Based on the 2010 ex-vessel price ($0.67/LCS lb, $0.68/SCS lb, $1.21/pelagic lb, and $13.48/lb for shark fins), the 2012 Atlantic shark commercial baseline quotas could result in revenues of $5,973,806. The adjustments due to overestimated landings for 2010 would result in a $6,944 gain in revenues in the Gulf of Mexico non-sandbar LCS fishery. The adjustment due to the overharvests in 2011 would result in a $13,621 loss in revenues in the Atlantic non-sandbar LCS fishery and a $3,924 loss in revenue in the porbeagle fishery. The adjustment due to the underharvests in 2011 would result in a $265,584 gain in revenues in the non-blacknose SCS fishery. These revenues are similar to the gross revenues analyzed in Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP. The IRFAs for those amendments concluded that the economic impacts on these small entities, resulting from rules such as this one that delay the season openings and adjust the trip limits inseason via proposed and final rulemaking, were expected to be minimal. Amendment 2 and Amendment 3 to the 2006 Consolidated HMS FMP and the EA with the 2011 quota specifications rule assumed we would be doing annual rulemakings and considered the IRFAs in the economic and other analyses at the time.

For this rule, NMFS reviewed the criterion at § 635.27(b)(ii) to determine when opening each fishery will provide equitable opportunities for fishermen while also considering the ecological needs of the different species. The opening of the fishing season could vary based on the available annual quota, catch rates, and number of fishing participants during the year. For the 2012 fishing season, NMFS is proposing to open the shark research, blacknose shark, non-blacknose SCS, and pelagic shark fisheries on the effective date of the final rule for this action (expected to be January 1). The direct and indirect economic impacts would be neutral on a short- and long-term basis, because NMFS is proposing not to change the opening dates of these fisheries from the status quo.

NMFS also proposes opening the porbeagle fishery on January 1. The direct and indirect economic impacts would be neutral on a short- and long-term basis, because NMFS is proposing not to change the opening dates of these fisheries from the status quo. However, due to the combined overharvest in 2010 and 2011 for the porbeagle fishery, the porbeagle quota is expected to be 0.8 mt dw (1,665 lbs dw). If landings continue to occur and the overharvest reaches 80 percent or more of the base quota (1.3 mt dw; 2,988 lb dw), NMFS would not open the fishery. This action would cause direct and indirect moderate, adverse economic impacts on shark fishermen and other entities that rely on porbeagle sharks.

NMFS proposes to delay the opening of the non-sandbar LCS in the Gulf of Mexico region until March 1, 2011, which would be the same opening date as 2010 fishing season. The delay in the Gulf of Mexico non-sandbar LCS fishing season could result in short-term direct, minor, adverse economic impacts as fishermen would have to fish in other fisheries to make up for lost non-sandbar LCS revenues during January and February of the 2012 fishing season. The short-term effects for delaying the season could cause indirect, minor, adverse economic impacts on shark dealers and other entities that deal with shark products as they may have to diversify during the beginning of the season when non-sandbar LCS shark products would not be available. However, long-term direct and indirect impacts are not anticipated as the delay would only be two months for the 2012 fishing season. In addition, NMFS does not anticipate that the delay would result in changes in ex-vessel prices as 2010 median ex-vessel prices for non-sandbar LCS meat and fins in the Gulf of Mexico region ranged from $0.36–$0.40/lb dw and $17.67–$15.46/lb dw, respectively, from January through March.

NMFS proposes to delay the opening of the non-sandbar LCS in the Atlantic region until the effective date of the HMS electronic reporting system (approximately February 2012). The

delay in the Atlantic non-sandbar LCS fishing season would result in short-term, direct, moderate, beneficial economic impacts as fishermen and dealers in the south Atlantic would not be able to fish for non-sandbar LCS starting in January but should still be able to fish earlier in the 2012 fishing season compared to the 2010 and 2011 fishing season, which did not start until July 15. South Atlantic fishermen commented during the public comment period for the 2011 shark specification rulemaking process that they felt that opening the fishery in July was not fair to them because by July the sharks have migrated north and are no longer available. With the implementation of the HMS electronic reporting system, NMFS should be able to monitor the quota on a real-time basis. This ability, along with the inseason adjustment criteria in § 635.24(a)(8), should allow NMFS the flexibility in furtherance of opportunities for all fishermen in all regions, to the extent practicable. Depending on how quickly the quota was being harvested, NMFS could reduce the retention limits to 0–33 sharks per trip to ensure that fishermen further north have ample quota for a fishery later in the 2012 fishing season. The direct impacts to shark fishermen in the Atlantic region of reducing the trip limit would depend on the needed reduction in the trip limit and the timing of such a reduction. Therefore, such a reduction in the trip limit is only anticipated to have minor adverse direct economic impacts to fishermen in the short-term; long-term impacts are not anticipated as these reductions would not be permanent.

In the North Atlantic area, a split opening for the non-sandbar LCS would have direct, minor, beneficial economic impacts in the short-term for fishermen as they would have access to the non-sandbar LCS quota in 2012. Fishermen in the North Atlantic area did not have or had limited access to the non-sandbar LCS quota in 2009. There would be indirect, minor, beneficial economic impacts in the short and long-term for shark dealers and other entities that deal with shark products in this area as they would also have access to non-sandbar LCS products in 2011. Thus, allowing the split season in 2012 would cause neutral cumulative economic impacts, since it would allow for a more equitable distribution of the quotas among constituents in this region, which was the original intent of Amendment 2.

**Authority:** 16 U.S.C. 971 *et seq.;* 16 U.S.C. 1801 *et seq.*

Dated: October 26, 2011.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 2011–28083 Filed 10–28–11; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 76, No. 210
Monday, October 31, 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.

## BUREAU OF CONSUMER FINANCIAL PROTECTION

**[Docket No. CFPB–2011–0033]**

### Proposed Collection; Comment Request

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice and request for comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (CFPB), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The CFPB is soliciting comments for a proposed generic information collection that will help the CFPB satisfy responsibilities under the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203 (Dodd-Frank Act) found in Sections 1013(b)(3) and 1034 of the Dodd-Frank Act. Currently, the CFPB is soliciting comments on a proposed generic information collection to help facilitate the collection and monitoring of and response to consumer complaints about certain financial products and services.

**DATES:** Written comments are encouraged and must be received on or before December 30, 2011 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2011–0033, by any of the following methods:

- *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *infocollection.comments@cfpb.gov*
- *Mail:* Cathleen Skinner, Consumer Response, Consumer Financial Protection Bureau, 1500 Pennsylvania Ave. NW., (Attn: 1801 L Street), Washington, DC 20220.
- *Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20006.

*Instructions:* All submissions must include the document title and docket number. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street, NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Cathaleen Skinner, Consumer Financial Protection Bureau, (202) 435–7469, *cathaleen.skinner@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Generic Clearance for Consumer Complaint and Information Collection Systems.

*OMB Control Number:* 3710–XXX.

*Abstract:* Over the next three years, the CFPB anticipates undertaking a variety of service delivery-focused activities under the Dodd-Frank Act. These activities, which include consumer complaint and inquiry processing, information-sharing with stakeholders, and complaint monitoring, require interrelated processes, or systems, that are responsive to stakeholders' needs, sensitive to changes in the consumer market, and subject to iterative testing. Since these systems will use similar methods for information collection or otherwise share common elements, the CFPB is proposing a generic clearance for intake forms, response forms and feedback collections. The streamlined process of the generic clearance will allow the CFPB to implement these systems and meet the obligations of the PRA without the delays of the normal clearance process. The CFPB's Consumer Complaint and Information Collection Systems' generic information collection burden estimates will consist of the burden attributable to: (1) Consumer complaint and inquiry intake, (2) stakeholder feedback collection, (3) consumer complaint and inquiry tracking, and (4) consumer complaint referral programming. An approved set of collection questions and fields associated with the pilot intake form (OMB Control No. 1505–0236) and a proposed set associated with the standard Consumer Response Intake Form (76 FR 38,458 (June 30, 2011)) will serve as the initial models for the collections proposed under a generic information collection request. The CFPB will only undertake a new collection under this generic clearance if the OMB does not object to the CFPB's proposal.

*Type of Review:* Generic Clearance Request.

*Affected Public:* Individuals and Households, Businesses and Organizations, State, Local or Tribal governments.

*Respondent's Obligation:* Voluntary.

*Estimated Number of Respondents:* A preliminary estimate of aggregate burden for this generic clearance follows. As the statutory mandate behind the CFPB's consumer complaint and information collection activities is largely unprecedented, the projections of the number of respondents have a high level of uncertainty.

| Proposed individual collections | Estimated number of respondents | Average burden per response (minutes) | Estimated total annual burden hours requested |
|---|---|---|---|
| Web Complaint and Inquiry Intake | 2,500,000 | 7 | 291,600 |
| Paper/Telephone Complaint and Inquiry Intake | 750,000 | 10 | 125,000 |

| Proposed individual collections | Estimated number of respondents | Average burden per response (minutes) | Estimated total annual burden hours requested |
|---|---|---|---|
| Stakeholder Feedback System | 10,000 | 5 | 830 |
| Complaint Tracking and Referral System | 10,000 | 5 | 830 |
| Total | 3,270,000 | 8 | 418,300 |

*Estimated Average Time per Respondent:* 8 minutes per response.

*Estimated Total Annual Burden Hours:* Approximately 418,300 burden hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the CFPB, including whether the information will have practical utility; (b) the accuracy of the above estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology, such as, permitting electronic submissions of responses.

**Robert Dahl,**

*PRA Clearance Officer, Department of the Treasury.*

[FR Doc. 2011–28074 Filed 10–28–11; 8:45 am]

**BILLING CODE 4810–AM–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

October 26, 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), New Executive Office Building, Washington, DC; *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 publication 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.

### National Agricultural Statistics Service

*Title:* Agricultural Resource Management, Chemical Use, and Post-harvest Chemical Use Surveys.

*OMB Control Number:* 0535–0218.

*Summary of Collection:* The primary objectives of the National Agricultural Statistics Service (NASS) are to provide the public with timely and reliable agricultural production and economic statistics, as well as environmental and specialty agricultural related statistics. Three surveys—the Agricultural Resource Management Study, the Fruit and Vegetable Chemical Use Surveys, and the Post-harvest Chemical Use Survey—are critical to NASS' ability to fulfill these objectives and to build the Congressionally mandated database on agricultural chemical use and related farm practices. NASS uses a variety of survey instruments to collect the information in conjunction with these studies.

*Need and Use of the Information:* The Agricultural Resource Management Study provides a robust data base of information to address varied needs of policy makers. There are many uses for the information from this study including an evaluation of the safety of the Nation's food supply; input to the farm sector portion of the gross domestic product; and to provide a barometer on the financial condition of farm businesses. Data from the Fruit and Vegetable Chemical Use Surveys is used to assess the environmental and economic implications of various program and policies and the impact on agricultural producers and consumers. The results of the Post-harvest Chemical Use Survey are used by the Environmental Protection Agency (EPA) to develop Food Quality Protection Act risk assessments. Other organizations use this data to make sound regulatory decisions.

*Description of Respondents:* Farms.

*Number of Respondents:* 135,583.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 79,731.

**Charlene Parker,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2011–28067 Filed 10–28–11; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

**[Docket No. FCIC–11–0010]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** This notice announces a public comment period on the information collection requests (ICRs) associated with the Multiple Peril Crop Insurance.

**DATES:** Comments that we receive on this notice will be accepted until close of business December 30, 2011.

**ADDRESSES:** FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0010, by any of the following methods:

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

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

*Privacy Act:* Anyone is able to search the electronic form of all comments received for any dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the complete User Notice and Privacy Notice for *Regulations.gov* at *http://www.regulations.gov/#!privacyNotice*.

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

**SUPPLEMENTARY INFORMATION:**

*Title:* Multiple Peril Crop Insurance.

*OMB Number:* 0563–0053.

*Expiration Date of Approval:* March 31, 2012.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The information collection requirements for this renewal package are necessary for administering the crop insurance program. Producers are required to report specific data when they apply for crop insurance and report acreage, yields, and notices of loss. Insurance companies accept applications; issue policies; establish and provide insurance coverage; compute liability, premium, subsidies, and losses; indemnify producers; and report specific data to FCIC as required in Appendix III/M13 Handbook. Commodities for which Federal crop insurance is available are included in this information collection package. This submission's per-response time was re-evaluated by data element and line item to show a truer, more accurate account of the time spent to collect the data FCIC requires.

FCIC is requesting the Office of Management and Budget (OMB) to extend the approval of this information collection for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other forms of information technology, *e.g.,* permitting electronic submission of responses).

*Estimate of Burden:* The public reporting burden for this collection of information are estimated to average 0.76 of an hour per response.

*Respondents/Affected Entities:* Producers and insurance companies reinsured by FCIC.

*Estimated Annual Number of Respondents:* 556,408.

*Estimated Annual Number of Responses Per Respondent:* 18.8.

*Estimated Annual Number of Responses:* 10,470,186.

*Estimated Total Annual Burden on Respondents:* 7,960,519.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed in Washington, DC, on October 25, 2011.

**William J. Murphy,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 2011–28068 Filed 10–28–11; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Bridger-Teton National Forest; Big Piney Ranger District; Wyoming; Environmental Impact Statement for the Sherman Cattle & Horse Allotment Grazing Authorization and Management Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an environmental impact statement to analyze the effects of domestic livestock grazing in the Sherman Cattle & Horse Allotment. This action was originally listed as a proposal (to be analyzed under an environmental assessment) on the Bridger-Teton National Forest Schedule of Proposed Actions on January 1, 2010. However, during development of the environmental assessment, it was determined that analysis and disclosure under an environmental impact statement would be more appropriate. The analysis contained in the environmental impact statement will be used by the Responsible Official to decide whether livestock grazing can be authorized within the allotment, and if so, under what conditions. The Sherman Cattle and Horse Allotment is located in western Wyoming, about 35 miles northwest of Big Piney, Wyoming, and is situated on the east side of the northern end of the Wyoming Range. The entire 17,370 acre allotment lies within Sublette County and within the boundaries of the Big Piney Ranger District.

**DATES:** Comments concerning the scope of the analysis must be received by November 30, 2011. All comments that were received during the previous analysis period will be considered in the current analysis. The draft environmental impact statement is expected in April of 2012 and the final environmental impact statement is expected in August of 2012.

**ADDRESSES:** Send written comments to District Ranger, Big Piney Ranger

District, P.O. Box 218, Big Piney, Wyoming 83113. Comments may also be sent via e-mail to *mailroom_r4_bridger_teton@fs.fed.us* (on the subject line put ''Sherman Grazing Allotment''), or via facsimile to (307) 276–5203.

**FOR FURTHER INFORMATION CONTACT:** Chad Hayward, Big Piney Ranger District, (307) 276–5817, *chayward@fs.fed.us,* or Anita DeLong, Big Piney Ranger District, (307) 413–9650, *akdelong@fs.fed.us,* and see **ADDRESSES** above. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

**SUPPLEMENTARY INFORMATION:**

## Purpose and Need for Action

The need for this analysis is to determine if continued authorization of livestock grazing on the Sherman C&H Allotment at current levels is appropriate, and to determine if current livestock management practices are sufficient for achieving and maintaining compliance with the 1990 Bridger-Teton Land and Resource Management Plan (Forest Plan) direction and Forest Service grazing management policies, and other applicable laws and regulations. The purpose of the proposal is to manage livestock grazing in a manner that allows the health of the land to be sustained and that meets the goals and objectives of the Forest Plan.

National Forest System lands provide an important source of livestock forage during portions of the year. Forest Plans provide for allocation of livestock grazing to meet Forest Plan objectives. Reauthorization is needed on these allotments because:

- Where consistent with other multiple use goals and objectives there is Congressional intent to allow grazing on suitable lands (Multiple Use-Sustained Yield Act of 1960, Forest and Rangeland Renewable Resource Planning Act of 1974, Federal Land Policy and Management Act of 1976, National Forest Management Act of 1976).
- The Sherman Cattle & Horse Allotment lies within the Management Area 24—Horse Creek—on the Bridger-Teton National Forest. The following Desired Future Conditions (DFCs) describe the land management direction intended to accomplish goals and objectives. Approximately eighty-six percent of the Sherman Cattle & Horse Allotment is located within an area designated by the Forest Plan as having a DFC of 1B (Substantial Commodity Resource Development with Moderate Accommodation of Other Resources). Management emphasis includes livestock production. Approximately nine percent of the project area is within the DFC 10 (Simultaneous Development of Resources, Opportunities for Human Experiences and Support for Big-game and a Wide Variety of Wildlife Species. Approximately five percent of the project area is within the DFC 12 (Backcountry Big-game Hunting, Dispersed Recreation, and Wildlife Security Areas).
- Federal regulation (36 CFR 222.2(c)) states that National Forest System lands would be allocated for livestock grazing and allotment management plans would be prepared consistent with forest plans.

Continued domestic livestock grazing must be consistent with the goals, objectives and guidelines of the Forest Plan. The allotment management plan needs to be revised to update and/or refine desired rangeland conditions and develop management strategies to meet them. This analysis complies with the schedule specified by the Rescission Act of 1995 (Pub. L. 104–19) to complete NEPA analyses on allotments where such analysis is needed to authorize permitted livestock grazing activity.

## Proposed Action

The Proposed Action is to authorize continued livestock grazing on the Sherman Cattle & Horse Allotment consistent with goals, objectives, standards and guidelines, management prescriptions, and monitoring requirements specified in the Forest Plan, and in compliance with the Rescission Act of 1995. The Proposed Action is designed to (1) contribute towards Forest Plan objective 1.1(h) which states ''provide forage for about 260,000 AUMs of livestock grazing annually'', and (2) achieve Goal 4.7 which states ''[g]razing use of the National Forest sustains or improves overall range, soils, water, wildlife, and recreation values or experiences.'' Project-specific allowable-use standards would be implemented and include more stringent forage utilization standards than outlined in the Forest Plan. The Proposed Action also includes a streambank alteration standard consistent with the Forest Plan. In addition, grizzly bear conservation measures would be implemented to (1) minimize grizzly bear/livestock conflicts and associated management actions, and (2) minimize food and other types of habituation and bear/human conflicts. Updated direction would be incorporated into the allotment management plan to guide livestock grazing management within the allotment. Livestock grazing management strategies in the Proposed Action were developed in accordance with the Code of Federal Regulations (CFR), 36 CFR 222.1(b)(2), which describes allotment management planning provisions.

Under the Proposed Action, a maximum livestock forage allocation of 2,332 AUM, or equivalent livestock numbers and season of use, would be permitted. Current permitted numbers are 858 cow/calf pairs with a season of use from July 6th to September 20th. These would be maintained under the Proposed Action. The allotment contains two pastures. Under the Proposed Action, the allotment would be grazed by livestock under a Deferred Rotation Grazing System. This rotation was required by the 1990 Allotment Management Plan and would continue to be implemented under the Proposed Action.

## Responsible Official

District Ranger, Big Piney Ranger District, P.O. Box 218, Big Piney, Wyoming 83113.

## Nature of Decision To Be Made

The District Ranger will (1) decide whether to authorize continued livestock grazing on the Sherman Cattle & Horse Allotment, and (2) decide, if livestock grazing is authorized, under what management strategies livestock grazing will be implemented.

## Preliminary Issues

The following preliminary issues were identified by the public and the Forest Service in the previous environmental analysis process.

*Issue 1*—Effects of livestock grazing on riparian and aquatic function.

*Issue 2*—Effects of livestock grazing on Threatened, Endangered, Experimental, and Candidate Species, Forest Service Sensitive Species, Forest Plan Management Indicator Species and migratory birds.

*Issue 3*—Effects of livestock grazing on vegetation composition and ground cover.

*Issue 4*—Effects of livestock grazing on soil quality.

## Scoping Process

This notice of intent continues the scoping process, which guides the development of the environmental impact statement. A scoping letter was mailed to those listed on the Big Piney Ranger District general mailing list. The mailing list included private landowners, term grazing permit holders, special interest groups, interested members of the public, and

local, State, and Federal agencies. The letter described the purpose and need for action and the proposed action. Additionally, the letter solicited public participation in the process, specifically the submission of comments, concerns, and recommendations regarding management of the allotment. Term grazing permit holders, or their representatives, were contacted shortly after the project was initiated to solicit their input concerning management of the allotment.

All submitted comments, including those previously submitted, will be used to prepare the new draft environmental impact statement. News releases will be prepared to give the public general notice concerning the progress of this project analysis.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

Dated: October 25, 2011.

**Eric J. Winthers,**

*Acting District Ranger.*

[FR Doc. 2011–28056 Filed 10–28–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee (LTFAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Federal Advisory Committee will hold a meeting on November 18, 2011 at the Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held November 18, 2011, beginning at 10 a.m. and ending at 3 p.m.

**ADDRESSES:** Lake Tahoe Basin Management Unit, 35 College Drive, South Lake Tahoe, CA 96150.

*For Further Information or To Request an Accommodation (One Week Prior to Meeting Date) Contact:* Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2773.

**SUPPLEMENTARY INFORMATION:** *Items to be covered on the agenda:* (1) Facilitated workshop to discuss a strategic workplan for Fiscal Year 2012, and (2) public comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: October 25, 2011.

**Jeff Marsolais,**

*Deputy Forest Supervisor.*

[FR Doc. 2011–28055 Filed 10–28–11; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 68–2011]**

### Foreign-Trade Zone 177—Evansville, IN; Application for Manufacturing Authority; Hoosier Stamping & Mfg. Corp. (Wheel Assemblies and Accessories), Chandler, IN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Ports of Indiana, grantee of FTZ 177, requesting manufacturing authority on behalf of Hoosier Stamping & Mfg. Corp. d/b/a Hoosier Wheel (Hoosier Stamping), located in Chandler, Indiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 25, 2011.

The Hoosier Stamping facility (25 employees, 9.44 acres, 9,500,000 unit capacity) is located within Site 8 of FTZ 177. The facility is used for the manufacturing, testing, warehousing, packaging, processing, inspecting, repairing and distributing of wheel assemblies and accessories. Components and materials sourced from abroad (representing up to 60% of the value of the finished product) include: pneumatic tires, tubes, rolled rim rings, semi-pneumatic tires, herring-bone tires, welding wires and bolts (duty rate ranges from duty-free to 3.7%). The application also requests authority to include a broad range of inputs and finished wheel assemblies that Hoosier Stamping may produce under FTZ procedures in the future. New major activity involving these inputs/products would require review by the FTZ Board.

FTZ procedures could exempt Hoosier Stamping from customs duty payments on the foreign components used in export production. The company anticipates that approximately one percent of the plant's shipments will be exported. On its domestic sales, Hoosier Stamping would be able to choose the duty rates during customs entry procedures that apply to finished wheel assemblies (duty-free) for the foreign inputs noted above. FTZ designation would further allow Hoosier Stamping to realize logistical benefits through the use of weekly customs entry procedures. Customs duties also could possibly be deferred or reduced on foreign status production equipment. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is December 30, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 17, 2012.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 25, 2011.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2011–28084 Filed 10–28–11; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one antidumping duty order in part.

**DATES:** *Effective Date:* October 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Brenda Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, *telephone:* (202) 482–4735.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. The Department also received a timely request to revoke in part the antidumping duty order on Certain Lined Paper Products from India for one exporter.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

#### Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register.** All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263, (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii) of the regulations, a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

#### Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not-collapse companies for purposes of respondent selection. Parties are requested to (a) Identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

#### Deadline for Withdrawal of Request for Administrative Review

Pursuant to section 351.213(d)(1) of the Department's regulations, a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

#### Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from

government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate-rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate-rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate-rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate-rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status *unless* they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with sections 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2012.

| | Period to be reviewed |
|---|---|
| **Antidumping Duty Proceedings** | |
| India: Certain Lined Paper Products A–533–843 | 9/1/10–8/31/11 |
| Abhinav Paper Products Pvt Ltd | |
| American Scholar, Inc. and/or I–Scholar | |
| A R Printing & Packaging India | |
| Akar Limited | |
| Ampoules & Vials Mfg. Co. Ltd. | |
| Apl Logistics India Pvt. Ltd. | |
| AR Printing & Packaging (I) | |
| Artesign Impex | |
| Arun Art Printers Pvt. Ltd. | |
| Aryan Worldwide | |
| Bafna Exports | |
| Cargomar Pvt. Ltd. | |
| Cello International Pvt. Ltd. (M/S Cello Paper Products) | |
| Chitra Exports | |
| Corporate Stationery Pvt. Ltd. | |
| Crane Worldwide Logistics Ind Pvt. | |
| Creative Divya | |
| D.D International | |
| Diki Continental Exports | |
| Exel India (Pvt.) Ltd. | |
| Exmart International Pvt. Ltd. | |
| Expeditors International (India) Pvt/Expeditors Cargo Mgmnt Systems | |
| Fatechand Mahendrakumar | |
| FFI International | |
| Freight India Logistics Pvt. Ltd. | |

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

| | Period to be reviewed |
|---|---|
| Gauriputra International | |
| International Greetings Pvt. Ltd. | |
| Karur K.C.P. Packagings Ltd | |
| Kejriwal Paper Ltd. and Kejriwal Exports | |
| Lodha Offset Limited | |
| M.S. The Bell Match Company | |
| Magic International Pvt Ltd | |
| Mahavideh Foundation | |
| Marisa International | |
| Navneet Publications (India) Ltd. | |
| Orient Press Ltd. | |
| Paperwise Inc. | |
| Phalada Agro Research Foundations | |
| Pioneer Stationery Pvt. Ltd. | |
| Premier Exports | |
| Raghunath Exporters | |
| Rajvansh International | |
| Riddhi Enterprises | |
| SAB International | |
| SAI Suburi International | |
| SAR Transport Systems | |
| SDV Intl Logistics Ltd. | |
| Seet Kamal International | |
| SGM Paper Products | |
| Shivam Handicrafts | |
| Soham Udyog | |
| Sonal Printers Pvt. Ltd. | |
| Super Impex | |
| Swati Growth Funds Ltd. | |
| Swift Freight (India) Pvt. Ltd | |
| V&M | |
| Yash Laminates | |
| Mexico: Certain Magnesia Carbon Bricks A–201–837 | 3/11/10–8/31/11 |
| RHI-Refmex SA. de C.V. | |
| The People's Republic of China: | |
| Certain Lined Paper Products[3] A–570–901 | 9/1/10–8/31/11 |
| Shanghai Lian Li Paper Products Co., Ltd. (''Lian Li'') | |
| Leo's Quality Products Co., Ltd./Denmax Plastic Stationary Factory | |
| Certain Magnesia Carbon Bricks[4] A–570–954 | 3/12/10–8/31/11 |
| ANH (Xinyi) Refractories Co. Ltd. | |
| Anyang Rongzhu Silicon Industry Co., Ltd. | |
| Bayuquan Refractories Co., Ltd. | |
| Beijing Tianxing Ceramic Fiber Composite Materials Corp. | |
| Changxing Magnesium Furnace Charge Co., Ltd. | |
| Changxing Wangfa Architectural & Metallurgical Materials Co., Ltd. | |
| Changzing Zhicheng Refractory Material Factory | |
| China Metallurgical Raw Material Beijing Company | |
| China Quantai Metallurgical (Beijing) Engineering & Science Co., Ltd. | |
| Chosun Refractories | |
| Cimm Group of China | |
| CNBM International Corporation | |
| Dalian Dalmond Trading Co., Ltd. | |
| Dalian F.T.Z. Maylong Resources Co., Ltd. | |
| Dalian Huayu Refractories International Co., Ltd. | |
| Dalian LST Metallurgy Co., Ltd. | |
| Dalian Mayerton Refractories Ltd. | |
| Dalian Morgan Refractories Ltd. | |
| Dashiqiao Bozhong Mineral Products Co., Ltd. | |
| Dashiqiao City Guangcheng Refractory Co., Ltd. | |
| Dashiqiao Jia Sheng Mining Co., Ltd. | |
| Dashiqiao Jinlong Refractories Co., Ltd. | |
| Dashiqiao RongXing Refractory Material Co., Ltd. | |
| Dashiqiao Sanqiang Refractory Material Co., Ltd. | |
| Dashiqiao Yutong Packing Factory | |
| Dengfeng Desheng Refractory Co., Ltd. | |
| DFL Minmet Refractories Corp. | |
| Duferco BarInvest SA Beijing Office | |
| Duferco Ironet Shanghai Representative Office | |
| Duferco SA | |
| Eastern Industries & Trading Co., Ltd. | |
| Fengchi Imp. and Exp. Co., Ltd. of Haicheng City | |
| Fengchi Mining Co., Ltd of Haicheng City | |
| Fengchi Refractories Co., Haicheng City | |

| | Period to be reviewed |
|---|---|
| Fengchi Refractories Corp. | |
| Haicheng City Qunli Mining Co., Ltd. | |
| Haicheng City Xiyang Import & Export Corporation | |
| Haicheng Donghe Taidi Refractory Co., Ltd. | |
| Haicheng Ruitong Mining Co., Ltd. | |
| Haiyuan Talc Powder Manufacture Factory | |
| Henan Boma Co. Ltd. | |
| Henan Kingway Chemicals Co., Ltd. | |
| Henan Tagore Refractories Co., Ltd. | |
| Henan Xinmi Changzxing Refractories, Co., Ltd. | |
| Hebei Qinghe Refractory Group Co. Ltd | |
| Huailin Refractories (Dashiqiao) Pte. Ltd. | |
| Jiangsu Sujia Group New Materials Co., Ltd | |
| Jiangsu Sujia Joint-Stock Co., Ltd. | |
| Jinan Forever Imp. & Emp. Trading Co., Ltd. | |
| Jinan Linquan Imp. & Emp. Co. Ltd. | |
| Jinan Ludong Refractory Co., Ltd. | |
| Kosmokraft Refractory Limited | |
| Kuehne & Nagel Ltd. Dalian Branch Office | |
| Lechang City Guangdong Province SongXin Refractories Co., Ltd. | |
| Liaoning Fucheng Refractories Group Co., Ltd. | |
| Liaoning Fucheng Special Refractory Co., Ltd. | |
| Liaoning Jiayi Metals & Minerals Ltd. | |
| Liaoning Jinding Magnesite Group | |
| Liaoning Mayerton Refractories Co., Ltd. | |
| Liaoning Mineral & Metallurgy Group Co., Ltd. | |
| Liaoning Qunyi Group Refractories Co., Ltd. | |
| Liaoning Qunyi Trade Co., Ltd. | |
| Liaoning RHI Jinding Magnesis Co., Ltd. | |
| LiShuang Refractory Industrial Co., Ltd. | |
| Lithomelt Co., Ltd. | |
| Luheng Refractory Co., Ltd. | |
| Luoyang Refractory Group Co., Ltd. | |
| Mayerton Refractories | |
| Minsource International Ltd. | |
| Minteq International Inc. | |
| National Minerals Co., Ltd. | |
| North Refractories Co., Ltd. | |
| Orestar Metals & Minerals Co., Ltd. | |
| Oreworld Trade (Tangshan) Co., Ltd. | |
| Puyang Refractories Co., Ltd. | |
| Qingdao Almatis Co., Ltd. (HQ) | |
| Qingdao Almatis Co., Ltd. (Manufacturing) | |
| Qingdao Almatis Trading Co., Ltd. (Sales Office) | |
| Qingdao Blueshell Import & Emport Corp. | |
| Qingdao Fujing Group Co., Ltd. | |
| Qingdao Huierde International Trade Co., Ltd. | |
| RHI Refractories Asia Pacific Pte. Ltd. | |
| RHI Refractories (Dalian) Co., Ltd. | |
| RHI Refractories Liaoning Co., Ltd. | |
| RHI Trading Shanghai Branch | |
| RHI Trading (Dalian) Co., Ltd. | |
| Rongyuan Magnesite Co., Ltd. of Dashiqiao City | |
| Shandong Cambridge International Trade Inc. | |
| Shandong Lunai Kiln Refractories Co., Ltd. | |
| Shandong Refractories Corp. | |
| Shanxi Dajin International (Group) Co., Ltd. | |
| Shanxi Xinrong International Trade Co. Ltd. | |
| Shenyang Yi Xin Sheng Lai Refractory Materials Co., Ltd. | |
| Shinagawa Rongyuan Refractories Co., Ltd. | |
| Sinosteel Corporation | |
| SMMC Group Co., Ltd. | |
| Tangshan Success Import & Export Trading Co., Ltd. | |
| Tianjin New Century Refractories, Ltd. | |
| Tianjin New World Import & Export Trading Co., Ltd. | |
| Tianjin Weiyuan Refractory Co., Ltd. | |
| Vesuvius Advanced Ceramics (Suzhou) Co. Ltd. | |
| Wonjin Refractories Co., Ltd. | |
| Xiyuan Xingquan Forsterite Co., Ltd. | |
| Yanshi City Guangming High-Tech Refractories Products Co., Ltd. | |
| YHS Minerals Co., Ltd. | |
| Yingkou Bayuquan Refractories Co., Ltd. | |
| Yingkou Dalmond Refractories Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Yingkou Guangyang Refractories Co., Ltd. | |
| Yingkou Guangyang Refractories Co., Ltd. (YGR) | |
| Yingkou Heping Samwha Minerals Co., Ltd. | |
| Yingkou Jiahe Refractories Co., Ltd. | |
| Yingkou Jinlong Refractories Group | |
| Yingkou Kyushu Refractories Co., Ltd. | |
| Yingkou New Century Refractories Ltd. | |
| Yingkou Qinghua Group Imp. & Emp. Co., Ltd. | |
| Yingkou Qinghua Refractories Co., Ltd. | |
| Yingkou Sanhua Refractory Materials Co., Ltd. | |
| Yingkou Tianrun Refractory Co., Ltd. | |
| Yingkou Wonjin Refractory Material Co., Ltd. | |
| Yingkou Yongji Mag Refractory, Ltd. | |
| Yixing Runlong Trade Co., Ltd. | |
| Yixing Xinwei Leeshing Refractory Material Co., Ltd. | |
| Yixing Zhenqiu Charging Ltd. | |
| Zhejiang Changxing Guangming Special Refractory Material Foundry, Co., Ltd. | |
| Zhejiang Deqing Jinlei Refractory Co., Ltd. | |
| Zhejiang Huzhou Fuzilin Refractory Metals Group Co., Ltd. | |
| Zhengzhou Annec Industrial Co., Ltd. | |
| Zhengzhou Huachen Refractory Co., Ltd. | |
| Zibo Lianzhu Refractory Materials Co., Ltd. | |
| Certain New Pneumatic Off-the-Road Tires[5] A–570–912 | 9/1/10–8/31/11 |
| Aeolus Tyre Co., Ltd. | |
| Beijing Shouchuang Tyre Co. Ltd. | |
| Cheng Shin Rubber (Xiamen) Ind. Ltd. | |
| China Enterprises Ltd. | |
| China Haohua Chemical Group Corp. | |
| China National Tyre & Rubber Guilin Co., Ltd. | |
| Cooper Chengshan (Shandong) Tire Co. Ltd. | |
| Double Coin Group Rugao Tyre Co., Ltd. | |
| Double Coin Holding Ltd. | |
| Double Coin Group Shanghai Donghai Tyre Co. Ltd. | |
| Double Happiness Tyre Industries Corp. Ltd. | |
| Eternity International L Freight Forwarder | |
| GITI Tire (China) Investment Co., Ltd. | |
| GITI Tire Pte. Ltd. | |
| Guangzhou Pearl River Rubber Tyre Ltd. | |
| Guilun Tire Co. | |
| Guizhou Tyre Co., Ltd. | |
| Guizhou Advance Rubber Co., Ltd. | |
| Guizhou Tyre Import and Export Corporation | |
| Hangzhou Zhongce Rubber Co., Ltd. | |
| Hebei Starbright Tire Co., Ltd. | |
| Henan Tyre Ltd. | |
| Hwa Fong Rubber Ltd (Hong Kong) | |
| Innova Rubber Co., Ltd. | |
| Jiangsu Feichi Co., Ltd. | |
| Kenda Global Holding Co. Ltd. | |
| Kenda Rubber (China) Co., Ltd. | |
| KS Holding Limited/KS Resources Limited | |
| Laizhou Xiongying Rubber Industry Co., Ltd. | |
| L–Guard International Enterprise | |
| Longkou Xinglong Tire Co. Ltd. | |
| Mai Shandong Radial Tyre Co., Ltd. | |
| Maxxis International (HK) Co. Ltd. | |
| Midland Speciality Tire Co., Ltd. | |
| Oriental Tyre Technology Limited | |
| Qingdao Aonuo Tyre Co. Ltd. | |
| Qingdao Doublestar Tire Industrial Co., Ltd. | |
| Qingdao Eastern Industrial Group Co. Ltd. | |
| Qingdao Etyre International Trade Co. Ltd. | |
| Qingdao Free Trade Zone Full-World International Trade Co., Ltd. | |
| Qingdao Hengda Tire Co. Ltd. | |
| Qingdao Honour Tyre Co. Ltd. | |
| Qingdao Milestone Tyre Co., Ltd. | |
| Qingdao Qihang Tyre Co. Ltd. | |
| Qingdao Qizhou Rubber Co., Ltd. | |
| Qingdao Seanoble International Trade | |
| Qingdao Shuanghe Tyre Co. Ltd. | |
| Qingdao Sinorient International Ltd. | |
| Qingdao Tengjiang Tyre Co. Ltd. | |
| Qingdao Taifa Group Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Qingdao Yellowsea Tyre Factory | |
| Sailun Co., Ltd. | |
| Shanghai Huyai Group Company | |
| Shandong Chengshan Group | |
| Shandong Goldkylin Rubber Group Co. | |
| Shandong Huatai Rubber Co. Ltd. | |
| Shandong Huitong Tyres Co. Ltd. | |
| Shandong Jinyu Tyre Co., Ltd. | |
| Shandong Linglong Tyre Co. Ltd. | |
| Shandong LuHe Group General Co. | |
| Shandong Sangong Rubber Co. Ltd. | |
| Shandong Taishan Tyre Co., Ltd. | |
| Shandong Wanda Boto Tyre Co., Ltd. | |
| Shandong Xingda Tyre Co., Ltd. | |
| Shandong Xingyuan International Trading Co., Ltd. | |
| Shandong Xingyuan Rubber Co. Ltd. | |
| Shandong Zhentai Tyre Co., Ltd. | |
| Shangong Zhongce Tyre Co. Ltd. | |
| Shifeng Double-Star Tire Co. Ltd. | |
| Sichuan Haida Tyre Group Co. Ltd. | |
| Techking Tires Unlimited | |
| Tengzhou Broncho Tyre Co. Ltd. | |
| Tianjin Wanda Tyre Group | |
| Tianjin United Tire & Rubber International Co., Ltd. | |
| Triangle Tyre Co. Ltd. | |
| U.S. Cooper Tire & Rubber Co. | |
| Weifang Longtai Tyre Co., Ltd. | |
| Weihai Zhongwei Rubber Co., Ltd. | |
| Wendeng Sanfeng Tyre Co. Ltd. | |
| World Tyres Limited | |
| Xiamen Rubber Factory | |
| Xingyuan Tyre Co., Ltd | |
| Xuzhou Hanbang Tyres Co., Ltd. | |
| Xuzhou Xugong Tyre Co. Ltd. | |
| Zhaoyuan Leo Rubber Co. Ltd. | |
| Freshwater Crawfish Tail Meat [6] A–570–848 | 9/1/10–8/31/11 |
| China Kingdom (Beijing) Import & Export Co., Ltd. | |
| Nanjing Gemsen International Co., Ltd. | |
| Shanghai Ocean Flavor International Trading Co., Ltd. | |
| Xiping Opeck Food Co., Ltd. | |
| Xuzhou Jinjiang Foodstuffs Co., Ltd. | |
| Yancheng Hi-King Agriculture Developing Co., Ltd. | |
| Kitchen Appliance Shelving and Racks [7] A–570–941 | 9/1/10–8/31/11 |
| Asia Pacific CIS (Wuxi) Co., Ltd. | |
| Guangdong Wire King Co., Ltd. (formerly known as Foshun Shunde Wireking Housewares & Hardware) | |
| Hangzhou Dunli Import & Export Co., Ltd. and Hangzhou Dunli Industry Co., Ltd. | |
| Hengtong Hardware Manufacturing (Huizhou) Co., Ltd. | |
| Jiangsu Weixi Group Co. | |
| Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asia) | |
| New King Shan (Zhu Hai) Co., Ltd. | |
| Narrow Woven Ribbons with Woven Selvedge [8] A–570–952 | 9/1/10–8/31/11 |
| Apex Ribbon | |
| Apex Trimmings | |
| FinerRibbon.com | |
| Hubschercorp | |
| Intercontinental Skyline | |
| Multicolor Inc. | |
| Pacific Imports | |
| Papillon Ribbon & Bow (Canada) | |
| Precious Planet Ribbons & Bows Co., Ltd. | |
| Supreme Laces Inc. | |
| Stribbons (Guangzhou) Ltd. | |
| Stribbons (Nanyang) MNC, Ltd. | |
| Weifang Dongfang Ribbon Weaving Co., Ltd. | |
| Yama Ribbons and Bows Co., Ltd.[9] | |
| Yangzhou Bestpak Gifts & Crafts Co., Ltd. | |
| Taiwan: Narrow Woven Ribbons with Woven Selvedge A–583–844 | 9/1/10–8/31/11 |
| Apex Ribbon | |
| Apex Trimmings | |
| FinerRibbons.com | |
| Hubs Hsien Chan Enterprise Co., Ltd | |
| Hsien Chan Enterprise Co., Ltd | |

| | Period to be reviewed |
|---|---|
| Multicolor Inc. | |
| Novelty Handicraft Co., Ltd. | |
| Pacific Imports | |
| Papillon Ribbon & Bow (Canada) | |
| Shieng Huong Enterprise Co., Ltd. | |
| Supreme Laces Inc. | |
| **Countervailing Duty Proceedings** | |
| India: Certain Lined Paper Products C–533–844 | 1/1/10–12/31/10 |
| A.R. Printing & Packaging India Pvt. Ltd. | |
| The People's Republic of China: | |
| Certain Magnesia Carbon Bricks C–570–955 | 8/2/10–12/31/10 |
| ANH (Xinyi) Refractories Co. Ltd. | |
| Anyang Rongzhu Silicon Industry Co., Ltd. | |
| Bayuquan Refractories Co., Ltd. | |
| Beijing Tianxing Ceramic Fiber Composite Materials Corp. | |
| Changxing Magnesium Furnace Charge Co., Ltd. | |
| Changxing Wangfa Architectural & Metallurgical Materials Co., Ltd. | |
| Changzing Zhicheng Refractory Material Factory | |
| China Metallurgical Raw Material Beijing Company | |
| China Quantai Metallurgical (Beijing) Engineering & Science Co., Ltd. | |
| Chosun Refractories | |
| Cimm Group of China | |
| CNBM International Corporation | |
| Dalian Dalmond Trading Co., Ltd. | |
| Dalian F.T.Z. Maylong Resources Co., Ltd. | |
| Dalian Huayu Refractories International Co., Ltd. | |
| Dalian LST Metallurgy Co., Ltd. | |
| Dalian Mayerton Refractories Ltd. | |
| Dalian Morgan Refractories Ltd. | |
| Dashiqiao Bozhong Mineral Products Co., Ltd. | |
| Dashiqiao City Guangcheng Refractory Co., Ltd. | |
| Dashiqiao Jia Sheng Mining Co., Ltd. | |
| Dashiqiao Jinlong Refractories Co., Ltd. | |
| Dashiqiao RongXing Refractory Material Co., Ltd. | |
| Dashiqiao Sanqiang Refractory Material Co., Ltd. | |
| Dashiqiao Yutong Packing Factory | |
| Dengfeng Desheng Refractory Co., Ltd. | |
| DFL Minmet Refractories Corp. | |
| Duferco BarInvest SA Beijing Office | |
| Duferco Ironet Shanghai Representative Office | |
| Duferco SA | |
| Eastern Industries & Trading Co., Ltd. | |
| Fengchi Imp. and Exp. Co., Ltd. of Haicheng City | |
| Fengchi Mining Co., Ltd of Haicheng City | |
| Fengchi Refractories Co., of Haicheng City | |
| Fengchi Refractories Corp. | |
| Haicheng City Qunli Mining Co., Ltd. | |
| Haicheng City Xiyang Import & Export Corporation | |
| Haicheng Donghe Taidi Refractory Co., Ltd. | |
| Haicheng Ruitong Mining Co., Ltd. | |
| Haiyuan Talc Powder Manufacture Factory | |
| Henan Boma Co. Ltd. | |
| Henan Kingway Chemicals Co., Ltd. | |
| Henan Tagore Refractories Co., Ltd. | |
| Henan Xinmi Changzxing Refractories, Co., Ltd. | |
| Hebei Qinghe Refractory Group Co. Ltd | |
| Huailin Refractories (Dashiqiao) Pte. Ltd. | |
| Jiangsu Sujia Group New Materials Co., Ltd | |
| Jiangsu Sujia Joint-Stock Co., Ltd. | |
| Jinan Forever Imp. & Emp. Trading Co., Ltd. | |
| Jinan Linquan Imp. & Emp. Co. Ltd. | |
| Jinan Ludong Refractory Co., Ltd. | |
| Kosmokraft Refractory Limited | |
| Kuehne & Nagel Ltd. Dalian Branch Office | |
| Lechang City Guangdong Province SongXin Refractories Co., Ltd. | |
| Liaoning Fucheng Refractories Group Co., Ltd. | |
| Liaoning Fucheng Special Refractory Co., Ltd. | |
| Liaoning Jiayi Metals & Minerals Ltd. | |
| Liaoning Jinding Magnesite Group | |
| Liaoning Mayerton Refractories Co., Ltd. | |
| Liaoning Mineral & Metallurgy Group Co., Ltd. | |
| Liaoning Qunyi Group Refractories Co., Ltd. | |
| Liaoning Qunyi Trade Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Liaoning RHI Jinding Magnesis Co., Ltd. | |
| LiShuang Refractory Industrial Co., Ltd. | |
| Lithomelt Co., Ltd. | |
| Luheng Refractory Co., Ltd. | |
| Luoyang Refractory Group Co., Ltd. | |
| Mayerton Refractories | |
| Minsource International Ltd. | |
| Minteq International Inc. | |
| National Minerals Co., Ltd. | |
| North Refractories Co., Ltd. | |
| Orestar Metals & Minerals Co., Ltd. | |
| Oreworld Trade (Tangshan) Co., Ltd. | |
| Puyang Refractories Co., Ltd. | |
| Qingdao Almatis Co., Ltd. (HQ) | |
| Qingdao Almatis Co., Ltd. (Manufacturing) | |
| Qingdao Almatis Trading Co., Ltd. (Sales Office) | |
| Qingdao Blueshell Import & Emport Corp. | |
| Qingdao Fujing Group Co., Ltd. | |
| Qingdao Huierde International Trade Co., Ltd. | |
| RHI Refractories Asia Pacific Pte. Ltd. | |
| RHI Refractories (Dalian) Co., Ltd. | |
| RHI Refractories Liaoning Co., Ltd. | |
| RHI Trading Shanghai Branch | |
| RHI Trading (Dalian) Co., Ltd. | |
| Rongyuan Magnesite Co., Ltd. of Dashiqiao City | |
| Shandong Cambridge International Trade Inc. | |
| Shandong Lunai Kiln Refractories Co., Ltd. | |
| Shandong Refractories Corp. | |
| Shanxi Dajin International (Group) Co., Ltd. | |
| Shanxi Xinrong International Trade Co. Ltd. | |
| Shenyang Yi Xin Sheng Lai Refractory Materials Co., Ltd. | |
| Shinagawa Rongyuan Refractories Co., Ltd. | |
| Sinosteel Corporation | |
| SMMC Group Co., Ltd. | |
| Tangshan Success Import & Export Trading Co., Ltd. | |
| Tianjin New Century Refractories, Ltd. | |
| Tianjin New World Import & Export Trading Co., Ltd. | |
| Tianjin Weiyuan Refractory Co., Ltd. | |
| Vesuvius Advanced Ceramics (Suzhou) Co. Ltd. | |
| Wonjin Refractories Co., Ltd. | |
| Xiyuan Xingquan Forsterite Co., Ltd. | |
| Yanshi City Guangming High-Tech Refractories Products Co., Ltd. | |
| YHS Minerals Co., Ltd. | |
| Yingkou Bayuquan Refractories Co., Ltd. | |
| Yingkou Dalmond Refractories Co., Ltd. | |
| Yingkou Guangyang Refractories Co., Ltd. | |
| Yingkou Guangyang Refractories Co., Ltd. (YGR) | |
| Yingkou Heping Samwha Minerals Co., Ltd. | |
| Yingkou Jiahe Refractories Co., Ltd. | |
| Yingkou Jinlong Refractories Group | |
| Yingkou Kyushu Refractories Co., Ltd. | |
| Yingkou New Century Refractories Ltd. | |
| Yingkou Qinghua Group Imp. & Emp. Co., Ltd. | |
| Yingkou Qinghua Refractories Co., Ltd. | |
| Yingkou Sanhua Refractory Materials Co., Ltd. | |
| Yingkou Tianrun Refractory Co.,Ltd. | |
| Yingkou Wonjin Refractory Material Co., Ltd. | |
| Yingkou Yongji Mag Refractory, Ltd. | |
| Yixing Runlong Trade Co., Ltd. | |
| Yixing Xinwei Leeshing Refractory Material Co., Ltd. | |
| Yixing Zhenqiu Charging Ltd. | |
| Zhejiang Changxing Guangming Special Refractory Material Foundry, Co., Ltd. | |
| Zhejiang Deqing Jinlei Refractory Co., Ltd. | |
| Zhejiang Huzhou Fuzilin Refractory Metals Group Co., Ltd. | |
| Zhengzhou Annec Industrial Co., Ltd. | |
| Zhengzhou Huachen Refractory Co., Ltd. | |
| Zibo Lianzhu Refractory Materials Co., Ltd. | |
| New Pneumatic Off-the Road Tires C–570–913 | 1/01/10–12/31/10 |
| Aeolus Tyre Co., Ltd. | |
| Beijing Shouchuang Tyre Co. Ltd. | |
| Cheng Shin Rubber (Xiamen) Ind. Ltd. | |
| China Enterprises Ltd. | |
| China National Tyre & Rubber Guilin Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Cooper Chengshan (Shandong) Tire Co. Ltd. | |
| Double Coin Group Rugao Tyre Co., Ltd./Double Coin Holding Ltd. (Huyai Group)/Double Coin Group Shanghai Donghai Tyre Co. Ltd. | |
| Double Happiness Tyre Industries Corp. Ltd. | |
| Eternity International L Freight Forwarder | |
| GITI Tire (China) Investment Co., Ltd. | |
| Guangzhou Pearl River Rubber Tyre Ltd. | |
| Guilun Tire Co. | |
| Guizhou Tyre Co., Ltd./Guizhou Advance Rubber Co., Ltd./Guizhou Tyre Import and Export Corporation | |
| Hangzhou Zhongce Rubber Co., Ltd. | |
| Hebei Starbright Tire Co., Ltd. | |
| Hwa Fong Rubber Ltd (Hong Kong) | |
| Innova Rubber Co., Ltd. | |
| Jiangsu Feichi Co., Ltd. | |
| Kenda Global Holding Co. Ltd./Kenda Rubber (China) Co., Ltd. | |
| KS Holding Limited/KS Resources Limited | |
| Laizhou Xiongying Rubber Industry Co., Ltd. | |
| L–Guard International Enterprise | |
| Longkou Xinglong Tire Co. Ltd. | |
| Mai Shandong Radial Tyre Co., Ltd. | |
| Midland Speciality Tire Co., Ltd. | |
| Oriental Tyre Technology Limited | |
| Qingdao Doublestar Tire Industrial Co., Ltd. | |
| Qingdao Eastern Industrial Group Co. Ltd. | |
| Qingdao Etyre International Trade Co. Ltd. | |
| Qingdao Free Trade Zone Full-World | |
| Qingdao Hengda Tire Co. Ltd. | |
| Qingdao Honour Tyre Co. Ltd./Qingdao Aonuo Tyre Co. Ltd. | |
| Qingdao Milestone Tyre Co., Ltd. | |
| Qingdao Qihang Tyre Co. Ltd. | |
| Qingdao Qizhou Rubber Co., Ltd. | |
| Qingdao Seanoble International Trade | |
| Qingdao Shuanghe Tyre Co. Ltd. | |
| Qingdao Sinorient International Ltd. | |
| Qingdao Tengjiang Tyre Co. Ltd. | |
| Qingdao Taifa Group Co., Ltd. | |
| Qingdao Yellowsea Tyre Factory | |
| Sailun Co., Ltd. | |
| Shandong Goldkylin Rubber Group Co. | |
| Shandong Huatai Rubber Co. Ltd. | |
| Shandong Huitong Tyres Co. Ltd. | |
| Shandong Jinyu Tyre Co., Ltd. | |
| Shandong Linglong Tyre Co. Ltd. | |
| Shandong LuHe Group General Co. | |
| Shandong Sangong Rubber Co. Ltd. | |
| Shandong Taishan Tyre Co., Ltd. | |
| Shandong Wanda Boto Tyre Co., Ltd. | |
| Shandong Xingda Tyre Co., Ltd. | |
| Shandong Xingyuan International Trading Co., Ltd. | |
| Shandong Xingyuan Rubber Co. Ltd. | |
| Shandong Zhentai Tyre Co., Ltd. | |
| Shangong Zhongce Tyre Co. Ltd. | |
| Shifeng Double-Star Tire Co. Ltd. | |
| Sichuan Haida Tyre Group Co. Ltd. | |
| Techking Tires Unlimited | |
| Tengzhou Broncho Tyre Co. Ltd. | |
| Tianjin Wanda Tyre Group | |
| Tianjin United Tire & Rubber International Co., Ltd. | |
| Triangle Tyre Co. Ltd. | |
| Weifang Longtai Tyre Co., Ltd. | |
| Weihai Zhongwei Rubber Co., Ltd. | |
| Wendeng Sanfend Tyre Co. Ltd. | |
| World Tyres Limited | |
| Xiamen Rubber Factory | |
| Xinyuan Tyre Co. Ltd. | |
| Xuzhou Hanbang Tyres Co., Ltd. | |
| Xuzhou Xugong Tyres Co. Ltd. | |
| Zhaoyuan Leo Rubber Co. Ltd. | |
| Kitchen Appliance Shelving and Racks C–570–942 | 1/01/10–12/31/10 |
| Asia Pacific CIS (Wuxi) Co., Ltd. | |
| Guangdong Wireking Co., Ltd. (formerly known as Foshun Shunde Wireking Housewares & Hardware) | |
| Hangzhou Dunli Import & Export Co., Ltd. and Hangzhou Dunli Industry Co., Ltd. | |
| Hengtong Hardware Manufacturing (Huizhou) Co., Ltd. | |

| | Period to be reviewed |
|---|---|
| Jiangsu Weixi Group Co.<br>Leader Metal Industry Co., Ltd. (aka Marmon Retail Services Asis)<br>New King Shan (Zhu Hai) Co., Ltd. and its parent company King Shan Wire<br>Narrow Woven Ribbons with Woven Selvedge C–570–953 .....<br>Weifang Dongfang Ribbon Weaving Co., Ltd. | 9/01/10–12/31/10 |
| **Suspension Agreements** | |
| None. | |

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 25, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28160 Filed 10–28–11; 8:45 am]

BILLING CODE 3510–DS–P

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Lined Paper Products from the People's Republic of China (''PRC'') who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Magnesia Carbon Bricks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are part.

[5] If one of the above named companies does not qualify for a separate rate, all other exporters of Certain New Pneumatic Off-the-Road Tires from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If one of the above named companies does not qualify for a separate rate, all other exporters of Freshwater Crawfish Tail Meat from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If one of the above named companies does not qualify for a separate rate, all other exporters of Kitchen Appliance Shelving and Racks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If one of the above named companies does not qualify for a separate rate, all other exporters of Narrow Woven Ribbons with Woven Selvedge from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] We will review subject merchandise exported by Yama Ribbons and Bows Co, Ltd. not otherwise covered by the exclusion. *See Narrow Woven Ribbons with Woven Selvedge from Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632 (September 1, 2010).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–904]**

### Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Third Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 29, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the third administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC'').[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We find that the mandatory respondents have not sold subject merchandise at less than normal value during the period of review (''POR''), April 1, 2009, through March 31, 2010.

**DATES:** Effective Date: October 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert Palmer, AD/CVD Operations,

[1] *See Certain Activated Carbon From the People's Republic of China: Preliminary Results of the Third Antidumping Duty Administrative Review, and Preliminary Rescission in Part,* 76 FR 23978 (April 29, 2011) (''*Preliminary Results*'').

Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–9068.

**SUPPLEMENTARY INFORMATION:**

## Background

On May 28, 2010, and June 30, 2010, the Department initiated this review with respect to 192 companies upon which an administrative review was requested.[2] On August 11, 2010, pursuant to 19 CFR 351.213(d)(1), the Department rescinded the administrative review with respect to 128 companies, based upon Petitioners'[3] timely withdrawal of review requests.[4] On August 23, 2010, the Department rescinded the administrative review with respect to an additional 45 companies, based on Petitioners' timely withdrawal of review requests.[5] Thus, 19 companies remained subject to this review.[6]

On May 19, 2010, Jacobi Carbons AB (''Jacobi'') and Calgon Carbon (Tianjin) Co., Ltd. (''CCT'') and its parent company Calgon Carbon Corporation (''CCC''), the mandatory respondents in this review, submitted additional surrogate value (''SV'') information.

In the *Preliminary Results,* we set the deadline for interested parties to submit case briefs and rebuttal briefs to May 30, 2011, and June 7, 2011, respectively. On May 11, 2011, we extended the deadlines for case and rebuttal briefs to June 13, 2011, and June 20, 2011, respectively.[7] On June 13, 2011, Petitioners, CCT, and the separate rate respondents, Ningxia Huahui Activated Carbon Co., Ltd. (''Huahui''), Shanxi Industry Technology Trading Co., Ltd. (''Shanxi ITT'') and Shanxi DMD Corporation (''Shanxi DMD'') filed case briefs. On June 14, 2011, Jacobi filed its case brief.[8] On June 16, 2011, the Department rejected Huahui's case brief because it contained new information and provided Huahui until June 20, 2011, to re-file its case brief.[9] On June 20, 2011, Huahui re-filed its case brief. Also on June 20, 2011, Petitioners, CCT, Shanxi ITT, Shanxi DMD, and Albemarle filed rebuttal briefs.

On June 21, 2011, the Department placed data to value the input of labor on the record for comment by interested parties.[10] On July 5, 2011, Albemarle provided comments on the June 21, 2011, data. On July 7, 2011, the Department placed additional information regarding the labor rate calculation on the record for comment by interested parties.[11] On July 12, 2011, CCT filed rebuttal comments to Albemarle's July 5, 2011, labor data comments. On July 21, 2011, the Department extended the final results until October 26, 2011.[12] The Department did not hold a public hearing, pursuant to 19 CFR 351.310(d), as the hearing requests made by interested parties were withdrawn.

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the ''Certain Activated Carbon from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Third Antidumping Duty Administrative Review,'' which is dated concurrently with this notice (''Decision Memo''). A list of the issues which parties raised and to which we respond in the Decision Memo is attached to this notice as an Appendix. The Decision Memo is a public document and is on file in the Central Records Unit, main Commerce building, Room 7046, and is accessible on the Department's Web site at *http://www.trade.gov/ia.* The paper copy and electronic version of the memorandum are identical in content.

## Scope of the Order

The merchandise subject to the order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas ($CO_2$) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or $CO_2$ gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of the order covers all forms of activated carbon that are activated by steam or $CO_2$, regardless of the raw material, grade, mixture, additives, further washing or post-activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of the order covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon-based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 75 FR 29976 (May 28, 2010); *see also, Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 37759 (June 30, 2010) (collectively, ''*Initiation Notices*'').

[3] Norit Americas Inc. and Calgon Carbon Corporation.

[4] *See Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 48644 (August 11, 2010) (''*First Rescission*'').

[5] *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 51754 (August 23, 2010) (''*Second Rescission*'').

[6] In the *Preliminary Results,* the Department inadvertently misstated the number of companies rescinded and the number of companies remaining under review. The remaining companies which were listed in *Initiation Notices* are: AmeriAsia Advanced Activated Carbon Products Co., Ltd.; Beijing Pacific Activated Carbon Products Co., Ltd.; Calgon Carbon (Tianjin) Co., Ltd.; Cherishmet Inc.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; Jacobi Carbons AB; Jiangxi Hansom Import Export Co.; Langfang Winfield Filtration Co.; Mindong Lianyi Group; Ningxia Guanghua A/C Co., Ltd.; Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.; Ningxia Huahui Activated Carbon Co., Ltd.; Ningxia Lingzhou Foreign Trade Co, Ltd.; Shanxi DMD Corporation; Shanxi Industry Technology Trading Co., Ltd.; Shanxi Sincere Industrial Co., Ltd.; Tangshan Solid Carbon Co., Ltd.; Tianjin Jacobi International Trading Co., Ltd.; and Tianjin Maijin Industries Co., Ltd.

[7] *See* Letter to Interested Parties, dated May 11, 2011.

[8] Jacobi filed its case brief under one-day lag rule. *See* 19 CFR 351.303(c).

[9] *See* Letter to Huahui and Albemarle, dated June 16, 2011.

[10] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: Third Administrative Review of the Antidumping Duty on Certain Activated Carbon From the People's Republic of China: Industry Specific Surrogate Labor Rate and Surrogate Financial Ratio Adjustments, dated June 21, 2011 (''Labor Memo'').

[11] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: Third Administrative Review of the Antidumping Duty on Certain Activated Carbon From the People's Republic of China: Revision to Surrogate Financial Ratio Adjustments, dated July 7, 2011 (''Revised Labor Memo'').

[12] *See Certain Activated Carbon From the People's Republic of China: Extension of Time Limit for Final Results of the Third Antidumping Duty Administrative Review,* 76 FR 43654 (July 21, 2011).

agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or $CO_2$ gas) activated carbons are within the scope, and those containing more than 50 percent chemically activated carbons are outside the scope. This exclusion language regarding blended material applies *only* to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within the scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

**Changes Since the Preliminary Results**

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to certain SVs and the margin calculations for CCT and Jacobi in the final results. Specifically, we have updated the SV for labor, coconut shell charcoal and the calculation of the surrogate financial ratios.[13] *See* Decision Memo at Comments 4b, 4c, and 4d and Final SV Memo [14]; *see also,* Labor Cost Methodology below. We have also corrected various errors in the *Preliminary Results* alleged by respondents. *See* Decision Memo at Comments 5a, 5b, 5c, 5d, 6a and 6b. For all changes to the margin calculations, *see* Decision Memo and the company specific analysis memoranda.

**Labor Cost Methodology**

Pursuant to the Department's recent decision regarding it final labor methodology,[15] we have calculated a revised hourly labor rate to use in valuing CCT and Jacobi's reported labor. The revised surrogate value for labor is calculated by using labor cost data from India, the primary surrogate country, as published in ''Chapter 6A: Labor Cost in Manufacturing'' from the International Labor Organization (''ILO'') Yearbook of Labor Statistics. Additionally, because the Department is now using Chapter 6A to calculate labor costs, the Department made certain adjustments in the surrogate financial ratio calculations regarding labor. *See* Labor Memo and Revised Labor Memo, for the details of the calculation and supporting data; *see also* Final SV Memo.

**Final Partial Rescission**

In the *Preliminary Results,* the Department preliminarily rescinded this review with respect to Ningxia Lingzhou Foreign Trade Co., Ltd. (''Lingzhou'') because the Department determined that it had no shipments of subject merchandise to the United States during the POR.

Subsequent to the *Preliminary Results,* no information was submitted on the record indicating that Lingzhou made sales to the United States of subject merchandise during the POR and no party provided written arguments regarding this issue. Thus, in accordance with 19 CFR 351.213(d)(3), and consistent with our practice, we are rescinding this review with respect to Lingzhou.

**Special Rule for Further Manufactured Products**

In the *Preliminary Results,* we applied the ''special rule'' for merchandise with value-added after importation and excused CCT from reporting U.S. sales of subject merchandise further processed by CCC, CCT's U.S. parent company, and the U.S. further-processing cost information associated with those sales.[16] Further, we stated that we would apply the weight-averaged margin calculated based upon CCT's U.S. sales to the first unaffiliated customer as the surrogate margin to the transactions to which the ''special rule'' applied.[17] Because we have not received any information on the record that contradicts our preliminary finding, we shall continue to apply the weight-averaged margin as stated.

**Separate Rates**

In our *Preliminary Results,* we determined that the following companies met the criteria for separate rate status: CCT; Jacobi; Beijing Pacific Activated Carbon Products Co., Ltd. (''Beijing Pacific''); Datong Municipal Yunguang Activated Carbon Co., Ltd.; Ningxia Guanghua Cherishment Activated Carbon Co., Ltd. (''GHC''); Huahui; Shanxi DMD Corporation; Shanxi Sincere Industrial Co., Ltd.; Shanxi Industry Technology Trading Co., Ltd.; Tangshan Solid Carbon Co., Ltd.; and Tianjin Maijin Industries Co., Ltd.[18] We have not received any information since the issuance of the *Preliminary Results* that provides a basis for reconsideration of these determinations. Therefore, the Department continues to find that the companies listed above meet the criteria for a separate rate.

Additionally, in the *Preliminary Results,* the Department inadvertently stated that Datong Juqiang Activated Carbon Co., Ltd.; Datong Yunguang Chemicals Plant; Hebei Foreign Trade and Advertising Corporation; Shanxi Newtime Co., Ltd.; and United Manufacturing International (Beijing) Ltd. were not rescinded from the administrative review and are considered as part of the PRC-Wide entity.[19] However, on August 11, 2010, and August 23, 2010, these companies were rescinded from this administrative review and, therefore, are no longer subject to this proceeding.[20]

These five companies, AmeriAsia Advanced Activated Carbon Products Co., Ltd.; Jiangxi Hansom Import Export co.; Langfang Winfield Filtration Co.; Mindong Lianyi Group; and Ningxia Guanghua A/C., Ltd.; companies upon which the Department initiated administrative reviews that have not been rescinded, did not submit either a separate rate application or certification. Therefore, because AmeriAsia

[13] CCT submitted Active Carbon India Private Limited's (''Active Carbon'') 2009–2010 financial statements in its post-preliminary SV submissions, which we will rely upon for the final results. *See* CCT's Post-Prelim SV Submission, dated May 19, 2011.

[14] *See* Memorandum to the File, through Catherine Bertrand, Program Manager, Office 9, from Bob Palmer, Case Analyst, Office 9 re: Third Administrative Review of Certain Activated Carbon from the People's Republic of China: Surrogate Values for the Final Results, dated concurrently with this notice (''Final SV Memo'') at 2–3.

[15] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

[16] *See Preliminary Results,* 76 FR at 23985–23986.

[17] *Id.*

[18] *See id.* at 23982–23984.

[19] *See id.* at 23983.

[20] *See First Rescission; see also, Second Rescission.*

Advanced Activated Carbon Products Co., Ltd.; Jiangxi Hansom Import Export co.; Langfang Winfield Filtration Co.; Mindong Lianyi Group; and Ningxia Guanghua A/C., Ltd. did not demonstrate their eligibility for separate rate status in a timely manner, we have determined it is appropriate to consider these companies as part of the PRC-wide entity.

**Rate For Non-Selected Companies**

In the *Preliminary Results,* the Department assigned the separate rate companies the rate calculated for CCT. However, for the final results, the rate for both the individually examined respondents, CCT and Jacobi, are *de minimis* and accordingly, the Department has determined a reasonable method for assigning a rate to the companies eligible for a separate rate. *See* Decision Memo at Comment 1. Pursuant to this method, we are assigning a rate of 0.44 U.S. Dollars per kilogram (''USD/kg'') to Huahui, its assigned rate in *Carbon AR 2.*[21] Additionally, we are assigning a rate of 0.28 USD/kg to the other companies eligible for a separate rate in this review, the separate rate calculated in *Carbon AR 2. See* Decision Memo at Comment 1.

**PRC-Wide Rate and PRC-Wide Entity**

The Department used the PRC-Wide rate of 2.42 USD/kg in the most recently completed administrative review of this antidumping order.[22] Because we have not calculated a PRC-Wide rate greater than the PRC-Wide rate from previous reviews in this proceeding and nothing on the record of the instant review calls into question the reliability of the PRC-Wide Rate, we find it appropriate to continue to apply the PRC-Wide rate of 2.42 USD/kg for the final results.[23]

In the *Preliminary Results,* the Department determined that those companies which did not demonstrate eligibility for a separate rate are properly considered part of the PRC-wide entity.[24] Since the *Preliminary Results,* none of the companies which did not file separate rate applications or certifications submitted comments regarding these findings. Therefore, we continue to treat these entities as part of the PRC-wide entity.

**Final Results of Review**

The dumping margins for the POR are as follows:

CERTAIN ACTIVATED CARBON FROM THE PEOPLE'S REPUBLIC OF CHINA

| Exporter | Margin |
|---|---|
| Jacobi Carbons AB[25] | $0.00/kg |
| Calgon Carbon (Tianjin) Co. Ltd. | 0.00/kg |
| Ningxia Huahui Activated Carbon Co., Ltd. | 0.44/kg |
| Datong Municipal Yunguang Activated Carbon Co., Ltd. | 0.28/kg |
| Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.[26] | 0.28/kg |
| Shanxi DMD Corporation | 0.28/kg |
| Shanxi Industry Technology Trading Co., Ltd. | 0.28/kg |
| Shanxi Sincere Industrial Co., Ltd. | 0.28/kg |
| Tangshan Solid Carbon Co., Ltd. | 0.28/kg |
| Tianjin Maijin Industries Co., Ltd. | 0.28/kg |
| PRC-Wide rate[27] | 2.42/kg |

**Assessment**

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b). We have calculated importer-specific duty assessment rates on a per-unit basis.[28] As the Department stated in the most recent administrative review,[29] we will continue to direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per-kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

**Disclosure**

We will 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).

**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 for by section 751(a)(2)(C) of the Act: (1) 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; (2) 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 established in the final results of this review (i.e., $2.42 per kilogram); and (3) 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) to file a certificate regarding the

[21] *See Certain Activated Carbon From the People's Republic of China: Final Results and Partial Rescission of Second Antidumping Duty Administrative Review,* 75 FR 70208, 70209 (November 17, 2010) (''*Carbon AR2''*) and accompanying IDM at Comment 3.

[22] *See Carbon AR2, 75 FR* at 70209 and 70211.

[23] *See Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 51940 and 51942 (Dep't of Commerce August 19, 2011) where the Department used the PRC-Wide Rate from the previous review.

[24] The companies considered part of the PRC-Wide entity are: AmeriAsia Advanced Activated Carbon Products Co., Ltd.; Jiangxi Hansom Import Export Co.; Langfang Winfield Filtration Co.; Mindong Lianyi Group; and Ningxia Guanghua A/C Co., Ltd.

[25] In the *Preliminary Results,* we found that Jacobi Carbons Industry (Tianjin) (''JCC'') and Tianjin Jacobi International Trading Co. Ltd. (''Tianjin Jacobi'') both act as export facilitators for Jacobi Carbons AB. *See Preliminary Results,* 76 FR at 23990. Therefore, as we have done in earlier segments of this antidumping duty order, we are continuing to find it appropriate that Jacobi Carbons AB, Tianjin Jacobi and JCC to receive the antidumping duty rate assigned to Jacobi Carbons AB.

[26] As stated above, GHC is a single entity with Beijing Pacific and Ningxia Guanghua Activated Carbon Co., Ltd. Additionally, in a previous review, the Department found that Cherishmet Inc. is affiliated with GHC. See Carbon AR1, 74 FR at 57996 n.2. However, Cherishment Inc. has not been found to be part of the single entity involving Beijing Pacific, GHC, and Ningxia Guanghua Activated Carbon Co., Ltd. *See* Memorandum to The File, from Robert Palmer, Case Analyst, through Catherine Bertrand, Program Manager; regarding First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China: Affiliation Memorandum of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd., dated April 30, 2009.

[27] As discussed in the Separate Rates and PRC-Wide Entity sections of this notice, the PRC-Wide entity includes AmeriAsia Advanced Activated Carbon Products Co., Ltd.; Jiangxi Hansom Import Export Co.; Langfang Winfield Filtration Co.; Mindong Lianyi Group; and Ningxia Guanghua A/C Co., Ltd.

[28] We divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount.

[29] *See Carbon AR2,* 75 FR at 70211.

reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

### Administrative Protective Orders

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 APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: October 24, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

### Appendix I—Decision Memorandum

**General Issues**

*Comment 1:* Assignment of the Separate Rate.

*Comment 2:* Ad Valorem Deposit Rates.

*Comment 3:* Zeroing.

*Comment 4: Surrogate Values:*

a. Energy Coal.

b. Carbonized Material.

c. Surrogate Financial Ratios.

d. Labor Rate

*Comment 5: Issues Regarding CCT:*

a. Hydrochloric Acid Purity Level Adjustment.

b. Freight Cost Calculation.

c. Plastic Wrapping Weight Conversions.

d. Raw Material Reporting by CCT and JB.

*Comment 6: Issues Regarding Jacobi*

a. Brokerage and Handling.

b. Adverse Facts Available for NXGH's Water Usage.

[FR Doc. 2011–28158 Filed 10–28–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–828]**

### Stainless Steel Butt-Weld Pipe Fittings From Italy; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* October 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Edythe Artman or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–3931 or (202) 482–3019, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 31, 2011, the Department of Commerce (the Department) published the initiation of the administrative review of the antidumping duty order on stainless steel butt-weld pipe fittings from Italy in the **Federal Register**. *See Initiation of Antidumping Duty Administrative Reviews, Requests for Revocation in Part, and Deferral of Administrative Review*, 76 FR 17825 (March 31, 2011). This review covers the period of February 1, 2010, to January 31, 2011. The current deadline for the preliminary results of the review is October 31, 2011.

### Extension of Time Limits for Preliminary Results of Review

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. 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 245-day time period for the preliminary results up to 365 days.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because it needs to obtain additional information from the respondent company, Tectubi Raccordi S.p.A., in order to complete its analysis. Because the Department requires additional time to obtain and analyze this information, it is not practicable to complete this review within the original time limit (*i.e.*, October 31, 2011) and, accordingly, the Department is extending the time limit for completion of the preliminary results of this administrative review until no later than December 15, 2011, which is 290 days from the last day of the anniversary month of this order. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: October 24, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28185 Filed 10–28–11; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–851]**

### Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty New Shipper Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On August 2, 2011, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the new shipper reviews (NSRs) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC) for Guangxi Hengyong Industrial & Commercial Dev., Ltd. (Hengyong) and Zhangzhou Hongda Import & Export Trading Co., Ltd. (Co.) (Hongda).[1] *See Certain Preserved Mushrooms From the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Reviews,* 76 FR 46270 (August 2, 2011) (*Preliminary Results*). We gave interested parties an opportunity to comment on the preliminary results. We received a case brief from Hongda on August 31, 2011. We received no rebuttal briefs from any parties. Furthermore, as described further below, we also received various comments/responses from the parties on

[1] In its request for review, Hengyong certified that it was the exporter and Hengyong Industrial & Commercial Dev. Ltd. Hengxian Food Division (Hengxian) was the manufacturer. *See* September 24, 2010, submission from Hengyong. In its request for NSR, Hongda certified it was the exporter and Fujian Haishan Foods Co., Ltd. (Haishan) was the manufacturer. *See* September 24, 2010, submission from Hongda.

the Department's preliminary results, supplemental questionnaire, and letter on August 4, 2011, August 10, 2011, and September 19, 2011, respectively.

Based on the comments received, we have made changes to the preliminary results for these final results.

**DATES:** *Effective Date:* October 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Scott Hoefke, Fred Baker or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–4947, (202) 482–2924, or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:** We published the preliminary results for these NSRs on August 2, 2011. In the preliminary results, the Department stated that interested parties were to submit case briefs within 30 days of publication of the preliminary results and rebuttal briefs within five days after the due date for filing case briefs. *See Preliminary Results,* 76 FR at 46276. We received two submissions from Hongda—comments on the preliminary results, filed on August 4, 2011, and a formal case brief, submitted on August 31, 2011.

On August 2, 2011, we also issued a supplemental questionnaire to Hengyong and Hongda, and received the responses on August 10, 2011.

On September 8, 2011, we issued a letter to interested parties soliciting comments on the correct surrogate value to use for the input cow manure. We received comments from Hengyong, Hongda, and Monterey Mushrooms, Inc. (petitioners) on September 19, 2011.

## Analysis of Comments Received

As indicated above, we received a case brief from Hongda on August 31, 2011. Hongda alleged that there were two computational errors in the final results calculations. One was an error caused by Hongda having reported some factor values in its factors of production database on a basis different from that reported for other factors. Hongda argued this error can be easily corrected with information already on the record. No other party submitted rebuttal comments on Hongda's argument. Upon review of the record and our calculations, we have determined that worksheets already on the record substantiate that Hongda made an error in how it reported some of the factor values, and that this error can indeed be easily corrected. We have corrected it for these final results of review. The second error was one in which the Department used an incorrect variable name in one line of the SAS calculations. Again, no party submitted rebuttal comments on Hongda's argument. A review of the record confirms that the Department used an incorrect variable name in the SAS calculations. We have corrected this error in the final results. For details, *see* Memorandum from Fred Baker to the File, Subject: ''Analysis of Data Submitted by Zhangzhou Hongda Import & Export Trading Co., Ltd. (Hongda) in the Final Results of New Shipper Review of the Antidumping Duty Order on Preserved Mushrooms from the People's Republic of China (PRC),'' dated October 24, 2011 (Hongda Final Results Analysis Memorandum).

In addition to the case brief, Hengyong, Hongda, and petitioners submitted comments on September 19, 2011, in response to the Department's September 8, 2011, letter to parties soliciting comments on the correct valuation of the input cow manure. Our September 8, 2011, letter included eight exhibits each consisting of a valuation source for cow manure different from the source we used in the preliminary results. In their September 19, 2011, comments, no party recommended our using any of the eight alternative possible sources in the final results. Furthermore, no party has suggested that we deviate from the source used in the preliminary results. Therefore, in these final results we have used the same source to value cow manure as we used in the preliminary results because we continue to find the source the most reliable on the record for valuation of the input.

## Period of Review

The period of review (POR) is February 1, 2010, through July 31, 2010.

## Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species Agaricus bisporus and Agaricus bitorquis. ''Certain Preserved Mushrooms'' refers to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Certain preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.[2]

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms'' (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

## Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products From the People's Republic of China,* 71 FR 53079 (September 8, 2006), and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006). It is the Department's policy to assign all exporters of merchandise subject to review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See, e.g., Certain Coated Paper Suitable for High-Quality Print*

[2] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000. On February 9, 2005, this decision was upheld by the United States Court of Appeals for the Federal Circuit. *See Tak Fat Trading Co.* v. *United States,* 396 F.3d 1378 (Fed. Cir. 2005).

*Graphics Using Sheet-Fed Presses From the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 75 FR 24892, 24899 (May 6, 2010) (unchanged in *Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 75 FR 59217 (September 27, 2010)).

In the preliminary results, we found that Hengyong and Hongda demonstrated their eligibility for separate rate status. We received no comments from interested parties regarding this determination. In these final results of review, we continue to find the evidence Hengyong and Hongda placed on the record demonstrates an absence of government control, both in law and in fact, with respect to Hengyong and Hongda's exports of the merchandise under review. Thus, we have determined that Hengyong and Hongda are eligible to receive a separate rate.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our preliminary results, we have made revisions to the margin calculation for Hongda. These changes are discussed in the Hongda Final Results Analysis Memorandum. We made no changes to the calculations for Hengyong.

**Final Results of Review**

The Department has determined that the following margins exist for the period February 1, 2010, through July 31, 2010:

| Exporter/Manufacturer | Weighted-average margin (percent) |
|---|---|
| Hengyong (exporter)/Hengxian (manufacturer) | 0.00 |
| Hongda (exporter)/Haishan (manufacturer) | 0.00 |

**Assessment Rates**

Pursuant to these final results, the Department determined, and CBP shall assess, antidumping duties on all appropriate entries. The Department intends to issue assessment instructions for Hengyong and Hongda to CBP 15 days after the date of publication of these final results of NSRs. Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific (or customer-specific) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by these reviews if any importer-specific (or customer-specific) assessment rate calculated in the final results of these reviews is above *de minimis.*

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of these final results of NSRs for all shipments of subject merchandise by Hengyong and Hongda entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) For subject merchandise produced by Hengxian and exported by Hengyong, or produced by Haishan and exported by Hongda, the cash deposit rate will be zero; (2) for subject merchandise exported by Hengyong, but not manufactured by Hengxian, or exported by Hongda, but not manufactured by Haishan, the cash deposit rate will continue to be the PRC-wide rate (*i.e.,* 198.63 percent); and; (3) for subject merchandise manufactured by Hengxian or Haishan, but exported by any party other than Hengyong or Hongda, respectively, the cash deposit rate will be the rate applicable to the exporter. These cash deposit requirements will remain in effect until further notice.

**Reimbursement of Duties**

This notice also 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 POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

**Administrative Protective Orders**

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These NSRs and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: October 24, 2011.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2011–28184 Filed 10–28–11; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1 through June 30, 2011.

**DATES:** Comments must be submitted within thirty days after publication of this notice.

**ADDRESSES:** Written comments (original and six copies) should be sent to the Secretary of Commerce, *Attn:* James Terpstra, Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave. NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–3965.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on June 15, 2011. As part of its newest report, the Department intends to include a list of subsidy

programs identified with sufficient clarity by the public in response to this notice.

**Request for Comments**

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1 through June 30, 2011. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Canada and Chile each account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December 31, 2011, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the government body or authority that provided the subsidy.

**Submission of Comment**

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD–ROM with the paper copies or by e-mail to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: *http://ia.ita.doc.gov.* Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, *e-mail address: webmaster-support@ita.doc.gov.*

For documents filed in the antidumping and countervailing duty proceedings, the Department only accepts electronic filings through the new IA ACCESS system. However, all comments and submissions in response to this Request for Comment should be mailed to James Terpstra, Import Administration; Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230, by no later than 5 p.m., on the above-referenced deadline date.

Dated: October 24, 2011.

**Christian Marsh,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2011–28142 Filed 10–28–11; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA775**

### Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2012 Research Fishery

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

**ACTION:** Notice of intent; request for applications.

**SUMMARY:** NMFS announces its request for applications for the 2012 shark research fishery from commercial shark fishermen with a directed or incidental limited access permit. The shark research fishery allows for the collection of fishery-dependent data for future stock assessments while also allowing NMFS and commercial fishermen to conduct cooperative research to meet the shark research objectives of the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Commercial vessels not participating in the shark research fishery may only land non-sandbar LCS, SCS, and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered.

**DATES:** Shark Research Fishery Applications must be received no later than 5 p.m., local time, on November 30, 2011.

**ADDRESSES:** Please submit completed applications to the HMS Management Division at:

- *Mail:* Attn: Delisse Ortiz, HMS Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* (301) 427–8503

For copies of the Shark Research Fishery Permit Application, please write to the HMS Management Division at the address listed above, call (301) 427–8503 (phone), or fax a request to (301) 713–1917. Copies of the Shark Research Fishery Application are also available at the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm.* Additionally, please be advised your application may be released under the Freedom of Information Act.

**FOR FURTHER INFORMATION CONTACT:** Karyl Brewster-Geisz or Delisse Ortiz, at (301) 427–8503 (phone) or (301) 713–1917 (fax).

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Consolidated HMS Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the Consolidated HMS FMP (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008) established, among other things, a shark research fishery to maintain time series data for stock assessments and to meet NMFS'

research objectives. The shark research fishery also allows selected commercial fishermen the opportunity to earn more revenue from selling additional sharks, including sandbar sharks, than allowed outside of the commercial shark fishery. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land/harvest sandbar sharks subject to the sandbar quota available each year. The base quota is 87.9 mt dw per year through December 31, 2012, although this number may be reduced in the event of overharvests, if any. The selected shark research fishery permittees will also have access to the non-sandbar LCS, SCS, and pelagic shark quotas. Commercial fishermen not participating in the shark research fishery may land non-sandbar LCS, SCS, and pelagic sharks subject to retention limits and quotas per §§ 635.24 and 635.27, respectively.

The 2012 trip limits and number of trips per month will depend on the number of selected vessels, available quota, and objectives of the research fishery. The trip limits and the number of trips taken have changed each year the research fishery has been active. Participants may also be limited on the amount of gear they can deploy on a given set (*e.g.,* number of hooks, length of longline). In 2011, vessels selected to participate in the shark research fishery were allowed a trip limit of 33 sandbar sharks and 33 non-sandbar large coastal sharks. The vessels participating in the shark research fishery fished an average of 2.6 trips per month.

In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application showing the vessel and owner(s) meet the specific criteria outlined below.

**Research Objectives**

Each year, NMFS determines the research objectives for the upcoming shark research fishery. The research objectives are developed by a shark board, which is comprised of representatives within NMFS, including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, Northeast Fisheries Science Center (NEFSC) Narragansett Laboratory, the Southeast Regional Office, Protected Species Division (SERO\PSD), and the HMS Management Division. The research objectives for 2012 are based on the Southeast Data, Assessment and Review (SEDAR) 11, 2005/2006 LCS stock assessment and SEDAR 21, 2010/2011 U.S. South Atlantic blacknose, U.S. Gulf of Mexico blacknose, sandbar, and dusky sharks stock assessment. The 2012 research objectives are:

- Collect reproductive, length, sex, and age data from sandbar sharks throughout the calendar year;
- Collect reproductive, length, sex, and age data from all species of sharks for additional species-specific assessments;
- Monitor the size distribution of sandbar sharks and other species captured in the fishery;
- Continue on-going tagging programs for identification of migration corridors and stock structure;
- Maintain time-series of abundance from previously derived indices for the shark BLL observer program;
- Acquire fin-clip samples of all species for genetic analysis;
- Attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat and preferred depth, consistent with ESA requirements for such tagging under the SEFSC observer program take permit obtained through the 2008 Section 7 Consultation and Biological Opinion (BiOp) for the Continued Authorization of Shark Fisheries (Commercial Shark Bottom Longline, Commercial Shark Gillnet and Recreational Shark Handgear Fisheries) as Managed under the Consolidated Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Consolidated HMS FMP), including Amendment 2 to the Consolidated HMS FMP (F/SER/2007/05044);
- Attach satellite archival tags to prohibited dusky sharks and other sharks, as needed, to provide information on daily and seasonal movement patterns, and preferred depth;
- Evaluate hooking mortality and post-release survivorship of dusky, hammerhead, and other sharks using hook timers and temperature-depth recorders;
- Evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields; and
- Examine the size distribution of sandbar sharks and other species captured in the Mid-Atlantic shark time/area closure off the coast of North Carolina from January 1 through July 31.

**Selection Criteria**

Shark Research Fishery Permit Applications will only be accepted from commercial shark fishermen who hold a current directed or incidental limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are landed/harvested to meet the research objectives for this year, NMFS will be giving priority to directed permit holders. As such, qualified incidental permit holders will only be selected if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: Type of commercial shark permit possessed; past participation in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per § 635.7; past compliance with HMS regulations at 50 CFR part 635; availability to participate in the shark research fishery; ability to fish in the regions and season requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. An applicant who has been charged criminally or civilly (*e.g.,* issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS-related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous 2 years for any HMS fishery, but failed to communicate with NMFS observer programs in order to arrange the placement of an observer before commencing any fishing trip that would have resulted in the incidental catch or harvest of any Atlantic HMS, per § 635.7, will not be considered for participation in the 2012 shark research fishery. Applicants who were selected to carry an observer in the previous 2 years for any HMS fishery and failed to comply with all the observer regulations per § 635.7, including failure to provide adequate sleeping accommodations per § 635.7(e)(1), a sufficiently sized survival craft per § 600.746(f)(6), or failure to pass a USCG safety examination per § 600.746(c)(2) will also not be considered. Exceptions will be made for vessels that were selected for HMS observer coverage but did not fish in the quarter when selected. Applicants who do not possess a valid Unites States Coast Guard (USCG) safety inspection decal when the application is submitted will not be considered. Applicants who have been non-compliant with any of the HMS observer program regulations in the previous 2 years, as described above, may be eligible for future participation in shark

research fishery activities by demonstrating 2 subsequent years of compliance with observer regulations at § 635.7.

**Selection Process**

The HMS Management Division will review all submitted applications that are deemed complete and develop a list of qualified applicants. A qualified applicant is an applicant that has submitted a complete application and has met the selection criteria. Qualified applicants are eligible to be selected to participate in the shark research fishery for 2012. The HMS Management Division will provide the list of qualified applicants without identification information to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of qualified applicants, and the available quota for a given year, will randomly select approximately 10 qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected through a lottery system. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, NMFS will notify the selected applicants and issue the shark research fishery permits. If needed, NMFS will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. The shark research fishery permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS-approved observer for each shark research trip.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and, thus, cannot be transferred to another vessel or owner(s). Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). These retention limits will be based on available quota, number of vessels participating in the 2012 shark research fishery, the research objectives set forth by the shark board, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land non-sandbar, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer. The shark research permit may be revoked or modified at any time and does not confer the right to engage in activities beyond those listed on the shark research fishery permit.

Commercial shark permit holders (directed and incidental) are invited to submit an application to participate in the shark research fishery on an annual basis. Permit applications can be found on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm* or by calling (301) 427–8503. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information, and NMFS' review of applicant information as outlined above. The 2012 shark research fishery will start after the opening of the shark fishery and under available quotas as published in a separate **Federal Register** final rule.

Dated: October 25, 2011.

**Galen Tromble,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2011–28042 Filed 10–28–11; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XA774**

### Marine Mammals; File No. 13927

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

**ACTION:** Notice; issuance of permit.

**SUMMARY:** Notice is hereby given that a permit has been issued to Dr. James H.W. Hain, Associated Scientists at Woods Hole, Box 721, Woods Hole, MA 02543 to conduct research on North Atlantic right whales (*Eubalaena glacialis*) and humpback whales (*Megaptera novaeangliae*).

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

**FOR FURTHER INFORMATION CONTACT:** Carrie Hubard or Amy Hapeman, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:** On December 10, 2008, notice was published in the **Federal Register** (73 FR 75084) that a request for a permit to conduct research on 23 cetacean species had been submitted by the above-named applicant. An additional two species of pinnipeds and four species of sea turtles were listed as animals that could be incidentally harassed as a result of the research. A permit that authorizes some of the activities requested by the applicant has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 13927 authorizes aerial and vessel surveys to study North Atlantic right and humpback whales. Bottlenose (*Tursiops truncatus*) and Atlantic spotted dolphins (*Stenella frontalis*) may be incidentally harassed during research activities. Research may occur annually, December through April off the U.S. southeast coast. The permit is valid through October 31, 2016. Several aspects of the application request have been denied, including: (1) Research off the coast of the northeast United States; (2) takes of pinnipeds, sea turtles, and cetacean species other than those listed above; (3) the use of non-motorized vessels, such as kayaks; (4) research associated with Project II (studies of sightability and survey methodology as relates to Early Warning Systems and mitigation of human impacts, including development and evaluation of new and/or improved research methods); and (5) research associated with Project III.b (feeding behavior of baleen whales).

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental

impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on October 17, 2011.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: October 25, 2011.

**Tammy C. Adams,**

*Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2011–28082 Filed 10–28–11; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**DATES:** *Time and Date:* 10 a.m., Friday, November 25, 2011.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

**STATUS:** Closed.

**Matters To Be Considered**

Surveillance and Enforcement Matters.

In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

**CONTACT PERSON FOR MORE INFORMATION:** Sauntia S. Warfield, (202) 418–5084.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2011–28081 Filed 10–27–11; 11:15 am]

**BILLING CODE 6351–01–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0013; Docket 2011–0079; Sequence 16]**

### Federal Acquisition Regulation; Submission for OMB Review; Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning cost or pricing data requirements and information other than cost or pricing data. A noticed was published in the **Federal Register** at 76 FR 35218, on June 16, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data'', on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data.

*Instructions:* Please submit comments only and cite Information Collection 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Chambers, Procurement Analyst, Federal Acquisition Policy Division, GSA (202) 501–3221 or *Edward.chambers@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

The Truth in Negotiations Act requires the Government to obtain certified cost or pricing data under certain circumstances. Contractors may request an exemption from this requirement under certain conditions and provide other information instead.

**B. Annual Reporting Burden**

*Respondents:* 33,332.

*Responses per Respondent:* 6.

*Total Responses:* 199,992.

*Hours Per Response:* 50.51.

*Total Burden Hours:* 10,101,684.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0013, Cost or Pricing Data Requirements and Information Other Than Cost or Pricing Data, in all correspondence.

Dated: October 21, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

[FR Doc. 2011–28115 Filed 10–28–11; 8:45 am]

**BILLING CODE 6820–EP–P**

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0144; Docket 2011–0079; Sequence 17]**

### Federal Acquisition Regulation; Submission for OMB Review; Payment by Electronic Fund Transfer

**AGENCY:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning payment by electronic fund transfer. A notice was published in the **Federal Register** at 76 FR 35219, on June 16, 2011. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0144, Payment by Funds Transfer, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0144, Payment by Funds Transfer'', under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0144, Payment by Funds Transfer''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0144, Payment by Funds Transfer'', on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417. *Attn:* Hada Flowers/IC 9000–0144, Payment by Funds Transfer.

*Instructions:* Please submit comments only and cite Information Collection 9000–0144, Payment by Funds Transfer, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Chambers, Procurement Analyst, Acquisition Policy Division, GSA (202) 501–3221, or *Edward.chambers@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

The FAR requires certain information to be provided by contractors which would enable the Government to make payments under the contract by electronic fund transfer (EFT). The information necessary to make the EFT transaction is specified in clause 52.232–33, Payment by Electronic Funds Transfer—Central Contractor Registration, which the contractor is required to provide prior to award, and clause 52.232–34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration, which requires EFT information to be provided as specified by the agency to enable payment by EFT.

### B. Annual Reporting Burden

*Respondents: 14,000.*

*Responses Per Respondent: 10.*

*Annual Responses: 140,000.*

*Hours per Response: .5.*

*Total Burden Hours: 70,000.*

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street, NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0144, Payment by Electronic Funds Transfer, in all correspondence.

Dated: October 21, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

[FR Doc. 2011–28118 Filed 10–28–11; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0142; Docket 2011–0079; Sequence 19]**

### Federal Acquisition Regulation; Information Collection; Past Performance Information

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat (MVCB) will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning past performance information.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before December 30, 2011.

**ADDRESSES:** Submit comments identified by Information Collection 9000–0142, Past Performance Information, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0142, Past Performance Information,''

under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0142, Past Performance Information.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0142, Past Performance Information,'' on your attached document.

- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0142, Past Performance Information.

*Instructions:* Please submit comments only and cite Information Collection 9000–0142, Past Performance Information, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Curtis Glover, Procurement Analyst, Acquisition Policy Division, at GSA (202) 501–1448 or e-mail *Curtis.glover@gsa.gov.*

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. When past performance is to be evaluated, the rule states that the solicitation shall afford offerors the opportunity to identify Federal, state and local government, and private contracts performed by offerors that were similar in nature to the contract being evaluated.

**B. Annual Reporting Burden**

*Respondents:* 150,000.

*Responses per Respondent:* 4.

*Annual Responses:* 600,000.

*Hours Per Response:* 2.

*Total Burden Hours:* 1,200,000.

*Obtaining Copies of Proposals:* Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0142, Past Performance Information, in all correspondence.

Dated: October 21, 2011.

**Laura Auletta,**

*Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.*

[FR Doc. 2011–28119 Filed 10–28–11; 8:45 am]

BILLING CODE 6820–EP–P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Science and Technology Reinvention Laboratory Personnel Management Demonstration Program

**AGENCY:** Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) (DASD (CPP)), Department of Defense (DoD).

**ACTION:** Notice of amendment.

**SUMMARY:** On December 2, 2008, DoD published **Federal Register** notice, 73 FR 73248–73252, to record amendments to eight legacy Science and Technology Reinvention Laboratory (STRL) Personnel Management Demonstration (demo) Project Plans resulting from section 1107(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110–181; 122 Stat 357; 10 U.S.C. 2358 note). Subsequent to this notice, section 1105(a) of the NDAA for FY 2010 (Pub. L. 111–84; 123 Stat. 2486; 10 United States Code (U.S.C.) 2358 note) was passed to designate seven additional DoD laboratories as STRLs and coupled them with the legacy STRLs enumerated in 9902(c)(2) of title 5, U.S.C., but it did not provide language to extend the coverage of section 1107(c) of NDAA for FY 2008 to all the STRLs listed in section 1105(a) of the NDAA for FY 2010. The Ike Skelton NDAA for FY 2011, subsection 1101(b)(2) contains language to clarify that section 1107(c) of the NDAA for FY 2008 applies to those DoD laboratories designated as STRLs by section 1105(a) of the NDAA for FY 2010. In addition, experience with the processes and procedures described in the **Federal Register** notice (73 FR 73248–73252) for adopting STRL flexibilities, modifying demo project plans, or executing **Federal Register** Notices has identified some areas for streamlining and updating. This notice adds reference to the new and clarifying legislation as well as a provision that processes and procedures may be changed with associated modifications issued in DoD internal issuances as appropriate.

**DATES:** This amendment may be implemented beginning on the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Betty A. Duffield, DCPAS, Suite B–200, 1400 Key Boulevard, Arlington, VA 22209–5144.

**SUPPLEMENTARY INFORMATION:**

**Modifications**

In the notice published on December 2, 2008, 73 FR 73248–73252:

1. On page 73249, in the first column, two lines from the top, add the following paragraph to the **SUMMARY** section:

''Section 1105(a) of NDAA for FY 2010 (Pub. L. 111–84; 123 Stat 2486; October 28, 2009) listed the existing STRLs enumerated under 5 U.S.C. 9902(c)(2) and designated seven additional DoD laboratories as STRLs for the purpose of designing, implementing, and sustaining demo projects. However, it did not provide specific language that extended the coverage of section 1107(c) of NDAA for FY 2008 to all the STRLs listed in section 1105(a) of the NDAA for FY 2010. The Ike Skelton NDAA for FY 2011, subsection 1101(b)(2) contains language to clarify that section 1107(c) of the NDAA for FY 2008 applies to those DoD laboratories designated as STRLs by section 1105(a) of the NDAA for FY 2010.''

2. On page 73251, insert the following as the first paragraph under III. Personnel System Changes, Section A.

''Section 1105(a) of the NDAA for FY 2010 was passed to designate seven additional DoD laboratories as STRLs and coupled them with the legacy STRLs enumerated in 9902(c)(2) of title 5, U.S.C., but it did not provide language to extend the coverage of section 1107(c) of the NDAA for FY 2008 to all the STRLs listed in section 1105(a) of the NDAA for FY 2010. The Ike Skelton NDAA for FY 2011, subsection 1101(b)(2) contains language to clarify that section 1107(c) of the NDAA for FY 2008 applies to those DoD laboratories designated as STRLs by section 1105(a) of the NDAA for FY 2010.''

3. On page 73251, under III. Personnel System Changes, in the first column, in the paragraph following the eighth bullet, delete ''STRLs enumerated in subsection 9902(c)(2) of title 5, U.S.C.,'' and replace with ''DoD laboratories designated as STRLs in section 1105(a) of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84; 123 Stat 2486; 10 U.S.C. 2358 note), as amended''.

4. For other references to ''subsection 9902(c)(2)'' or just ''9902(c)(2)'' found

throughout the **Federal Register** notice (73 FR 73248–73252), delete each mention of ''subsection 9902(c)(2)'' or ''9902(c)(2)'' and replace with ''section 1105(a) of the NDAA for FY 2010, as amended.''

5. On page 73252, in the first column, immediately preceding the signature block, add the following new section:

''D. Modifications to the processes and procedures described herein may be made from time to time. Changes could occur as experience is gained, results are analyzed, and conclusions are reached or new demo authorities are approved which impact processes and procedures. Such revisions may be formalized in DoD internal issuances as appropriate.''

Dated: October 26, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2011–28085 Filed 10–28–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

**[Docket ID USN–2011–0015]**

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, Department of Defense (DoD).

**ACTION:** Notice to Add a New System of Records.

**SUMMARY:** The Department of the Navy proposes to add a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on November 30, 2011 unless comments are received that would result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Robin Patterson, (202) 685–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy systems of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, has been published in the **Federal Register** and is available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on October 21, 2011, to the House Committee on Government Report, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining records About Individual,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: October 26, 2011.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N05000–1**

**SYSTEM NAME:**

OPNAV Headquarters Web (HQWeb).

**SYSTEM LOCATION:**

Chief of Naval Operations (DNS–4), 2000 Navy Pentagon, Washington, DC 20350–2000.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Navy, DoN Civilian employees and contractors.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual information to include: title, full name, current home address, home phone number, cell phone number, email addresses, rank/grade, date of rank, nationality, brief biography, spouse's name, child(ren)'s name(s), and emergency contact name and phone number.

Work related information to include: Current supervisor's name, date checked in, last command, next command, office name, address, room number, phone number, DSN, fax number, and email address; office of primary responsibility, position title, organization code, office designator, clearance, clearance adjudication date, competencies, secondary phone number, area of responsibility, area of interest, End of Active Obligated Service, reporting to position code, Unit Identification Code (UCI), and billet information.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 5013, Secretary of the Navy; DoD 8500.2, Information Assurance (IA) Implementation; and SECNAVINST 5239.3B, Department of the Navy Information Assurance Policy.

**PURPOSE(S):**

The system provides information and support for staff collaboration, to include: flag officers and retired flag officers, internal and external staff coordination for the OPNAV staff; and other web services, such as libraries, workflow systems and related functions. The system is also used for recall rosters needed for emergency notification and reporting.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

**IN ADDITION TO THOSE DISCLOSURES GENERALLY PERMITTED UNDER 5 U.S.C. 552A(B) OF THE PRIVACY ACT OF 1974, THESE RECORDS CONTAINED THEREIN MAY SPECIFICALLY BE DISCLOSED OUTSIDE THE DOD AS A ROUTINE USE PURSUANT TO 5 U.S.C. 552A(B)(3) AS FOLLOWS:**

The DoD 'Blanket Routine Uses' set forth at the beginning of Department of Navy compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper file folders and electronic storage media.

**RETRIEVABILITY:**

Records are retrieved by name and/or organization code.

**SAFEGUARDS:**

The Personally Identifiable Information (PII) is encrypted and can only be accessed via the web-based HQWeb interface with an administrator or command manager account that is authorized to view. The HQWeb system is Common Access Card (CAC) enabled with the PII further protected by groups that limit access to command managers and specified individuals on a need to know basis. Command managers only have the ability to see contact information for those people in their command directory. Access to other command directories is not permitted.

**RETENTION AND DISPOSAL:**

Destroy when 2 years old.

**SYSTEM MANAGER(S) AND ADDRESS:**

OPNAV CIO: Chief of Naval Operations (DNS–4), 2000 Navy Pentagon, Washington, DC 20350–2000.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Operations (DNS–4), 2000 Navy Pentagon, Washington, DC 20350–2000 or visit the HQWeb Web site. Full name and command name should accompany the written inquiry. The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system can access their personal data via HQWeb and make necessary changes to ensure information is accurate.

The system manager may require an original signature or a notarized signature as a means of proving the identity of the individual requesting access to the records.

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2011–28059 Filed 10–28–11; 8:45 am]

**BILLING CODE 5001–06–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment Request.

**SUMMARY:** The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before November 30, 2011.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* 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 the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 26, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Federal Student Aid

*Type of Review:* Revision.

*Title of Collection:* 2012–2013 Federal Student Aid Application.

*OMB Control Number:* 1845–0001.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually; Monthly; Weekly.

*Affected Public:* Individuals or Households; Not-for-Profit Institutions; State, Local and Tribal Government.

*Total Estimated Number of Annual Responses:* 46,447,024.

*Total Estimated Annual Burden Hours:* 29,357,853.

*Abstract:* Section 483 of the Higher Education Act of 1965, as amended (HEA), mandates that the Secretary of Education ''* * *shall produce, distribute, and process free of charge common financial reporting forms as described in this subsection to be used for application and reapplication to determine the need and eligibility of a student for financial assistance.''

The determination of need and eligibility are for the following Title IV, HEA, federal student financial assistance programs: The Federal Pell Grant Program; the Campus-Based programs (Federal Supplemental Educational Opportunity Grant, Federal Work-Study, and the Federal Perkins Loan Program); the William D. Ford Federal Direct Loan Program; the Teacher Education Assistance for College and Higher Education Grant; and the Iraq and Afghanistan Service Grant.

Federal Student Aid, an office of the U.S. Department of Education (hereafter ''the Department''), subsequently developed an application process to collect and process the data necessary to determine a student's eligibility to receive Title IV, HEA program assistance. The application process involves an applicant's submission of the Free Application for Federal Student Aid (FAFSA). After submission of the FAFSA, an applicant receives a Student Aid Report (SAR) which is a summary of the data they submitted on the FAFSA. The applicant reviews the SAR, and, if necessary, will make corrections or updates to their submitted FAFSA.

Copies of the information collection submission for OMB review may be accessed from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4703. 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 the Internet address *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. 2011–28133 Filed 10–28–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Submission for OMB Review

**AGENCY:** Department of Education.

**ACTION:** Comment Request.

**SUMMARY:** The Director, Information Collection Clearance Division, Privacy,

Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

**DATES:** Interested persons are invited to submit comments on or before November 30, 2011.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. 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 the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 26, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

### Office of Postsecondary Education

*Type of Review:* Reinstatement.

*Title of Collection:* Application for Grants under the Upward Bound Program.

*OMB Control Number:* 1840–0550.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Once every four years.

*Affected Public:* Not-for-Profit Institutions; Private Sector; State, Local and Tribal Government.

*Total Estimated Number of Annual Responses:* 1,240.

*Total Estimated Annual Burden Hours:* 40,880.

*Abstract:* The Department of Education is requesting a reinstatement, with change, of a previously approved application for grants under the Upward Bound (UB) Program (1840–0550), which has expired. The Department is requesting a reinstatement with change because of the implementation of the Higher Education Opportunity Act revisions to the Higher Education Act, the authorizing statute for the program. This application will be used to award new grants and collect data under the UB program. The UB program provides grants to institutions of higher education, public and private agencies and organizations, community-based organization with experience in serving disadvantaged youth, combinations of such institutions, agencies and organizations, and secondary schools. The UB program provides grants to projects designed to generate in program participants the skills and motivation necessary to complete a program of secondary education and to enter and succeed in a program of postsecondary education.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4742. 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 the Internet address *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. 2011–28137 Filed 10–28–11; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Comment request.

**SUMMARY:** The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, 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 December 30, 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: October 26, 2011.

**Darrin King,**

*Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.*

**Office of Innovation and Improvement**

*Type of Review:* New.

*Title of Collection:* Magnet Schools Assistance Program Government Performance and Results Act (GPRA) Table Forms.

*OMB Control Number:* Pending.

*Agency Form Number(s):* N/A.

*Frequency of Responses:* Annually.

*Affected Public:* State, Local or Tribal Government.

*Total Estimated Number of Annual Responses:* 153.

*Total Estimated Annual Burden Hours:* 77.

*Abstract:* The Magnet Schools Assistance Program makes grants to Local Educational Agencies to establish and operate magnet schools projects that are part of approved desegregation plans. The collection of this information is necessary for providing (1) data to the Department of Education (ED) and Congress on the progress of Government Performance and Results Act (GPRA) program indicators and ED goals; (2) a standard format for grantees to report to ED and Congress on GPRA measures; and (3) a consistent format to calculate these data in the aggregate with the same mathematical procedures.

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 4740. 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. 2011–28139 Filed 10–28–11; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board Natural Gas Subcommittee

**AGENCY:** Department of Energy.

**ACTION:** Notice of Cancellation of Open Meeting.

**SUMMARY:** This notice announces the cancellation of the November 1, 2011, meeting of the Secretary of Energy Advisory Board (SEAB) Natural Gas Subcommittee. The public meeting was scheduled to be held at the U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. The **Federal Register** notice announcing this meeting was published on Thursday, October 13, 2011, (76 FR 63613). Please note, the October 31, 2011, meeting will continue as scheduled. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting cancellation be announced in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Renee Stone by email at: *shalegas@hq.doe.gov.*

Issued at Washington, DC, on October 25, 2011.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2011–28058 Filed 10–28–11; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC12–1–000]**

### Commission Information Collection Activities (FERC–725F); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission, Department of Energy.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

**DATES:** Comments in consideration of the collection of information are due December 30, 2011.

**ADDRESSES:** Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC12–1–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First-time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's email address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at: *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at: *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC12–1. For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

**FOR FURTHER INFORMATION:** Ellen Brown may be reached by email at: *DataClearance@FERC.gov,* telephone at: (202) 502–8663, and fax at: (202) 273–0873.

**SUPPLEMENTARY INFORMATION:** The information collected by the FERC–725F, ''Mandatory Reliability Standard for Nuclear Plant Interface Coordination'' (OMB Control No. 1902–0249), is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA) (16 U.S.C. 824o). On August 8, 2005, the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAct 2005), was enacted into law.[1] EPAct 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the

[1] Energy Policy Act of 2005, Public Law 109–58, Title XII, Subtitle A, 119 Stat. 594, 941 (2005), 16 U.S.C. 824o.

Commission can independently enforce Reliability Standards.[2]

On February 3, 2006, the Commission issued Order No. 672, implementing section 215 of the FPA.[3] Pursuant to Order No. 672, the Commission certified one organization, North American Electric Reliability Corporation (NERC), as the ERO. The Reliability Standards developed by the ERO and approved by the Commission apply to users, owners and operators of the Bulk-Power System, as set forth in each Reliability Standard.

On November 19, 2007, NERC filed its petition for FERC approval of the Nuclear Plant Interface Coordination Reliability Standard, designated NUC–001–1. In Order No. 716, issued October 16, 2008, the Commission approved the standard while also directing certain revisions.[4] Revised Reliability Standard, NUC–001–2, was filed with the Commission by NERC in August 2009 and subsequently approved by the Commission January 21, 2010.[5]

The purpose of Reliability Standard NUC–001–2 is to require ''coordination between nuclear plant generator operators and transmission entities for the purpose of ensuring nuclear plant safe operation and shutdown.'' [6] The Nuclear Reliability Standard applies to nuclear plant generator operators (generally nuclear power plant owners and operators, including licensees) and ''transmission entities,'' defined in the Reliability Standard as including a nuclear plant's suppliers of off-site power and related transmission and distribution services. To account for the variations in nuclear plant design and grid interconnection characteristics, the Reliability Standard defines transmission entities as ''all entities that are responsible for providing services related to Nuclear Plant Interface Requirements (NPIRs),'' and lists eleven types of functional entities (heretofore described as ''transmission entities'') that could provide services related to NPIRs.[7]

Reliability Standard NUC–001–2 requires a nuclear power plant operator and its suppliers of back-up power and related transmission and distribution services to coordinate concerning nuclear licensing requirements for safe nuclear plant operation and shutdown and system operating limits. Information collection requirements include establishing and maintaining interface agreements, including record retention requirements.

**ACTION:** The Commission is requesting a three-year extension of the FERC–725F reporting requirements, with no changes to the requirements.

**Burden Statement** [8]

The Commission estimates that the total universe of respondents for this collection is 143 unique entities. This includes 26 unique owners of nuclear facilities and 117 transmission entities that provide services related to NPIRs. FERC also estimated that there are 65 unique nuclear plant sites involved in this collection. In order to estimate the burden the Commission considered two categories: Establishing new agreements; and making modifications to existing agreements.

The Commission assumes there may be as many as 10 new agreements established each year. Because applicable entities should already be in compliance with NUC–001–2 (meaning that all nuclear sites should already have agreements in place), new agreements would only come about due to company mergers or new interconnections between nuclear plant sites and other entities. FERC further assumes that each agreement involves one nuclear plant site and an average of two transmission entities.

For modifications to existing agreements the Commission assumes that each nuclear plant site will be required to make up to two modifications a year to existing agreements. Because the Commission assumes that each agreement involves an average of two transmission entities, the burden for this category also includes two transmission entities per nuclear plant site (or 130 in total). FERC estimates that some of these transmission entities are involved in multiple agreements (as stated above, the number of unique transmission entities is estimated at 117).

The burden information is summarized in the following table.

| Data collection | Number of respondents annually (1) | Number of responses (documents) (2) | Average burden hours per response (3) | Total annual burden hours (1) × (2) × (3) |
|---|---|---|---|---|
| FERC–725F: | | | | |
| New agreements | 10 nuclear operators + 20 transmission entities. | 1 | Reporting: 1,080<br>Recordkeeping: 108 | Reporting: 32,400.<br>Recordkeeping: 3,240. |
| Modifications to agreements. | 65 nuclear plants + 130 transmission entities.[9] | 2 | Reporting: 67 (rounded)<br>Recordkeeping: 7 (rounded). | Reporting: 26,000.<br>Recordkeeping: 2,600. |
| Total | Not applicable (see text for discussion). | Not applicable | Not applicable | 64,240. |

The average annualized cost is estimated to be the total annual hours

[2] 16 U.S.C. 824o(e)(3).

[3] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[4] *Mandatory Reliability Standard for Nuclear Plant Interface Coordination,* Order No. 716, 125 FERC ¶ 61,065, at P 189 & n.90 (2008), *order on reh'g,* Order No. 716–A, 126 FERC ¶ 61,122 (2009).

[5] *North American Electric Reliability Corporation,* 130 FERC ¶ 61,051 (2010). When the revised Reliability Standard was approved the Commission did not go to OMB for approval. It is assumed that the changes made did not substantively affect the information collection and therefore a formal submission to OMB was not needed.

[6] See Reliability Standard NUC–001–2 at *http://www.nerc.com/files/NUC-001-2.pdf.*

[7] The list of functional entities consists of transmission operators, transmission owners, transmission planners, transmission service providers, balancing authorities, reliability coordinators, planning authorities, distribution providers, load-serving entities, generator owners and generator operators.

[8] The burden estimates for this renewal have been generated based on actual FERC staff experience in developing and modifying agreements pursuant to NUC–001–2. The Commission considers this burden estimate more accurate than was previously approved by OMB.

[9] This figure of 130 transmission entities is based on the assumption that each agreement will be between 1 nuclear plant and 2 transmission entities (65 times 2 = 130). However, there is some double counting in this figure because some transmission entities may be party to multiple agreements with multiple nuclear plants. The double counting does not affect the burden estimate and the correct number of unique respondents will be reported to OMB.

(Reporting) [10]—58,400 hours times $120/hour = $7,008,000, plus the total annual hours (Recordkeeping) [11]—5,840 times $28/hour = $163,520, plus the record storage cost [12]—143 entities times $15.25 per year per entity = $2,181 (rounded), which is $7,173,701.

The Commission believes that this estimate is conservative because multiple plants are located on certain sites, and one entity may operate multiple plants, providing for potential economies in updating, drafting and executing the interface agreements.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.* permitting electronic submission of responses).

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28087 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

[10] The $120/hour figure is a combined average of legal, technical and administrative staff.

[11] The $28/hour figure is based on a FERC staff study that included estimating public utility recordkeeping costs.

[12] This is based on the estimated cost to service and store 1 GB of data (based on the aggregated cost of an IBM advanced data protection server).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP11–481–001]**

### Southern Star Central Gas Pipeline, Inc.; Notice of Application

On October 19, 2011, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed with the Federal Energy Regulatory Commission (Commission) an amendment to their May 13, 2011 abbreviated application under section 7(c) of the Natural Gas Act and the Rules and Regulations of the Commission's Regulations for authority to expand the existing certificated storage boundary zone not only horizontally but also vertically at Southern Star's existing Alden Gas Storage Field located in Rice County, Kansas. Subsequent to the filing of the original application, Southern Star's technical experts reported that storage gas had migrated vertically into the Simpson zone in portions of its existing field and in portions of the area originally identified for horizontal storage field expansion.

The expansion would further the integrity and protection of the gas storage field. The current operational parameters and capabilities of the Alden Gas Storage Field will be unchanged and current certificated service levels to customers will not be affected by boundary expansions sought by the amended Application.

Questions concerning this application may be directed to David N. Roberts, Staff Analyst, Regulatory Affairs, 4700 Highway 56, Owensboro, Kentucky 42301, by calling (270) 852–4654 or by emailing *david.n.roberts@sscgp.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify Federal and State agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.fere.gov.* Persons unable to file electronically should submit an original and seven 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on November 15, 2011.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28088 Filed 10–28–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP12–36–000.
*Applicants:* Northwest Pipeline GP.
*Description:* Northwest Pipeline GP submits tariff filing per 154.204: Puget Sound Contract No. 100313—Non-Conforming to be effective 11/28/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5057.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 07, 2011.

*Docket Numbers:* RP12–37–000.
*Applicants:* Northern Natural Gas Company.
*Description:* Northern Natural Gas Company submits tariff filing per 154.204: 20111007 Essar Non-Conforming to be effective 11/24/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5068.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 07, 2011.

*Docket Numbers:* RP12–38–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* Texas Eastern Transmission, LP submits tariff filing per 154.403: PCB TETLP DEC 2011 FILING to be effective 12/1/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5084.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 07, 2011.

*Docket Numbers:* RP12–39–000.
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.403(d)(2): AGT FRQ 2011 FILING to be effective 12/1/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5097.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 07, 2011.

*Docket Numbers:* RP12–40–000.
*Applicants:* American Midstream (AlaTenn), LLC.
*Description:* American Midstream (AlaTenn), LLC submits tariff filing per 154.204: AlaTenn Negotiated Rate Filing to be effective 11/25/2011.
*Filed Date:* 10/25/2011.
*Accession Number:* 20111025–5028.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 07, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 25, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28049 Filed 10–28–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP12–31–000.
*Applicants:* Wyoming Interstate Company, L.L.C.
*Description:* Operational Purchases and Sales Report for the twelve month period ended June 30, 2011 of Wyoming Interstate Company, L.L.C.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5066.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 02, 2011.

*Docket Numbers:* RP12–32–000.
*Applicants:* Guardian Pipeline, L.L.C.
*Description:* Guardian Pipeline, L.L.C. submits tariff filing per 154.204: PAL (Chevron) to be effective 10/25/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5072.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 02, 2011.

*Docket Numbers:* RP12–33–000.
*Applicants:* Texas Eastern Transmission, LP.
*Description:* Texas Eastern Transmission, LP submits tariff filing per 154.204: ConocoPhillips TEMAX Agreements to be effective 11/1/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5074.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 02, 2011.

*Docket Numbers:* RP12–34–000.
*Applicants:* Trailblazer Pipeline Company LLC.
*Description:* Penalty Revenue Crediting Report of Trailblazer Pipeline Company LLC.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5083.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 02, 2011.

*Docket Numbers:* RP12–35–000
*Applicants:* Algonquin Gas Transmission, LLC.
*Description:* Algonquin Gas Transmission, LLC submits tariff filing per 154.204: KeySpan 2011–11–01 release to BG Energy to be effective 11/1/2011.
*Filed Date:* 10/24/2011.
*Accession Number:* 20111024–5029.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 07, 2011.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

**Filings in Existing Proceedings**

*Docket Numbers:* RP11–2593–001.
*Applicants:* Energy West Development, Inc.
*Description:* Energy West Development, Inc. submits tariff filing per 154.205(b): EWD ACA Filing to be effective 10/1/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5119.
*Comment Date:* 5 p.m. Eastern Time on Friday, October 28, 2011.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 24, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28001 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–147–000.
*Applicants:* PJS Capital LLC.
*Description:* PJS Capital LLC submits tariff filing per 35.1: PJS Capital, LLC Electric Tariff Original Volume No 1 to be effective 10/1/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5003.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–148–000.
*Applicants:* Virginia Electric and Power Company.
*Description:* Virginia Electric and Power Company submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5059.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–149–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): 2158R1 Arkansas Electric Cooperative Corporation NITSA NOA to be effective 10/1/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5060.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–150–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 176 of Florida Power Corporation to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5067.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–151–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 194 of Florida Power Corporation to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5068.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–152–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Revised Rate Schedule No. 199 of Florida Power Corporation to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5069.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–153–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 210 of Florida Power Corporation to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5070.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–154–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 213 of Florida Power Corporation to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5073.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–155–000.
*Applicants:* Union Electric Company.
*Description:* Union Electric Company submits tariff filing per 35.15: Withdrawal of RS 94 to be effective 12/18/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5081.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–156–000.
*Applicants:* Virginia Electric and Power Company.
*Description:* Virginia Electric and Power Company submits tariff filing per 35: Compliance Filing—MBS Tariff Sect 17.0 Limitations to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5091.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–157–000.
*Applicants:* Elwood Energy, LLC.
*Description:* Elwood Energy, LLC submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5095.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–158–000.
*Applicants:* Dominion Energy Salem Harbor, LLC.
*Description:* Dominion Energy Salem Harbor, LLC submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5097.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–159–000.
*Applicants:* Dominion Nuclear Connecticut, Inc.
*Description:* Dominion Nuclear Connecticut, Inc. submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5107.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–160–000.
*Applicants:* Dominion Retail, Inc.
*Description:* Dominion Retail, Inc. submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5111.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–161–000.
*Applicants:* Bishop Hill Energy LLC.
*Description:* Bishop Hill Energy LLC submits tariff filing per 35.1: Application for Market-Based Rate Authorization & Request for Waivers & Approval to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5120.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–162–000
*Applicants:* Bishop Hill Energy II LLC
*Description:* Bishop Hill Energy II LLC submits tariff filing per 35.1: Application for Market-Based Rate Authorization & Request for Waivers & Approval to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5121.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–163–000.
*Applicants:* ISO New England Inc.
*Description:* ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): 2012 NESCOE Budget to be effective 1/1/2012.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5122.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

*Docket Numbers:* ER12–164–000.
*Applicants:* Bishop Hill Energy III LLC.
*Description:* Bishop Hill Energy III LLC submits tariff filing per 35.1: Application for Market-Based Rate Authorization & Request for Waivers & Approval to be effective 12/21/2011.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5123.
*Comment Date:* 5 p.m. Eastern Time on Monday, November 14, 2011.

Take notice that the Commission received the following electric securities filings:
*Docket Numbers:* ES11–50–000.
*Applicants:* AEP Generating Company, AEP Texas North Power Company, AEP Texas Central Company, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Wheeling Power Company.
*Description:* Supplemental Application under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Generating Company.
*Filed Date:* 10/21/2011.
*Accession Number:* 20111021–5117.
*Comment Date:* 5 p.m. Eastern Time on Monday, October 31, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 21, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–28000 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:
*Docket Numbers:* EC12–9–000.
*Applicants:* Settlers Trail Wind Farm, LLC.
*Description:* Settlers Trail Wind Farm, LLC Application for Authorization under Section 203 of the Federal Power Act, Request for Expedited Consideration, and Confidential Treatment.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5151.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:
*Docket Numbers:* EG12–4–000.
*Applicants:* Sandy Creek Energy Associates, L.P.
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Sandy Creek Energy Associates, L.P.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5048.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

Take notice that the Commission received the following electric rate filings:
*Docket Numbers:* ER11–4147–000.
*Applicants:* ITC Midwest LLC.
*Description:* ITC Midwest LLC submits tariff filing per 35.19a(b): Filing of a Refund Report to be effective N/A.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5060.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER11–4149–000.
*Applicants:* ITC Midwest LLC.
*Description:* ITC Midwest LLC submits tariff filing per 35.19a(b): Filing of a Refund Report to be effective N/A.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5061.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER11–4154–000.
*Applicants:* ITC Midwest LLC.
*Description:* ITC Midwest LLC submits tariff filing per 35.19a(b): Filing of Refund Report to be effective N/A.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5057.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER11–4307–000.
*Applicants:* Green Mountain Energy Company.
*Description:* Green Mountain Energy Company's market power analysis of its affiliates in the southeast region.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5138.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 02, 2011.

*Docket Numbers:* ER11–4308–000.
*Applicants:* Reliant Energy Northeast LLC.
*Description:* Reliant Energy Northeast LLC's market power analysis of REN's affiliates in the southeast region.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5140.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 02, 2011.

*Docket Numbers:* ER12–114–000.
*Applicants:* Southwestern Electric Power Company.
*Description:* Southwestern Electric Power Company submits tariff filing per 35.13(a)(2)(iii): 20111019 Hope Restated and Amended PSA to be effective 12/17/2010.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5030.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–115–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): eTariff filing of JDA to be effective 12/18/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5032.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–116–000.
*Applicants:* Duke Energy Carolinas, LLC.
*Description:* Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii): eTariff Filing of Joint OATT to be effective 12/18/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5045.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–117–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Queue No. W3–107; Original Service Agreement No. 3076 to be effective 9/19/2011.
*Filed Date:* 10/19/2011.

*Accession Number:* 20111019–5053.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–118–000.
*Applicants:* Carolina Power & Light Company.
*Description:* Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Rate Schedule No. 190 of Carolina Power and Light Company to be effective 12/18/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5058.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–119–000.
*Applicants:* Carolina Power & Light Company.
*Description:* Carolina Power & Light Company submits tariff filing per 35.13(a)(2)(iii): Certificate of Concurrence of Carolina Power and Light Company with Joint OATT to be effective 12/18/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5062.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–120–000.
*Applicants:* Florida Power Corporation.
*Description:* Florida Power Corporation submits tariff filing per 35.13(a)(2)(iii): Certificate of Concurrence of Florida Power Corporation with Joint OATT to be effective 12/18/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5063.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–122–000.
*Applicants:* Union Electric Company, Entergy Arkansas, Inc.
*Description: Union Electric Company submits tariff filing per 35.1: RS 94—Interchange Agreement—EAI and AECI to be effective 12/18/2011.*
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5097.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–123–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Queue Position W1–126; Original Service Agreement No. 3088 to be effective 9/19/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5098.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–124–000.
*Applicants:* Western Massachusetts Electric Company.
*Description:* Western Massachusetts Electric Company submits tariff filing per 35.12: Pioneer Valley Design & Preliminary Engineering Agreement for Switchyard Layout to be effective 10/20/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5099.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–125–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Revisions to the PJM OATT & OA regarding the DR Registration Timeline to be effective 12/19/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5108.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–126–000.
*Applicants:* Trademark Merchant Energy, LLC.
*Description:* Trademark Merchant Energy, LLC submits tariff filing per 35.13(a)(2)(iii): Notice of Succession—Trademark Merchant Energy, LLC to be effective 9/6/2011.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5109.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–127–000.
*Applicants:* Westar Energy, Inc.
*Description:* Westar Energy, Inc. submits tariff filing per 35.13(a)(2)(iii): Burlingame, KS Wholesale Power Sales Service to be effective 1/1/2012.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111019–5111.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: October 20, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–27998 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12–10–000.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* Application for approval of acquisition of transmission assets pursuant to section 203 of Michigan Electric Transmission Company, LLC.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5061.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* EC12–11–000.
*Applicants:* Michigan Electric Transmission Company, LLC.
*Description:* Application for approval of acquisition of transmission assets pursuant to Section 203 of Michigan Electric Transmission Company, LLC.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5062.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* EC12–12–000.
*Applicants:* ITC Midwest LLC.
*Description:* Application of ITC Midwest LLC for approval of acquisition of transmission assets pursuant to Section 203.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5063.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER07–771–005.
*Applicants:* Louisville Gas and Electric Company, Kentucky Utilities Company.
*Description:* Annual Schedule 2 True-Up Filing of Louisville Gas and Electric Co./Kentucky Utilities Co.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5108.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER10–2124–001; *ER10–2125–001; ER10–2127–001; ER10–2128–001; ER10–2129–001; ER10–2130–001; ER10–2131–002 ER10–2132–001; ER10–2133–002; ER10–2134–001; ER10–2135–001; ER10–2136–001; ER10–2137–*

*002; ER10–2138–002; ER10–2139–002; ER10–2140–002; ER10–2141–002; ER10–2764–001.*

*Applicants:* Forward Energy LLC, Sheldon Energy LLC, Invenergy Cannon Falls LLC, Spindle Hill Energy LLC, Spring Canyon Energy LLC, Grays Harbor Energy LLC, Grand Ridge Energy LLC, Willow Creek Energy LLC, Hardee Power Partners Limited, Judith Gap Energy LLC, Invenergy TN LLC, Wolverine Creek Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Vantage Wind Energy LLC, Beech Ridge Energy LLC.

*Description:* Notification of Change in Facts under Market-Based Rate Authority of Spring Canyon Energy LLC, et al.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5058.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER11–3872–002.

*Applicants:* Stony Creek Energy LLC.

*Description:* Notification of Change in Facts under Market-Based Rate Authority of Stony Creek Energy LLC.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5053.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–128–000.

*Applicants:* EGP Stillwater Solar, LLC.

*Description:* EGP Stillwater Solar, LLC submits tariff filing per 35.12: EGP Stillwater Solar, LLC MBR Tariff to be effective 11/15/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5001.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–129–000.

*Applicants:* Spindle Hill Energy LLC.

*Description:* Spindle Hill Energy LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5044.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–130–000.

*Applicants:* Spring Canyon Energy LLC.

*Description:* Spring Canyon Energy LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5045.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–131–000.

*Applicants:* Grays Harbor Energy LLC.

*Description:* Grays Harbor Energy LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5049.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–132–000.

*Applicants:* Wolverine Creek Energy LLC.

*Description:* Wolverine Creek Energy LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5054.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–133–000.

*Applicants:* Invenergy TN LLC.

*Description:* Invenergy TN LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5055.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–134–000.

*Applicants:* Invenergy Cannon Falls LLC.

*Description:* Invenergy Cannon Falls LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5056.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–135–000.

*Applicants:* Judith Gap Energy LLC.

*Description:* Judith Gap Energy LLC submits tariff filing per 35: Compliance Filing of a Revised Market-Based Rate Tariff to be effective 12/20/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5057.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

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Dated: October 20, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–27997 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC12–13–000.

*Applicants:* Michigan Electric Transmission Company.

*Description:* METC's application for approval of acquisition of transmission assets pursuant to Section 203 of the Federal Power Act.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5131.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–136–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii): Queue No. V2–041; Original Service Agreement No. 3074 to be effective 9/19/2011.

*Filed Date:* 10/19/2011.

*Accession Number:* 20111019–5153.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–137–000.

*Applicants:* Appalachian Power Company.

*Description:* Appalachian Power Company submits tariff filing per 35.1: 20111020 APCo RS and SA Tariff to be effective 10/21/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5095.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–138–000.

*Applicants:* Union Electric Company, Entergy Arkansas, Inc.

*Description:* Union Electric Company submits tariff filing per 35.1: RS 94—Interchange Agreement with EAI and AECI to be effective 12/18/2011.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5096.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–139–000.
*Applicants:* Entergy Services, Inc.
*Description:* Entergy Mississippi, Inc submits Notice of Termination of the executed Interconnection and Operating Agreement and Generator Imbalance Agreement, filed 11/22/00 with Duke Energy Southhaven, LLC.
*Filed Date:* 10/19/2011.
*Accession Number:* 20111021–0203.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, November 09, 2011.

*Docket Numbers:* ER12–140–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii): Incorporate Formula Rate Template for Kansas Power Pool to be effective 12/1/2011.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5111.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–141–000.
*Applicants:* NAP Trading and Marketing, Inc.
*Description:* NAP Trading and Marketing, Inc submits Notice of Cancellation of Market-Based Rate Tariff to be effective 10/21/11.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111021–0204.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–142–000.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): EAI–Ameren Missouri Certificate of Concurrence to be effective 12/18/2011.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5114.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–143–000.
*Applicants:* Dominion Energy Kewaunee, Inc.
*Description:* Dominion Energy Kewaunee, Inc. submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/20/2011.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5121.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–144–000.
*Applicants:* Dominion Energy Marketing, Inc.
*Description:* Dominion Energy Marketing, Inc. submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/20/2011.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5130.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–145–000.
*Applicants:* Dominion Energy Manchester Street, Inc.
*Description:* Dominion Energy Manchester Street, Inc. submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/20/2011.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5132.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* ER12–146–000.
*Applicants:* Dominion Energy New England, Inc.
*Description:* Dominion Energy New England, Inc. submits tariff filing per 35: Compliance Filing—MBR Tariff Order of Affiliate Restrictions to be effective 10/20/2011.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5135.
*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

Take notice that the Commission received the following electric securities filings:
*Docket Numbers:* ES11–30–001.
*Applicants:* System Energy Resources, Inc.
*Description:* Supplemental Information of System Energy Resources, Inc.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5154.
*Comment Date:* 5 p.m. Eastern Time on Monday, October 31, 2011.

*Docket Numbers:* ES11–40–001.
*Applicants:* Entergy Mississippi, Inc., Entergy Services, Inc., Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy New Orleans, Inc., Entergy Gulf States Louisiana, L.L.C., System Energy Resources, Inc., Entergy Texas, Inc.
*Description:* Supplemental information of Entergy Services, Inc., et al.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5157.
*Comment Date:* 5 p.m. Eastern Time on Monday, October 31, 2011.

*Docket Numbers:* ES11–44–001.
*Applicants:* Georgia Power Company.
*Description:* Amendment to Application of Georgia Power Company under ES11–44.
*Filed Date:* 10/20/2011.
*Accession Number:* 20111020–5156.
*Comment Date:* 5 p.m. Eastern Time on Monday, October 31, 2011.

*Docket Numbers:* ES11–53–001.
*Applicants:* System Energy Resources, Inc.

*Description:* Supplemental Information of System Energy Resources, Inc.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5155.

*Comment Date:* 5 p.m. Eastern Time on Monday, October 31, 2011.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF86–1061–008, *EL12–3–000.*

*Applicants:* Sunoco Power Generation LLC.

*Description:* Sunoco Power Generation LLC submits a Request for a Limited waiver of the Qualifying Facility Standards for 2010.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111021–0201.

*Comment Date:* 5 p.m. Eastern Time on Thursday, November 10, 2011.

*Docket Numbers:* QF12–11–000.

*Applicants:* Green Lane Energy, Inc.

*Description:* Form 556—Notice of self-certification of Green Lane Energy, Inc.

*Filed Date:* 10/20/2011.

*Accession Number:* 20111020–5034.

*Comment Date:* None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: October 21, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–27996 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14172–000, 14178–000 and 14190–000]**

### Riverbank Hydro No. 6 LLC, Lock Hydro Friends Fund XLVII, FFP Project 52 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 6 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XLVII (Lock Hydro), and FFP Project 52 LLC (FFP 52) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Toad Suck Ferry Lock and Dam, located on the Kentucky River, in Perry and Faulkner Counties, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14172–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 37.8 megawatts (MW); (4) a tailrace structure; and (5) a 12.6-mile-long, 69 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 78.8 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Toad Suck Ferry Lock and Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14178–000 would consist of: (1) Three lock frame modules, each frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 22.5 MW; (2) a new switchyard containing a transformer; and (3) a proposed 2.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 147.926 GWh, and operate run-of-river utilizing surplus water from the Toad Suck Ferry Lock and Dam, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

FFP 52's Project No. 14190–000 would consist of: (1) An 900-foot-long, 300-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing four generating units with a total capacity of 40.0 MW; (3) a 1,560-foot-long, 320-foot-wide tailrace; (4) a 7.2/69 KV substation; and (5) a 1.25-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 160.0 GWh, and operate run-of-river utilizing surplus water from the Toad Suck Ferry Lock and Dam, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14172–000, P–14178–000, or P–14190–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28111 Filed 10–28–11; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14131–000; 14135–000; 14138–000]**

### Riverbank Hydro No. 1 LLC; Qualified Hydro 20 LLC; Lock Hydro Friends Fund XXXVII; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2011, Riverbank Hydro No. 1 LLC (Riverbank), Qualified Hydro 20 LLC (Qualified Hydro) and Lock Hydro Friends Fund XXXVI (Lock Hydro) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Aberdeen Lock & Dam, located on the Tombigbee River in Monroe County, Mississippi. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14131–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating units with a total capacity of 10 megawatts (MW); (4) a tailrace structure; and (5) 4-mile-long, 25 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 142.0 gigawatt-hours (GWh) and operate run-of-river utilizing surplus water from the Aberdeen Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Qualified Hydro's Project No. 14135–000 would consist of: (1) An 130-foot-long, 120-foot-wide approach channel; (2) a powerhouse, located on the east side of the dam, containing two generating units with a total capacity of 8.0 MW; (3) a 225-foot-long, 100-foot-

wide tailrace; (4) a 4.16/69 KV substation; and (5) a 2.4-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 32.0 GWh and operate run-of-river utilizing surplus water from the Aberdeen Lock & Dam, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*Lock Hydro's Project No. 14138–000 would consist of:* (1) One lock frame module, the frame module will be 44-feet long, 40-feet-high and contain four generating units with a total combined capacity of 10.0 MW; (2) a new switchyard containing a transformer; (3) a proposed 1.5-mile-long, 115 kilo-volt (kV) transmission line to an existing distribution line. The proposed project would have an average annual generation of 43.830 GWh and operate run-of-river utilizing surplus water from the Aberdeen Lock & Dam, as directed by the Corps..

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14131–000, P–14135–000 or P–14138–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28091 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14176–000, 14188–000, 14200–000]**

### Riverbank Hydro No. 19 LLC; Lock Hydro Friends Fund XXXIV; FFP Project 59 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 19 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XXXIV (Lock Hydro), and FFP Project 59 LLC (FFP 59) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 8, located on the Kentucky River, in Jessamine and Garrard Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14176–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating unit with a total capacity of 10.0 megawatts (MW); (4) a tailrace structure; and (5) an 8.2-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 33.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 8, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14188–000 would consist of: (1) One lock frame modules, the frame module will be 75-feet long, 20-feet-high and contain four generating units with a total combined capacity of 2.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 3.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 8.766 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 8, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

FFP 59's Project No. 14200–000 would consist of: (1) An 300-foot-long, 90-foot-wide approach channel; (2) a powerhouse, located on the northeastern side of the dam, containing two generating units with a total capacity of 6.8 MW; (3) a 300-foot-long, 220-foot-wide tailrace; (4) a 4.16/25 KV substation; and (5) a 0.25-mile-long, 25 kV transmission line. The proposed project would have an average annual generation of 27.2 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 8, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14176–000, P–14188–000, or P–14200–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28108 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14162–000; 14173–000; 14182–000; 14192–000]**

### Solia 9 Hydroelectric LLC Riverbank Hydro No. 17 LLC Lock Hydro Friends Fund XLI FFP Project 54 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Solia 9 Hydroelectric LLC (Solia), and Riverbank Hydro No. 17 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XLI (Lock Hydro), and FFP Project 54 LLC (FFP 54) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Tom Bevill Lock & Dam, located on the Tombigbee River in Pickens County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*Solia's Project No. 14162–000 would consist of:* (1) A 150-foot-long headrace intake channel; (2) a powerhouse containing two generating units with a total capacity of 16.0 megawatt (MW); (3) a 179-foot-long tailrace; (4) a 2.0-mile-long, 34.5 kilo-volt (kV) transmission line. The proposed project would have an average annual generation of 75.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Tom Bevill Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Douglas Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

*Riverbank's Project No. 14173–000 would consist of:* (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 20.2 MW; (4) a tailrace structure; and (5) a 17.3-mile-long, 69 kV transmission line. The project would have an estimated average annual generation of 72.6 GWh, and operate run-of-river utilizing surplus water from the Tom Bevill Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14182–000 would consist of: (1) One lock frame modules, the frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 15.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 10.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 92.043 GWh, and operate run-of-river utilizing surplus water from the Tom Bevill Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FFP 54's Project No. 14192–000 would consist of:* (1) A 350-foot-long, 150-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing two generating units with a total capacity of 18.0 MW; (3) a 300-foot-long, 165-foot-wide tailrace; (4) a 7.2/69 KV substation; and (5) a 1.0-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 72.0 GWh, which would be sold to a local utility. The project would operate run-of-river and utilize flows released from the Tom Bevill Lock & Dam and operate as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14162–000, P–14173–000, 14182–000, or P–14192–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28100 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14164–000; 14189–000; 14198–000]**

### Riverbank Hydro No. 10 LLC Lock Hydro Friends Fund XL FFP Project 56 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 10 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XL (Lock Hydro), and FFP Project 56 LLC (FFP 56) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower

project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 3, located on the Kentucky River, in Henry and Owen Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*Riverbank's Project No. 14164–000 would consist of:* (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating unit with a total capacity of 9.8 megawatts (MW); (4) a tailrace structure; and (5) an 8.1-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 28.6 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 3, as directed by the Corps.

Applicant Contact: Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*Lock Hydro's Project No. 14189–000 would consist of:* (1) One lock frame modules, the frame module will be 45-feet long, 20-feet-high and contain four generating units with a total combined capacity of 3.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 2.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 13.149 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 3, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FFP 56's Project No. 14198–000 would consist of:* (1) An 150-foot-long, 100-foot-wide approach channel; (2) a powerhouse, located on the east side of the dam, containing two generating units with a total capacity of 5.8 MW; (3) a 200-foot-long, 75-foot-wide tailrace; (4) a 4.6/25 KV substation; and (5) a 0.25-mile-long, 25 kV transmission line. The proposed project would have an average annual generation of 23.2 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 3, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14164–000, P–14189–000, or P–14198–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28102 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14175–000; 14183–000]**

### Riverbank Hydro No. 12 LLC; Lock Hydro Friends Fund XXXVI; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 12 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XXXVI (Lock Hydro) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Green River Lock & Dam No. 2, located on the Green River, in McLean County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14175–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating unit with a total capacity of 10.0 megawatts (MW); (4) a tailrace structure; and (5) a 1.1-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 32.5 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Green River Lock & Dam No. 2, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14183–000 would consist of: (1) One lock frame modules, the frame module will be 45-feet long, 20-feet-high and contain four generating units with a total combined capacity of 3.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 2.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 13.149 GWh, and operate run-of-river utilizing surplus water from the Green River Lock & Dam No. 2, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14175–000, or P–14183–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28107 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14163–000; 14174–000; 14181–000; 14195–000]**

### Solia 7 Hydroelectric LLC; Riverbank Hydro No. 20 LLC; Lock Hydro Friends Fund XLIII; FFP Project 53 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Solia 7 Hydroelectric LLC (Solia), and Riverbank Hydro No. 20 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XLIII (Lock Hydro), and FFP Project 53 LLC (FFP 53) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Howell Heflin Lock & Dam, located on the Tombigbee River, in Greene County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Solia's Project No. 14163–000 would consist of: (1) A 150-foot-long headrace intake channel; (2) a powerhouse containing two generating units with a total capacity of 32.0 megawatts (MW); (3) a 140-foot-long tailrace; (4) a 3.5-mile-long, 34.5 kilo-volt (kV) transmission line. The proposed project would have an average annual generation of 130.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Howell Heflin Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Douglas Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

*Riverbank's Project No. 14174–000 would consist of:* (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 24.7 MW; (4) a tailrace structure; and (5) an 11.0-mile-long, 69 kV transmission line. The project would have an estimated average annual generation of 91.6 GWh, and operate run-of-river utilizing surplus water from the Howell Heflin Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14181–000 would consist of: (1) Two lock frame modules, each frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 15.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 20.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 78.894 GWh, and operate run-of-river utilizing surplus water from the Howell Heflin Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FFP 53's Project No. 14195–000 would consist of:* (1) An 280-foot-long, 75-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing two generating units with a total capacity of 24.0 MW; (3) a 250-foot-long, 130-foot-wide tailrace; (4) a 7.2/115 KV substation; and (5) a 1.5-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 96.0 GWh, and operate run-of-river utilizing surplus water from the Howell Heflin Lock & Dam, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14163–000, P–14174–000, 14181–000, or P–14195–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28094 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14167–000, 14185–000 and 14196–000]**

### Riverbank Hydro No. 16 LLC, Lock Hydro Friends Fund IV, FFP Project 55 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 16 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund IV (Lock Hydro), and FFP Project 55 LLC (FFP 55) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 2, located on the Kentucky River, in Henry and Owen Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14167–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating unit with a total capacity of 9.4 megawatts (MW); (4) a tailrace structure; and (5) a 2.7-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 31.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 2, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14185–000 would consist of: (1) One lock frame modules, the frame module will be 45-feet long, 20-feet-high and contain four generating units with a total combined capacity of 3.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 3.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 13.149 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 2, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

FFP 55's Project No. 14196–000 would consist of: (1) An 170-foot-long, 130-foot-wide approach channel; (2) a powerhouse, located on the southeastern side of the dam, containing two generating units with a total capacity of 6.6 MW; (3) a 275-foot-long, 130-foot-wide tailrace; (4) a 4.16/25 KV substation; and (5) a 3.0-mile-long, 25 kV transmission line. The proposed project would have an average annual generation of 26.4 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 2, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14167–000, P–14185–000, or P–14196–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28101 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[14160–000; 14179–000; 14194–000]**

### Riverbank Hydro No. 8 LLC Lock Hydro Friends Fund XLIV FFP Project 51 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 8 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XLIV (Lock Hydro) and FFP Project 51 LLC (FFP 51) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Emmett Sanders Lock & Dam, located on the Arkansas River in Jefferson County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14160–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing three generating units with a total capacity of 50.1 megawatts (MW); (4) a tailrace structure; and (5) a 3.3-mile-long, 69 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 145.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Emmett Sanders Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14179–000 would consist of: (1) Three lock frame modules, each frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 25.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 7.0-mile-long, 115 kV transmission line to

an existing distribution line. The proposed project would have an average annual generation of 164.362 GWh, and operate run-of-river utilizing surplus water from the Emmett Sanders Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FFP 51's Project No. 14194–000 would consist of:* (1) An 840-foot-long, 340-foot-wide approach channel; (2) a powerhouse, located on the east side of the dam, containing four generating units with a total capacity of 36.0 MW; (3) a 425-foot-long, 260-foot-wide tailrace; (4) a 7.2/115 KV substation; and (5) a 2.6-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 144.0 GWh, and operate run-of-river utilizing surplus water from the Emmett Sanders Lock & Dam, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14160–000, P–14179–000, or P–14194–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28099 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14158–000; 14191–000]**

### Arkansas Electric Cooperative Corp.; FFP Project 1 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Arkansas Electric Cooperative Corp. (Arkansas Electric), and on May 3, 2011, FFP Project 1 LLC (FFP 1) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Col. Charles D. Maynard Lock & Dam, located on the Arkansas River in Jefferson County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Arkansas Electric's Project No. 14158–000 would consist of: (1) An 750-foot-long, 400-foot-wide headrace channel; (2) a powerhouse, located on the right abutment of the dam, containing four generating units with a total capacity of 36.0 megawatt (MW); (3) a 1,200-foot-long, 450-foot-wide tailrace; and (4) a proposed 4.0-mile-long, 115 kilo-volt (kV) transmission line to an existing switchyard. The proposed project would have an average annual generation of 140.0 GWh, and operate run-of-river utilizing surplus water from the Col. Charles D. Maynard Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Jonathan Oliver, Arkansas Electric Cooperative Corp., One Cooperative Way, Little Rock, AR 72209. (501) 570–2488.

*FFP 1's Project No. 14191–000 would consist of:* (1) An 500-foot-long, 450-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing four generating units with a total capacity of 42.0 MW; (3) a 1,785-foot-long, 315-foot-wide tailrace; (4) a 7.2/115 KV substation; and (5) a 2.0-mile-long, 115 kV transmission line. The proposed project would have an average annual generation of 168.0 GWh, and operate run-of-river utilizing surplus water from the Col. Charles D. Maynard Lock & Dam, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14158–000, or P–14191–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28098 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14157–000; 14161–000; 14184–000]**

### Solia 2 Hydroelectric LLC; Riverbank Hydro No. 7 LLC; Lock Hydro Friends Fund XXXVIII Notice of Competing Preliminary Permit Applications Accepted for Filing And Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Solia 2 Hydroelectric LLC (Solia), Riverbank Hydro No. 7 LLC (Riverbank) and on May 3, 2011, Lock Hydro Friends Fund XXXVIII (Lock Hydro) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Arkansas Lock & Dam No. 5, located on the Arkansas River in Jefferson County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*Solia's Project No. 14157–000 would consist of:* (1) A 230-foot-long, headrace intake channel; (2) a powerhouse containing two generating units with a total capacity of 32.0 megawatts (MW); (3) a 240-foot-long tailrace; (4) a 1.6-mile-long, 34.5 kilo-Volts (kV) transmission line. The proposed project would have an average annual generation of 154.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Arkansas Lock & Dam No. 5, as directed by the Corps.

*Applicant Contact:* Mr. Douglas Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

*Riverbank's Project No. 14161–000 would consist of:* (1) A forebay; (2) an intake structure; (3) a powerhouse containing three generating units with a total capacity of 60.9 MW; (4) a tailrace structure; and (5) a 2.9-mile-long, 69 KV transmission line. The project would have an estimated average annual generation of 190.0 GWh, and operate run-of-river utilizing surplus water from the Arkansas Lock & Dam No. 5, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*Lock Hydro's Project No. 14184–000 would consist of:* (1) One lock frame modules, the frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 20.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 3.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 131.490 GWh, and operate run-of-river utilizing surplus water from the Arkansas Lock & Dam No. 5, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14157–000, P–14161–000, 14184–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28097 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14156–000; 14159–000; 14166–000; 14180–000; 14193–000]**

### Arkansas Electric Cooperative Corp., Riverbank Hydro No. 9 LLC, Solia 3 Hydroelectric LLC, Lock Hydro Friends Fund XLV, FFP Project 2 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Arkansas Electric Cooperative Corp. (Arkansas Electric), Riverbank Hydro No. 9 LLC (Riverbank) and Solia 3 Hydroelectric LLC (Solia) and on May 3, 2011, Lock Hydro Friends Fund XLV (Lock Hydro) and FFP Project 2 LLC (FFP 2) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) David D. Terry Lock & Dam, located on the Arkansas River in Pulaski County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*Arkansas Electric's Project No. 14156–000 would consist of:* (1) An 700-foot-long, 450-foot-wide headrace channel; (2) a powerhouse, located on the right abutment of the dam, containing four generating units with a total capacity of 39.6 megawatt (MW); (3) a 800-foot-long, 500-foot-wide tailrace; and (4) a proposed 4.0-mile-long, 115 kilo-volt (kV) transmission line to an existing distribution line. The proposed project would have an average annual generation of 140.0 GWh, and operate run-of-river utilizing surplus water from the David D. Terry Lock & Dam 3, as directed by the Corps.

*Applicant Contact:* Mr. Jonathan Oliver, Arkansas Electric Cooperative Corp., One Cooperative Way, Little Rock, AR 72209. (501) 570–2488.

*Riverbank's Project No. 14159–000 would consist of:* (1) A forebay; (2) an

intake structure; (3) a powerhouse containing three generating units with a total capacity of 73.5 MW; (4) a tailrace structure; and (5) a 4.1-mile-long, 69 KV transmission line. The project would have an estimated average annual generation of 184.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the David D. Terry Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*Solia's Project No. 14166–000 would consist of:* (1) A 230-foot-long, headrace intake channel; (2) a powerhouse containing two generating units with a total capacity of 32.0 MW; (3) a 240-foot-long tailrace; (4) a 1.3-mile-long, 34.5 kV transmission line. The proposed project would have an average annual generation of 163.0 GWh, and operate run-of-river utilizing surplus water from the David D. Terry Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Douglas Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

*Lock Hydro's Project No. 14180–000 would consist of:* (1) One lock frame modules, the frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 20.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 5.0-mile-long, 115 kV) transmission line to an existing distribution line. The proposed project would have an average annual generation of 131.490 GWh, and operate run-of-river utilizing surplus water from the David D. Terry Lock & Dam, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

*FFP 2's Project No. 14193–000 would consist of:* (1) An 450-foot-long, 360-foot-wide approach channel; (2) a powerhouse, located on the east side of the dam, containing four generating units with a total capacity of 50.0 MW; (3) a 1,750-foot-long, 360-foot-wide tailrace; (4) a 7.2/115 KV substation; and (5) a 4.0-mile-long, 115 kV transmission line. The proposed project would have an average annual generation of 200.0 GWh, and operate run-of-river utilizing surplus water from the David D. Terry Lock & Dam, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14156–000, P–14159–000, 14166–000, 14180–000 or P–14193–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28096 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14130–000; 14137–000; 14149–000]**

### Riverbank Hydro No. 2 LLC, Lock Hydro Friends Fund XXXVI, Arkansas Electric Cooperative Corp.; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2011, Riverbank Hydro No. 2 LLC (Riverbank) and Lock Hydro Friends Fund XXXVI (Lock Hydro) and on April 11, 2011, Arkansas Electric Cooperative Corp. (Arkansas Electric) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Joe Hardin Lock & Dam No. 3, located on the Arkansas River in Lincoln and Jefferson Counties, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14130–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing three generating units with a total capacity of 60 megawatts (MW); (4) a tailrace structure; and (5) a 21-mile-long, 69 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 142.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Joe Hardin Lock & Dam No. 3, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14137–000 would consist of: (1) Two lock frame modules, each frame module will be 109-feet long, 40-feet-high and contain ten generating units with a total combined capacity of 28.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 7.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 196.358 GWh, and operate run-of-river utilizing surplus

water from the Joe Hardin Lock & Dam No. 3, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

Arkansas Electric's Project No. 14149–000 would consist of: (1) An 800-foot-long, 350-foot-wide headrace channel; (2) a powerhouse, located on the right abutment of the dam, containing four generating units with a total capacity of 48.0 MW; (3) a 900-foot-long tailrace; and (4) a proposed 5.0-mile-long, 115 kilo-volt (kV) transmission line to an existing distribution line. The proposed project would have an average annual generation of 155.0 GWh, and operate run-of-river utilizing surplus water from the Joe Hardin Lock & Dam No. 3, as directed by the Corps.

*Applicant Contact:* Mr. Jonathan Oliver, Arkansas Electric Cooperative Corp., One Cooperative Way, Little Rock, AR 72209; (501) 570–2488.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14130–000, P–14137–000 or P–14149–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28090 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14168–000, 14187–000 and 14199–000]**

### Riverbank Hydro No. 13 LLC, Lock Hydro Friends Fund XXXIV, FFP Project 55 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 13 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XXXIV (Lock Hydro), and FFP Project 55 LLC (FFP 55) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 6, located on the Kentucky River, in Mercer and Woodford Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14168–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating unit with a total capacity of 9.0 megawatts (MW); (4) a tailrace structure; and (5) a 5.6-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 29.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 6, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14187–000 would consist of: (1) One lock frame modules, the frame module will be 45-feet long, 20-feet-high and contain four generating units with a total combined capacity of 2.5 MW; (2) a new switchyard containing a transformer; and (3) a proposed 3.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 10.957 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 6, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

FFP 55's Project No. 14199–000 would consist of: (1) An 460-foot-long, 140-foot-wide approach channel; (2) a powerhouse, located on the northwestern side of the dam, containing two generating units with a total capacity of 4.5 MW; (3) a 300-foot-long, 120-foot-wide tailrace; (4) a 4.16/25 KV substation; and (5) a 3.0-mile-long, 25 kV transmission line. The proposed project would have an average annual generation of 22.0 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 6, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at

*http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14168–000, P–14187–000, or P–14199–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28104 Filed 10–28–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 14171–000, 14186–000,14197–000]**

### Riverbank Hydro No. 18 LLC, Lock Hydro Friends Fund XXXV, FFP Project 57 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 18 LLC (Riverbank), and on May 3, 2011, Lock Hydro Friends Fund XXXV (Lock Hydro), and FFP Project 57 LLC (FFP 57) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 4, located on the Kentucky River, in Franklin County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14171–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing one generating unit with a total capacity of 5.0 megawatts (MW); (4) a tailrace structure; and (5) a 0.6-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 20.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 4, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

Lock Hydro's Project No. 14186–000 would consist of: (1) One lock frame modules, the frame module will be 45-feet long, 20-feet-high and contain four generating units with a total combined capacity of 3.0 MW; (2) a new switchyard containing a transformer; and (3) a proposed 4.0-mile-long, 115 kV transmission line to an existing distribution line. The proposed project would have an average annual generation of 13.149 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 4, as directed by the Corps.

*Applicant Contact:* Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566 x 709.

FFP 57's Project No. 14197–000 would consist of: (1) An 450-foot-long, 200-foot-wide approach channel; (2) a powerhouse, located on the northeastern side of the dam, containing two generating units with a total capacity of 5.4 MW; (3) a 300-foot-long, 125-foot-wide tailrace; (4) a 4.16/25 KV substation; and (5) a 600-foot-long, 25 kV transmission line. The proposed project would have an average annual generation of 21.6 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 4, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14171–000, or P–14197–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28106 Filed 10–28–11; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL12–5–000]**

### Pacific Gas and Electric Company; California Independent System Operator Corporation; Notice of Complaint

Take notice that on October 24, 2011, pursuant to section 206 of the Federal Power Act and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedures, 18 CFR 385.206, Pacific Gas and Electric Company (Complainant) file a complaint against the California Independent System Operator Corporation (Respondent), alleging that the application of certain provisions of the Respondent's Tariff to impose a penalty on the Complainant, based on an earlier, unmodified section of the Respondent's Tariff is unjust and unreasonable.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

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 and 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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to

intervene, and protests must be served on the Complainants.

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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on November 14, 2011.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28089 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2149–152]**

### Wells Hydroelectric Project; Notice of Availability of the Final Environmental Impact Statement for the Wells Hydrolectric Project

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission (Commission or FERC) regulations contained in the Code of Federal Regulations (CFR)(18 CFR part 380 [FERC Order No. 486, 52 FR 47897]), the Office of Energy Projects has reviewed the application for license for the Wells Hydroelectric Project (FERC No. 2149), located on the Columbia River in Douglas, Okanogan, and Chelan counties, Washington, and has prepared a final environmental impact statement (EIS) for the project. The project occupies 8.60 acres of U.S. Bureau of Land Management land and 6.55 acres of U.S. Army Corps of Engineers land.

The final EIS contains staff's analysis of the applicant's proposal and the alternatives for relicensing the Wells Project. The final EIS documents the views of governmental agencies, non-governmental organizations, affected Indian tribes, the public, the license applicant, and Commission staff.

A copy of the final EIS is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''e-Library'' link. Enter the docket number, excluding the last three digits, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

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, contact FERC Online Support.

For further information, please contact Kim A. Nguyen at (202) 502–6105 or at *kim.nguyen@ferc.gov.*

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28110 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER12–128–000]**

### EGP Stillwater Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of EGP Stillwater Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 10, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 21, 2011.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2011–27999 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14169–000]**

### Riverbank Hydro No. 15 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 15 LLC (Riverbank) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Hugo Dam, located on the Kiamichi River, in Choctaw County, Oklahoma. The sole purpose of a preliminary permit, if issued, is to grant the permit holder

priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*The proposed project would consist of:* (1) A bifurcation from the existing outlet structure; (2) a 16-foot-diameter, 165-foot-long penstock; (3) a powerhouse containing one generating unit with a total capacity of 8.6 megawatts (MW); (4) a tailrace structure; and (5) a 2.8-mile-long, 25 kilo-volt (kV) transmission line. The project would have an estimated average annual generation of 21.8 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Hugo Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1-(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14169–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28105 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14215–000]**

### Spartanburg Water System; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On June 23, 2011, Spartanburg Water System (Spartanburg) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located on the Pacolet River in Spartanburg County, South Carolina. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) An existing 11.3-foot-high, 171-foot-long wooden dam, owned by Spartanburg; (2) a reservoir with a surface area of 11.69 acres and a storage capacity of 60 acre-feet; (3) a 130-foot-long, 12-foot-wide concrete headrace channel; (4) a powerhouse containing one generating unit with a total capacity of 150.0 kilowatts (kW); (5) a 70-foot-long, 10-foot-wide bedrock tailrace structure; and (6) a 450-foot-long, 12 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 770.0 megawatt-hours (MWh) and the project power would be sold.

*Applicant Contact:* Ms. Sue Schneider, General Manager, Spartanburg Water, 200 Commerce Street, P.O. Box 251, Spartanburg, South Carolina 29304. (864) 580–5642.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 Days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1-(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14215–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28109 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14133–000]**

### Riverbank Hydro No. 5 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2011, Riverbank Hydro No. 5 LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Wright Patman Dam, located on the Sulphur River in Bowie County, Texas. The sole purpose of a preliminary permit, if

issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 10.0 megawatts (MW); (4) a tailrace structure; and (5) 10.1-mile-long, 25 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 24.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Millwood Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14133–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28093 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14254–000]**

### FFP Project 8 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 11, 2011, FFP Project 8 LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project located on the Wax Lake Outlet in St. Mary Parish, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed in-stream hydrokinetic project would consist of: (1) Up to 4,928 SmarTurbine generating units installed in arrays on the water bottom; (2) the total capacity of the installation would be up to 197,120 kilowatts; (3) flexible cables would convey each array's power to a metering station; and (4) a 13-mile-long, 34.5 kilo-Volt transmission line would interconnect with the power grid. The proposed project would have an average annual generation of 448,295,232 kilowatt-hours (kWh), which would be sold to a local utility.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14254–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28112 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14165–000]**

### Riverbank Hydro No. 11 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On May 2, 2011, Riverbank Hydro No. 11 LLC (Riverbank) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Nolin River Dam, located on the Nolin River, in Edmonson County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary

permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A bifurcation from the existing outlet structure; (2) a 10-foot-diameter, 140-foot-long penstock; (3) a powerhouse containing one generating unit with a total capacity of 8.0 megawatts (MW); (4) a tailrace structure; and (5) an 3.1-mile-long, 25 kilovolt (kV) transmission line. The project would have an estimated average annual generation of 24.5 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 3, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1-(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14165–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28103 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14256–000]**

### Windsor Machinery Co., Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 15, 2011, Windsor Machinery Co., Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Braendly Hydroelectric Project to be located on Fishkill Creek in Dutchess County, New York. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would redevelop an abandoned project and consist of: (1) An existing 130-foot-long, 18-foot-high cut stone with a concrete cap dam creating a reservoir with a surface area of approximately 3.04 acres and a total storage capacity of 15 acre-feet at a normal maximum operating elevation of 119.5 feet mean sea level (msl); (2) a new 5-foot-diameter, 200-foot-long penstock replacing an existing penstock in its entirety; (3) a new 35-foot-long by 35-foot-wide 3-storey high powerhouse at the site of an original powerhouse containing one turbine unit with a rated capacity of 225 kilowatts; (4) an existing 10-foot-long by 5-foot-wide tailrace; (5) a new 480-volt, 400-foot-long transmission line extending from the powerhouse to a nearby building; and (6) appurtenant facilities. The project would have an annual generation of 1,600 megawatt-hours.

*Applicant Contact:* Sarah L. Bower, Windsor Machinery Co., Inc., 16 Orbit Lane, Hopewell Junction, NY 12533; phone: (845) 897–4194.

*FERC Contact:* Monir Chowdhury; phone: (202) 502–6736.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14256–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28086 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14134–000]**

### Qualified Hydro 21 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On April 1, 2011, Qualified Hydro 21 LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Arkansas

River Lock and Dam No. 3, located on the Arkansas River, in Lincoln and Jefferson Counties, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

*The proposed project would consist of:* (1) An 400-foot-long, 280-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing four generating units with a total capacity of 48.0 MW; (3) a 500-foot-long, 280-foot-wide tailrace; (4) a 7.2/115 kilo-Volt (kV) substation; and (5) a 2.6-mile-long, 115 kV transmission line. The proposed project would have an average annual generation of 192.0 GWh, and operate run-of-river utilizing surplus water from the Arkansas River Lock and Dam No. 3, as directed by the Corps.

*Applicant Contact:* Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14134–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28095 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14132–000]**

### Riverbank Hydro No. 3 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 1, 2011, Riverbank Hydro No. 3 LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Millwood Dam, located on the Little River in Little River County, Arkansas. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 18.0 megawatts (MW); (4) a tailrace structure; and (5) 8.1-mile-long, 25 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 46.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Millwood Dam, as directed by the Corps.

*Applicant Contact:* Mr. Kuo-Bao Tong, Riverbank Power Corporation, Royal Bank Plaza, South Tower, P.O. Box 166, 200 Bay Street, Suite 3230, Toronto, ON, Canada M5J2J4. (416) 861–0092 x 154.

*FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

*Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications:* 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1 (866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14132–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2011.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2011–28092 Filed 10–28–11; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**EPA–HQ–OARM–2011–0803, EPA–HQ–OARM–2–11–0804; FRL–9484–8]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Background Checks for Contractor Employees (Renewal) and Drug Testing for Contract Employees (Renewal)

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

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew two existing

approved Information Collection Requests (ICR) to the Office of Management and Budget (OMB). These ICRs are scheduled to expire as follows: EPA ICR No. 2159.03 on April 30, 2012, and EPA ICR No. 2183.05 on June 30, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before December 30, 2011.

**ADDRESSES:** Submit your comments, identified by Docket ID Numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ramrakha.staci@epa.gov.*
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of three (3) copies and identify one of following Docket ID Numbers:

(1) *Docket ID:* EPA–HQ–OARM–2011–0803, Background Checks for Contractor Employees.

(2) *Docket ID:* EPA–HQ–OARM–2–11–0804, Drug Testing for Contractor Employees.

- *Hand Delivery:* EPA Docket Center-Attention OEI Docket, EPA West, Room B102, 1301 Constitution Ave., NW., Washington DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments identified by the Docket ID numbers provided for each item in the text. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

**FOR FURTHER INFORMATION CONTACT:** Staci Ramrakha, Policy Training and Oversight Division, Office of Acquisition Management (3802R), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–2017; *email address: ramrakha.staci@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## How can I access the docket and/or submit comments?

EPA has established a public docket for each of the ICRs identified in this document (see the Docket ID numbers for each ICR that are provided in the text), which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

## What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

## What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## What information collection activity or ICR does this apply to?

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The

display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Individual ICRs**

(1) *Docket ID:* EPA–HQ–OARM–2011–0803, Background Checks for Contractor Employees;

(2) *Docket ID:* EPA–HQ–OARM–2–11–0804, Drug Testing for Contractor Employees.

*Affected entities:* Entities potentially affected by these two ICRs are contractors performing work at sensitive sites or on sensitive projects, and not covered under the provisions of Homeland Security Presidential Directive-2. Specifically, all contractors involved with Emergency Response, Superfund, Information systems, Facility Services, and Research Support that have significant security concerns, as determined by the contracting officer, on a case-by-case basis, will be required to provide qualified personnel that meet the background check and drug testing requirements developed by EPA.

**Titles: (1) Background Checks for Contractor Employees (Renewal); (2) Drug Testing for Contractor Employees**

*ICR numbers:* (1) Background checks for Contractor Employees EPA–HQ–OARM–2011–0803, OMB Control No. 2030–0043; (2) Drug Testing for Contractor Employees EPA ICR No. 2183.05, OMB Control No. 2030–0044.

*ICR status:* (1) EPA–HQ–OARM–2011–0803 is scheduled to expire on April 30, 2012. (2) EPA ICR No. 2183.05 is scheduled to expire on June 30. 2012.

*Abstract:* (1) Background checks cover citizenship or valid visa, criminal convictions, weapons offenses, felony convictions, and parties prohibited from receiving federal contracts. (2) Drug tests are for the presence of marijuana, cocaine, opiates, amphetamines and phencyclidine (PCP). Contractors shall maintain records of all background checks and drug tests.

*Burden Statement:* Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The individual ICRs provide a detailed explanation of the Agency's estimate, which are briefly summarized below.

(1) The number of contractor employees expected to submit the requested information for EPA–HQ–OARM–2011–0803, Background Checks, is 3,000 for the life of the ICR (3 years), which equates to 1,000 per year. The estimated effort for contractors to collect information for each background check is one hour, or 1,000 hours per year. The estimated annual respondent cost for performing background check collection requests is $83,450. This is calculated by multiplying the number of annual occurrences, 1,000, by the estimated respondent cost of $83.45 per collection, which includes time to fill out the information, the cost of the background check, reviewing/applying suitability criteria, submitting a notification to the EPA and maintaining files. Using an annual escalation rate of 2.5%, this equates to a total respondent cost of $256,670 over the three year life of this ICR. In addition to the respondent burden, there is also an agency burden for ensuring contractor compliance, documenting contractors' notifications and issuing waivers. This is estimated to be .5 hours for each collection (1,000 per year) and .25 hours for each waiver request (250 per year) for a total of 562.5 hours per year and a cost of $53,133.75 per year. This equates to a total agency cost of $159,401.25 over the three year life of this ICR.

(2) The number of contractor employees expected to submit the requested information for EPA ICR No. 2183.05, Drug Testing, is 1,350 for the life of this ICR (3 years) which equates to 450 per year. The estimated effort for contractors to collect information for each drug test is one hour, for a total of 450 hours per year. The estimated annual respondent cost for performing drug tests is $72,450. This is calculated by multiplying the number of annual occurrences, 450, by the estimated respondent cost of $161.00 per test, which includes time to provide the sample, the cost of the drug test, reviewing results, submitting notification to the EPA and maintaining files. Using an annual escalation rate of 2.5%, this equates to a total respondent cost of $495,000. In addition to the respondent burden, there is also an agency burden for ensuring contractor compliance. This is estimated to be .25 hours per occurrence for a total of 112.5 hours per year (450 drug tests per year multiplied by .25) and an annual cost of $10,626.75. This equates to a total agency cost of $31,880.25 over the three year life of this ICR.

**Are there changes in the estimates from the last approval?**

EPA estimates that the hourly burden for both collections will remain the same as reported in the previous information collections because there has been no change in the information being collected and approximately the same number of contracts remain active.

**What is the next step in the process for this ICR?**

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: October 19, 2011.

**John R. Bashista,**

*Director, Office of Acquisition Management.*

[FR Doc. 2011–28077 Filed 10–28–11; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9484–9]**

## California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition (LSI) Engines; Fleet Requirements for In-Use LSI Forklifts and Other Industrial Equipment; Opportunity for Public Hearing and Comment

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

**ACTION:** Notice.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has amended its emission standards and certification and test procedures for large spark-ignition nonroad engines (''LSI Emission Standards''). CARB has also adopted in-use fleet average emission requirements for large- and medium-sized fleets (''LSI In-Use Fleet Requirements). California's LSI In-Use Fleet Requirements are applicable to fleets comprised of four or more pieces of equipment powered by LSI engines, including forklifts, industrial tow tractors, sweepers/scrubbers, and airport

ground support equipment. CARB requests that EPA find the amended LSI Emission Standards to be within the scope of a previously granted LSI authorization or, in the alternative, grant a new full authorization pursuant to Clean Air Act section 209(e). This notice announces that EPA has tentatively scheduled a public hearing to consider California's LSI Emission Standards and LSI In-Use Fleet Requirements, and that EPA is now accepting written comment on the request.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on November 15, 2011, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by November 7, 2011, expressing interest in presenting the agency with oral testimony. Parties wishing to present oral testimony at the public hearing should provide written notice to Kristien Knapp at the email address noted below. If EPA receives a request for a public hearing, that hearing will be held at 1310 L Street NW., Washington, DC 20005. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead consider CARB's request based on written submissions to the docket. Any party may submit written comments until December 15, 2011.

By November 14, 2011, any person who plans to attend the hearing may call Kristien Knapp at (202) 343–9949, to learn if a hearing will be held.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0830, by one of the following methods:

- On-Line at *http://www.regulations.gov:* Follow the On-Line Instructions for Submitting Comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- Mail: Air and Radiation Docket, Docket ID No. EPA–HQ–OAR–2011–0830, U.S. Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*On-Line Instructions for Submitting Comments:* Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0830. EPA's policy is that all comments we receive will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov,* your email address will automatically be captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

EPA will make available for public inspection materials submitted by CARB, written comments received from any interested parties, and any testimony given at the public hearing. Materials relevant to this proceeding are contained in the Air and Radiation Docket and Information Center, maintained in Docket ID No. EPA–HQ–OAR–2011–0830. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all federal government work days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (email) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA–HQ–OAR–2011–0830, in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver and authorization **Federal Register** notices. The page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

**FOR FURTHER INFORMATION CONTACT:** Kristien G. Knapp, Attorney-Advisor, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. Telephone: (202) 343–9949. Fax: (202) 343–2804. Email: *knapp.kristien@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. California's LSI Regulations

By letter dated December 10, 2008, CARB submitted to EPA its request pursuant to section 209(e) of the Clean Air Act (''CAA'' or ''the Act''), regarding its regulation of emissions from new off-road large spark-ignition (LSI) engines and its in-use fleet requirements for forklifts and other industrial equipment with LSI engines.[1] The LSI regulations are designed to reduce emissions of hydrocarbons (HC) and oxides of nitrogen ($NO_X$) from forklifts and other industrial equipment powered by LSI engines. CARB approved the LSI regulations at a public hearing on May 25, 2006 (by Resolution 06–11).[2] After making modifications to the regulation available on December 1, 2006, and February 1, 2007 for supplemental public comment, CARB's Executive Officer formally adopted the LSI regulations in Executive Order R–07–

[1] California Air Resources Board (''CARB''), ''Request for Authorization,'' December 10, 2008, EPA–HQ–OAR–2011–0830–0001.

[2] CARB Enclosure 1, ''Resolution 06–11,'' EPA–HQ–OAR–2011–0830–0002.

001 on March 2, 2007.[3] The LSI regulations are codified at title 13, California Code of Regulations, sections 2775 through 2775.2 [4]

Underpinning CARB's LSI regulations is a set of emission standards for new off-road LSI engines beginning in 2007. The emission standards include: Adoption of EPA's 2007 and later model year emission standards for the same engines, more stringent standards for the 2010 and later model years, optional certification standards, and more rigorous certification and test procedures. The LSI regulations also apply to operators of large- and medium-sized fleets of forklifts, sweepers/scrubbers, airport ground support equipment (GSE), and industrial tow tractors with engine displacements of greater than one liter. These fleets must meet a fleet average in-use emission standard.

## II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the Act permanently preempts any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for new nonroad engines or vehicles. States are also preempted from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles. Section 209(e)(2) requires the Administrator, after notice and opportunity for public hearing, to authorize California to enforce such standards and other requirements, unless EPA makes one of three findings. In addition, other states with attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards. On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.[5] EPA later revised these regulations in 1997.[6] As stated in the preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) ''consistency'' inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).[7]

In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California's nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same ''consistency'' criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California ''standards and accompanying enforcement procedures are not consistent with section 202(a)'' of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.

## III. EPA's Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and requesting written comment on issues relevant to a full authorization analysis. Specifically, we request comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable federal standards is arbitrary and capricious, (b) whether California needs such standards to meet compelling and extraordinary conditions, and (c) whether California's standards and accompanying enforcement procedures are consistent with section 209 of the Act.

## IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until December 15, 2011. Upon expiration of the comment period, the Administrator will render a decision on CARB's request based on the record from the public hearing, if any, all relevant written submissions, and other information that she deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA–HQ–OAR–2011–0830.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as ''Confidential Business Information'' (''CBI''). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: October 25, 2011.

**Margo Tsirigotis Oge,**

*Director, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2011–28116 Filed 10–28–11; 8:45 am]

**BILLING CODE 6560–50–P**

[3] CARB Enclosure 2, ''Executive Order R–07–001,'' EPA–HQ–OAR–2011–0830–0003.

[4] CARB Enclosure 3, ''Final Regulation Order,'' EPA–HQ–OAR–2011–0830–0004.

[5] 59 FR 36969 (July 20, 1994).

[6] *See* 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request from California to authorize the state to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

[7] *See* 59 FR 36969 (July 20, 1994).

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 9485–2]**

### National Drinking Water Advisory Council; Notice of a Public Teleconference Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Public Teleconference Meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA or Agency) is announcing a public teleconference of the National Drinking Water Advisory Council (NDWAC or Council) on November 18, 2011. The Council will consult with EPA regarding potential modifications to the lead service line replacement requirements of the National Drinking Water Regulations for Lead and Copper.

**DATES:** The public teleconference will be held on November 18, 2011, from 10:30 a.m. to 12:30 p.m. (Eastern Standard Time).

**FOR FURTHER INFORMATION CONTACT:** Any interested person or organization that would like to register and receive pertinent information concerning the public teleconference may contact Suzanne Kelly, Designated Federal Officer, by mail at U.S. EPA, Office of Ground Water and Drinking Water (Mail Code 4601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460; or by telephone at (202) 564–3887; or by email at *kelly.suzanne@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Public Participation:* The EPA encourages the public to register early because there are a limited number of phone lines and they will be made available on a first-come, first-serve basis.

*Meeting Note:* The public teleconference will be conducted by telephone only.

*Oral Statements:* Individuals or groups requesting to make an oral statement will be limited to three minutes. Those interested in being placed on the public speakers list for the November 18, 2011, teleconference should contact Ms. Kelly no later than November 16, 2011, at the contact information listed under the **FOR FURTHER INFORMATION CONTACT** section.

*Written Statements:* Written statements should be provided to Ms. Kelly no later than November 14, 2011, by fax (202) 564–3753 or via email, at the contact information listed under the **FOR FURTHER INFORMATION CONTACT** section. Written statements received on or prior to the due date will be distributed to the Council before any final discussion or vote is completed. Any statements received after the due date will be forwarded to the Council members for their information and will become part of the permanent meeting file.

*Special Accommodations:* For information on access or services for individuals with disabilities or to request accommodation of a disability, please contact Ms. Kelly at the contact information listed under the **FOR FURTHER INFORMATION CONTACT** section, preferably, at least 10 days before the teleconference to give the EPA as much time as possible to process your request.

**Background**

*National Drinking Water Advisory Council:* The 15 member Council was created by Congress on December 16, 1974, as part of the Safe Drinking Water Act (SDWA) of 1974 [42 U.S.C. 300j–5] to provide practical and independent advice, consultation and recommendations to the EPA Administrator on the activities, functions, policies, and regulations required by the SDWA. This Council is operated in accordance with the provisions of the SDWA and the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. More information about the Council can be found at: *http://water.epa.gov/drink/ndwac/.*

*National Drinking Water Regulations for Lead and Copper:* EPA is developing proposed revisions to the Lead and Copper Rule (LCR), which is the National Primary Drinking Water Regulation for controlling lead and copper in drinking water supplied by public water systems. EPA consulted with the NDWAC on potential revisions to the LCR on July 21, 2011. In that meeting, NDWAC deferred consultations on potential modifications to the lead service line replacement requirements of the LCR until after EPA's Science Advisory Board (SAB) issued its final report on the subject. The SAB recently finalized their report entitled ''SAB Evaluation of the Effectiveness of Partial Lead Service Line Replacements.'' This report contains the SAB's technical evaluation of the current scientific data regarding the effectiveness of partial lead service line replacements. The final report and more information about the SAB can be found at: *http://yosemite.epa.gov/sab/sabproduct.nsf/0/964CCDB94F4E6216852579190072606F/$File/EPA-SAB-11-015-unsigned.pdf.*

Dated: October 26, 2011.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 2011–28113 Filed 10–28–11; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 30, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Submit your PRA comments to Nicholas A. Fraser, Office of

Management and Budget, via fax at (202) 395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** Benish Shah, Office of Managing Director, (202) 418–7866.

*OMB Approval Number:* 3060–1015.

*Title:* Ultra Wideband Transmission Systems Operating Under part 15.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Number of Respondents:* 50 respondents; 50 responses.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* One time, on occasion reporting requirements; and Third party disclosure.

*Obligation to Respond:* Required to obtain or retain benefits.

*Total Annual Burden:* 50 hours.

*Total Estimated Cost:* $2,500.

*Privacy Impact Assessment:* N/A.

*Nature and Extent of Confidentiality:* There is no need for confidentiality.

*Needs and Uses:* This collection will be submitted as an extension (no change in reporting requirements), after this 60 day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance. The Commission rules in 47 CFR part 15, 15.525 requires operators of the Ultra Wideband (UWB) imaging systems to coordinate with other Federal agencies via the FCC and to obtain approval before the UWB equipment may be used. Initial operation in a particular area may not commence until the information has been sent to the Commission and no prior approval is required. The information will be used to coordinate the operation of the Ultra Wideband transmission systems in order to avoid interference with sensitive U.S. government radio systems. The UWB operators will be required to provide name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA) under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications. Since initial operation in a particular area does not require approval from the FCC to operate the equipment.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary, Office of the Secretary, Office of Managing Director.*

[FR Doc. 2011–28072 Filed 10–28–11; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Notice

**AGENCY:** Federal Election Commission.

**DATE AND TIME:** *Thursday, November 3, 2011 at 10 a.m.*

**PLACE:** 999 E Street NW., Washington, DC (Ninth Floor).

**STATUS:** This Meeting, Open to the Public, Was Canceled.

**PERSON TO CONTACT FOR INFORMATION:** Judith Ingram, Press Officer, Telephone: (202) 694–1220.

**Shawn Woodhead Werth,**

*Secretary and Clerk of the Commission.*

[FR Doc. 2011–28257 Filed 10–27–11; 4:15 pm]

**BILLING CODE 6715–01–P**

## FEDERAL MARITIME COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Federal Maritime Commission.

**TIME AND DATE:** November 3, 2011–10 a.m.

**PLACE:** 800 North Capitol Street NW., First Floor Hearing Room, Washington, DC.

**STATUS:** A part of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

**MATTERS TO BE CONSIDERED:**

**Open**

1. Staff Briefing and Recommendation Concerning Publication of Inaccurate or Inactive Ocean Common Carrier Tariffs—Show Cause Order.

2. Staff Briefing Concerning Non-Compliance with Commission Order on Special Reporting Requirements for the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement.

**Closed**

1. Discussion on Non-Compliance with Commission Order on Special Reporting Requirements for the Transpacific Stabilization Agreement and the Westbound Transpacific Stabilization Agreement.

**CONTACT PERSON FOR MORE INFORMATION:** Karen V. Gregory, Secretary, (202) 523–5725.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–28283 Filed 10–27–11; 4:15 pm]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for a license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF)—Ocean Transportation Intermediary (OTI) pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515). Notice is also hereby given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a license.

Interested persons may contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

Agxit, LLC (NVO), 11080 St. Rt. 729, Jeffersonville, OH 43128, Officers: David A. McElwain, Manager, (Qualifying Individual), David W. Martin, President, Application Type: New NVO License.

Anicam Cargo, Inc. (NVO & OFF), 1770 NW. 96th Avenue, Doral, FL 33172, Officers: Alfredo Gutierrez, Director/CEO, (Qualifying Individual), Angela Gutierrez, Vice President/Acting Secretary, Application Type: New NVO & OFF License.

AOC Freight Corporation dba AOC Limited dba AOC China Limited (NVO), 20910 Normandie Avenue, Suite C, Torrance, CA 90502, Officers: Cindy Yim, President, (Qualifying Individual), Spencer Ho, Director/Vice President/Secretary, Application Type: New NVO License.

Coastar Freight Services, Inc. (NVO), 10370 Slusher Drive, #2, Santa Fe Springs, CA 90670, Officer: Weng C. NG, President/Vice President/CFO/Secretary, (Qualifying Individual), Application Type: New NVO License.

Com Tec LLC (OFF), 327 College Street, Suite 200, Woodland, CA 95695, Officer: Nasrullah Chaudhry, Manager, (Qualifying Individual), Application Type: New OFF License.

Demark Customs Broker (NVO & OFF), 1608 NW. 84th Avenue, Doral, FL

33126, Officers: Ramiro M. Ramirez, Jr., Vice President/Director, (Qualifying Individual), Mirna Ramirez, President/Secretary/Treasurer/Director, Application Type: Add OFF Service.

Direct Express Intermodal, LLC (NVO & OFF), 3399 Peachtree Road, NE., Suite 1130, Atlanta, GA 30326, Officers: James J. Briles, III, COO/Manager, (Qualifying Individual), Chad J. Rosenberg, CEO, Application Type: Add NVO & OFF License.

Florida International Enterprises, Inc. (NVO), 7675 N. 66th Street, Miami, FL 33166, Officers: Rene Hernandez, President, (Qualifying Individual), Ana M. Hernandez, Vice President, Application Type: New NVO License.

Global Forwarding Enterprises Limited Liability Company, dba GlobalForwarding.com dba Forwardingservices.com dba Containerquote.com dba Global Forwarding Enterprises LLC (NVO), 348 Route 9 N, Suite G, Manalapan, NJ 07726, Officers: Rachel Micari, Manager, (Qualifying Individual), Pavel Kapelnikov, General Manager/Member, Application Type: Trade Name Change & QI Change.

HTNS America, Inc. dba UKO Logis, Inc. (NVO & OFF), 17268 S. Main Street, Carson, CA 90248, Officers: Kaehong Park, CFO, (Qualifying Individual), Won S. Jang, President/CEO/Secretary, Application Type: QI Change.

Kiomex, LLC (NVO & OFF), 8435 NW. 72nd Street, Miami, FL 33166, Officers: Irene M. Chizmar, COO, (Qualifying Individual), Christopher A. Jeffery, Owner, Application Type: Name Change.

Ocean Star International, Inc. dba O.S.I. & Cargociti Worldwide Logistics (NVO & OFF), 10880 Wiles Road, Coral Springs, FL 33076, Officer: Joshua S. Morales, President, (Qualifying Individual), Application Type: Trade Name Change.

RLE International, Inc. (NVO & OFF), 1400 NW. 96th Avenue, Suite 106, Miami, FL 33172, Officers: Ricardo A. Mejia, Secretary, (Qualifying Individual), Irina B. Pando, President/Treasurer, Application Type: QI Change.

Sam Philip dba Red Orange North America (NVO & OFF), 7D Jules Lane, New Brunswick, NJ 08901, Officer: Sam Philip, Sole Proprietor, (Qualifying Individual), Application Type: New NVO & OFF License.

The Ultimate Logistics Services, Inc. (NVO & OFF), 3 Birch Place, Pine Brook, NJ 07058, Officer: Michael K. Cheng, President/Secretary/Treasurer, (Qualifying Individual), Application Type: New NVO & OFF License.

Toll Global Forwarding (USA) Inc. (NVO & OFF), 800 Federal Blvd., Carteret, NJ 07008, Officers: J. Myles O'Brien, CEO, (Qualifying Individual), Tracy Wang, CFO/Secretary, Application Type: Add NVO Service.

Trans State Logistics, Inc. (NVO & OFF), 9080 Telstar Avenue, Suite 332, El Monte, CA 91731, Officers: Florence Hau, Secretary, (Qualifying Individual), Cheng K. Shing, Director/CEO/CFO, Application Type: QI Change.

Unicorn Shipping, Inc. (NVO & OFF), 1225 W. 190th Street, Suite 250, Gardena, CA 90248, Officer: Moazam Mahmood, President/Vice President, (Qualifying Individual), Application Type: New NVO & OFF License.

Dated: October 25, 2011.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2011–28031 Filed 10–28–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

| License No. | Name/Address | Date reissued |
|---|---|---|
| 012248N | World Air and Ocean Services, Inc., 461 Littlefield Avenue, So. San Francisco, CA 94080. | September 2, 2011. |
| 019901N | Ambiorix Cargo Express Inc., 453 East 167th Street, Bronx, NY 10456 | August 21, 2011. |

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–28032 Filed 10–28–11; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Revocation

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

*License Number:* 1590F.
*Name:* Fernando L. Cancetty dba Sunrise Forwarding Company.
*Address:* 540 Cressida Circle, Spring Hill, FL 34609.
*Date Revoked:* September 23, 2011.
*Reason:* Voluntarily surrendered license.

*License Number:* 2952F.
*Name:* New York Customs Brokers Inc.
*Address:* 148–02 Guy R. Brewer Blvd., Jamaica, NY 11434.
*Date Revoked:* September 2, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 3512F.
*Name:* Urie Transportation Management, Incorporated dba U.S. Northwest Express dba USNW Express.
*Address:* 5150 Village Park Drive SE., Suite 100, Bellevue, WA 98006.
*Date Revoked:* September 26, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 004299N.
*Name:* CNC Shipping International Inc.
*Address:* 7774 NW 71st Street, Miami, FL 33166.
*Date Revoked:* September 3, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 8016NF.
*Name:* Guardship America, Incorporated.
*Address:* 6679 Santa Barbara Road, Suite J, Elkridge, MD 21075.
*Date Revoked:* September 21, 2011.
*Reason:* Failed to maintain valid bonds.

*License Number:* 8814NF.
*Name:* Baltrans Ocean, Inc.
*Address:* 150–15 183rd Street, Springfield Gardens, NY 11413.
*Date Revoked:* October 6, 2011.
*Reason:* Voluntarily surrendered license.

*License Number:* 12248F.
*Name:* World Air and Ocean Services, Inc.
*Address:* 461 Littlefield Avenue, So. San Francisco, CA 94080.
*Date Revoked:* September 2, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 012659N.
*Name:* Centre Shipping International, Inc.
*Address:* 11011 Richmond Avenue, Suite 675, Houston, TX 77042.
*Date Revoked:* September 2, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 012787N.
*Name:* Newport Cargo Consolidated, Inc. dba Touchdown Freight Co.
*Address:* 12833 Simms Avenue, Hawthorne, CA 90250.
*Date Revoked:* October 3, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 017582F.
*Name:* Trans Global Logistics, Inc.
*Address:* 100 Eagle Ridge Road, Midland City, AL 36350.
*Date Revoked:* October 7, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 018715N.
*Name:* Sunwoo International, Inc. dba Gen-X International Freight Company.
*Address:* 1835 South Nordic Road, Mt. Prospect, IL 60056.
*Date Revoked:* September 30, 2011.
*Reason:* Voluntarily surrendered license.

*License Number:* 019318N.
*Name:* Marine International, Inc.
*Address:* 1417 Ashford Lane, Aurora, IL 60502.
*Date Revoked:* September 1, 2011.
*Reason:* Voluntarily surrendered license.

*License Number:* 019453N.
*Name:* La Onion Shipping Co., Inc.
*Address:* 1680 Jerome Avenue, Bronx, NY 10453.
*Date Revoked:* October 2, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 019825NF.
*Name:* Anchor Global (USA), Inc.
*Address:* 11133 Oakton Road, Oakton, VA 22124.
*Date Revoked:* September 23, 2011.
*Reason:* Failed to maintain valid bonds.

*License Number:* 020102NF.
*Name:* Cargo Shipping Expedition International Inc.
*Address:* 131 Industrial Avenue, Hasbrouck Heights, NJ 07604.
*Date Revoked:* September 2, 2011.
*Reason:* Failed to maintain valid bonds.

*License Number:* 020298NF.
*Name:* A A Shipping Incorporated.
*Address:* 11526 Harwin Drive, Houston, TX 77072.
*Date Revoked:* September 27, 2011.
*Reason:* Failed to maintain valid bonds.

*License Number:* 020328N.
*Name:* AJ Cargo Express Inc.
*Address:* 3340 Fort Independence Street, Suite 44, Bronx, NY 10463.
*Date Revoked:* October 3, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021246N.
*Name:* Around the World Shipping, Inc.
*Address:* 13324 Estrella Avenue, Gardena, CA 90248.
*Date Revoked:* October 2, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021325N.
*Name:* Yaseen Trading and Investment, Inc. dba Yaseen Shipping.
*Address:* 2547 South Main Street, Santa Ana, CA 92707.
*Date Revoked:* September 28, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 021389NF.
*Name:* Global Market Express Corporation.
*Address:* 13500 SW., 88th Street, Suite 285–D, Miami, FL 33186.
*Date Revoked:* September 30, 2011.
*Reason:* Failed to maintain valid bonds.

*License Number:* 022392N.
*Name:* AGXH Trucking LLC dba Unix Global Logistics.
*Address:* 4137 Banner Drive, Houston, TX 77013.
*Date Revoked:* September 26, 2011.
*Reason:* Failed to maintain a valid bond.

*License Number:* 022630N.
*Name:* Quantum Group LLC.
*Address:* 346 Bennetts Farm Road, Ridgefield, CT 06877.
*Date Revoked:* September 2, 2011.
*Reason:* Failed to maintain a valid bond.

**Sandra L. Kusumoto,**

*Director, Bureau of Certification and Licensing.*

[FR Doc. 2011–28030 Filed 10–28–11; 8:45 am]

BILLING CODE 6730–01–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 November 25, 2011.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *FFD Financial Corp.,* Dover, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of First Federal Community Bank, Dover, Ohio, a thrift, upon its conversion to a national bank.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Sterne Agee Group, Inc.,* Birmingham, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Sum Financial Corporation and The Citizens Exchange Bank, both in Pearson, Georgia.

Board of Governors of the Federal Reserve System, October 26, 2011.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 2011–28066 Filed 10–28–11; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (''FTC'' or ''Commission'').

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through December 31, 2014, the current OMB clearance for the information collection requirements contained in its Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising (''Franchise Rule'' or ''Rule''). That clearance expires on December 31, 2011.

**DATES:** Comments must be submitted by November 30, 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 ''Franchise Rule, PRA Comment, FTC File No. P094400'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA2* 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 J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Craig Tregillus, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., H–286, Washington, DC 20580, (202) 326–2970.

**SUPPLEMENTARY INFORMATION:** *Title:* Franchise Rule, 16 CFR part 436.

*OMB Control Number:* 3084–0107.

*Type of Review:* Extension of currently approved collection.

*Abstract:* On August 10, 2011, the Commission sought comment on the information collection requirements associated with the Franchise Rule. 76 FR 49479. No comments were received. Pursuant to the OMB regulations, 5 CFR part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing a second opportunity for the public to comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

*Estimated Annual Burden:* 16,750 hours.

*Estimated Number of Respondents, Estimated Average Burden per Year per Respondent:* (250 new franchisors × 30 hours of annual disclosure burden) + (2,250 established franchisors × 3 hours of average annual disclosure burden) + (2,500 franchisors × 1 hour of annual recordkeeping burden).[1]

*Estimated Annual Labor Cost:* $3,597,500.

*Estimated Capital or Other Non-Labor Cost:* $8,000,000.

*Request for Comment:* You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before November 30, 2011. Write ''Franchise Rule, PRA Comment, FTC File No. P094400'' 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). 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).[2] 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, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/franchiserulePRA2* 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 ''Franchise Rule, PRA Comment, FTC File No. P094400'' 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 J), 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 November 30, 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.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, *Attention:* Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security

[1] The details and assumptions underlying these estimates and for estimated annual labor and non-labor costs were set forth in the August 10, 2011 **Federal Register** notice.

[2] 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).

precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

**Willard K. Tom,**

*General Counsel.*

[FR Doc. 2011–28044 Filed 10–28–11; 8:45 am]

**BILLING CODE 6750–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Injury Prevention and Control (BSC, NCIPC)

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 following meeting of the aforementioned board:

**TIMES AND DATES:**

9 a.m.–5:30 p.m., December 15, 2011 (Open).

9 a.m.–3 p.m., December 16, 2011 (Open).

*Place:* CDC, 1600 Clifton Road, NE., Building 19, Atlanta, Georgia 30333.

*Status:* Open to the public, limited only by the space available. There will be 15 minutes allotted for public comments at the end of the open session.

*Purpose:* The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments and (2) conduct and assist in research and control activities related to injury.

*Matters To Be Discussed:* The BSC, NCIPC will discuss the recommendations provided by the expert panel on the Research Portfolio Reviews that have been conducted and will discuss research strategies needed to guide the Center's focus.

Agenda items are subject to change as priorities dictate.

**CONTACT PERSON FOR MORE INFORMATION:** Dr. Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Designated Federal Officer, NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–1430.

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: October 25, 2011.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2011–28052 Filed 10–28–11; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families Announces the Award of a Single-Source Program Expansion Supplement Grant to the National Runaway Switchboard (NRS) in Chicago, IL

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice of the Award of a Single-Source Program Expansion Supplement grant to the National Runaway Switchboard (NRS) in Chicago, IL, to support initiatives in the areas of quality assurance, comprehensive outreach and increased capacity through technology improvements.

**STATUTORY AUTHORITY:** Part C, Section 331, of the ''Reconnecting Homeless Youth Act of 2008,'' Public Law 110–378.

*CFDA Number:* 93.623.

**SUMMARY:** The Administration on Children, Youth and Families, Family and Youth Services Bureau (FYSB), announces the award of a single-source program expansion supplement grant of $311,997 to the National Runaway Switchboard (NRS) in Chicago, IL, for initiatives in the areas of quality assurance, comprehensive outreach and increased capacity through technology improvements. Through these initiatives, NRS will improve its outreach to youth through Web site enhancements such as, increased access to the ''Live Chat'' function; recruitment of additional Spanish-English bilingual volunteers; increased outreach and partnerships with local, regional and national organizations to enhance NRS' national impact in crisis intervention for youth and families. In terms of evidence-based programming, this funding will also enable NRS to conduct a study and evaluate efforts in the area of reconnecting runaway youth with their families.

**DATES:** September 30, 2011–April 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Curtis O. Porter, Director, Division of Youth Services, Family and Youth Services Bureau, 1250 Maryland Avenue SW., Suite 800, Washington, DC 20024, *Phone:* (202) 205–8102.

Dated: October 13, 2011.

**Bryan Samuels,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 2011–28036 Filed 10–28–11; 8:45 am]

**BILLING CODE 4182–04–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families Announces the Award of Five Single-Source Expansion Supplement Grants To Support Expanded Technical Assistance Activities in the Field of Child Welfare

**AGENCY:** Children's Bureau, ACYF, ACF, HHS.

**ACTION:** Notice announcing the award of five single-source expansion supplement grants to support expanded technical assistance activities that will address emerging issues, and technical assistance needs for States and Tribes as they seek to implement legislation and changing programs that support children and families in the child welfare system.

*Project Period:* September 30, 2011–September 29, 2012.

*CFDA Numbers:* 93.556; 93.648; 93.556; 93.658; 93.674; 93.652 .

*Statutory Authorities:* Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351). Section 476(c)(2)(iii) of the Social Security Act, as amended by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351). Section 476(c)(2)(iii) of the Social Security Act, as amended by the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Pub. L. 110–351). Section 203 (42 U.S.C. 5113) of the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA) of 1978, (Pub. L. 95–266), as amended. Section 203 (42 U.S.C. 5113) of the Child Abuse Prevention and Treatment and Adoption Reform Act (CAPTA) of 1978, (Pub. L. 95–266), as amended.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and

Families (ACYF), Children's Bureau (CB) announces the award of five single-source program expansion supplement grants to the following organizations:

**University of Oklahoma, National Resource Center for Youth Services, Tulsa, Oklahoma**

*Award Amount:* $157,739.

Award funds will support expanded technical assistance to address emerging technical assistance needs for States and Tribes as they seek to implement legislation and changing programs dedicated to former foster youth. The grantee is the recipient of a cooperative agreement to administer the National Resource Center for Youth Development (NRCYD). The grantee has been providing technical assistance services through a cooperative agreement since September 30, 2009, pursuant to the legislative authority of the Promoting Safe and Stable Families Program, Section 435(d), Title IV–B, subpart 2, of the Social Security Act [42 U.S.C. 629e].

In February 2008, the National Youth in Transition Database (NYTD) final regulation was promulgated. NYTD requires States to begin collecting information from youth in foster care and young adults formerly in foster care every six months, beginning October 1, 2010. State representatives continue to identify implementation of NYTD as a significant challenge, particularly since it will require State agencies to remain in contact with youth who may no longer be receiving services from the agency. The implementation of NYTD over the next four years will require the NRCYD to continue to provide additional technical assistance to States to implement this regulation effectively. The supplement will allow the NRCYD to provide more intensive technical assistance and on-site consultation to States and Tribes to continue to assist them in implementing these provisions.

**Research Foundation of CUNY on Behalf of Hunter College School of Social Work, New York, NY**

*Award Amount:* $466,311.

Award funds will support expanded technical assistance to address continuing challenges in the field as child welfare programs work to implement the requirements of new legislation. The Research Foundation of CUNY on behalf of Hunter College is the recipient of a cooperative agreement to act as the administrator for National Resource Center for Permanency and Family Connections (NRCPFC), which provides technical assistance services pursuant to the legislative authority of the Promoting Safe and Stable Families Amendments of the Social Security Act (42 U.S.C. 629e).

The supplemental funding will allow the NRCPFC to:

1. Provide focused technical assistance to Family Connections grantees.
2. Engage States that did not receive discretionary grants in on-site consultation regarding effectively involving relatives in child welfare practice.
3. Proactively transfer the knowledge developed under the discretionary grant program to States to assist in meeting new plan requirements.

The supplemental funding will allow NRCPFC to increase technical assistance efforts to enhance the achievement of permanency by assisting agencies to better locate, notify, and involve families and relatives in the engagement and planning process while maintaining awareness of confidentiality issues.

**Tribal Law and Policy Institute, West Hollywood, CA**

*Award Amount:* $602,643.

Award funds will provide more intensive technical assistance to Tribes. The Tribal Law and Policy Institute administers the National Resource Center for Tribes under a cooperative agreement where technical assistance is provided to Tribes to assist in building organizational capacity so that Tribes may operate their own foster care programs under title IV–E of the Social Security Act. Under the agreement, Tribal Law and Policy Institute identifies promising practices in Tribal child welfare systems, identifies and effectively implements community, and culturally-based strategies and resources that strengthen Tribal child and family services.

Supplemental funding will support Regional Roundtables and build Tribal capacity in the following areas:

1. In-depth overview of the Fostering Connections Act, the Social Security Act, and Title IV–B & IV–E provisions and requirements to increase the knowledge and understanding of Tribal leaders, Tribal child welfare staff, and Tribal judges concerning these Federal laws and the requirements of this Federal funding.
2. Capacity building on developing infrastructure within the Tribal child welfare system, including policies and procedures, licensing standards, Tribal child welfare code, case management skill building and data collection.
3. Training for Tribal caseworkers and Tribal legal/judicial staff on the Fostering Connections Act and Title IV–B and IV–E Program requirements in order to document the eligibility and continue funding of Title IV–E eligible children and assure that all appropriate services are provided to children in care.

**Research Foundation of SUNY, University of Albany, Albany, NY**

*Award Amount:* $600,000.

Grant funds will allow the grantee to provide more intensive technical assistance to Tribes. The Research Foundation of SUNY administers the National Child Welfare Workforce Institute under a cooperative agreement. The goal of the National Child Welfare Workforce Institute is to build the capacity of the nation's child welfare workforce and improve outcomes for children, youth, and families through activities that support the development of skilled child welfare leaders.

Supplemental funding for the Workforce Institute will be focused on building the capacity of the Tribal child welfare workforce. The additional support will begin to address capacity needs as Tribes prepare to operate their own foster care, adoption, and guardianship assistance programs under title IV–E of the Social Security Act. Supplemental activities will expand services and supports for university traineeships for Native American students, and expand the Leadership Academy for Middle Managers (LAMM) to increase training and supports for Tribal middle managers in child welfare. There are five traineeship universities supporting American Indian students that will increase the total number of student stipends by at least 12 students, increase student stipend amounts, and increase student travel awards for travel to and from classes and field education placements and for relevant State Tribal conferences and meetings. The LAMM training will further build the capacity of Tribal Middle Managers who have already completed the basic Leadership Academy of Middle Managers by providing a three-day follow up residential advanced training and six months of coaching, as well as evaluation of this cultural adaptation of the current LAMM model for tribal participants.

**Regents of the Board of the University of Michigan, Ann Arbor, Michigan**

*Award Amount:* $300,000,

Award funds will support the grantee to provide more intensive technical assistance and conduct a rigorous evaluation of research and demonstration sites. The Regents of the University of Michigan administers the National Quality Improvement Center on the Representation of Children in the

Child Welfare System (QIC–ChildRep) under a cooperative agreement. The purpose of the QIC–ChildRep is to improve the quality of legal representation for children and youth in child welfare cases so that States and Tribes achieve the best safety, permanency, and well-being outcomes for children and youth. This systems improvement model funds three research and demonstration sites, each involving a rigorous evaluation. Given the complexity of the models being implemented, considerable training, technical assistance, monitoring and support are necessary for each site to design and implement evaluation plans. Supplemental funds will allow for an increased level of effort in conducting evaluations to meet the requirements of the cooperative agreement. Additional training, technical assistance, and support to each research and demonstration site, coupled with more intensive monitoring of site specific evaluation efforts, will enhance the depth and rigor of all evaluation results.

**FOR FURTHER INFORMATION CONTACT:** Jan Shafer, Children's Bureau, 1250 Maryland Avenue SW., Washington, DC 20024. *Telephone:* (202) 205–8172; *Email: jan.shafer@acf.hhs.gov*.

Dated: October 13, 2011.

**Bryan Samuels,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 2011–28038 Filed 10–28–11; 8:45 am]

**BILLING CODE 4184–29–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families Announces the Award of a Single-Source Program Expansion Supplement Grant To Support Expanded Training and Technical Assistance to the Pennsylvania Coalition Against Domestic Violence in Harrisburg, PA

**AGENCY:** Family and Youth Services Bureau, ACYF, ACF, HHS.

**ACTION:** Notice to Announce the Award of a Single-Source Program Expansion Supplement to Pennsylvania Coalition Against Domestic Violence, National Resource Center on Domestic Violence to Support a Family Violence Prevention and Services Act (FVPSA) Technical Assistance (TA) Project.

*CFDA Number:* 93.592.

**Statutory Authority:** Section 310 of the Family Violence Prevention and Services Act, as amended by Section 201 of the CAPTA Reauthorization Act of 2010, Pub. L. 111–320.

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB) is announcing the award of a single-source program expansion supplement of $250,000 to the Pennsylvania Coalition Against Domestic Violence in Harrisburg, PA. The supplemental funds will support the grantee in providing training and technical assistance to domestic violence service providers including ACF grantees, State and local social service agencies; so that they better serve victims of domestic violence and their children who are experiencing the mental health and traumatic effects of intimate partner violence. These efforts will increase domestic violence programs awareness and access to effective interventions that are trauma informed.

**DATES:** September 30, 2011 through September 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Marylouise Kelley, Ph.D., Director, Family Violence Prevention and Services Program, 1250 Maryland Avenue SW., Suite 8216, Washington, DC 20024. *Telephone:* (202) 104–5756. *Email: Marylouise.kelley@acf.hhs.gov*.

Dated: October 13, 2011.

**Bryan Samuels,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 2011–28035 Filed 10–28–11; 8:45 am]

**BILLING CODE 4184–32–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcing the Award of a Single-Source Expansion Supplement Grant to the National Association of Councils on Developmental Disabilities in Washington, DC

**AGENCY:** Administration on Developmental Disabilities, ACF, HHS.

**ACTION:** Notice of the award of a single-source program expansion supplement grant to the National Association of Councils on Developmental Disabilities, Washington, DC, to support self-advocacy summits.

*CFDA Number:* 93.631.

**Statutory Authority:** The Developmental Disabilities Assistance and Bill of Rights Act of 2000 (DD Act), Pub. L. 106–402, Section 129(b).

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Developmental Disabilities (ADD), Office of Program Support (OPS) announces the award of a single-source program expansion supplement grant of $388,640 to the National Association of Councils on Developmental Disabilities (NACDD), Washington, DC, to support implementation of 3 to 4 self-advocacy summit meetings.

The self-advocacy summits will be interactive meetings requiring a high degree of participation from the attending self-advocates who will act as the primary presenters. The meetings are intended to educate both the network of ADD grantees on the ADD Program's four goals and, as such, every participant will be required to communicate their expertise related to:

- The current status of self-advocacy in their home State, which will include reporting on support structures, activities, accomplishments, and challenges;
- The discerned steps needed to strengthen and enhance current efforts at the State level; and
- Recommendations for action items intended to strengthen and enhance current self-advocacy efforts at the national level.

Summit participants are primarily individuals with developmental disabilities (as defined by the DD Act) who are experts with specialized knowledge in the self-advocacy movement in their States. Other participants will include ADD grantees with specific expertise related to supporting individuals with developmental disabilities to fully participate in systems change and advocacy efforts in their States.

**DATES:** September 30, 2011 to September 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Johnson, Administration on Developmental Disabilities, Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Center, 370 L'Enfant Promenade, SW., 2nd Floor, Washington, DC 20447; Telephone: (202) 690–5982; E-mail: *jennifer.johnson@acf.hhs.gov*

Dated: October 21, 2011.

**Sharon B. Lewis,**

*Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 2011–28141 Filed 10–28–11; 8:45 am]

**BILLING CODE 4184–38–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcement of a Single-Source Grant Award to the National Association of Councils on Developmental Disabilities in Washington, DC

**AGENCY:** Administration on Developmental Disabilities, ACF, HHS.

**ACTION:** Announcement of a Single-Source Grant Award to the National Association of Councils on Developmental Disabilities (NACDD), Washington, DC, to provide training and technical assistance to the State Councils on Developmental Disabilities.

*CFDA Number:* 93.631.

**Statutory Authority:** Pub. L. 106–402, Section 129(b).

**SUMMARY:** The Administration for Children and Families (ACF), Administration on Developmental Disabilities (ADD), Office of Program Support (OPS) announces the award of a single-source grant of $620,000 to the National Association of Councils on Developmental Disabilities (NACDD), located in Washington, DC. The award will support a project to provide training and technical assistance (T/TA) to the designated State Councils on Developmental Disabilities (State Councils).

The primary focus of the T/TA is to improve program performance, statutory compliance, and program outcomes across the network of State Councils. Toward this end, NACDD shall provide T/TA to the entities designated by ADD as State Councils. Under this project, it is expected that initiatives shall be identified and undertaken to support the improvement of State Council operations and performance.

**DATES:** September 29, 2011 to September 30, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Johnson, Administration on Developmental Disabilities, Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Center, 370 L'Enfant Promenade, SW., 2nd Floor, Washington, DC 20447; Telephone: (202) 690–5982; Email: *jennifer.johnson@acf.hhs.gov*

Dated: *October 21, 2011.*

**Sharon B. Lewis,**

*Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 2011–28134 Filed 10–28–11; 8:45 am]

BILLING CODE 4184–38–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcement of the Award of a Single-Source Program Expansion Supplement Grant to the University of Massachusetts, Institute for Community Inclusion, in Boston, MA

**AGENCY:** Administration on Developmental Disabilities, ACF, HHS.

**ACTION:** Announcement of a Single-Source Program Expansion Supplement Grant to the University of Massachusetts, Institute for Community Inclusion, Boston, MA, to develop and implement an employment data collection and analysis project related to youth and young adults with intellectual and developmental disabilities.

*CFDA Number:* 93.631.

**Statutory Authority:** This award will be made pursuant to Section 161 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15081–15083).

**SUMMARY:** This notice announces that the Administration for Children and Families (ACF), Administration on Developmental Disabilities (ADD) has awarded a single-source expansion supplement grant of $150,000 for data collection analyses, and reporting.

The following project will be funded:

The University of Massachusetts, Institute for Community Inclusion will collect data, analyze, and report on the employment and economic status of youth and young adults, ages 16 to 30, with intellectual and developmental disabilities. The project will also develop a rigorous, yet practical, ethical, and affordable research design for this evaluation. The data will originate from various existing data sources and will be analyzed using appropriate data analysis techniques. The data will be simplified and categories will be formed that reflect the activities and outcomes of youth and young adults with intellectual and developmental disabilities. A report will be written, highlighting a profile of education, employment, and economic outcomes for youth and young adults with intellectual and developmental disabilities. This information will be provided to ADD and its partners, and will be made available to the public.

**DATES:** 9/30/2011–9/29/2012.

**FOR FURTHER INFORMATION CONTACT:** Ophelia McLain, Supervisory Program Specialist, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Aerospace Building, 2nd Floor, Washington, DC 20447. Telephone: (202) 690–7025 Email: *ophelia.mclain@acf.hhs.gov.*

Dated: October 21, 2011.

**Sharon Lewis,**

*Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 2011–28136 Filed 10–28–11; 8:45 am]

BILLING CODE 4184–38–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcing the Award of a Single-Source Program Expansion Supplement Grant to the Johns Hopkins University, Bloomberg School of Public Health in Baltimore, MD, To Support the Development of a Human Services National Interoperable Architecture (HSNIA)

**AGENCY:** Office of Information Services, OA, ACF, HHS.

**ACTION:** Notice of the award of a single-source program expansion supplement grant.

*CFDA Number:* 93.647.

**Statutory Authority:** This award will be made pursuant to section 3021 of the Patient Protection and Affordable Care Act (ACA) [Pub. L. 111–148] and the Improper Payments Elimination and Recovery Act of 2010 [Pub. L. 111–204].

**SUMMARY:** The Administration for Children and Families (ACF), Office of Administration (OA), Office of Information Services (OIS) announces the award of $1,000,000 as a single-source expansion supplement grant to extend an award made to the Johns Hopkins University (JHU), Greenberg School of Public Health in Baltimore, MD. The grant will allow JHU, and its partner, JHU Applied Physics Laboratory, to continue the development of a Human Services National Interoperable Architecture (HSNIA). Under the supplement award, JHU and its partners will develop Phase III of an architectural framework that will be used as a model to facilitate State and local agencies in information exchanges among eligibility and verification services that are developed by the HHS/Centers for Medicare and Medicaid Services (CMS) under the requirements of the Patient Protection and Affordable Care Act (ACA).

To address issues related to implementation of the ACA and the Improper Payments Elimination and Recovery Act of 2010, the

Administration has directed Federal Agencies to begin to design and execute plans related to the legislation. JHU and its partners will create the development of a conceptual information technology architecture with ACF/Office of Information Services. The project will produce a solution that supports information exchanges and interoperability that will lead to reductions in improper payments as a preventative step in the program integrity process.

**DATES:** September 30, 2011 through September 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** David Jenkins, Federal Project Officer, Office of Administration, Office of Information Services, Administration for Children and Families, 901 D Street, SW., 3rd Floor West, Washington, DC 20047; Email: *David.Jenkins@acf.hhs.gov*; Telephone: (202) 690–5802.

Dated: October 24, 2011.

**Michael Curtis,**

*Director, Office of Information Services.*

[FR Doc. 2011–28143 Filed 10–28–11; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcement of the Award of a Single-Source Program Expansion Supplement Grant to the University of Massachusetts, Institute for Community Inclusion in Boston, MA, To Support the Think College Project

**AGENCY:** Administration on Developmental Disabilities, ACF, HHS.

**ACTION:** Notice announcing the award of a single-source program expansion supplement grant to the University of Massachusetts, Institute for Community Inclusion, Boston, MA, to support the National Training Initiative on Post Secondary Education's Think College project.

*CFDA Number:* 93.632.

**Statutory Authority:** This award will be made pursuant to Section 151 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15061–15066).

**SUMMARY:** This notice announces that the Administration for Children and Families (ACF), Administration on Developmental Disabilities (ADD) has awarded a single-source program expansion supplement grant of $159,679 for post-secondary education opportunities.

The Institute for Community Inclusion at the University of Massachusetts in collaboration with seven ACF–ADD supported University Centers for Excellence in Developmental Disabilities Education, Research, and Service (UCEDDs) in Delaware, Minnesota, Hawaii, South Carolina, Tennessee [Vanderbilt], Ohio, and California along with the Association of University Centers on Disabilities (AUCD) has established a consortium that will conduct research, provide training and technical assistance, and disseminate information on promising practices that support individuals with developmental disabilities to increase their independence, productivity, and inclusion through access to post-secondary education. Think College's goals are to improve long-term independent living and employment outcomes for individuals with developmental disabilities. The consortium is acting as a national resource for knowledge, training, materials, and dissemination of information on participation in post-secondary education of individuals with developmental disabilities.

**DATES:** September 30, 2011—September 29, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Johnson, Supervisory Program Specialist, Administration on Developmental Disabilities, 370 L'Enfant Promenade SW., Aerospace Building, 2nd Floor, Washington, DC 20447. *Telephone:* (202) 690–5982 *Email: jennifer.johnson@acf.hhs.gov.*

Dated: *October 21, 2011.*

**Sharon Lewis,**

*Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 2011–28138 Filed 10–28–11; 8:45 am]

**BILLING CODE ;P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–N–0400]**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2011–0014]**

### Approaches to Reducing Sodium Consumption; Establishment of Dockets; Request for Comments, Data, and Information; Correction

**AGENCY:** Food and Drug Administration, HHS; Food Safety and Inspection Service, USDA.

**ACTION:** Notice; establishment of dockets; request for comments, data, and information; correction.

**SUMMARY:** The Food and Drug Administration (FDA) and the Food Safety Inspection Service (FSIS) are correcting a notice that appeared in the **Federal Register** of September 15, 2011 (76 FR 57050). In that notice, FDA and FSIS established dockets to obtain comments, data, and evidence relevant to the dietary intake of sodium, as well as current and emerging approaches designed to promote sodium reduction. The document published with two typographical errors in the References section. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:**

*FDA:* Richard E. Bonnette, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, (240) 402–1235.

*FSIS:* Rosalyn Murphy-Jenkins, Director, Labeling and Program Delivery Division, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, USDA, FSIS, OPPD, LPDD Stop Code 3784, Patriots Plaza III, 8–161A, 1400 Independence Ave. SW., Washington, DC 20250–3700.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–23753, appearing on page 57050, in the **Federal Register** of Thursday, September 15, 2011, FDA and FSIS are making the following corrections:

1. On page 57053, in the third column, in the References section, the second reference is corrected to read: ''2. Xu, J, Kochanek, KD, Murphy, SL, Tejada-Vera, B. ''Deaths: preliminary data for 2007,'' CDC, *National Vital Statistics Report.* 2010; 58 (19).''

2. On page 57054, in the first column, in the References section, the twenty-

fifth reference is corrected to read: ''25. NHLBI (2003). ''The seventh report of the Joint National Committee on prevention, detection, evaluation, and the treatment of high blood pressure,'' *NIH Publication No. 04–5230.* Bethesda, MD: National Heart, Lung, and Blood Institute.''

Dated: October 19, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy, Food and Drug Administration.*

Dated: October 19, 2011.

**Alfred V. Almanza,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 2011–28029 Filed 10–28–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2011–D–0739]**

### Small Entity Compliance Guide: Required Warnings for Cigarette Packages and Advertisements; Availability; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of October 25, 2011 (76 FR 66074). The document announced the availability of a guidance for industry entitled ''Required Warnings for Cigarette Packages and Advertisements—Small Entity Compliance Guide'' for a final rule that published in the **Federal Register** of June 22, 2011 (76 FR 36628). The notice published with an incorrect docket number. This document corrects that error.

**FOR FURTHER INFORMATION CONTACT:** Joyce Strong, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3208, Silver Spring, MD 20993–0002, (301) 796–9148.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 2011–27530, appearing on page 66074, in the **Federal Register** of Tuesday, October 25, 2011, the following correction is made:

1. On page 66074, in the third column, in the Docket No. heading, ''[Docket No. FDA–2011–N–0568]'' is corrected to read ''[Docket No. FDA–2011–D–0739]''.

Dated: October 25, 2011.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2011–28051 Filed 10–28–11; 8:45 am]

BILLING CODE 4160–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Bureau of Primary Health Care (BPHC) Uniform Data System (OMB No. 0915–0193)—[Revision]**

The Uniform Data System (UDS) contains the annual reporting requirements for the cluster of primary care grantees funded by HRSA. The UDS includes reporting requirements for grantees of the following primary care programs: Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care, and other grantees under section 330. The authorizing statute is section 330 of the Public Health Service Act, as amended. Federally Qualified Health Center ''Look-Alikes'' do not receive grant funds, but report certain UDS data to HRSA in order to permit monitoring of their performance.

HRSA collects data in the UDS which are used to ensure compliance with legislative and regulatory requirements, improve health center performance and operations, and report overall program accomplishments. To meet these objectives, BPHC requires a core set of data collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends. The UDS will be revised in four ways: (1) A new staff tenure table is added to collect months of service for persons within specified categories; (2) three new clinical measures are added consistent with identified national priorities; (3) reporting of health conditions is based on all (vs. primary) diagnoses; and, (4) a limited number of questions are revised concerning Electronic Health Record (EHR) reporting capabilities and a new question is asked regarding health center national quality recognition.

The annual estimate of burden is as follows:

| Type of report | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Universal report | 1,287 | 1 | 1,287 | 82 | 105,534 |
| Grant report | 328 | 1 | 328 | 18 | 5,904 |
| Total | 1,615 | | 1,615 | | 111,438 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to: *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the attention of the desk officer for HRSA.

Dated: October 21, 2011.

**Reva Harris,**

*Acting Director, Division of Policy Information and Coordination.*

[FR Doc. 2011–28034 Filed 10–28–11; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork @hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Maternal and Child Health Services Title V Block Grant Program Guidance and Forms for the Title V Application/Annual Report (OMB No. 0915–0172)—[Revision]**

The Health Resources and Services Administration (HRSA) proposes to revise the *Maternal and Child Health Services Title V Block Grant Program—Guidance and Forms for the Application/Annual Report.* The guidance is used annually by the 50 States and 9 jurisdictions during both the creation of applications for Block Grants (under Title V of the Social Security Act) and in the preparation of the required annual report. The proposed revisions follow and build on extensive consultation received from a workgroup convened to provide suggestions to improve the guidance and forms.

The changes in this edition of the *Maternal and Child Health Services Title V Block Grant Program Guidance and Forms for the Title V Application/ Annual Report* include the following proposed revisions: (1) The requirements for reporting on the health status indicators and health systems capacity indicators were rewritten to reduce the reporting burden to the States; (2) the instructions for completing Form 7, ''Number of Individuals Served,'' have been clarified to assist States in more accurately estimating the number of individuals who receive Title V services; and (3) the detail sheets for the performance measures, outcome measures, health systems capacity indicators and health status indicators have been updated with corresponding Healthy People 2020 Objectives. In addition, efficiencies through use of the electronic application are identified for States to reduce their efforts in completing the application.

The annual estimate of burden is as follows:

| Type of document | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Application and Report without Needs Assessment (2012, 2013 & 2014) | 59 | 1 | 59 | 246 | 14,514 |
| Total | 59 | | 59 | | 14,514 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb. eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: October 24, 2011.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2011–28033 Filed 10–28–11; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* December 8, 2011, 1 p.m. to 5 p.m. E.D.T.

December 9, 2011, 9 a.m. to 12 p.m. E.D.T.

*Place:* Parklawn Building (and via audio conference call), Conference Room 10–65, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, December 8 from 1 p.m. to 5 p.m. (E.D.T.) and on Friday, December 9 from 9 a.m. to 12 p.m. (E.D.T.). The public can join the meeting via audio conference call by dialing 1–(800) 369–3104 on December 8–9 and providing the following information:

*Leader's Name:* Dr. Geoffrey Evans.

*Password:* ACCV.

*Agenda:* The agenda items for the December meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice (DOJ), National Vaccine Program Office (NVPO), Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health) and Center for Biologics, Evaluation and Research (Food and Drug Administration). A draft agenda and additional meeting materials will be posted on the ACCV Web site (*http://www.hrsa.gov/vaccinecompensation/accv.htm*) prior to the meeting. Agenda items are subject to change as priorities dictate.

*Public Comment:* Persons interested in attending the meeting in person or providing an oral presentation should submit a written request, along with a copy of their presentation to: Annie Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or *email: aherzog@hrsa.gov.* Requests should contain the name, address, telephone number, email address, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by email, mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the public comment period. Public

participation and ability to comment will be limited to space and time as permitted.

**FOR FURTHER INFORMATION CONTACT:** Anyone requiring information regarding the ACCV should contact Annie Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or *email: aherzog@hrsa.gov.*

Dated: October 25, 2011.

**Reva Harris,**

*Acting Director, Division of Policy and Information Coordination.*

[FR Doc. 2011–28125 Filed 10–28–11; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Cell Signaling and Biology.

*Date:* December 6, 2011.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *sizemoren@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.

*Date:* December 6, 2011.

*Time:* 1:30 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7760, Bethesda, MD 20892, (301) 435–1747, *rosenzweign@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 25, 2011.

**Jennifer S. Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28127 Filed 10–28–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

*Date:* November 17, 2011.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Doug Mendoza, Extramural Support Assistant, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3An–12, Bethesda, MD 20892, (301) 594–2770, *mendozad@od.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 25, 2011.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28130 Filed 10–28–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Minority Programs Review Subcommittee A.

*Date:* November 16, 2011.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Courtyard by Marriott, Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20815.

*Contact Person:* Mona R. Trempe, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (301) 594–3998, *trempemo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 25, 2011.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2011–28129 Filed 10–28–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed National Toxicology Program (NTP) Review Process for the Report on Carcinogens: Request for Public Comment and Listening Session

**AGENCY:** Division of the National Toxicology Program (DNTP), National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

**ACTION:** Request for public comment and announcement of listening session.

**SUMMARY:** The NTP invites written public comment on the proposed Report on Carcinogens (RoC) review process and announces a public listening session to receive oral comments on the proposed process.

**DATES:** The deadline for submission of written comments is November 30, 2011, and the deadline to register for the public listening session is November 21, 2011. The public listening session will be held November 29, 2011, 1–5 p.m. (EST), although it may end earlier depending on the number of registered speakers and will be cancelled if there are no registrants by the close of business (COB) on November 21, 2011. Registrants will receive information to access the listening session on or before November 22, 2011, and speakers should send talking points or slides by COB on November 21, 2011.

**ADDRESSES:** Written comments should be sent to Dr. Ruth Lunn, Director, Office of the Report on Carcinogens, DNTP, NIEHS, P.O. Box 12233, MD K2–14, Research Triangle Park, NC 27709; *telephone:* (919) 316–4637 or email *lunn@niehs.nih.gov.* Courier address: NIEHS, Room 2006, 530 Davis Drive, Morrisville, NC 27560. Registration for the listening session is via the NTP Web site (*http://ntp.niehs.nih.gov/go/rocprocess*). TTY users should contact the Federal TTY Relay Service at (800) 877–8330. Requests must be made at least 5 business days in advance of the listening session.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments should be directed to Dr. Lunn (see **ADDRESSES**).

**SUPPLEMENTARY INFORMATION:**

#### Background Information on the RoC and its Review Process

The RoC is a science-based, public health document, required by Congress to be published every two years (Public Health Services Act sec. 301(b)(4), 42 U.S.C. 241(b)(4)). The RoC provides information on substances that may pose a hazard to human health by virtue of their carcinogenicity (for more information see *http://ntp.niehs.nih.gov/go/roc*). Substances are listed in the report as either *known* or *reasonably anticipated human carcinogens.* The NTP prepares the RoC on behalf of the Secretary of Health and Human Services. The 12th RoC was published in June 2011.

The NTP followed an established process for the review of substances for the 12th RoC. The NTP is proposing changes to the review process for listing substances in the 13th RoC to enhance transparency and efficiency and to enable the NTP to publish the RoC in a timelier manner. The NTP also seeks to maintain critical elements of the existing process including external scientific and public involvement, scientific rigor, and external peer review. The proposed RoC review process is available on the NTP RoC Web site (http://ntp.niehs.nih.gov/go/rocprocess).

#### Request for Public Comment

The NTP invites written and oral comments on the proposed RoC review process. Written comments should be sent to Dr. Ruth Lunn (see **ADDRESSES**) by November 30, 2011. Individuals submitting written public comments are asked to include relevant contact information (name, affiliation and sponsoring organization (if any), telephone, and email). Written submissions will be posted on the RoC Web site as they are received and the submitter will be identified by name, affiliation, and/or sponsoring organization.

The NTP will hold a listening session using Adobe® Connect™ on November 29, 2011, from 1–5 p.m. (EST) to receive oral comments on the proposed RoC review process. The listening session may end earlier depending on the number of registered speakers and will be cancelled if there are no registrants by COB on November 21, 2011. If the event is cancelled, notification will be posted on the RoC Web site (*http://ntp.niehs.nih.gov/go/rocprocess*). Individuals who wish to participate in the listening session as either speakers or observers must register by November 21, 2011, at *http://ntp.niehs.nih.gov/go/rocprocess.* There will be 50 connections available for registrants including speakers plus observers. Registration to present oral remarks is limited to the first 15 registrants who wish to speak with one time slot per organization. The NTP will send registrants instructions to access the listening session on or before November 22, 2011. A maximum of 15 minutes will be allotted per speaker. Registered speakers should submit their oral statement and/or slides to Dr. Lunn by COB on November 21, 2011. All statements and/or slides will be posted on the RoC Web site with the speaker identified by name, affiliation, and/or sponsoring organization.

The NTP will carefully review both the written and oral comments received on the proposed RoC review process and consider what changes, if any, might be needed. The NTP plans to post the finalized RoC review process on the RoC Web site (*http://ntp.niehs.nih.gov/go/rocprocess*) and present it at the next NTP Board of Scientific Counselors meeting on December 15, 2011. Details about this meeting will be published in the **Federal Register** and posted on the NTP Web site at *http://ntp.niehs.nih.gov/go/165.*

Dated: October 24, 2011.

**John R. Bucher,**

*Associate Director, National Toxicology Program.*

[FR Doc. 2011–28132 Filed 10–28–11; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Electron Paramagnetic Resonance Devices and Systems for Oximetry

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of an exclusive worldwide license to practice the invention embodied in: HHS Ref. No. E–175–1995/0 and/1;

| Patent/Application No. | Territory | Filing date | Status |
|---|---|---|---|
| 5,678,548 | US | July 20, 1995 | Issued. |
| 5,828,216 | US | August 19, 1996 | Issued. |
| 5,865,146 | US | July 29, 1997 | Issued. |
| PCT/US1996/11879 | WIPO | July 18, 1996 | Expired. |

and HHS Ref. No. E–250–2008/0;

| Patent/Application No. | Territory | Filing date | Status |
|---|---|---|---|
| 61/200,579 | US | November 29, 2008 | Expired. |
| PCT/US2009/65956 | WIPO | November 25, 2009 | Expired. |
| 13/131,165 | US | May 25, 2011 | Pending. |
| 09829806.0 | EP | November 25, 2009 | Pending. |

to Resonance Research, Inc., a company incorporated under the laws of the Commonwealth of Massachusetts having its headquarters in Billerica, Massachusetts. The United States of America is the assignee of the rights of the above inventions. The contemplated exclusive license may be granted in a field of use limited to electron paramagnetic resonance devices and systems for oximetry.

**DATES:** Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before November 15, 2011 will be considered.

**ADDRESSES:** Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, Esq., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; Email: *shmilovm@mail.nih.gov.* A signed confidentiality nondisclosure agreement will be required to receive copies of any patent applications that have not been published by the United States Patent and Trademark Office or the World Intellectual Property Organization.

**SUPPLEMENTARY INFORMATION:** The patents and patent applications intended for licensure disclose or cover devices and systems for *in vivo* quantitative oximetry using low frequency time-domain EPR imaging in the frequency range of 250–300 MHz. The systems developed use a time-domain spectroscopic EPR imaging approach that is a unique combination of: (1) multi-gradient Single Point Imaging involving global phase encoding and (2) conventional 90°-τ-180° Spin-Echo pulse sequence well-known in MRI where the images are obtained by the filtered back-projection after FT of the echoes collected under frequency-encoding gradients. The combination approach of single point imaging with the spin-echo signal detection procedure to take advantage of $T_2$ (and not $T_2$*) dependent contrast and the enhanced spatial resolution associated with the constant-time pure phase-encoding approach. This approach has become feasible because of the availability of non-toxic water-soluble trityl and deuterated trityl based spin probes which have reasonable $T_1$ and $T_2$ in the range 5–10 μs.

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 fifteen (15) days from the date of this published notice, NIH receives written evidence and argument that 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.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: October 25, 2011.

**Richard U. Rodriguez,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 2011–28131 Filed 10–28–11; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Safety and Environmental Enforcement (BSEE)

**[Docket ID No. BOEM–2011–0068; OMB Number 1014–0003]**

### Information Collection Activities: Oil and Gas Production Safety Systems; Submitted for Office of Management and Budget (OMB) Review; Comment Request

**ACTION:** 30-day Notice.

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart H, ''Oil and Gas Production Safety Systems.'' This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by November 30, 2011.

**ADDRESSES:** Submit comments by either fax (202) 395–5806 or email (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, *Attention:* Desk Officer for the Department of the Interior (1014–0003). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* Go to *http://www.regulations.gov.* In the entry titled, ''Enter Keyword or ID,'' enter BOEM–2011–0068 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *cheryl.blundon@bsee.gov.*

Mail or hand-carry comments to: Department of the Interior; Bureau of Safety and Environmental Enforcement; Regulations Development Branch;

*Attention:* Cheryl Blundon 381 Elden Street, Herndon, Virginia 20170–4817. Please reference 1014–0003 in your comment and include your name and return address.

**FOR FURTHER INFORMATION CONTACT:** Cheryl Blundon by email at *cheryl.blundon@bsee.gov* or by telephone at (703) 787–1607, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR 250, Subpart H, Oil and Gas Production Safety Systems.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, pipeline right-of-way, or a right-of-use and easement. Section 1332(6) states that ''operations in the [O]uter Continental Shelf should be conducted in a safe manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health.''

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and Office of Management and Budget (OMB) Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Facility Production Safety System Applications are subject to cost recovery and BSEE regulations specify filing fees for these applications.

This submittal also removes an IC requirement that was inadvertently included in this collection. The requirement pertains to the Pacific Region's Emergency Action Plans that are submitted to local air quality agencies, which is included in the IC for 30 CFR 550, subpart C (§ 550.304).

Regulations implementing these responsibilities are under 30 CFR 250, subpart H. Responses are mandatory. No questions of a sensitive nature are asked. BSEE protects information considered proprietary according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR part 252, OCS Oil and Gas Information Program, and 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.''

BSEE uses the information collected under subpart H to evaluate equipment and/or procedures that lessees and operators propose to use during production operations, including evaluation of requests for departures or use of alternate procedures or equipment. Information is also used to verify that production operations are safe and protect the human, marine, and coastal environment. BSEE inspectors review the records required by this subpart to verify compliance with testing and minimum safety requirements.

The Gulf of Mexico OCS Region (GOMR) has a policy regarding approval of requests to use a chemical-only fire prevention and control system in lieu of a water system. BSEE may require additional information be submitted to maintain approval. The information is used to determine if the chemical-only system provides the equivalent protection of a water system for the egress of personnel should a fire occur.

*Frequency:* On occasion.

*Description of Respondents:* Potential respondents comprise Federal oil, gas, or sulphur lessees, operators, and holders of pipeline rights-of-way.

*Estimated Reporting and Recordkeeping Hour Burden:* The estimated annual hour burden for this information collection is a total of 62,963 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

| Citation 30 CFR 250 subpart H and NTL(s) | Reporting and record-keeping requirement | Non-hour cost burdens* | | |
|---|---|---|---|---|
| | | Hour burden | Average No. of annual responses | Annual burden Hours |
| **Submittals** | | | | |
| 800; 801; 802; 803 | Submit application, and all required/supporting information, for a production safety system with > 125 components. | 16 | 1 | 16 |
| | | 5,030 per submission × 1 = $5,030<br>$13,238 per offshore visit × 1 = $13,238<br>$6,884 per shipyard visit × 1 = $6,884 | | |
| | 25–125 components. | 13 | 10 | 130 |
| | | $1,218 per submission × 10 = $12,180<br>$8,313 per offshore visit × 1 = $8,313<br>$4,766 per shipyard visit × 1 = $4,766 | | |
| | < 25 components | 8 | 20 | 160 |
| | | $604 per submission × 20 = $12,080 | | |

| Citation 30 CFR 250 subpart H and NTL(s) | Reporting and record-keeping requirement | Non-hour cost burdens* | | |
|---|---|---|---|---|
| | | Hour burden | Average No. of annual responses | Annual burden Hours |
| | Submit modification to application for production safety system with >125 components. | 9 | 180 | 1,620 |
| | | $561 per submission × 180 = $100,980 | | |
| | 25–125 components. | 7 | 758 | 5,306 |
| | | $201 per submission × 758 = $152,358 | | |
| | < 25 components. | 5 | 329 | 1,645 |
| | | $85 per submission × 329 = $27,965 | | |
| 801(a) | Submit application for a determination that a well is incapable of natural flow. | 6 | 41 | 246 |
| 803(b)(2) | Submit required documentation for unbonded flexible pipe. | Burden is submitted with application § 250.802(e) | | 0 |
| 803(b)(8); related NTLs | Request approval to use chemical only fire prevention and control system in lieu of a water system. | 22 | 31 | 682 |
| 807 | Submit detailed info regarding installing SSVs in an HPHT environment with your APD, APM, DWOP etc.. | Burden is covered under 1010–0141. | | 0 |
| **Subtotal** | | | 1,370 responses | 9,805 hours |
| | | | $343,794 non-hour costs | |
| **General** | | | | |
| 801(h)(2); 803(c) | Identify well with sign on wellhead that subsurface safety device is removed; flag safety devices that are out of service. | ≤Usual/customary safety procedure for removing or identifying out-of-service safety devices | | 0 |
| 802(e), (f), (h)(3); 803(b)(2); | Specific alternate approval requests requiring District Manager approval.. | Burden covered under 1010–0114. | | |
| 803(b)(8)(iv); (v) | Post diagram of firefighting system; furnish evidence firefighting system suitable for operations in subfreezing climates.. | 5 | 38 | 190 |
| 804(a)(12); 800 | Notify BSEE prior to production when ready to conduct pre-production test and inspection; upon commencement of production for a complete inspection. | 1 | 76 | 76 |

| Citation 30 CFR 250 subpart H and NTL(s) | Reporting and record-keeping requirement | Non-hour cost burdens* | | |
|---|---|---|---|---|
| | | Hour burden | Average No. of annual responses | Annual burden Hours |
| 806(c) | Request evaluation and approval of other quality assurance programs covering manufacture of SPPE. | 2 | 1 | 2 |
| **Subtotal** | | | 115 responses. | 268 hours |
| **Recordkeeping** | | | | |
| 801(h)(2); 802(e); 804(b) | Maintain records for 2 years on subsurface and surface safety devices to include approved design & installation features, testing, repair, removal, etc; make records available to BSEE. | 36 | 615 | 22,140 |
| 803(b)(1)(iii), (b)(2)(i) | Maintain pressure-recorder charts. | 23 | 615 | 14,145 |
| 803(b)(4)(iii) | Maintain schematic of the emergency shutdown (ESD) which indicates the control functions of all safety devices. | 15 | 615 | 9,225 |
| 803(b)(11) | Maintain records of wells that have erosion-control programs and results for 2 years; make available to BSEE upon request.. | 12 | 615 | 7,380 |
| **Subtotal** | | | 2,460 responses. | 52,890 hours |
| **Total Burden Hours** | | | 3,945 responses. | 62,963 hours |
| | | $343,794 Non-hour cost burdens | | |

*Estimated Reporting and Recordkeeping Non-Hour Cost Burden:* We have identified 10 non-hour cost burdens, all of which are cost recovery fees required under § 250.802(e). However, the actual fee amounts are specified in 30 CFR 250.125, which provides a consolidated table of all of the fees required under the 30 CFR 250 regulations. The total non-hour cost burdens (cost recovery fees) in this IC request are $343,794.

The non-hour cost burdens required in 30 CFR 250, subpart H (and respective cost-recovery fee amount per transaction) are required as follows:

- Submit application for a production safety system with > 125 components—$5,030 per submission; $13,238 per offshore visit; and $6,884 per shipyard visit.
- Submit application for a production safety system with 25—125 components—$1,218 per submission; $8,313 per offshore visit; and $4,766 per shipyard visit.
- Submit application for a production safety system with < 25 components—$604 per submission.
- Submit modification to application for production safety system with > 125 components—$561 per submission.
- Submit modification to application for production safety system with 25–125 components—$201 per submission.
- Submit modification to application for production safety system with < 25 components—$85 per submission.

*Public Disclosure Statement:* The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on August 16, 2011, we published a **Federal Register** notice (76 FR 50748) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR 250 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received one comment in support of this collection; it did not pertain to the paperwork burden.

*Public Availability of Comments:* Before including your address, phone number, email 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: October 19, 2011.

**Sharon Buffington,**

*Acting Chief, Office of Offshore Regulatory Programs.*

[FR Doc. 2011–28041 Filed 10–28–11; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLORM040 L17110000.DU0000.241A; HAG11–0336]**

### Notice of Intent To Prepare an Amendment to the Cascade-Siskiyou National Monument Resource Management Plan, Oregon, and Associated Environmental Assessment

**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) Medford District Office, Ashland Resource Area, Medford, Oregon, intends to prepare an Environmental Assessment (EA) which will amend the 2008 Cascade-Siskiyou National Monument Resource Management Plan (CSNM RMP), and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

**DATES:** This notice initiates the public scoping process for the RMP Amendment with associated EA. Comments on issues may be submitted in writing until November 30, 2011. The date(s) and location(s) of any scoping meeting(s) will be announced at least 15 days in advance through the local news media, mailings to interested individuals, and on the BLM Medford Web site at: *http://www.blm.gov/or/districts/medford/index.php.* In order to be included in the EA, all comments must be received prior to the close of the 30-day 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 EA.

**ADDRESSES:** You may submit comments on issues and planning criteria related to the CSNM RMP Amendment and associated EA by any of the following methods:

- *Email: kminor@blm.gov.*
- *Fax:* (541) 618–2400, *Attention:* Kathy Minor.
- *Mail or hand delivery:* Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, *Attention:* Kathy Minor.

Documents pertinent to this proposal may be examined at the Medford District Office. All comments must contain the name and address of the submitter, regardless of delivery method, in order to be considered.

**FOR FURTHER INFORMATION CONTACT:** And/or to have your name added to our mailing list, contact Kathy Minor, CSNM Planner, telephone (541) 618–2245; address Medford District Office, 3040 Biddle Road, Medford, Oregon 97504; email *kminor@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. This service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** This document provides notice that the BLM Medford District Office, Ashland Resource Area, Medford, Oregon, intends to prepare an RMP amendment with an associated EA for the Cascade-Siskiyou National Monument, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Jackson County, Oregon and encompasses approximately 55,930 acres of public lands. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process.

This RMP amendment and associated EA will modify land tenure adjustment decisions in the CSNM RMP to allow for land exchanges that ''furthers the protective purposes of the monument,'' where the public land involved is located within the CSNM. Currently, the CSNM RMP allows for exchanges only where the public land involved is located outside the CSNM. This amendment would be consistent with the Presidential Proclamation 7318, dated June 9, 2000, which states, ''All Federal lands within the boundaries of this monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, including but not limited to withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing, *other than by exchange that furthers the protective purposes of the monument* [emphasis added].''

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the plan amendment process. The Medford BLM seeks public input on issues and planning criteria. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency. BLM personnel identified one preliminary planning issue for the planning area. The preliminary planning issue is that the CSNM RMP is inconsistent with Presidential Proclamation 7318, dated June 9, 2000. The Proclamation provides for exchanges that further the protective purposes of the monument. The CSNM RMP precluded exchanges where the Federal land is located within the monument, thus making it inconsistent with the Proclamation. Preliminary planning criteria include:

1. The plan amendment will be consistent with Presidential Proclamation 7318;

2. Lands addressed in the RMP will be public lands (including split estate

lands) managed by the BLM. There will be no decisions in the RMP for lands not managed by the BLM;

3. The BLM will complete the plan in compliance with FLPMA (43 U.S.C. 1701 *et seq.*), NEPA, and other applicable laws and regulations;

4. Where existing planning decisions are still valid, those decisions may remain unchanged and be incorporated into the new RMP amendment;

5. The plan amendment will recognize valid existing rights;

6. The BLM will use a collaborative and multi-jurisdictional approach, when practical, to determine the desired future condition of public lands; and

7. The BLM will strive to make land use plan decisions compatible with existing plans and policies of adjacent local, State, Federal, and tribal agencies, and consistent with other applicable laws and regulations governing the administration of public land.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;

2. Issues to be resolved through policy or administrative action; or

3. Issues beyond the scope of this plan amendment.

The BLM will provide an explanation in the EA as to why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Lands and realty, botany, wildlife and fisheries, hydrology, soils, archeology, recreation, fire and fuels management, and Geographic Information Systems.

**Authority:** 40 CFR 1501.7, 43 CFR 1610.2, 40 CFR 1508.22.

**Dayne Barron,**

*BLM Medford District Manager.*

[FR Doc. 2011–28064 Filed 10–28–11; 8:45 am]

**BILLING CODE 4310–33–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLORV00000.L10200000.DD0000; HAG 12–0022]**

### Notice of Public Meeting, John Day-Snake Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Public Meeting.

**SUMMARY:** Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (RAC) will meet as indicated below:

**DATES:** The meeting will be held on November 29, 2011.

**ADDRESSES:** The meeting will be held at Umatilla National Forest Supervisor Office located at 2517 SW. Hailey, Pendleton, Oregon, on November 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Mark Wilkening, Public Affairs Specialist, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or email *mwilkeni@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 November 29, 2011, meeting will be held from 8 a.m. to 4:30 p.m. Pacific Standard Time (PST) at the Umatilla National Forest Supervisor Office in Pendleton, Oregon. Topics may include: Welcoming/Orientation of New Members, Election of Officers, Power/Energy Transmission options, updates by Federal managers on litigation, energy projects, and other issues affecting their districts/units and other matters as may reasonably come before the RACs. All RAC meetings are open to the public; time is set aside for oral comments at 1 p.m. on November 29, 2011. Those who verbally address the RAC are asked to provide a *written* statement of their presentation. Unless otherwise approved by the RAC Chair, the public comment period will last no longer than 15 minutes; each speaker may address the RAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM Vale District Office at (541) 473–6218 as soon as possible. Before including your address, phone number, email address, or other personal identifying information in your comment, please 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.

**Donald N. Gonzalez,**

*BLM Vale District Manager.*

[FR Doc. 2011–28128 Filed 10–28–11; 8:45 am]

**BILLING CODE 4310–33–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLAZ910000.L12100000.XP0000LXSS150A00006100.241A]**

### State of Arizona Resource Advisory Council Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meetings.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Arizona Resource Advisory Council (RAC) will meet in Phoenix, Arizona, as indicated below.

**DATES:** Meetings will be held on December 1–2, 2011, from 8:30 a.m. until 5 p.m. on the first day and 8 a.m. until 4:30 p.m. on the second day.

**ADDRESSES:** The meetings will be held at the BLM National Training Center

located at 9828 North 31st Avenue, Phoenix, Arizona 85051.

**FOR FURTHER INFORMATION CONTACT:** Dorothea Boothe, Arizona RAC Coordinator at the Bureau of Land Management, Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427, (602) 417–9504. 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 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Arizona. Planned agenda items include: A welcome and introduction of Council members; BLM State Director's update on BLM programs and issues; updates on the Arizona Water Strategy, land use planning and public involvement, renewable energy projects and the Northern Arizona Proposed Mineral Withdrawal Final Environmental Impact Statement; RAC questions on District Managers' Reports; reports by the RAC working groups; new member orientation and training; and other items of interest to the RAC. Members of the public are welcome to attend the RAC working group meetings on December 1 and the Business meeting on December 2. A half-hour public comment period is scheduled on December 2 from 11:30 to Noon for any interested members of the public who wish to address the Council on BLM or Forest Service recreation fee programs and business. Depending on the number of persons wishing to speak and time available, the time for individual comments may be limited. Written comments may also be submitted during the meeting for the RAC's consideration. Final meeting agendas will be available two weeks prior to the meetings and posted on the BLM Web site at: *http://www.blm.gov/az/st/en/res/rac.html.* Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the RAC Coordinator listed above no later than two weeks before the start of the meeting. Under the Federal Lands Recreation Enhancement Act, the RAC has been designated as the Recreation Resource Advisory Council (RRAC) and has the authority to review all BLM and Forest Service recreation fee proposals in Arizona. The RRAC will not review any recreation fee proposals at this meeting.

**Raymond Suazo,**

*Acting State Director.*

[FR Doc. 2011–28054 Filed 10–28–11; 8:45 am]

**BILLING CODE 4310–32–P**

## INTERNATIONAL TRADE COMMISSION

**[DN 2852]**

## Certain Wiper Blades; Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Wiper Blades,* DN 2852; the Commission is soliciting comments on any public interest issues raised by the complaint.

**FOR FURTHER INFORMATION CONTACT:** James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** The Commission has received a complaint filed on Robert Bosch LLC on October 26, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wiper blades. The complaint names as respondents ADM21 Co., Ltd. of Korea; ADM21 Co. (North America) Ltd. of NJ; Alberee Products, Inc. of MD; API Korea Co., Ltd. of Korea; Cequent Consumer Products, Inc. of OH; Corea Autoparts Producing Corporation of South Korea; Danyang UPC Auto Parts Co., Ltd. of China; Fu-Gang Co., Ltd. of Taiwan; PIAA Corporation USA of OR; Pylon Manufacturing Corp. of FL; RainEater, LLC of PA; Scan Top Enterprise Co., Ltd. of Taiwan; and Winplus North America Inc. of Canada.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers. In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2852'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by

facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf.* Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: October 26, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–28120 Filed 10–28–11; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–1091 (Review)]**

### Artists' Canvas From China

#### Determination

On the basis of the record[1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on artists' canvas from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

#### Background

The Commission instituted this review on May 2, 2011 (76 FR 24516) and determined on August 5, 2011 that it would conduct an expedited review (76 FR 54789, September 2, 2011).

The Commission transmitted its determination in this review to the Secretary of Commerce on October 25, 2011. The views of the Commission are contained in USITC Publication 4273 (October 2011), entitled *Artists' Canvas from China: Investigation No. 731–TA–1091 (Review).*

By order of the Commission.

Issued: October 25, 2011.

**James R. Holbein,**

*Secretary to the Commission.*

[FR Doc. 2011–28121 Filed 10–28–11; 8:45 am]

**BILLING CODE 7020–02–P**

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Daniel R. Pearson dissenting.

## DEPARTMENT OF JUSTICE

**[OMB Number 1190–0009]**

### Agency Information Collection Activities Under Review; Title II of the Americans With Disabilities Act of 1990/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form

**ACTION:** 60-Day Notice of Information Collection Under Review.

The Department of Justice, Civil Rights Division, Disability Rights Section, will be submitting the following information collection request to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995. The information collection extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until December 30, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time should be directed to Allison Nichol (phone number and address listed below). If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, contact or write her at U.S. Department of Justice, Civil Rights Division, Disability Rights Section—NYA, 950 Pennsylvania Avenue NW., Washington, DC 20530.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, *Attn:* DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to (202) 395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please contact Allison Nichol, Chief, Disability Rights Section, Civil Rights Division, by calling (800) 514–0301 (Voice) or (800) 514–0383 (TTY) (the Division's ADA Information Line), or the DOJ Desk Officer at (202) 395–3176.

We request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

The information collection is listed below:

(1) Type of information collection. Extension of Currently Approved Collection.

(2) The title of the form/collection. Title II of the Americans with Disabilities Act/Section 504 of the Rehabilitation Act of 1973 Discrimination Complaint Form.

(3) The agency form number and applicable component of the Department sponsoring the collection. No form number. Disability Rights Section, Civil Rights Division, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: Primary: Individuals alleging discrimination by public entities based on disability. Under title II of the Americans with Disabilities Act, an individual who believes that he or she has been subjected to discrimination on the basis of disability by a public entity may, by himself or herself or by an authorized representative, file a complaint. Any Federal agency that receives a complaint of discrimination by a public entity is required to review the complaint to determine whether it has jurisdiction under section 504. If the

agency does not have jurisdiction, it must determine whether it is the designated agency responsible for complaints filed against that public entity. If the agency does not have jurisdiction under section 504 and is not the designated agency, it must refer the complaint to the Department of Justice. The Department of Justice then must refer the complaint to the appropriate agency.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 5,000 respondents per year at 0.75 hours per complaint form.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,750 hours annual burden.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Office of the Chief Information Officer, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2011–28006 Filed 10–28–11; 8:45 am]

**BILLING CODE 4410–13–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act and the Texas Solid Waste Disposal Act

Notice is hereby given that on October 24, 2011, a proposed Consent Decree in *United States of America* v. *Hercules Incorporated and Rockwell Automation, Inc.,* Civil Action No. 6:11–cv–00267–WSS was lodged with the United States District Court for the Western District of Texas.

In this action the United States brought suit against Hercules Incorporated and Rockwell Automation, Inc.(collectively, ''Defendants''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601–9675, and the Texas Solid Waste Disposal Act, Texas Health & Safety Code Ann. §§ 361.001 to 361.966 (hereafter citations to this statute will be in the form ''TSWDA § 361.xxx''), for recovery of response costs incurred, and to obtain a declaratory judgment as to liability for response costs to be incurred, for responding to the releases and threatened releases of solid wastes and hazardous substances at and from the Naval Weapons Industrial Reserve Plant in McGregor, Texas (''NWIRP McGregor'') and the adjacent areas where such solid wastes and hazardous substances have come to be located (collectively, the ''NWIRP McGregor Site''). The Consent Decree requires Defendants to pay to the United States $14,000,000. The Consent Decree also includes a finding that Settling Defendants are entitled to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. 9613(f)(2), for ''matters addressed'' in the Consent Decree. With certain exceptions, the Consent Decree defines ''matters addressed'' in the Consent Decree to be all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the NWIRP McGregor Site, by the United States or any other person. In addition, Defendants agree to forgo any claims against the United States arising under Federal Contracts and related to ''matters addressed'' in the Consent Decree. Under the Consent Decree, the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to CERCLA Sections 106 and 107(a), 42 U.S.C. 9606 and 9607(a), and TSWDA § 361.344, with regard to the NWIRP McGregor Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *U.S.* v. *Hercules Incorporated,* D.J. Ref. 90–11–3–08465/1.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $5.50 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above.

**Maureen M. Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2011–28045 Filed 10–28–11; 8:45 am]

**BILLING CODE 4410–15–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### United States v. Grupo Bimbo S.A.B. de C.V., et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Grupo Bimbo S.A.B. de C.V., et al.,* Civil Action No. 1:11–cv–01857. On October 21, 2011, the United States filed a Complaint alleging that the proposed acquisition by Grupo Bimbo S.A.B. de C.V. (''Grupo Bimbo'') and BBU, Inc. (collectively ''BBU'') of the North American Fresh Bakery business of Sara Lee Corporation (''Sara Lee'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed the same time as the Complaint, requires BBU to divest certain brands of sliced bread and related assets to one or more acquirers approved by the United States.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street NW., Suite 1010, Washington, DC 20530 (telephone: (202) 514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, Department of Justice,

Washington, DC 20530 (telephone: (202) 307–0827).

**Patricia A. Brink,**

*Director of Civil Enforcement.*

**United States District Court for the District of Columbia**

*United States of America, United States Department of Justice, Antitrust Division, Litigation I Section, 450 Fifth Street NW., Suite 4100, Washington, DC 20530, Plaintiff,* v. *Grupo Bimbo, S.A.B. de C.V., Prolongacion Paseo de la Reforma No. 1000, Col. Pena Blanca Santa Fe, Delegacon Alvaro Obregon, Mexico D.F., 01210 Mexico, BBU, INC., 225 Business Center Drive, Horsham, Pennsylvania 19044, and Sara Lee Corporation, 3500 Lacey Road, Downers Grove, Illinois 60515, Defendants.*

*Case:* 1:11–cv–01857.
*Assigned To:* Sullivan, Emmet G.
*Assign Date:* 10/21/2011.
*Description:* Antitrust.

**Complaint**

The United States of America (''United States''), acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of the North American Fresh Bakery business of Defendant Sara Lee Corporation (''Sara Lee'') by Defendants Grupo Bimbo S.A.B. de C.V. (''Grupo Bimbo'') and BBU, Inc. (collectively ''BBU''), and to obtain other equitable relief. The acquisition would likely substantially lessen competition in the market for sliced bread in eight relevant geographic markets in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and result in higher prices for consumers of sliced bread in these markets. The United States alleges as follows:

**I. Nature of the Action**

1. On November 9, 2010, BBU agreed to acquire the North American Fresh Bakery business of Sara Lee (by acquiring all of the shares of Sara Lee Bakery Group, Inc. and Sara Lee Vernon LLC).

2. BBU and Sara Lee compete in the sale of sliced bread, which they sell under a variety of well-known brands. They are among the four largest sellers of sliced bread in the eight relevant geographic markets alleged below; in four of the relevant geographic markets, they are the two largest.

3. BBU and Sara Lee compete aggressively with each other in the relevant markets. The head-to-head competition between the companies results in lower prices for consumers and improved service to retailers.

4. As alleged in greater detail below, the proposed acquisition would substantially increase concentration among sellers of sliced bread in each of the relevant geographic markets and eliminate the substantial head-to-head competition between BBU and Sara Lee, likely leading to higher prices and reduced service, and substantially lessening competition in the sale of sliced bread in the relevant markets. Therefore, the proposed acquisition violates Section 7 of the Clayton Act.

**II. Jurisdiction, Venue, and Interstate Commerce**

5. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

6. BBU and Sara Lee manufacture, market, and sell sliced bread and other consumer products in the flow of interstate commerce, and their production and sale of these products substantially affect interstate commerce. BBU and Sara Lee transact business and are found in the District of Columbia, through, among other things, the sale of consumer products to grocery stores in this District. Venue is proper in this District for Sara Lee and BBU, Inc. under Section 12 of the Clayton Act, 15 U.S.C. 22. Venue is proper in this District for Grupo Bimbo, a Mexican corporation, under 28 U.S.C. 1391(d).

7. Defendants have consented to personal jurisdiction and venue in this judicial district.

**III. The Defendants**

8. Grupo Bimbo is a corporation organized under the laws of Mexico, with headquarters in Mexico City. It controls BBU, Inc., a Delaware corporation headquartered in Horsham, Pennsylvania, through which Grupo Bimbo carries out its baking business in the United States, including but not limited to sliced bread. Grupo Bimbo had more than $8 billion in worldwide sales in 2009. In the same year, BBU's sales in the United States totaled approximately $3.9 billion. BBU sells sliced bread under a variety of national and regional brand names, including Bimbo, Arnold, Brownberry, Oroweat, Roman Meal, Freihofer's, Maier's, Mrs Baird's, Stroehmann, and Weber's. BBU also makes and sells Thomas' English muffins and Entenmann's sweet baked goods.

9. Sara Lee is a corporation organized under the laws of Maryland, with headquarters in Downers Grove, Illinois. Sara Lee had more than $10 billion in worldwide revenues in fiscal 2010. That year, Sara Lee's North American Fresh Bakery division had approximately $2.1 billion in sales. Sara Lee sells sliced bread under a variety of brand names, including the ''Sara Lee'' brand family (including Sara Lee, Sara Lee Classic, Sara Lee Soft & Smooth, Sara Lee Hearty & Delicious, and Sara Lee Delightful), EarthGrains, and regional brands such as Milton's, Mother's, Grandma Sycamore's, Rainbo, San Luis Sourdough, Old Home, and Holsum.

**IV. Relevant Markets**

*A. Relevant Product Market—Sliced Bread*

10. The relevant product market is no broader than sliced bread. ''Sliced bread,'' as the term is used in the industry and in this Complaint, is fresh sliced and bagged loaf bread sold by supermarkets, mass merchandisers (such as Wal-Mart), club stores (such as Costco), other grocery stores, and convenience stores. For purposes of this Complaint, ''sliced bread'' does not include breakfast breads (such as raisin bread or cinnamon swirl), buns and rolls, bagels or English muffins, or products sold by in-store bakeries.

11. There is substantial variety and differentiation among sliced-bread products. Sliced breads vary in price, brand, flavor, texture, nutritional content, ingredients (*e.g.,* the inclusion or exclusion of sweeteners or artificial ingredients), and other factors. Sliced breads range from traditional white bread to a wide variety of wheat and whole grain breads, rye, sourdough, and other varieties.

12. Sliced breads also vary in shape. ''Traditional'' breads are baked in longer, narrower loaf pans and are often used as sandwich bread; ''wide pan'' breads are shorter and wider (and typically denser) than traditional breads. Traditional breads are often targeted to families with younger children. Wide pan breads are marketed as having greater nutritional value, and are typically sold at higher prices than traditional breads.

13. Sliced breads include both branded products, which bear a brand owned by or licensed to the baker (such as BBU's Arnold or Sara Lee's EarthGrains), and private-label products, which bear a brand owned by the retailer (such as Wal-Mart's Great Value). Large baking companies, including BBU and Sara Lee, make and

sell both branded and private-label bread.

14. Industry participants consider sliced breads to be a distinct set of products from other bakery products. Sliced bread sellers monitor the prices of competing sliced-bread products and set the prices of their sliced-bread products accordingly, and do not typically set sliced-bread prices based on prices of consumer products other than sliced bread.

15. There are no adequate substitutes for sliced bread for most consumers. Most consumers purchase sliced bread to make sandwiches or toast, among other uses. Consumers are unlikely to substitute other bakery or food products for sliced bread for these and other uses. Therefore, a hypothetical monopolist producer of sliced bread would find it profitable to increase its prices by a small but significant and non-transitory amount. Accordingly, sliced bread is a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

*B. Relevant Geographic Markets*

16. The metropolitan and surrounding areas of San Diego, Los Angeles, San Francisco and Sacramento, California; Kansas City, Kansas; Omaha, Nebraska; Oklahoma City, Oklahoma; and Harrisburg/Scranton, Pennsylvania, each are relevant geographic markets.

17. The relevant geographic markets for analyzing the effects of this acquisition on competition are best defined by reference to the locations of the retailers that purchase sliced bread for sale to consumers, rather than by the location of bakeries. This approach to defining the relevant geographic markets is appropriate because bakers can price discriminate to their retailer customers based on location—*i.e.,* price differently to retailers in different locations based on local competitive conditions—and the retailers cannot defeat these price differences through arbitrage.

18. Where sellers can successfully price discriminate based on customer location, the goal of geographic market definition is to identify the area encompassing the locations of potentially targeted customers. The relevant geographic markets identified above encompass the locations of retailers that could likely be targeted for price increases for sliced bread as a result of this transaction. For each of these geographic markets, the participants in each market are those sellers who currently sell sliced bread into that area, regardless of the location of the sellers' production facilities.

19. Arbitrage across each of these geographic areas is unlikely to occur. Arbitrage would occur if a retailer in a higher-priced area were supplied with goods that had been sold to a retailer in a lower-priced area. Arbitrage of sliced bread between metropolitan areas is prohibitively costly because the retailer would incur substantial transportation costs to ship bread from another retailer to its store locations. In addition, arbitrage would be costly because it would require retailers to forego the ''direct store delivery'' (''DSD'') services provided by the bakery, which include delivering bread up to five times a week, stocking their shelves and displays, and removing stale or dated loaves.

20. Accordingly, a hypothetical monopolist seller of sliced bread to retailers in each of the eight geographic areas identified in Paragraph 16 would find it profitable to increase its prices by a small but significant and non-transitory amount. Therefore, the geographic areas identified in Paragraph 16 are relevant geographic markets and ''sections of the country'' within the meaning of Section 7 of the Clayton Act.

**V. Likely Anticompetitive Effects**

21. Each of the relevant markets for sliced bread would be highly concentrated, and concentration would increase substantially in each of the relevant markets, as a result of the acquisition. Specifically,

a. In San Diego, Defendants are the two largest sellers of sliced bread, with a combined market share of approximately 63 percent (in dollars).

b. In Los Angeles, Defendants are the two largest sellers of sliced bread, with a combined market share of approximately 58 percent.

c. In San Francisco, BBU is the largest seller of sliced bread, and Sara Lee is the third largest, with a combined market share of approximately 56 percent.

d. In Sacramento, Defendants are the two largest sellers of sliced bread, with a combined market share of approximately 59 percent.

e. In Kansas City, Sara Lee is the largest seller of sliced bread, and BBU is the third largest, with a combined market share of approximately 52 percent.

f. In Omaha, Sara Lee is the largest seller of sliced bread, and BBU is the third largest, with a combined market share of approximately 52 percent.

g. In Oklahoma City, Sara Lee is the largest seller of sliced bread, and BBU is the fourth largest, with a combined market share of approximately 53 percent.

h. In Harrisburg and Scranton, Defendants are the two largest sellers of sliced bread, with a combined market share of approximately 56 percent.

22. BBU and Sara Lee compete vigorously in the sale of sliced bread in the relevant geographic markets on price, promotions, variety, flavor, texture, shape, nutrition, and ingredients. They compete for retailers' business and for shelf and display space in retailers' stores by, among other things, offering lower wholesale prices and larger promotional discounts, which lower the prices paid by consumers of sliced bread.

23. Consumers vary in their preferences for particular sliced bread products, and bakers and retailers offer a wide variety of sliced bread products to meet consumer preferences. Consumers consider many factors when choosing sliced-bread products, including brand, flavor, texture, nutritional content, shape, ingredients, and price. BBU and Sara Lee each make and sell a wide variety of sliced-bread products, under a portfolio of brands that have been developed over many years, to meet this diverse consumer demand.

24. Bread brands convey information to consumers regarding quality, value, nutrition, and other attributes, and are an important factor in many consumers' buying decisions. Branded sliced breads typically sell at significantly higher prices than similar private-label sliced breads, indicating that many consumers value the qualities they associate with branded sliced breads.

25. BBU's wide-pan variety breads, sold under the Oroweat and Arnold brands in the relevant markets, are similar in shape, flavor, texture, image, and price to Sara Lee's wide-pan variety breads sold under the Sara Lee Hearty & Delicious and EarthGrains brands in the relevant markets. Similarly, Sara Lee sells traditional soft white and wheat bread in the relevant markets under the Sara Lee Soft & Smooth brand and other brands, which are similar in shape, flavor, texture, image, and price to traditional soft white bread sold by BBU under the Bimbo, Mrs Baird's, Stroehmann, Freihofer's, Weber's, and other brands in the relevant markets.

26. BBU and Sara Lee recognize that many of their sliced-bread products are close substitutes for each other's products, and a significant number of consumers in the relevant markets regard BBU and Sara Lee branded sliced-bread products as their first and second choices in sliced-bread products.

27. The acquisition would eliminate the substantial head-to-head competition between BBU and Sara Lee

for sliced-bread sales to retailers and consumers, and allow BBU profitably to raise prices and decrease the services that it provides to retailers in the relevant markets.

28. A price increase by BBU in a relevant market likely would result in the loss of substantial sales to Sara Lee, because, as previously alleged, a substantial number of consumers view BBU and Sara Lee breads as close substitutes. Prior to the acquisition, BBU would have lost the profits on the sales it loses to Sara Lee (and others) as a result of such a price increase. Following the acquisition, BBU would own the Sara Lee products, and would retain the profits that it would otherwise lose when consumers switch to Sara Lee products, in addition to earning higher profits on the sale of BBU products, which it would retain. Because those sales of Sara Lee products are likely profitable, a price increase by BBU would be profitable after the acquisition. The same profit motive would apply to an increase in the prices of Sara Lee bread, recaptured through sales of BBU bread. Therefore, BBU likely would unilaterally raise prices as a result of the acquisition.

29. The significant increase in market concentration that the proposed acquisition would produce in the relevant markets, combined with the loss of head-to-head competition between BBU and Sara Lee, is likely to substantially lessen competition in violation of Section 7 of the Clayton Act, resulting in higher prices for retailers and consumers of sliced bread.

**VI. Absence of Countervailing Factors**

*A. Entry*

30. Responses from competitors and new entry are unlikely to prevent the acquisition's likely anticompetitive effects. Barriers to entering these markets include: (i) The substantial time and expense required to build a brand reputation to overcome existing consumer preferences; (ii) the substantial sunk costs for promotional and advertising activity needed to secure the distribution and placement of a new entrant's sliced-bread products in retail outlets; (iii) the difficulty of securing shelf-space in retail outlets; (iv) the time and cost of building new bakeries and other facilities; and (v) the time and cost of developing delivery routes.

*B. Efficiencies*

31. The proposed acquisition is unlikely to generate verifiable, merger-specific, cognizable efficiencies sufficient to reverse the likely competitive harm of the acquisition.

**VII. Violation Alleged**

32. The United States hereby repeats and realleges the allegations of paragraphs 1 through 31 as if fully set forth herein.

33. BBU's proposed acquisition of Sara Lee would likely substantially lessen competition in interstate trade and commerce, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and would likely have the following effects, among others:

(a) Actual and potential competition in the relevant markets between BBU and Sara Lee for sales of sliced bread would be eliminated; and

(b) Competition generally in the relevant markets for sliced bread would be substantially lessened.

**VIII. Request for Relief**

The United States requests:

(a) That the Court adjudge the proposed acquisition to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed acquisition or from entering into or carrying out any other agreement, understanding, or plan by which Sara Lee would be acquired by, acquire, or merge with BBU;

(c) That the Court award the United States the costs of this action; and

(d) That the Court award such other relief to the United States as the Court may deem just and proper.

Respectfully submitted,

Dated: October 21, 2011.

For Plaintiff United States:

*/s/ Sharis A. Pozen*
Sharis A. Pozen (DC Bar #446732),
*Acting Assistant Attorney General for Antitrust.*

*/s/ Patricia A. Brink*
PATRICIA A. BRINK
*Director of Civil Enforcement.*

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**United States District Court for the District of Columbia**

*United States of America, Plaintiff, v. Grupo Bimbo, S.A.B. de C.V., et al., Defendants.*

*Case:* 1:11–cv–01857.
*Assigned To:* Sullivan, Emmet G.
*Assign Date:* 10/21/2011.
*Description:* Antitrust.

**Competitive Impact Statement**

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

The United States filed a civil antitrust Complaint on October 21, 2011, seeking to enjoin the proposed acquisition of the North American Fresh Bakery business of Defendant Sara Lee Corporation (''Sara Lee'') by Defendants Grupo Bimbo S.A.B. de C.V. (''Grupo Bimbo'') and BBU, Inc. (collectively ''BBU''), alleging that the acquisition likely would substantially lessen competition in the market for sliced bread in eight relevant geographic markets in the United States, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The loss of competition caused by the acquisition likely would result in higher prices for consumers of sliced bread in those markets.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which will substantially eliminate the anticompetitive effects that would result from the acquisition. Under the proposed Final Judgment, which is explained more fully below, BBU is required to divest certain brands of sliced bread and related assets to one or more acquirers approved by the United States, in the markets where anticompetitive effects are likely. Under the Hold Separate, BBU and Sara Lee must take certain steps to ensure that the assets being divested continue to be operated in a competitively and economically viable manner and that competition for the products being

divested is maintained during the pendency of the divestiture.

The United States and the Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

## II. Events Giving Rise to the Alleged Violation

### *A. The Defendants and the Proposed Acquisition*

Defendant BBU is the largest sliced-bread baker and seller in the United States, operating 33 bakeries, 21 transportation depots, and more than 7,000 sales routes.[1] In 2009, BBU's sales in the United States totaled approximately $3.9 billion. BBU owns many of the major brand names in the sliced-bread industry, including Bimbo, Arnold, Brownberry, Oroweat, Mrs Baird's, Stroehmann, Freihofer, and Weber's.

Defendant Sara Lee's North American Fresh Bakery division is the third largest sliced-bread producer in the United States. Sara Lee operates 41 bakeries and approximately 4,800 sales routes in the United States. In fiscal year 2010, Sara Lee's North American Fresh Bakery division had $2.1 billion in sales. The majority of Sara Lee's bread sales are made under brands in the ''Sara Lee'' brand family, but Sara Lee also has substantial sales under its EarthGrains brand and various regional brands, including Milton's, Mother's, Grandma Sycamore's, Rainbo, San Luis Sourdough, Old Home, and Holsum.

On or about November 9, 2010, BBU entered into an agreement to acquire Sara Lee's North American bread-baking business by acquiring all of the shares of Sara Lee Bakery Group, Inc. and Sara Lee Vernon LLC (the ''Acquisition'').

### *B. Relevant Markets*

#### 1. The Relevant Product Market Is No Broader Than Sliced Bread

The Complaint alleges that the relevant product market is no broader than sliced bread. Sliced bread is fresh sliced and bagged loaf bread sold by supermarkets, mass merchandisers (such as Wal-Mart), club stores (such as Costco), other grocery stores, and convenience stores. There is substantial variety and differentiation among sliced-bread products. Sliced breads vary in price, brand, flavor, texture, nutritional content, ingredients (*e.g.,* the inclusion or exclusion of sweeteners or artificial ingredients), and other factors. Sliced breads range from traditional white bread to a wide variety of wheat and whole grain breads, rye, sourdough, and other varieties.

Sliced breads also vary in shape. ''Traditional'' breads are baked in longer, narrower loaf pans and often used as sandwich bread. ''Wide pan'' breads are shorter and wider (and typically denser) than traditional breads. Traditional breads are often targeted to families with younger children. Wide-pan breads are marketed as having greater nutritional value, and are typically sold at higher prices than traditional breads.

Sliced breads include branded products, which bear a brand owned by or licensed to the baker (such as BBU's Arnold or Sara Lee's EarthGrains), and private-label products, which bear a brand owned by the retailer (such as Wal-Mart's Great Value). Most large baking companies, including BBU and Sara Lee, make and sell branded and private-label bread.

There are no adequate substitutes for sliced bread for most consumers. Most consumers purchase sliced bread to make sandwiches or toast, among other uses, and are unlikely to substitute other bakery or food products for sliced bread for these and other uses. Therefore, a hypothetical monopolist producer of sliced bread would find it profitable to increase its prices by a small but significant and non-transitory amount. Accordingly, sliced bread is a relevant product market and a line of commerce within the meaning of Section 7 of the Clayton Act.

#### 2. The Relevant Geographic Markets Are Local

The Complaint alleges that the San Francisco, San Diego, Sacramento, Los Angeles, Harrisburg/Scranton, Kansas City, Kansas, Omaha, and Oklahoma City metropolitan and surrounding areas each constitute relevant geographic markets for the sale of sliced bread. Each geographic market is defined with respect to the location of customers (*e.g.,* grocery stores), rather than the location of manufacturers (*i.e.,* bakeries), because, as the Complaint alleges, sliced-bread suppliers can price discriminate across local geographic markets.

The appropriateness of defining the geographic market as a price-discrimination market based on the location of the customers is explained in the 2010 Horizontal Merger Guidelines issued by the U.S. Department of Justice and the Federal Trade Commission. Under the Guidelines analysis, ''[f]or price discrimination to be feasible, two conditions typically must be met: differential pricing and limited arbitrage.'' U.S. Dept. of Justice & FTC, Horizontal Merger Guidelines 3 (2010) (hereinafter ''Horizontal Merger Guidelines''). If these conditions are met, ''a hypothetical profit-maximizing firm that was the only present or future seller of the relevant product(s) to customers in the region would impose at least a [small price increase] on some customers in the specified region.'' Horizontal Merger Guidelines 4.2.2. So long as this price increase would not be defeated by arbitrage, the targeted region constitutes a relevant geographic market. *Id.*

Sliced-bread suppliers can charge different prices for the same product (net of transportation costs) in different metropolitan areas. Sliced-bread suppliers compete for retailers' business and for shelf and display space in retailers' stores by, among other things, offering lower wholesale list prices and larger promotional discounts, which lower the prices paid by consumers of sliced bread. List prices and promotional activity are regularly determined after a consideration of the competitive conditions in a particular geographic area. Even with larger retailers that have a national or regional footprint, there are different pricing and promotional strategies that are influenced by the degree of competition in a particular area.

Geographic price discrimination by sliced-bread suppliers is possible because the cost of arbitrage is prohibitively expensive. Arbitrage would occur if a retailer in a higher-priced area were supplied with goods previously sold to a retailer in a lower-priced area. Arbitrage of sliced bread between metropolitan areas is very costly because the retailer would incur substantial transportation costs to ship bread from another retailer to its store locations. In addition, arbitrage would require retailers to forego the ''direct store delivery'' (''DSD'') services provided by the bread manufacturer, which include delivering bread to their stores up to five times a week, stocking their shelves and displays, and removing stale or dated loaves. Accordingly, arbitrage of sliced bread is unlikely to occur or to eliminate disparities in wholesale prices between metropolitan areas. Therefore, a hypothetical monopolist seller of sliced bread to retailers in each of the geographic areas identified above would find it profitable to increase its prices by

[1] Defendant Grupo Bimbo, a Mexican corporation headquartered in Mexico City, operates in the United States through its subsidiary BBU, Inc.

a small but significant and non-transitory amount. Therefore, the eight geographic areas identified in the Complaint are relevant geographic markets and ''sections of the country'' within the meaning of Section 7 of the Clayton Act.

*C. The Acquisition Is Likely To Substantially Lessen Competition in the Sale of Sliced Bread in Each of the Relevant Geographic Markets*

The Complaint alleges that the Acquisition is likely to substantially lessen competition in the sale of sliced bread in the relevant geographic markets. The Acquisition would result in the relevant markets being highly concentrated, giving BBU a dominant share of the sliced bread market. In San Diego, BBU would have 63 percent of the sliced bread market; in Sacramento 59 percent; in Los Angeles 58 percent; in San Francisco 56 percent; in Omaha 52 percent; in Oklahoma City 53 percent; in Kansas City 52 percent; and in Harrisburg/Scranton 56 percent.[2]

In addition, BBU and Sara Lee are among each other's most important competitors in the relevant markets, and in some relevant markets are particularly close competitors within certain market segments, such as wide-pan and traditional sliced bread. The Defendants regularly set prices and offer promotions in response to competition from each other, or to win market share from each other. Consumers benefit from this competition in the form of lower prices, innovative and healthier products, and a greater variety of choices of sliced-bread products. As discussed below, new entry is unlikely to eliminate the Acquisition's anticompetitive effects.

1. The Loss of Competition Between the Defendants in the Relevant Geographic Markets Is Likely To Lead to Post-Acquisition Price Increases

For a substantial number of consumers in the relevant markets, BBU and Sara Lee branded sliced-bread products are close substitutes. BBU's wide-pan variety breads, sold under the Oroweat and Arnold brands in the relevant markets, are similar in shape, flavor, texture, image, and price to Sara Lee's wide-pan variety breads sold under the Sara Lee Hearty & Delicious and EarthGrains brands in the relevant geographic markets. Similarly, Sara Lee sells traditional soft white and wheat bread in the relevant markets under the Sara Lee Soft & Smooth brand and other brands, which are similar in shape, flavor, texture, image, and price to traditional soft white bread sold by BBU under the Bimbo, Mrs Baird's, Stroehmann, Freihofer's, Weber's, and other brands in the relevant geographic markets. BBU and Sara Lee recognize that many of their sliced-bread products are close substitutes for each other's products, and they engage in substantial head-to-head competition for sales of these substitute products.

The loss of the head-to-head competition between the Defendants is likely to produce unilateral anticompetitive effects. *See* Horizontal Merger Guidelines 6.0. Because a substantial number of consumers view BBU and Sara Lee breads as closest substitutes, BBU is likely to increase prices post-transaction. Prior to the Acquisition, a price increase by BBU in a relevant market likely would result in the loss of substantial sales to Sara Lee. BBU would have lost the profits on the sales it loses to Sara Lee (and others) as a result of the price increase. Following the Acquisition, however, BBU would own the Sara Lee products, and would retain the profits that it would otherwise lose when consumers switch to Sara Lee products, in addition to earning higher profits on the sale of BBU products, which it would retain. Because those sales of Sara Lee products likely are profitable, a price increase by BBU likely would be profitable after the Acquisition. The same profit motive would apply to an increase in the prices of Sara Lee bread, recaptured through sales of BBU bread. Therefore, BBU likely would raise prices unilaterally as a result of the Acquisition.

For a unilateral price increase to be profitable, the brands at issue need not be the closest substitutes for all consumers. A merger ''may produce significant unilateral effects for a given product even though many more sales are diverted to products sold by non-merging firms than to products previously sold by the merger partner.'' Horizontal Merger Guidelines § 6.1. All that is required is that a significant proportion of customers regard the breads as their first and second choices. *Id.* The Complaint alleges that this condition is met in each of the relevant geographic markets with respect to the BBU and Sara Lee brands.

2. Entry Is Unlikely To Prevent the Acquisition's Anticompetitive Effects

The Complaint alleges that entry by new firms is not likely to prevent the Acquisition's anticompetitive effects. Entry by new firms will not prevent an acquisition's anticompetitive effects unless that entry is likely to occur in a timely manner and is sufficient to deter those anticompetitive effects. Horizontal Merger Guidelines § 9.

Entry into the sliced-bread business is unlikely to prevent anticompetitive effects because there are substantial barriers to entry in a timely manner. First, a well-established brand is crucial to the sale of sliced bread, and developing that brand equity is difficult and time-consuming. Consumers are reluctant to try new brands unless they are heavily promoted through advertising and especially aggressive pricing. In addition, constructing a new bakery is time-consuming. From the time a decision to build a new bakery is made, it can take six months to acquire the land; construction can then take 12 to 18 months.

Nor is it likely that any existing competitors in the relevant markets would expand their output or reposition their products to constrain a price increase by the leading firms. The other competitors either lack sufficient brand equity, or their production capacity serving the relevant markets is too small to constrain a post-merger price increase.

## III. Explanation of the Proposed Final Judgment

The proposed Final Judgment requires significant divestitures that will preserve competition in the market for sliced bread. Within 90 calendar days after filing of the Complaint (subject to up to two 30-day extensions) or five calendar days after entry of a Final Judgment by the Court, whichever is later, the Defendants are required to divest a perpetual, royalty-free, assignable, transferable, exclusive license to use the following brands and associated assets to an acquirer or acquirers that has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) to compete effectively in the manufacture and sale of sliced bread in each geographic market. To prevent the splitting of a divested brand between BBU and the acquirer within a relevant market, in most instances the proposed Final Judgment provides that for each brand of sliced bread required to be divested, the divestiture will include additional fresh bread products sold under that brand, *i.e.,* buns, rolls, sandwich thins, thin buns, etc.

In Los Angeles, San Diego, San Francisco, and Sacramento, California, the Defendants are required to divest the

[2] All of the market shares in the following paragraphs are rounded off to the nearest percentage point. As a consequence, the post-Acquisition market share of BBU need not be exactly equal to the sum of the pre-Acquisition shares of the BBU brands and the Sara Lee brands minus the pre-Acquisition share attributable to the divested brands.

Sara Lee family of brands (which includes Sara Lee, Sara Lee Classic, Sara Lee Soft & Smooth, Sara Lee Hearty & Delicious, and Sara Lee Delightful) and the EarthGrains brand. In Harrisburg/Scranton, Pennsylvania, the Defendants are required to divest the Holsum and Milano brands. In Kansas City, Kansas, the Defendants are required to divest the EarthGrains and Mrs Baird's brands. In Omaha, Nebraska, the Defendants are required to divest the EarthGrains and Healthy Choice brands. In Oklahoma City, Oklahoma, the Defendants are required to divest the EarthGrains brand. These divestitures target the loss of competition between BBU and Sara Lee in each particular market and will prevent or significantly reduce the increase in concentration that the transaction would otherwise produce in the relevant markets.

- In Los Angeles, BBU brands currently account for 41 percent of the sliced bread market and Sara Lee brands currently account for 18 percent. The divestiture in Los Angeles of EarthGrains and the Sara Lee family brands, which together account for 17 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 41 percent.
- In San Diego, BBU brands currently account for 46 percent of the sliced-bread market and Sara Lee brands currently account for 17 percent. The divestiture in San Diego of EarthGrains and the Sara Lee family of brands, which together account for 15 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 48 percent.
- In San Francisco, BBU brands currently account for 44 percent of the sliced-bread market and Sara Lee brands currently account for 12 percent. The divestiture in San Francisco of EarthGrains and the Sara Lee family of brands, which together account for 8 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 47 percent.
- In Sacramento, BBU brands currently account for 34 percent of the sliced-bread market and Sara Lee brands currently account for 25 percent. The divestiture in Sacramento of EarthGrains and the Sara Lee family of brands, which together account for 15 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 44 percent.
- In Kansas City, BBU brands currently account for 17 percent of the sliced-bread market and Sara Lee brands currently account for 35 percent. The divestiture in Kansas City of EarthGrains and Mrs Baird's, which together account for 9 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 43 percent.
- In Omaha, BBU brands currently account for 14 percent of the sliced-bread market and Sara Lee brands currently account for 38 percent. The divestiture in Omaha of EarthGrains and Healthy Choice, which together account for 5 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 47 percent.
- In Oklahoma City, BBU brands currently account for 7 percent of the sliced-bread market and Sara Lee brands currently account for 46 percent. The divestiture in Oklahoma City of EarthGrains, which accounts for 6 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 47 percent.
- In Harrisburg/Scranton, BBU brands currently account for 44 percent of the sliced-bread market and Sara Lee brands currently account for 12 percent. The divestiture in Harrisburg/Scranton of Holsum and Milano, which together account for 8 percent of the sliced-bread market, will reduce the merged firm's post-Acquisition market share to 49 percent.

The United States' analysis of the proposed Acquisition indicates that the acquisition of all of the Sara Lee brands of sliced bread in each of these eight geographic areas would have created an incentive for BBU to raise prices on BBU and Sara Lee brands of sliced bread because, in the event of a price increase, a significant portion of the lost sales from either the BBU or the Sara Lee portfolio of brands would be diverted to the other. In each geographic area, the divestiture, by separating the ownership of several closely competing brands, prevents the Acquisition from creating any significant incentive for the merged firm to raise the price of sliced bread.

In addition, as stated above, without the required divestitures, the Acquisition would have created substantial increases in the merged firm's sliced-bread market share in multiple geographic markets. The divestitures reduce those increases to no more than 4 percentage points in all but three markets: Sacramento (10 points), Omaha (9 points), and Kansas City (9 points). These incremental share gains in these three geographic markets do not pose substantial competitive concerns because they will result from the combination of brands that are largely in different segments of the sliced-bread market—*i.e.,* combining traditional breads and wide pan breads. Combining ownership of brands that consumers consider to be relatively distant substitutes for each other is less likely to raise competitive concerns than combining closer substitutes. The required divestitures mandate the sale of the Defendants' brands that most closely and directly compete in order to preserve competition in the segments of the market where they are very close substitutes for each other.

In Sacramento, the Sara Lee brands required to be divested are those that compete strongly with BBU brands. The Sara Lee brands that BBU will retain, in particular Rainbo, San Luis Sourdough, and Old Home, do not compete as directly with BBU brands, and thus present BBU with little incentive to increase prices post-Acquisition. In Omaha, BBU and Sara Lee primarily compete in the sale of wide-pan bread. BBU is not a significant competitor in Omaha in the traditional bread segment. Although wide-pan bread is a small part of the overall sliced-bread market, the divestiture of the EarthGrains and Healthy Choice brands protects the competition in this segment that the Acquisition would otherwise have reduced. The increased market share that BBU will retain in Omaha after the divestiture largely comes from BBU's acquisition of Sara Lee's traditional bread products, which is unlikely to reduce competition because BBU has not been a significant competitor in the sale of traditional bread in the Omaha metropolitan area.

In Kansas City, BBU and Sara Lee compete in both the traditional and wide-pan segments. The required divesture of BBU's traditional Mrs Baird's brand and Sara Lee's wide-pan EarthGrains brand targets competition in each of these segments. The small increase in market share of sliced bread that BBU likely will retain after the divestitures in Kansas City largely comes from combining BBU's wide-pan bread brands with Sara Lee's traditional bread brands, which is unlikely to create a significant competitive concern.

In addition to a perpetual, royalty-free, assignable, transferable, exclusive license to use the particular brands of sliced bread, the proposed Final Judgment requires with respect to each relevant geographic market the divestiture of related tangible assets, including records, customer information, and other assets related to the divested brands. It also requires the divestiture of related intangible assets, including the rights to trade dress, trademarks, trade secrets, and other intellectual property used in the research, development, production, marketing, servicing, distribution, or sale of the brands being divested.

In addition, effective divestitures probably will require the sale of

manufacturing plants and equipment used primarily to manufacture the divested brands, as well as distribution facilities, routes, route assets, and other tangible assets used in connection with those manufacturing plants. Accordingly, the proposed Final Judgment requires the divestiture of brand-related plants and plant-related assets, but it also provides that the Defendants need not divest those assets in the event that (1) the acquirer does not want those assets, and (2) the United States determines in its sole discretion that a divestiture of some or all of such assets is not reasonably necessary to enable the acquirer to replace the competition that otherwise would have been lost pursuant to the Acquisition.

The proposed Final Judgment provides that there will be a single acquirer of all brands and brand-related assets required to be divested in California, and that there may be different acquirers in different relevant markets outside of California. As stated above, to prevent the splitting of a divested brand between BBU and the acquirer within a relevant market, in most instances the proposed Final Judgment provides that for each brand of sliced bread required to be divested, the divestiture will include additional fresh-bread products sold under that brand, *i.e.,* buns, rolls, sandwich thins, thin buns, etc.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy the United States, in its sole discretion, that an acquirer or acquirers can and will use the assets as part of a viable, ongoing business engaged in the sale of sliced bread in the metropolitan and surrounding areas of Los Angeles, San Diego, San Francisco, Sacramento, Harrisburg, Scranton, Kansas City, Kansas, Omaha, and Oklahoma City.

Section V of the proposed Final Judgment provides that if Defendants do not accomplish the ordered divestitures within the prescribed time period, the Court will appoint a trustee, selected by the United States, to complete the divestitures. If a trustee is appointed, the proposed Final Judgment provides that Defendants must cooperate fully with the trustee and pay all of the trustee's costs and expenses. The trustee's compensation will be structured to provide an incentive for the trustee to maximize the price and terms of the divestitures and the speed with which they are accomplished. After the trustee's appointment becomes effective, the trustee will file monthly reports with the United States and the Court setting forth the trustee's efforts to accomplish the required divestitures.

The proposed Final Judgment provides that if a trustee is appointed, the trustee may make the ordered divestitures in California to different acquirers, so long as the United States is satisfied that the California divestiture assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint.

At the end of six months, if the divestitures have not been accomplished, the trustee and the United States will make recommendations to the Court, which shall enter such orders as appropriate to carry out the purpose of the Final Judgment, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also provides that the United States may appoint a monitoring trustee to ensure that Defendants expeditiously comply with all of their obligations and perform all of their responsibilities under the Final Judgment and the Hold Separate and to ensure that the divestiture assets remain economically viable, competitive, and ongoing assets, and that competition in the sale of sliced bread in the relevant markets is maintained until the required divestitures have been accomplished. The monitoring trustee shall serve at the cost and expense of Defendants, on customary and reasonable terms and conditions agreed to by the monitoring trustee and the United States.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

The United States, BBU, and Sara Lee have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register,** or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register.**

Written comments should be submitted to:

Joshua H. Soven, Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 450 Fifth Street NW., Suite 4100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Defendants. The United States could have continued the litigation and sought a judicial order enjoining BBU's acquisition of Sara Lee's North American Fresh Bakery business. The United States is satisfied, however, that divestiture of the assets described in the proposed Final Judgment will preserve competition for the sale of sliced bread in the relevant geographic markets. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

## VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by

the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B).

In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public-interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable.'').[3]

A court considers under the APPA, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

*Bechtel,* 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' ''prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case'').

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60. As the United States District Court for the District of Columbia confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of

[3] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[4] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[5]

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: October 21, 2011.

Respectfully submitted,

/s/Michelle Seltzer
Michelle Seltzer (DC Bar #475482),
David Gringer,
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**United States District Court for the District of Columbia**

*United States of America, Plaintiff, v. Grupo Bimbo, S.A.B. de C.V., et al., Defendants*

Case No.:
Judge:

**[Proposed] Final Judgment**

*Whereas,* Plaintiff United States of America filed its Complaint on October 21, 2011, and plaintiff and defendants Grupo Bimbo S.A.B. de C.V. (''Grupo Bimbo''), BBU, Inc. (''BBU'') and Sara Lee Corporation (''Sara Lee'') (collectively ''Defendants''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And whereas,* Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And whereas,* the essence of this Final Judgment is the prompt and certain divestiture of certain rights and assets by Defendants to assure that competition is not substantially lessened;

*And whereas,* the United States requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

*And whereas,* Defendants have represented to the United States that the divestitures required below can and will be made and that Defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

*Now therefore,* before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged,* and *decreed:*

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

**II. Definitions**

As used in this Final Judgment:

(A) ''Acquirer'' means the person or persons to whom Defendants divest all or any portion of the Divestiture Assets.

(B) ''BBU'' means Defendant BBU, Inc., a Delaware corporation with its headquarters in Horsham, Pennsylvania, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

(C) ''California Area'' means the state of California.

(D) ''California Assets'' means:

(1) A perpetual, royalty-free, assignable, transferable, exclusive license (or, in the case of rights licensed from third parties or Sara Lee, a sublicense or assignment thereof) to use, manufacture (or have manufactured for the Acquirer), distribute, market, promote, advertise, and sell Fresh Bread under the California Brands in the California Area, including the right to manufacture Fresh Bread under the California Brands outside of the California Area for sale exclusively in the California Area, subject to any preexisting limitations on Sara Lee's authority to engage in such actions in the California Area;

(2) All plants and equipment used by Sara Lee to manufacture Fresh Bread under the California Brands for sale in the California Area (at the locations identified herein), and all trucks and other vehicles, depots, and warehouses utilized by Sara Lee or its agents in the distribution and sale of Fresh Bread under the California Brands in the California Area, provided, however, that the United States may approve a package of fewer of the assets identified in this subparagraph (2) based on a determination, in its sole discretion, that such a smaller package is sufficient to maintain current levels of competition for the manufacturing, distribution, and sale of Fresh Bread in the California Area;

(3) All route books, customer lists, and other records used in the Defendants' sale of Fresh Bread under the California Brands in the California Area, provided that copies may be provided if such assets cannot be separated from what Defendants require for the retained business;

(4) All Other Assets used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of Fresh Bread under the California Brands in the California Area; and

(5) The Sara Lee Fresh Bread production facilities located at (a) 160 L Street, Fresno, California, 93721; (b) 955 Kennedy Street, Oakland, California, 94606; (c) 3211 6th Avenue, Sacramento, California, 95817; and (d) 2651 South Airport Way, Stockton, California, 95206. The California Assets specifically exclude the Sara Lee Fresh Bread production facility located at 5200 South Alameda, Vernon, California, 90058.

(E) ''California Brands'' means the EarthGrains, Sara Lee, Sara Lee Classic, Sara Lee Soft & Smooth, Sara Lee Hearty & Delicious, and Sara Lee Delightful brands for Fresh Bread in the California Area and any other related Trade Dress used in connection with the sale of Fresh Bread in the California Area.

(F) ''Central Pennsylvania Area'' means Adams, Berks, Carbon, Columbia, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Mifflin, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wayne, Wyoming, and York Counties in the commonwealth of Pennsylvania.

(G) ''Central Pennsylvania Assets'' means:

[5] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298 at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

(1) A perpetual, royalty-free, assignable, transferable, exclusive license (or, in the case of rights licensed from third parties or Sara Lee, a sublicense or assignment thereof) to use, manufacture (or have manufactured for the Acquirer), distribute, market, promote, advertise, and sell Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area, including the right to manufacture Fresh Bread under the Central Pennsylvania Brands outside of the Central Pennsylvania Area for sale exclusively in the Central Pennsylvania Area, subject to any preexisting limitations on Sara Lee's authority to engage in such actions in the Central Pennsylvania Area;

(2) all plants and equipment used by Sara Lee to manufacture Fresh Bread under the Central Pennsylvania Brands for sale in the Central Pennsylvania Area (at the locations identified herein), and all trucks and other vehicles, depots, and warehouses utilized by Sara Lee or its agents in the distribution and sale of Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area, provided, however, that the United States may approve a package of fewer of the assets identified in this subparagraph (2) based on a determination, in its sole discretion, that such a smaller package is sufficient to maintain current levels of competition for the manufacturing, distribution, and sale of Fresh Bread in the Central Pennsylvania Area;

(3) all route books, customer lists, and other records used in the Defendants' sale of Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area, provided that copies may be provided if such assets cannot be separated from what Defendants require for the retained business;

(4) all Other Assets used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of Fresh Bread under the Central Pennsylvania Brands in the Central Pennsylvania Area; and

(5) the Sara Lee Fresh Bread production facilities located at (a) 500 Hanover Street, Northumberland, Pennsylvania, 17857; and (b) 249 North 11th Street, Sunbury, Pennsylvania, 17801.

(H) ''Central Pennsylvania Brands'' means the Holsum and Milano brands for Fresh Bread in the Central Pennsylvania Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Central Pennsylvania Area.

(I) ''Central Region Area'' means the Kansas City Area, the Omaha Area, and the Oklahoma City Area.

(J) ''Central Region Assets'' means:

(1) A perpetual, royalty-free, assignable, transferable, exclusive license (or, in the case of rights licensed from third parties or Sara Lee, a sublicense or assignment thereof) to use, manufacture (or have manufactured for the Acquirer), distribute, market, promote, advertise, and sell Fresh Bread under the Central Region Brands in the Central Region Area, including the right to manufacture Fresh Bread under the Central Region Brands outside of the Central Region Area for sale exclusively in the Central Region Area, subject to any preexisting limitations on Defendants' authority to engage in such actions in the Central Region Area;

(2) all plants and equipment used by Sara Lee to manufacture Fresh Bread under the Central Region Brands for sale in the Central Region Area (at the locations identified herein), and all trucks and other vehicles, depots, and warehouses utilized by Sara Lee or its agents in the distribution and sale of Fresh Bread under the Central Region Brands in the Central Region Area, provided, however, that the United States may approve a package of fewer of the assets identified in this subparagraph (2) based on a determination, in its sole discretion, that such a smaller package is sufficient to maintain current levels of competition for the manufacturing, distribution, and sale of Fresh Bread in the Central Region Area;

(3) all route books, customer lists, and other records used in the Defendants' sale of Fresh Bread under the Central Region Brands in the Central Region Area, provided that copies may be provided if such assets cannot be separated from what Defendants require for the retained business;

(4) all Other Assets used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of Fresh Bread under the Central Region Brands in the Central Region Area; and

(5) the Sara Lee Fresh Bread production facilities located at (a) 317 South Elm Street, Hastings, Nebraska, 68901; (b) 221 North Chapel Hill Road, Sioux Falls, South Dakota, 57103; (c) 2630 Southeast Drive, Wichita, Kansas, 67216; and (d) 1916 North Broadway, Oklahoma City, Oklahoma, 73103. The Central Region Assets specifically exclude the Sara Lee bread production facilities located at (i) 415 South Mill Street, Fergus Falls, Minnesota, 56537; (ii) 3723 South Dakota Avenue, South Sioux City, Nebraska, 68776; and (iii) 1500 North US Highway 75, Sioux City, Iowa, 51102.

(K) ''Central Region Brands'' means:

(1) The EarthGrains and Mrs Baird's brands for Fresh Bread in the Kansas City Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Kansas City Area;

(2) the EarthGrains and, as licensed by Defendants, Healthy Choice brands for Fresh Bread in the Omaha Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Omaha Area; and

(3) the EarthGrains brand for Fresh Bread in the Oklahoma City Area, and any other related Trade Dress used in connection with the sale of Fresh Bread in the Oklahoma City Area.

(L) ''Divestiture Assets'' means the California Assets, the Central Pennsylvania Assets, and the Central Region Assets.

(M) ''Divestiture Trustee'' means the trustee selected by the United States and appointed by the Court pursuant to Section V of this Final Judgment.

(N) ''Formulas'' mean all of Defendants' formulas, recipes, and specifications used by a Defendant in connection with the production and packaging associated with the goods manufactured, distributed, marketed, and sold under a brand name, including, without limitation, ingredients, manufacturing processes, equipment and material specifications, trade and manufacturing secrets, know-how, and scientific and technical information.

(O) ''Fresh Bread,'' for purposes of this Final Judgment, means for the Central Pennsylvania Brands and the Central Region Brands, fresh, bagged, sliced bread, and items sold as bagged buns, rolls, sandwich thins, thin buns, bagels, English muffins, flat bread sold as traditional pita bread, and other fresh bread products sold under each Relevant Brand in the Central Pennsylvania Area and the Central Region Area. For the purposes of this Final Judgment, ''Fresh Bread'' for the California Area means fresh, bagged, sliced bread, and items sold as bagged buns, rolls, sandwich thins, thin buns, and other fresh bread products sold under the California Brands in the California Area, and excludes English muffins, bagels, and flat bread sold as traditional pita bread.

(P) ''Grupo Bimbo'' means Defendant Grupo Bimbo S.A.B. de C.V., a corporation organized under the laws of Mexico, with its headquarters in Mexico City, Mexico, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint

ventures, and their directors, officers, managers, agents, and employees.

(Q) ''Kansas City Area'' means Johnson, Leavenworth, Miami, and Wyandotte Counties in the state of Kansas, and Cass, Clay, Jackson, Lafayette, Platte, and Ray Counties in the state of Missouri.

(R) ''Licensed Trademarks'' means all trademarks or service marks belonging or licensed to Defendants (whether registered or unregistered, or whether the subject of a pending application) that consist of, or incorporate, a Relevant Brand.

(S) ''Monitoring Trustee'' means any monitor appointed by the United States pursuant to Section IX of this Final Judgment.

(T) ''Oklahoma City Area'' means Canadian, Cleveland, Logan, McClain, Oklahoma, and Pottawatomie Counties in the state of Oklahoma.

(U) ''Omaha Area'' means Pottawattamie County in the state of Iowa, and Cass, Douglas, Lancaster, Sarpy, Saunders, and Washington Counties in the state of Nebraska.

(V) ''Other Assets'' means, with respect to each Relevant Brand:

(1) All tangible assets (other than plants and equipment) primarily used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of any Fresh Bread product sold under a Relevant Brand in its Relevant Area, including but not limited to copies of customer lists and route maps; copies of accounts, credit records and related customer information; product inventory; packaging and copies of artwork relating to such packaging; and copies of all performance records and all other records, provided, however, that Defendants may retain the portions of such tangible assets that relate to products other than any Fresh Bread product sold under a Relevant Brand in its Relevant Area where such assets reasonably can be divided, or may provide copies of such assets where it is reasonable to do so; and

(2) All of the following intangible assets:

(a) All licenses, permits, or authorizations issued by any governmental organization, contracts (including route contracts), teaming arrangements, agreements, leases, commitments, certifications, and understandings, including agreements with suppliers, distributors, independent operators, wholesalers, retailers, marketers, unions, employees, or advertisers used primarily in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, or sale of any Fresh Bread product sold under a Relevant Brand in its Relevant Area;

(b) A non-exclusive, transferable, royalty-free license or sublicense to all not-previously-identified intellectual property used in the research, development, manufacturing, production, distribution, marketing, promotion, advertising, servicing, or sale of any Fresh Bread product under a Relevant Brand in its Relevant Area, including but not limited to any patents, licenses and sublicenses, copyrights, Licensed Trademarks (excluding trademarks other than the Licensed Trademarks), and trade secrets; and

(c) all technical information, computer software, route configurations, and related documentation, know-how, and Formulas, including information relating to plans for, improvement to, or line extensions of, Fresh Bread products sold or distributed primarily under a Relevant Brand in its Relevant Area; all research, packaging, distribution, marketing, advertising, and sales know-how and documentation, including marketing and sales data, packaging designs, quality assurance and control procedures; all associated manuals and technical information that Defendants provide to their own employees, customers, suppliers, agents or licensees; and all research data concerning historic and current research and development efforts, including, but not limited to, designs or experiments primarily related to the Relevant Brands in the Relevant Areas, and the results of successful and unsuccessful designs and experiments, provided that with respect to any intangible assets identified in subparagraphs (a), (b), and (c) herein that, prior to the merger, were being used in the research, development, production, distribution, marketing, promotion, advertising, servicing, or sale of any Fresh Bread product distributed or sold under a Relevant Brand in a Relevant Area and any product or other asset not being divested, Defendants may utilize and retain the portions of such intangible assets that relate solely to products other than any Fresh Bread product distributed or sold under a Relevant Brand in a Relevant Area where such assets reasonably can be divided, and may provide copies of such intangible assets that relate to both any Fresh Bread sold or distributed under a Relevant Brand in a Relevant Area and any other product or asset not being divested if such assets cannot be separated from what Defendants require for the retained business.

(W) ''Relevant Areas'' means the California, Central Pennsylvania, and Central Region Areas.

(X) ''Relevant Brands'' means the California Brands, the Central Pennsylvania Brands, and the Central Region Brands.

(Y) ''Sara Lee'' means Defendant Sara Lee Corporation, a Maryland corporation with its headquarters in Downers Grove, Illinois, its successors and assigns (other than Grupo Bimbo and BBU), and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

(Z) ''Trade Dress'' means the print, style, color, labels, and other elements of trade dress currently used by Defendants and/or their subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures in association with the goods manufactured, distributed, marketed, and sold under a brand name.

**III. Applicability**

(A) This Final Judgment applies to each Defendant and all persons in active concert or participation with any Defendant who receives actual notice of this Final Judgment by personal service or otherwise.

(B) If, prior to complying with Section IV or V of this Final Judgment, Defendants sell, license, or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser(s) to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the Acquirer(s) of the assets divested pursuant to this Final Judgment.

**IV. Divestitures**

(A) Grupo Bimbo and BBU are ordered and directed, within ninety (90) calendar days after the filing of the Complaint in this matter or five (5) calendar days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer or Acquirers acceptable to the United States in its sole discretion. The United States, in its sole discretion, may agree to up to two thirty (30) day extensions of this time period, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

(B) In accomplishing the divestiture ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets.

Defendants shall inform any person who inquires about a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States no later than five (5) business days after such information is made available to any prospective Acquirer.

(C) Subject to the execution of customary confidentiality agreements, Defendants shall provide prospective Acquirers and the United States with information relating to the personnel (including independent operators) directly involved in the operation and sale activities relating to the Divestiture Assets to enable the Acquirer(s) to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer(s) to employ or contract with any Defendant's employee or independent operator whose responsibility relates to the Divestiture Assets.

(D) Subject to the execution of customary confidentiality agreements, Defendants shall permit prospective Acquirers of the Divestiture Assets to (1) have reasonable access to personnel; (2) make inspections of the physical facilities; (3) have access to any and all environmental, zoning, and other permit documents and information; and (4) have access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

(E) Grupo Bimbo and BBU shall warrant to the Acquirer(s) that the Divestiture Assets will be operational on the date of sale.

(F) Defendants shall not take any action that will impede in any way the licensing, permitting, operation, or divestiture of the Divestiture Assets.

(G) Grupo Bimbo and BBU shall warrant to the Acquirer(s) that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, or other permits relating to the operation of the Divestiture Assets.

(H) In connection with the divestiture of the Divestiture Assets pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, at the option of the Acquirer(s), Grupo Bimbo and BBU shall enter into transitional supply and transportation agreements, up to six (6) months in length, for the supply and transportation of Fresh Bread under the Relevant Brands in the Relevant Areas. At the request of the Acquirer, the United States, in its sole discretion, may agree to one or more extensions of this time period, not to exceed twelve (12) months in total. The terms and conditions of such transitional supply and transportation agreements must be acceptable to the United States in its sole discretion. All such agreements shall be deemed incorporated into this Final Judgment, and a failure by Grupo Bimbo or BBU to comply with any terms of such an agreement shall constitute a failure to comply with this Final Judgment. Upon the expiration or termination of such agreements, Grupo Bimbo and BBU shall not enter into or have any supply or transportation agreements with the Acquirer(s) relating to the sale of Fresh Bread under the Relevant Brands in the Relevant Areas for a period of three (3) years thereafter.

(I) Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by the Divestiture Trustee appointed pursuant to Section V, of this Final Judgment shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the divestiture will achieve the purposes of this Final Judgment and that the Relevant Brands can and will be used by the Acquirer(s) as part of viable, ongoing businesses engaged in the sale of Fresh Bread. Divestiture of the California Assets by Defendants pursuant to Section IV of the Final Judgment shall be made to a single Acquirer. Divestiture of the Central Region Assets and Central Pennsylvania Assets pursuant to Section IV (by Defendants) or Section V (by the Divestiture Trustee) of the Final Judgment, and divestiture of the California Assets by the Divestiture Trustee pursuant to Section V of the Final Judgment, may be made to one or more Acquirers, provided that in each instance it is demonstrated to the sole satisfaction of the United States that the Divestiture Assets will remain viable and the divestiture of such assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment:

(1) Shall be made to an Acquirer or Acquirers that, in the United States' sole judgment, has or have the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the sale of Fresh Bread; and

(2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants give Defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability of the Acquirer to compete effectively.

(J) During the term of this Final Judgment, Defendants shall not sell or introduce for sale any Fresh Bread under a Relevant Brand in its Relevant Area, and Defendants shall not use the Sara Lee trade name for co-branding of any Fresh Bread product sold in the California Area.

**V. Appointment of Divestiture Trustee**

(A) If BBU and Grupo Bimbo have not divested the California Assets, the Central Pennsylvania Assets, and the Central Region Assets within the time period specified in paragraph IV(A), Grupo Bimbo and BBU shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the not-yet-divested Divestiture Assets (the ''remaining Divestiture Assets'').

(B) After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the remaining Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Grupo Bimbo and BBU any investment bankers, attorneys, or other agents, who shall be solely accountable to the Divestiture Trustee and who shall be required to execute customary confidentiality agreements, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

(C) Defendants shall not object to a sale by the Divestiture Trustee on any

ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

(D) The Divestiture Trustee shall serve at the cost and expense of Grupo Bimbo and BBU, on such terms and conditions as the United States approves, and shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to Grupo Bimbo or BBU and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the remaining Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but timeliness is paramount.

(E) Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the remaining Divestiture Assets, and Defendants shall develop financial and other information relevant to the remaining Divestiture Assets as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

(F) After its appointment, the Divestiture Trustee shall file monthly reports with the United States and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the remaining Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the remaining Divestiture Assets.

(G) If the Divestiture Trustee has not accomplished the divestiture ordered under this Final Judgment within six (6) months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent the report contains information that the Divestiture Trustee deems confidential, the report shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the United States, which shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of this Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States.

**VI. Notice of Proposed Divestiture**

(A) Within two (2) business days following execution of a definitive divestiture agreement, Grupo Bimbo and BBU or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Grupo Bimbo and BBU. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

(B) Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer(s), any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer(s), and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish to the United States any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

(C) Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer(s), any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer(s) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

**VII. Financing**

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

**VIII. Hold Separate**

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order (the ''Hold Separate'') entered by this Court. Defendants shall take no action that would jeopardize the divestiture ordered by this Court.

**IX. Appointment of Monitoring Trustee**

(A) Upon the filing of this Final Judgment, the United States may, in its sole discretion, appoint a Monitoring Trustee, subject to approval by the Court.

(B) The Monitoring Trustee shall have the power and authority to monitor Defendants' compliance with the terms of this Final Judgment and the Hold Separate entered by this Court and shall have such powers as this Court deems appropriate. Subject to Paragraph IX(D) of this Final Judgment, the Monitoring Trustee may hire any consultants, accountants, attorneys, or other persons,

who shall be solely accountable to the Monitoring Trustee, reasonably necessary in the Monitoring Trustee's judgment.

(C) Defendants shall not object to actions taken by the Monitoring Trustee in fulfillment of the Monitoring Trustee's responsibilities under any Order of this Court on any ground other than the Monitoring Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Monitoring Trustee within ten (10) calendar days after the action taken by the Monitoring Trustee giving rise to the Defendants' objection.

(D) The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall serve, without bond or other security, at the cost and expense of Defendants, on such terms and conditions as the United States approves, including the execution of customary confidentiality agreements. The compensation of the Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall be on reasonable and customary terms commensurate with the individuals' experience and responsibilities.

(E) The Monitoring Trustee shall have no responsibility or obligation for the operation of Defendants' businesses.

(F) Defendants shall assist the Monitoring Trustee in monitoring Defendants' compliance with their individual obligations under this Final Judgment and under the Hold Separate. The Monitoring Trustee and any consultants, accountants, attorneys, and other persons retained by the Monitoring Trustee shall have full and complete access to the personnel, books, records, and facilities relating to the Divestiture Assets, subject to reasonable protection for trade secret or other confidential research, development, or commercial information or any applicable privileges. Defendants shall take no action to interfere with or to impede the Monitoring Trustee's accomplishment of its responsibilities.

(G) After its appointment, the Monitoring Trustee shall file monthly reports with the United States and the Court setting forth the Defendants' efforts to comply with their individual obligations under this Final Judgment and under the Hold Separate. To the extent such reports contain information that the Monitoring Trustee deems confidential, such reports shall not be filed in the public docket of the Court.

(H) The Monitoring Trustee shall serve until the divestiture of all of the Divestiture Assets is finalized pursuant to either Section IV or Section V of this Final Judgment and any agreement(s) for transitional supply and transportation services described in Paragraph IV(H) of this Final Judgment have expired.

(I) If the United States determines that the Monitoring Trustee has ceased to act or failed to act diligently, the United States may appoint a substitute Monitoring Trustee in the same manner as provided in this Section.

(J) The Monitoring Trustee appointed pursuant to this Final Judgment may be the same person or entity appointed as a Divestiture Trustee pursuant to Section V of this Final Judgment.

**X. Affidavits**

(A) Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit as to the fact and manner of their compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for the Divestiture Assets and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Provided that the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including any limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

(B) Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavits filed pursuant to this section within fifteen (15) calendar days after the change is implemented.

(C) Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

(D) Sara Lee's obligations under paragraphs A and B of this Section shall cease upon completion of its sale to Grupo Bimbo and BBU of the Sara Lee business that includes the Divestiture Assets.

**XI. Compliance Inspection**

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including consultants and other persons retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

(1) Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested, including, but not limited to, any transitional supply and/or transportation agreements entered into between the Acquirer(s) and the Defendants pursuant to paragraph IV(H) of this Final Judgment.

(C) No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or

for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

**XII. No Reacquisition**

Defendants shall not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

**XIII. Retention of Jurisdiction**

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

**XIV. Expiration of Final Judgment**

Unless this Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry.

**XV. Public Interest Determination**

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States's responses to those comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and responses to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge.

[FR Doc. 2011–28037 Filed 10–28–11; 8:45 am]

BILLING CODE 4410–11–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–0147]**

### Agency Information Collection Activities; Proposed Collection, Comments Requested: Reinstatement, With Change, of a Previously Approved Collection for Which Approval Has Expired; 2012–2013 Census of State and Federal Adult Correctional Facilities

**ACTION:** 60-day notice of information collection under review.

The Department of Justice (DOJ), Bureau of Justice Statistics will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 30, 2011. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracy L. Snell or James J. Stephan, Statisticians, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531 (*phone:* (202) 307–0765).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of information collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Collection:* 2012–2013 Census of State and Federal Adult Correctional Facilities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: CJ–43A Individual Facility List; CJ–43B: Individual Facility Information; and CJ–43 Census of State and Federal Adult Correctional Facilities (under development; this form will be submitted in a substantive change package when the materials are ready for review). Corrections Statistics Unit, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: State Departments of Corrections authorities. Others: Authorities from the Federal Bureau of Prisons and administrators of privately-operated prison facilities. The Census of State and Federal Correctional Facilities obtains information on individual facilities designed to house adults sentenced to confinement by State, Federal, or District of Columbia courts. These facilities include prisons, penitentiaries, and correctional institutions; boot camps; prison farms; reception, diagnostic, and classification centers; road camps; forestry and conservation camps; youthful offender facilities (except in California); vocational training facilities; prison hospitals; drug and alcohol treatment facilities; prerelease centers; halfway houses; and State-operated local detention facilities.

*The CJ–43A, Facility Roster:* An estimated 71 respondents from state departments of correction, the Federal Bureau of Prisons, and corporations operating private prisons will be provided with a list of facilities in their jurisdictions (CJ–43A). Respondents will be asked to provide the information requested in the CJ–43B (see below) for each individual facility in their jurisdiction. Respondents can opt to use this listing to aid them in identifying individual facilities in operation on March 31, 2012, the anticipated survey reference date, or they can opt to provide the information based on a list of facilities generated through their own

data systems. The CJ–43A is intended to be used as an aid and is not intended as an instrument to be filled out, so there is no burden associated with this instrument.

*The CJ–43B collection instrument:* An estimated 71 respondents from state departments of correction, the Federal Bureau of Prisons, and corporations operating private prisons will be asked to provide basic facility information for an estimated 2,200 adult correctional facilities. The CJ–43B identifies the elements to be collected for each facility. These items include name and location of the facility, sex of inmates housed, physical security of the facility, percentage of inmates regularly permitted to leave the facility unaccompanied, a one-day count of inmates by sex, and future plans to modify or close the facility. Based on the preference of the respondent, these data can be submitted via an electronic datafile generated from the respondent's information management system or via individual forms for each facility. The Bureau of Justice Statistics will use information obtained from the CJ–43B to develop a sampling frame for future inmate surveys as well as to respond to queries from the U.S. Congress, Executive Office of the President, the U.S. Supreme Court, state officials, international organizations, researchers, students, the media, and others seeking facility-level statistics.

*The CJ–43:* Respondents from state departments of correction, the Federal Bureau of Prisons, and corporations operating private prisons will be asked to provide detailed facility information for an estimated 2,200 facilities in operation. This collection instrument is under development, but is expected to include items regarding facility characteristics, such as facility functions, capacity, and court orders or consent decrees under which facilities are operating; population characteristics, including special populations housed; staff characteristics; measures of facility security; and facility programs. BJS expects to consult with corrections experts and professionals to determine other topical items to be included in this collection. These statistics will provide a snapshot of adult correctional institutions in the United States and will be used to respond to queries from administrators, legislators, researchers, and planners to track changes in the numbers and types of facilities in operation, changes in staffing, security issues, and programs/services available to inmates in the state and federal correctional systems. A supplemental approval will be submitted to OMB when the materials are ready for review.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,200 responses at 15 minutes each for the CJ–43B. The estimated time is based on feedback from state and federal corrections department staff. The total burden estimate is based on the conservative assumption that all respondents would submit separate forms for each facility; however, it is expected that the majority of respondents will choose to submit a single electronic file generated from their information management systems. The CJ–43 is still in the planning stages. A supplemental approval and burden adjustment will be sought through OMB when the materials are ready for review.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 550 annual total burden hours associated with the collection.

*If additional information is required contact:* Mrs. Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

**Jerri Murray,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2011–28007 Filed 10–28–11; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Standard on Slings

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Standard on Slings,'' as revised, to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

**SUPPLEMENTARY INFORMATION:** The Slings Standard (29 CFR 1910.184) specifies several collection of information requirements, the specifics of which depend on the type of sling. The purpose of each of these requirements is to prevent workers from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling. The OSHA is revising this information collection to include requirements contained in the Standards Improvement Project—Phase III Final Rule published June 8, 2011 (76 FR 33590).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0223. The current OMB approval is scheduled to expire on October 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the

related notice published in the **Federal Register** on May 11, 2011 (76 FR 27367) and the Standards Improvement Project—Phase III Final Rule published June 8, 2011 (76 FR 33590).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0223. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration (OSHA).

*Title of Collection:* Standard on Slings.

*OMB Control Number:* 1218–0223.

*Affected Public:* Private Sector—Businesses or other for-profits and Not-for profit institutions.

*Total Estimated Number of Respondents:* 1,116,667.

*Total Estimated Number of Annual Responses:* 246,224.

*Total Estimated Annual Burden Hours:* 20,001.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: October 24, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–27995 Filed 10–28–11; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Agreement and Undertaking

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Agreement and Undertaking,'' as revised, (Form OWCP–1) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on November 1, 2011, or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** On October 31, 2011, the DOL is submitting the revised Agreement and Undertaking ICR to the OMB for review and approval for use in accordance with the PRA (44 U.S.C. 3501 *et seq.*). Coal mine operators desiring to be self-insurers complete and submit Form OWCP–1 to provide the Secretary of Labor with authorization to sell securities or to bring suit under indemnity bonds deposited by the self-insured employers in the event there is a default in the payment of benefits. The OWCP is revising this information collection to make cosmetic changes to the form. The changes are not expected to alter the public burden.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0039. The current OMB approval is scheduled to expire on October 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 22, 2011 (76 FR 52352).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0039. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Office of Workers' Compensation Programs (OWCP).

*Title of Collection:* Agreement and Undertaking.

*OMB Control Number:* 1240–0039.

*Affected Public:* Private Sector—Businesses or other for-profits.

*Total Estimated Number of Respondents:* 20.

*Total Estimated Number of Responses:* 20.

*Total Estimated Annual Burden Hours:* 5.

*Total Estimated Annual Other Costs Burden:* $9.

Dated: October 25, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–28062 Filed 10–28–11; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Certificate of Medical Necessity

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Certificate of Medical Necessity,'' as revised, (Form CM–893) to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on November 1, 2011, or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** On October 31, 2011, the DOL is submitting the revised Certificate of Medical Necessity ICR to the OMB for review and approval for use in accordance with the PRA (44 U.S.C. 3501 *et seq.*). The Certificate of Medical Necessity is completed by a coal miner's physician and is used by the OWCP to determine whether the miner meets impairment standards to qualify for durable medical equipment, home nursing, and/or pulmonary rehabilitation. The OWCP is revising this information collection to make cosmetic changes to the form, technically making this submission a revision under the PRA; however, the changes are not expected to alter the public burden.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0024. The current OMB approval is scheduled to expire on October 31, 2011; however, it should be noted that information collection information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on August 30, 2011 (76 FR 53966).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0024. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Office of Workers' Compensation Programs (OWCP).

*Title of Collection:* Certificate of Medical Necessity.

*OMB Control Number:* 1240–0024.

*Affected Public:* Private Sector—Businesses or other for-profits and Not-for-profit institutions.

*Total Estimated Number of Respondents:* 2,500.

*Total Estimated Number of Responses:* 2,500.

*Total Estimated Annual Burden Hours:* 965.

*Total Estimated Annual Other Costs Burden:* $1,335.

Dated: October 25, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–28060 Filed 10–28–11; 8:45 am]

**BILLING CODE 4510–CF–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Occupational Safety and Health Onsite Consultation Agreements

**ACTION:** Notice.

**SUMMARY:** The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Occupational Safety and Health Onsite Consultation Agreements,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** A copy of this ICR with applicable supporting documentation; including a description of the likely

respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: (202) 395–6929/Fax: (202) 395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

**SUPPLEMENTARY INFORMATION:** This ICR seeks approval to continue information collections set forth in regulations establishing responsibilities of State onsite consultation projects. The OSHA onsite consultation service program offers free and confidential advice to small and medium-sized businesses in all states across the country, with priority given to high-hazard worksites. The requirements specified in the onsite consultation regulations for cooperative agreements, 29 CFR part 1908, are necessary to ensure uniform delivery of onsite consultation services nationwide. The regulatory procedures specify the activities to be carried out by State onsite consultation programs funded by the Federal government, as well as the responsibilities of employers who receive onsite consultation services.

Those activities and responsibilities include information collections subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0110. The current OMB approval is scheduled to expire on October 31, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 22, 2011 (76 FR 36579).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0110. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Agency:* Occupational Safety and Health Administration.

*Title of Collection:* Occupational Safety and Health Onsite Consultation Agreements.

*OMB Control Number:* 1218–0110.

*Affected Public:* Private Sector—Businesses or other for-profits; State Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 26,855.

*Total Estimated Number of Responses:* 112,530.

*Total Estimated Annual Burden Hours:* 223,419.

*Total Estimated Annual Other Costs Burden:* $0.

Dated: October 25, 2011.

**Michel Smyth,**

*Departmental Clearance Officer.*

[FR Doc. 2011–28070 Filed 10–28–11; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–73,174]**

### EMD Chemicals, Inc. Including On-Site Independent Contractors and Leased Workers From Ajilen, Ranstad, Assigned Counsel, Emerson Personnel, J&J Staffing, Accountemps/Robert Half, EMD Temps, Chromhelp, and Greentree Food Management, Gibbstown, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 2010, applicable to workers of EMD Chemicals, Inc., including on-site independent contractors and leased workers from Ajilen, Ranstad, Assigned Counsel, Emerson Personnel, J&J Staffing, Accountemps/Robert Half, EMD Temps, and ChromHelp, Gibbstown, New Jersey. The workers are engaged in activities related to the production of specialty chemicals. The notice was published in the **Federal Register** on May 20, 2010 (75 FR 28300).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The company reports that independent contract workers from Greentree Food Management were employed on-site at the Gibbstown, New Jersey location of EMD Chemicals. The Department has determined that these workers were sufficiently under the control of EMD Chemicals, Inc. to be included in this certification.

Based on these findings, the Department is amending this certification to include workers from Greentree Food Management working on-site at EMD Chemicals, Inc., Gibbstown, New Jersey.

The amended notice applicable to TA–W–73,174 is hereby issued as follows:

All workers of EMD Chemicals, Inc., including on-site independent contractors and leased workers from Ajilen, Ranstad, Assigned Counsel, Emerson Personnel, J&J Staffing, Accountemps/Robert Half, EMD Temps, ChromHelp, and Greentree Food Management, Gibbstown, New Jersey, who became totally or partially separated from employment on or after December 21, 2008, through April 14, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for

adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 18th day of October 2011.

**Michael W. Jaffe,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2011–27992 Filed 10–28–11; 8:45 am]

**BILLING CODE 4510–FN–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 70–0036; NRC–2009–0278]**

### Environmental Assessment and Finding of No Significant Impact for a License Amendment to Materials License No. SNM–33; Westinghouse Electric Company, LLC, Hematite Decommissioning Project, Hematite, MO

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice appearing in the **Federal Register** on September 29, 2011 (76 FR 60557), that noticed the availability of the Environmental Assessment (EA) and Finding of No Significant Impact for a materials license amendment submitted by Westinghouse Electric Company, LLC, Hematite Decommissioning Project. This action is necessary to correct the NRC's Agencywide Documents Access and Management System (ADAMS) accession number for the EA contained in Section II, ''EA Summary,'' and Section IV, ''Further Information''.

**FOR FURTHER INFORMATION CONTACT:** John J. Hayes, Senior Project Manager, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone: (301) 415–5928, *email: John.Hayes@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** On page 60558 of the **Federal Register** published September 29, 2011 (76 FR 60557), in the second column, fifteenth line, ''ML111020620'' is corrected to read ''ML112101726''. On page 60559 of the same document, in the second column of the table appearing at the top of the page ''ML111020620'' is corrected to read ''ML112101726''.

Dated at Rockville, Maryland, this 21st day of October, 2011.

For the Nuclear Regulatory Commission.

**Lydia Chang,**

*Acting Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.*

[FR Doc. 2011–28073 Filed 10–28–11; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2011–0253]**

### Governors' Designees Receiving Advance Notification of Transportation of Certain Shipments of Nuclear Waste and Spent Fuel

On January 6, 1982 (47 FR 596 and 47 FR 600), the U.S. Nuclear Regulatory Commission (NRC) published in the **Federal Register** final amendments to Title 10 of the Code of Federal Regulations (10 CFR) parts 71 and 73 (effective July 6, 1982), that require advance notification to Governors or their designees by NRC licensees prior to transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in part 73 is for spent nuclear reactor fuel shipments and the notification for part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR part 73).

The following list updates the names, addresses, and telephone numbers of those individuals in each State who are responsible for receiving information on these shipments. The list is published annually in the **Federal Register** to reflect any changes in information. Current State contact information can also be accessed throughout the year at *http://nrc-stp.ornl.gov/special/designee.pdf.*

Questions regarding this matter should be directed to Stephen N. Salomon, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by email at *Stephen.Salomon@nrc.gov* or by telephone at (301) 415–2368.

Dated at Rockville, Maryland, this 25th day of October 2011.

For the U.S. Nuclear Regulatory Commission.

**Josephine M. Piccone,**

*Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.*

INDIVIDUALS TO RECEIVE ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS

| State | Part 71 | Part 73 |
|---|---|---|
| ALABAMA | Colonel Hugh McCall, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36102–1511, (334) 242–4394, 24 hours: (334) 242–4128, Fax: (334) 242–0512 | SAME. |
| ALASKA | Douglas H. Dasher, PE, Alaska Monitoring and Assessment, Section Manager, 610 University Avenue, Fairbanks, AK 99709, (907) 451–2172, 24 hours: (907) 457–1421, Cell: (907) 347–7779, (907) 451–5146 | SAME. |
| ARIZONA | Aubrey V. Godwin, Director, Arizona Radiation Regulatory Agency 4814 South 40th Street, Phoenix, AZ 85040, (602) 255–4845, ext. 222, Cell: (408) 861–9609, 24 hours: (602) 223–2212, (602) 437–0705 | SAME. |
| ARKANSAS | Bernard Bevill, Radiation Control Section, Arkansas Department of Health, 4815 West Markham Street, Mail Slot #30, Little Rock, AR 72205–3867, (501) 661–2301, 24 hours: (501) 661–2136, Fax: (501) 661–2236 | SAME. |
| CALIFORNIA, | Captain Steve Dowling, California Highway Patrol, Commercial Vehicle Section, 601 North 7th Street, Sacramento, CA 95811, (916) 843–3400, 24 hours: (916) 843–4199, Fax: (916) 322–3154 | SAME. |
| COLORADO | Captain Matthew Packard, Colorado State Patrol, Hazardous Materials Unit, Troop 8–C, 15065 South Golden Road, Golden, CO 80401, (303) 273–1910, Cell: (303) 524–5618, 24 hours: (303) 329–4501, Fax: (303) 273–1911 | SAME. |

INDIVIDUALS TO RECEIVE ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|---|---|---|
| CONNECTICUT | Edward L. Wilds, Jr., Ph.D., Director, Radiation Division, Department of Environmental Protection, Elm Street, Hartford, CT 06106–5127, (860) 424–3029, Cell: (860) 490–3211, 24 hours: (860) 424–3333, Fax: (860) 424–4065 | SAME. |
| DELAWARE | Lewis D. Schiliro, Secretary, Department of Safety & Homeland Security, P.O. Box 818, Dover, DE 19903–0818, (302) 744–2665, 24 hours: (302) 698–7744, Fax: (302) 739–4874 | SAME. |
| FLORIDA | John A. Williamson, Environmental Administrator, Bureau of Radiation Control, Environmental Radiation Program, Department of Health, P.O. Box 680069, Orlando, FL 32868–0069, (407) 297–2096 x212, Cell: (850) 528–4151, 24 hours: (407) 297–2095, Fax: (407) 297–2085 | SAME. |
| GEORGIA | Captain Bruce Bugg, Region 3 Commander, Georgia Department of Public Safety, Motor Carrier Compliance Division, 320 Chester Avenue, Atlanta, GA 30316, (404) 463–3899, 24 hours: (404) 463–3899, Fax: (770) 357–8867<br>Alternate: Sergeant Brent Moore, 24 hour: (404) 357–8880, Fax: (404) 624–7295 | SAME. |
| HAWAII | Gary Gil, Deputy Director for Environmental Health, State of Hawaii, Department of Health, 1250 Punchbowl Street, Honolulu, HI 96813, (808) 586–4424, 24 hours: (808) 366–8950, Fax: (808) 586–4368<br>Lynn Nakosone, Division Administrator, Environmental Health Services Division, State of Hawaii, Department of Health, 591 Ala Moana Boulevard, #125, Honolulu, HI 96813, (808) 586–4576, 24 hours: (808) 348–6418, Fax: (808) 586–1522 | SAME. |
| IDAHO | Captain William L. (Bill) Reese, Idaho State Police, Commercial Vehicle Safety, 700 South Stratford Drive, Meridian, ID 83642, (208) 884–7220, 24 hours: (208) 846–7550, Fax: (208) 884–7192 | SAME. |
| ILLINOIS | Joseph G. Klinger, Assistant Director, Illinois Emergency Management Agency, Division of Nuclear Safety, 2200 S. Dirksen Parkway, Springfield, IL 62703, (217) 785–9868, Mobile: (217) 720–4634, 24 hours: (217) 782–7860, Fax: (217) 558–7398 | SAME. |
| INDIANA | Major Jeffrey L. Walker, Commander, Commercial Vehicle Enforcement Division, Indiana State Police, 5252 Decatur Boulevard, Indianapolis, IN 46241, (317) 615–7431, Mobile: (317) 432–4929, 24 hours: (317) 232–8248, Fax: (317) 821–2350 or 821–2353 | SAME. |
| IOWA | J. Derek Hill, Administrator, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Avenue, Camp Dodge, Building W–4, Johnston, IA 50131–1824, (515) 725–3231, Mobile: (515) 725–3260, 24 hours: (515) 725–3231, Fax: (515) 725–3260 | SAME. |
| KANSAS | Jennifer Clark, Technological Hazards Section Chief, Department of the Adjutant General, Division of Emergency Management, 2800 SW Topeka Boulevard, Topeka, KS 66611–1287, (785) 274–1394, Mobile: (785) 207–1540, 24 hours: (785) 296–3176, Fax: (785) 274–1426 | SAME. |
| KENTUCKY | Matthew W. McKinley, Administrator, Radiation Control Program, Cabinet for Health and Family Services, 275 East Main Street, Mail Stop HS–1C–A, Frankfort, KY 40621, (502) 564–3700, ext 3701, 24 hours: (502) 229–6254, Fax: (502) 564–1492 | SAME. |
| LOUISIANA | Captain Allen T. Moss, Louisiana State Police, 7919 Independence Boulevard, P.O. Box 66168, #A–26, Baton Rouge, LA 70896–6614, (225) 925–6113, ext. 241, Cell: (225) 485–9240, 24 hours: (877) 925–6595, Fax: (225) 925–3559 | SAME. |
| MAINE | Lieutenant Robert Williams, State Police, Maine Dept. of Public Safety, 42 Commerce Drive, SHS42, Augusta, ME 04333–0042, (207) 624–7206 or (207) 624–7200, Mobile: (207) 441–6212, 24 hours: (207) 624–7076, Fax: (207) 287–3042 | SAME. |
| MARYLAND | Major A. J. McAndrew, Field Operations Bureau, Special Operations and Transportation Safety Command, Maryland State Police, 901 Elkridge Landing Road, Suite 300, Linthicum Heights, MD 21090, (410) 694–6100, Cell: (301) 573–3915, 24 hours: (410) 653–4200, Fax: (410) 694–6135 | SAME. |
| MASSACHUSETTS | Robert L. Gallaghar, Deputy Director, Radiation Control Program, Massachusetts Department of Public Health, Shraffts Center, Suite 1M2A, 529 Main Street, Charlestown, MA 02129, (617) 242–3035 x2001, 24 hours: (617) 242–3453, Fax: (617) 242–3457 | SAME. |
| MICHIGAN | Captain W. Thomas Sands, Michigan State Police, Emergency Management & Homeland Security Division, 4000 Collins Rd, Lansing, MI 48910, (517) 333–5042, 24 hours: (517) 241–8000, Fax: (517) 333–4987 | SAME. |
| MINNESOTA | Kevin C. Leuer, Director, Preparedness Branch, Minnesota Division of Homeland Security & Emergency Management, 444 Cedar Street, Suite 223, St. Paul, MN 55101–6223, (651) 201–7406, 24 hours: 1–800–422–0798, Fax: (651) 296–0459 | SAME. |
| MISSISSIPPI | Brian E. Maske, HAZMAT/WIPP, Program Manager, Planner—Districts 2 & 4, LEPC Coordinator, Mississippi Emergency Management Agency, Office of Preparedness—Plans Bureau, P.O. Box 5644, #1 MEMA Drive 39208, Pearl, MS 39288, (601) 933–6369, 24 hours: (601) 933–6362, Fax: (601) 933–6815 | SAME. |
| MISSOURI | Paul D. Parmenter, Director, Emergency Management Agency, P.O. Box 116, 2302 Militia Drive, Jefferson City, MO 65102, (573) 526–9101, 24 hours: (573) 751–2748, Fax: (573) 634–7966, Alternate: Timothy A. Diemler, Deputy Director, (573) 751–9193, 24 hours: (573) 751–2748, Fax: (573) 634–7966 | SAME. |

INDIVIDUALS TO RECEIVE ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|---|---|---|
| MONTANA | Ed Tinsley, Administrator, Homeland Security Advisor, Montana Disaster & Emergency Services, 1956 MT Majo Street, P.O. Box 4789, Fort Harrison, MT 59636–4789, (406) 841–3911, Mobile: (406) 461–1674, 24 hours: (406) 841–3911, Fax: (406) 841–3965 | SAME. |
| NEBRASKA | Sergeant Glenn Elwell, Nebraska State Patrol/NIAC, Nebraska Information Analysis Center, 3800 NW 12th Street, Lincoln, NE 68521, (402) 479–4076, Cell: (402) 540–0036, NIAC: (402) 479–4049, Fax: (402) 479–4950 | SAME. |
| NEVADA | Karen K. Beckley, Radiation Control, Program Manager, Nevada State Health Division, 4150 Technology Way, Suite 300, Carson City, NV 89701, (775) 687–7540, 24 hours: 1–(877) 438–7231, Fax: (775) 687–7552 | SAME. |
| NEW HAMPSHIRE | Sergeant Christopher Scott, Department of Safety, Division of Motor Vehicles, Highway Patrol and Enforcement Bureau, 23 Hazen Drive, Concord, NH 03305, (603) 223–8757, Cell: (603) 717–5546, 24 hours: (603) 271–3636, Fax: (603) 271–1760 | SAME. |
| NEW JERSEY | Paul Baldauf, Director, Radiation Protection Programs, Division of Environmental Safety & Health, Department of Environmental Protection, P.O. Box 420 Mailcode: 401–03E, Trenton, NJ 08625–0420, (609) 633–7964, 24 hours: 1–800–927–6337, Fax: (609) 777–1330 | SAME. |
| NEW MEXICO | Don Shainin, Technical Hazards Unit Leader, WIPP Program Manager, New Mexico Department of Homeland Security and Emergency Management (DHSEM), P.O. Box 27111, Santa Fe, NM 87502, (505) 476–9628, 24 hours: (505) 476–9635, Fax: (505) 476–9695 | SAME. |
| NEW YORK | Andrew X. Feeney, Director, New York State Office of Emergency Management, 1220 Washington Avenue, Building 22, Albany, NY 12226–2251, (518) 292–2301, 24 hours: (518) 292–2200, Fax: (518) 322–4978 | SAME. |
| NORTH CAROLINA | First Sergeant Shane S. Manuel, North Carolina State Highway Patrol, 4702 Mail Service Center, Raleigh, NC 27699–4702, (919) 319–1523, Mobile: (919) 618–0434, 24 hours: (919) 733–3861, Fax: (919) 319–1534 | SAME. |
| NORTH DAKOTA | Terry L. O'Clair, Director, Division of Air Quality, North Dakota Department of Health, 918 East Divide Avenue—2nd Floor, Bismarck, ND 58501–1947, (701) 328–5188, 24 hours: (701) 328–9921, Fax: (701) 328–5185 | SAME. |
| OHIO | Michael Bear, Interim Branch Chief Radiological Branch, Ohio Emergency Management Agency, 2855 West Dublin Granville Road, Columbus, OH 43235–2206 (614) 799–3687, 24 hours: (614) 889–7150, Fax: (614) 799–5950 | SAME. |
| OKLAHOMA | Lt. Colonel Gregory Allen, Deputy Chief, Oklahoma Dept. of Public Safety, Oklahoma Highway Patrol, P.O. Box 11415, Oklahoma City, OK 73136–0145, (405) 425–7044, 24 hours: (405) 833–1428, Fax: (405) 425–2254 | SAME. |
| OREGON | Ken Niles, Administrator, Nuclear Safety and Energy Emergency Preparedness Division, Oregon Department of Energy, 625 Marion Street, NE, Salem, OR 97301, (503) 378–4906; Cell: (503) 884–3905 , 24 hours: (503) 884–3905, Fax: (503) 373–7806 | SAME. |
| PENNSYLVANIA | Timothy Baughman, Deputy Director for Operations, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110, (717) 651–2001, 24 hours: (717) 651–2001, Fax: (717) 651–2021 | SAME. |
| RHODE ISLAND | Terrence Mercer, Associate Administrator, Motor Carriers Section, Division of Public Utilities and Carriers, 89 Jefferson Boulevard, Warwick, RI 02888, (401) 941–4500, Ext. 150, 24 hours: (401) 444–1183 (State Police) | SAME. |
| SOUTH CAROLINA | Susan Jenkins, Bureau of Land and Waste Management, Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 896–4271, 24 hours: (803) 667–0019 or (803) 408–2816, Fax: (803) 896–4242 | SAME. |
| SOUTH DAKOTA | Kristi Turman, Director, South Dakota Department of Public Safety, Office of Emergency Management, 118 W. Capitol Avenue, Pierre, SD 57501–2000, (605) 773–3231, 24 hours: (605) 773–3231, Fax: (605) 773–3580 | SAME. |
| TENNESSEE | Sean Kice, Radiological Protection Officer, Tennessee Emergency Management Agency, 3041 Sidco Drive, Nashville, TN 37204, (615) 253–3811, Mobile: (615) 428–8923, 24 hours: (615) 741–0001, Fax: (615) 741–8238 | SAME. |
| TEXAS | Richard A. Ratliff, P.E. L.M.P., Radiation Safety Licensing Branch Mgr., Division for Regulatory Services, Texas Dept. of State Health Services, Mail Code 2835, P.O. Box 149347, Austin, TX 78714–9347, (512) 834–6679, 24 hours: (512) 458–7460, Fax: (512) 834–6716 | Steven C. McCraw, Director, Texas Dept of Public Safety, Office of Homeland Security, P.O. Box 4087, Austin, TX 78773, (512) 424–7770, 24 hours: (512) 424–2208, Fax: (512) 424–5708. |
| UTAH | Rusty Lundberg, Director, Division of Radiation Control, Department of Environmental Quality, 195 North 1950 West, P.O. Box 144850, Salt Lake City, UT 84114–4850, (801) 536–4257, 24 hours: (801) 536–4123, Mobile: (801) 867–1769, Fax: (801) 553–4097 | SAME. |
| VERMONT | Keith N. Flynn, Commissioner, Department of Public Safety, Division of Vermont State Police, 103 South Main Street, Waterbury, VT 05671–2101, (802) 244–8718, Cell: (802) 371–9147, 24 hours: (802) 244–8727, Fax: (802) 241–5610 | SAME. |

INDIVIDUALS TO RECEIVE ADVANCE NOTIFICATION OF NUCLEAR WASTE SHIPMENTS—Continued

| State | Part 71 | Part 73 |
|---|---|---|
| VIRGINIA | Gregory F. Britt, Director, Technological Hazards Division, Virginia Department of Emergency Management, 10501 Trade Court, Richmond, VA 23236, (804) 897–9950, ext. 6578, 24 hours: (804) 674–2400 or 1–800–468–8892, Fax: (804) 897–6576 | SAME. |
| WASHINGTON | Lieutenant Kevin Zeller, Commercial Vehicle Division, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504–2600, (360) 596–3816. Cell: (360) 239–0467, 24 hours: (253) 536–6210 Fax: (360) 596–3828<br>Alternate: Captain Darrin Grondel, Commercial Vehicle Division, Washington State Patrol, P.O. Box 42600, Olympia, WA 98504–2600 (360) 596–3801 | SAME. |
| WEST VIRGINIA | Lieutenant Colonel J.C. Chambers, Chief of Field Services, West Virginia State Police, 725 Jefferson Road, South Charleston, WV 25309, (304) 746–2100, 24 hours: (304) 746–2158, Fax: (304) 746–2111 | SAME. |
| WISCONSIN | Brian Satula, Administrator, Wisconsin Emergency Management, Department of Military Affairs, P.O. Box 7865, Madison, WI 53707–7865, (608) 242–3210, Cell: (608) 514–3461, 24 hour: 1–800–943–0003, Fax: (608) 242–3313 | SAME. |
| WYOMING | Captain Scot Montgomery, Support Services Officer, Commercial Carrier, Wyoming Highway Patrol, 5300 Bishop Boulevard, Cheyenne, WY 82009–3340, (307) 777–3915, Cell: (307) 630–3736, 24 hours: (307) 777–4321, Fax: (307) 777–4282 | SAME. |
| DISTRICT OF COLUMBIA. | Frederick Goldsmith, Critical Infrastructure Mgr., Homeland Security & Emergency Management Agency, 2720 Martin Luther King, Jr. Avenue, SE, 2nd Floor, Room 247, Washington, DC 20032, (202) 481–3169, Mobile: (202) 375–9506 | SAME. |
| PUERTO RICO | Dr. Pedro Nieves, Chairman, Puerto Rico Quality Board, P.O. Box 11488, San Juan, PR 00917, (787) 767–8056 or (787) 767–8057, Mobile: (787) 447–9222, 24 hours: (787) 447–9222, Fax: (787) 767–4861 | SAME. |
| GUAM | Governor Eddie Baza Calvo, Executive Chamber, P.O. Box 2950, Agana, Guam 96932, (671) 472–8931, Fax: (671) 477–4826 | SAME. |
| VIRGIN ISLANDS | Alicia Barnes, Commissioner, Department of Planning and Natural Resources, 45 Estate Mars Hill, Frederiksted, St. Croix, U.S. Virgin Islands 00840, (340) 713–2401, (340) 774–3320, 24 hours: (340) 774–5138, Fax: (340) 773–1716, (340) 775–5706 | SAME. |
| AMERICAN SAMOA | Dr. Toafa Vaiagae, Director, American Samoa Environmental Protection Agency, P.O. Box PPA, Pago Pago, AS 96799, (684) 633–2304, 24 hours: (684) 633–2304, Fax: (684) 633–5801 | SAME. |
| COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS. | Marvin K. Seman, Special Assistant for Homeland Security, Commonwealth of Northern Mariana Islands, 1326 Guguan Street, Caller Box 10007, Saipan, MP 96950, (670) 664–2216, Mobile: (670) 287–7154, Fax: (670) 664–2218 | SAME. |

[FR Doc. 2011–28076 Filed 10–28–11; 8:45 am]
**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on U.S. Evolutionary Power Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on November 14–15, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

**Monday, November 14, 2011—8:30 a.m. Until 5 p.m. and Tuesday, November 15, 2011—8:30 a.m. Until 5 p.m.**

The Subcommittee will review Chapters 7, ''Instrumentation and Controls,'' and 9, ''Auxiliary Systems,'' of the U.S. EPR DCD Safety Evaluation Report (SER) with Open Items and Chapter 7, ''Instrumentation and Controls,'' of the Calvert Cliffs RCOL SER with Open Items. The Subcommittee will hear presentations by and hold discussions with the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone (301) 415–7366) or *Email: Derek.Widmayer@nrc.gov* five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, entrance should be made through the One White Flint North building, 11555 Rockville

Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone (240) 888–9835) to be escorted to the meeting room.

Dated: October 25, 2011.

**Yoira Diaz-Sanabria,**

*Technical Assistant, Reactor Safety Branch, Advisory Committee on Reactor Safeguards.*

[FR Doc. 2011–28071 Filed 10–28–11; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Hispanic Council on Federal Employment

**AGENCY:** Office of Personnel Management.

**ACTION:** Scheduling of Council Meeting.

**SUMMARY:** The Hispanic Council on Federal Employment will hold its fourth meeting on Friday, November 18, 2011, at the time and location shown below. The Council is an advisory committee composed of representatives from Hispanic organizations and senior government officials. Along with its other responsibilities, the Council shall advise the Director of the Office of Personnel Management on matters involving the recruitment, hiring, and advancement of Hispanics in the Federal workforce. The Council is co-chaired by the Chief of Staff of the Office of Personnel Management and the Assistant Secretary for Human Resources and Administration at the Department of Veterans Affairs.

The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

**DATES:** November 18th, 2011 from 10 a.m.–1 p.m.

*Location:* U.S. Office of Personnel Management, the Pendleton, Theodore Roosevelt Building, 1900 E St., NW., Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Veronica E. Villalobos, Director for the Office of Diversity and Inclusion, Office of Personnel Management, 1900 E St., NW., Suite 5H35, Washington, DC 20415. Phone (202) 606–2984 FAX (202) 606–2183 or email at *Edgar.Gonzalez@opm.gov.*

U.S. Office of Personnel Management.

**John Berry,**

*Director.*

[FR Doc. 2011–28165 Filed 10–28–11; 8:45 am]

**BILLING CODE 6325–46–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission staff will hold the inaugural roundtable discussion of the Financial Reporting Series on Tuesday, November 8, 2011, in the Multipurpose Room, L–006. The meeting will begin at 10 a.m. and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:30 a.m. Visitors will be subject to security checks. The roundtable will be webcast on the Commission's Web site at *http://www.sec.gov* and will be archived for later viewing.

On October 20, 2011, the Commission published notice of the roundtable discussion (Release No. 34–65602), indicating that the event is open to the public and inviting the public to submit written comments to the Commission staff. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable discussion.

The agenda for the roundtable includes opening remarks followed by panel discussions focusing on the recognition and communication of uncertainty in financial statements.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 27, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–28312 Filed 10–27–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, November 3, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, November 3, 2011 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Other matters relating to enforcement proceedings; and

A post argument discussion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: October 27, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–28294 Filed 10–27–11; 4:15 pm]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold an Open Meeting on November 2, 2011 at 9 a.m., in the Auditorium, Room L–002, to hear oral argument in an appeal by Wendy McNeeley, CPA, from an initial decision of an administrative law judge.

The law judge found that McNeeley engaged in improper professional conduct as defined in the Commission's Rule of Practice 102(e) by engaging in highly unreasonable conduct that resulted in a violation of applicable professional standards in circumstances in which McNeeley knew, or should have known, that heightened scrutiny was warranted. The law judge determined that McNeeley should be denied the privilege of appearing or

practicing as an accountant before the Commission for one year.

Issues likely to be considered at oral argument include whether McNeeley engaged in improper professional conduct as defined in the Commission's Rule of Practice 102(e) and, if so, the extent to which, under the circumstances, sanctions are warranted.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: October 26, 2011.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. 2011–28210 Filed 10–27–11; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65617; File No. SR–NASDAQ–2011–145]**

## Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Description of the Nasdaq Daily Share Volume Service

October 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 13, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing this proposed rule change to modify the description of the Nasdaq Daily Volume Share Service in Nasdaq Rule 7040, as well as to remove the word ''Daily'' from the name of the service.

The text of the proposed rule change is below. Proposed deletions are in [brackets]. Proposed new language is in *italics*.[3]

* * * * *

**7040. Nasdaq [Daily] Share Volume Service**

(a) The Nasdaq [Daily] Share Volume Service [shall allow participating subscribers to view volume reports on a T + 1 basis] *is a historical data product that provides aggregated share volume information at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities in the Nasdaq Market Center. The Nasdaq Share Volume Service is comprised of two different reports:*

(1) Daily Share Volume Report—providing aggregated share volume information on a daily basis. The daily report is available to subscribers the following calendar day for the prior trading day's data.

(2) Monthly Share Volume Report—providing aggregated share volume information on a monthly basis. The monthly report is available to subscribers on the fifth calendar day of every month for the prior month's data.

[1] *(b)* Access to the underlying data for redistribution shall be available for a fee of $2,500/month.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

This proposal pertains to the Nasdaq Daily Share Volume Service (the ''Service''), which makes information available via a Web-based data product and provides daily traded share volume by issue for participating market participants (the ''Daily Share Volume Report''). Specifically, the Service is a historical data product that summarizes the aggregated share volume in the Nasdaq Market Center at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities. Thus, the product allows subscribers to determine the share volumes of a particular market participant in a particular stock.

Prior to the establishment of the Service and the Daily Share Volume Report in a 2007 filing (the ''Initial Filing''),[4] the monthly share volume report (the ''Monthly Share Volume Report'') was provided free of charge to anyone with internet access via NASDAQtrader.com.[5] In the Initial Filing, the free-of-charge monthly product was discussed as a part of the basis for the Service. The Initial Filing specifically noted that Nasdaq had received numerous requests for a daily product comparable to the existing monthly product. As a result, the Service included both the Daily Share Volume Report and the Monthly Share Volume Report. Subsequently, Nasdaq began providing the monthly product solely to subscribers of the Service. The fee for the Service, comprised of both the Daily Share Volume Report and the Monthly Share Volume Report, is $2,500 per month. The monthly and daily reports have since become widely used in the data product customer community.

Nasdaq proposes to modify the description of the Service in Nasdaq Rule 7040(a) to reflect the fact that subscribers of the daily version of the Service also receive the Monthly Share Volume Report in consideration for the $2,500 per month fee that they pay. The proposal would also remove the word ''Daily'' from the name of the Service to lessen confusion concerning the share volume information provided. Thus, the rule change will make it clear that the Service is comprised of the Daily Share Volume Report and the Monthly Share Volume Report.

The Daily Share Volume Report summarizes the aggregated share volume in the Nasdaq Market Center at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities. All Nasdaq market participants are given the option to determine whether they wish to have their trading volumes included in the data provided to subscribers to the Service. In the case of the daily product, market participants are excluded unless they specifically opt to have their data included. This provides flexibility to market participants as to what information they would like to include in the report. Thus, while some market participants wish to include their data in the product in order to advertise their level of market activity, others decide

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaq.cchwallstreet.com.*

[4] *See* Securities Exchange Act Release No. 55444 (March 12, 2007), 72 FR 12648 (March 16, 2007) (SR–NASDAQ–2007–006).

[5] At that time, Nasdaq, as well as other exchanges, had concluded that the Act did not require exchanges to submit proposed rule changes when making data available free of charge. Commission staff has since advised Nasdaq to submit proposed rule changes in circumstances where information about quotations or transactions is provided free of charge.

not to opt in, in order to maintain full anonymity with respect to their trading activity. The daily share volume information is available the next calendar day for the prior trading day's activity.

The Monthly Share Volume Report volume information is similar to the Daily Share Volume Report in that it summarizes the aggregated share volume in the Nasdaq Market Center at the market participant and issue level for all Nasdaq- and non-Nasdaq-listed securities. In contrast to the Daily Share Volume Report, the Monthly Share Volume Report aggregates the information on a monthly, rather than on a daily basis. Because the information is provided on an aggregated monthly basis, and thus reveals less granular, and less timely, information about market participants, most market participants do not object to inclusion of their data in the product. For those market participants that do object, they are able to opt out of inclusion. The monthly share volume information for a given month is available on the fifth calendar day of every month for the prior month's data. This provides adequate time for month-end processing.

Because the pre-existing Monthly Share Volume Report has never been specifically stated in Nasdaq Rule 7040 to be part of the information provided by the Service, Nasdaq now proposes to submit a rule change to clarify its inclusion in the product. Accordingly, Nasdaq proposes to modify Nasdaq Rule 7040(a) to clarify that the Monthly Share Volume Report will be included as part of the information provided to subscribers of the Service, as well as to remove the word ''Daily'' from the name of the Service to lessen confusion. The fee for the product is not changing. As such, this should be considered as a non-controversial rule change.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general and with Sections 6(b)(5) of the Act,[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to clarify what is included in the Service, as well as the modify [sic] name of the Service, thereby eliminating any confusion surrounding Nasdaq's rules.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–145 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2011–145. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–145, and should be submitted on or before November 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–27994 Filed 10–28–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65618; File No. SR–FINRA–2011–061]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Expand the Exception Relating to Transfers of Proprietary Securities Positions in Connection With Certain Corporate Control Transactions

October 25, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 14, 2011, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA trade reporting rules to expand the scope of the existing exception for over-the-counter (''OTC'') transfers of proprietary positions in debt and equity securities effected in connection with certain corporate control transactions.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA trade reporting rules require that OTC transactions in debt and equity securities be reported to FINRA unless they qualify for an express exception under the rules. For purposes of the trade reporting rules, a ''trade'' or ''transaction'' entails a change of beneficial ownership of securities between parties (*e.g.,* a purchase or sale of securities) in which a FINRA member participates.[4] As a general matter, when members report OTC trades, FINRA facilitates the public dissemination of the trade information and/or assesses regulatory transaction fees under Section 3 of Schedule A to the FINRA By-Laws (''Section 3'')[5] and the Trading Activity Fee (''TAF'').[6] Certain transactions and transfers are not reported to FINRA at all (*e.g.,* trades executed and reported through an exchange and transfers made pursuant to an asset purchase agreement that has been approved by a bankruptcy court), while other transactions must be reported to FINRA for regulatory transaction fee assessment purposes only (*e.g.,* away from the market sales).[7] Members must have policies and procedures and internal controls in place to determine whether a transaction qualifies for an exception under the rules.

Under FINRA trade reporting rules,[8] there is an exception for transfers of proprietary securities positions between a member and another member or non-member broker-dealer where the transfer (1) Is effected in connection with a merger of one broker-dealer with the other broker-dealer or a direct or indirect acquisition of one broker-dealer by the other broker-dealer or the other broker-dealer's parent company and (2) is not in furtherance of a trading or investment strategy. Members are not required to report such transfers for publication purposes, but must report them to FINRA for purposes of assessing applicable regulatory transaction fees pursuant to Section 3 and the TAF. Additionally, members must provide FINRA at least three business days advance written notice of their intent to use this exception, including the basis for their determination that the transfer meets the terms of the exception.

FINRA is proposing to expand the scope of this exception to apply to any transfer of proprietary securities positions where the transfer (1) Is effected in connection with a merger or direct or indirect acquisition and (2) is not in furtherance of a trading or investment strategy. Thus, the exception would no longer be limited to transfers between a member and another member or non-member broker-dealer effected in connection with a merger or acquisition involving the member or its parent company. However, for purposes of this exception, the distinguishing factor will continue to be whether the transfer is being effected as part of the corporate control transaction rather than being driven by a trading or investment strategy.

For example, a member's parent company acquires a foreign financial institution, and as part of the corporate control transaction, the foreign financial institution's proprietary positions are transferred to the member. Under the proposed rule change, the transfer would not be reported for public dissemination purposes, but would be reported to FINRA for regulatory purposes. By way of further example, a member's parent company acquires two new subsidiaries, both of which are U.S. non-broker-dealer financial institutions, and as part of the corporate control transaction, the proprietary positions of one subsidiary are transferred to the other subsidiary. Both of the subsidiaries have custodial accounts at the member, and the member facilitates the transfer. Under the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Trade Reporting Frequently Asked Questions, FAQ 100.4, available at *http://www.finra.org/Industry/Regulation/Guidance/P038942.*

[5] Pursuant to Section 31 of the Act, FINRA and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. FINRA obtains its Section 31 fees and assessments from its membership in accordance with Section 3.

[6] The TAF is one of the member regulatory fees FINRA uses to fund its member regulation activities, market regulation activities, financial monitoring and policymaking, rulemaking and enforcement activities. Among others, the TAF is assessed for the sale of all exchange registered securities wherever executed and OTC equity securities. *See* FINRA By-Laws, Schedule A, § 1(b)(1).

[7] *See* Rules 6282(i) (Alternative Display Facility), 6380A(e) (FINRA/Nasdaq Trade Reporting Facility), 6380B(e) (FINRA/NYSE Trade Reporting Facility), 6622(e) (OTC Reporting Facility), and 6730(e) and 6750 (Trade Reporting and Compliance Engine).

[8] *See* Rules 6282(i)(2) and 7130(c); 6380A(e)(2) and 7230A(g); 6380B(e)(2) and 7230B(f); 6622(e)(2) and 7330(g); and Rule 6750(b).

change, the transfer would not be reported for public dissemination purposes, but would be reported to FINRA for regulatory purposes.

FINRA believes that the policy reasons behind the existing exception support expanding the scope of the exception as proposed herein. While such transfers are ''trades'' or ''transactions'' because they result in a change of beneficial ownership, they are unlike the typical securities transaction in that they are not driven by a trading or investment strategy (*e.g.,* a desire to exit a position or lock in a profit) relating to a particular security position. Additionally, the securities being transferred typically are assigned a value, such as the closing price of the security on a date certain, solely for purposes of effectuating the transfer. As such, FINRA believes that public dissemination of such transfers would not provide meaningful price discovery information to the market. To the contrary, dissemination could confuse investors and other market participants, particularly where the positions being transferred are substantial. Public dissemination of significant and perhaps unusual trading activity could give the false impression of investor interest, market participant transactions and significant price discovery activities, and the volume reports could skew a variety of trading activity indicators.

FINRA notes that the other provisions of the existing exception will remain unchanged under the proposed rule change. Specifically, members will continue to be required to provide FINRA at least three business days advance written notice of their intent to rely on this exception, including the basis for their determination that the transfer meets the terms of the exception. They also will continue to be required to report the transfers (for regulatory and not publication purposes) on the same day as the ultimate transfer of the positions on their books and records (unless later reporting is warranted under specific circumstances).[9]

FINRA has filed the proposed rule change for immediate effectiveness and has requested waiver of the 30-day operative delay. FINRA is proposing to make the proposed rule change operative immediately upon filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires [sic], among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will clarify members' trade reporting obligations, enhance the utility of market information and protect investors and other market participants by ensuring that transfers that do not contribute to market price discovery and could confuse market participants are not disseminated.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

FINRA has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing, as set forth in Rule 19b–4(f)(6)(iii),[13] to allow the trade reporting exception to apply to the broader range of transfers as soon as possible for the benefit of the marketplace and the investing public. FINRA proposes to make the proposed rule change operative immediately upon filing. The Commission has determined that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the trade reporting exception to apply to transfers of securities positions which transfers do not contribute to market price discovery and could confuse investors.[14] Accordingly, the Commission waives the 30-day operative delay requirement and designates the proposed rule change to be operative upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2011–061 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[9] *See supra* note 8; *see also Regulatory Notice* 09–21 (April 2009).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2011–061 and should be submitted on or before November 21, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28061 Filed 10–28–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65619, File No. SR–BATS–2011–032]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Order Approving Proposed Rule Change by BATS Exchange, Inc. To Adopt Rules Applicable to Auctions Conducted by the Exchange for Exchange-Listed Securities

October 25, 2011.

### I. Introduction

On August 22, 2011, BATS Exchange, Inc. (''BATS'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules governing auctions conducted on the Exchange for securities listed on BATS (''Exchange Auctions''). The proposed rule change was published for comment in the **Federal Register** on September 12, 2011.[3] The Commission received no comment letters regarding the proposal. This order approves the proposed rule change.

### II. Description of the Proposal

The Exchange proposes to adopt rules to govern Exchange Auctions. Specifically, the Exchange proposes to conduct: (1) An opening auction (''Opening Auction'') and determine an official opening price for dissemination to the consolidated tape; (2) a closing auction (''Closing Auction'') and determine an official closing price for dissemination to the consolidated tape; (3) an auction in the event of an initial public offering (''IPO Auction''); and (4) an auction in the event of a halt of trading in a security (''Halt Auction''). The Opening Auction, IPO Auction, Halt Auction, and Closing Auction operated by BATS will be a single-price Dutch auction to match buy and sell orders at the price at which the most shares would execute. In addition, the Exchange seeks to establish order types to participate in the Opening and Closing Auction and to offer a new data feed to Exchange data recipients[4] in connection with Exchange Auctions, (''BATS Auction Feed'').[5]

#### *A. BATS Auction Feed*

The Exchange represents that the BATS Auction Feed would provide data recipients with uncompressed real-time data regarding the current status of price and size information related to Exchange Auctions.[6] In addition, the Exchange represents that the BATS Auction Feed would be made available to all data recipients equally and without charge via subscription through an established connection to the Exchange through extranets, direct connection, and Internet-based virtual private networks.[7]

#### *B. Order Types To Participate in Auctions*

The Exchange proposes to offer the following order types in connection with Opening Auctions: ''Market-On-Open'' or ''MOO'' order, ''Limit-On-Open'' or ''LOO'' order, and a ''Late-Limit-On-Open'' or ''LLOO'' order. The Exchange proposes to offer the following order types in connection with Closing Auctions: ''Market-On-Close'' or ''MOC'' order, ''Limit-On-Close'' or ''LOC'' order, and a ''Late-Limit-On-Close'' or ''LLOC.'' In addition, the Exchange seeks to offer a ''Regular Hours Only'' or ''RHO'' order, which would be a BATS order that is designated for execution only during Regular Trading Hours,[8] which includes the Opening Auction, the Closing Auction, and IPO/Halt Auctions.

#### *C. Opening Auction*

The Exchange will conduct an Opening Auction for all BATS listed securities. The Exchange will permit Users[9] to submit orders to the Exchange starting at 8 a.m., the beginning of the Pre-Opening Session.[10] Any Eligible Auction Orders[11] designated for the Opening Auction would be queued until 9:30 a.m. at which time they would be eligible to be executed in the Opening Auction. BATS proposes to disseminate and update the BATS Auction Feed associated with the Opening Auction at 9:28 a.m. and every five seconds thereafter via electronic means.

#### *D. Closing Auction*

The Exchange will conduct a Closing Auction for all BATS listed securities. The Exchange would permit Users to submit orders to the Exchange starting at 8 a.m., the beginning of the Pre-Opening Session. Any Eligible Auction Orders designated for the Closing Auction would be queued until 4 p.m. at which time they would be eligible to be executed in the Closing Auction. BATS proposes to disseminate and update the BATS Auction Feed associated with the Closing Auction at 3:55 p.m. and every 5 seconds thereafter via electronic means.

#### *E. IPO and Halt Auctions*

For trading in a BATS listed security in an IPO or following a trading halt in that security, the Exchange proposes to conduct an IPO or Halt Auction. The Quote-Only Period[12] with respect to a

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[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 65266 (September 6, 2011), 76 FR 56249 (September 12, 2011) (''Notice'').

[4] The Exchange represents that Exchange data recipients include Members of the Exchange as well as non-Members that have entered into an agreement with the Exchange that permits them to receive Exchange data. *See* Notice *supra* note 3, at 76 FR 56250 n. 4.

[5] *See* Notice *supra* note 3, at 76 FR 56249 n.4.

[6] *See id.*

[7] *See id.*

[8] BATS Rule 1.5(w) defines ''Regular Trading Hours'' is the time between 9:30 a.m. and 4 p.m. Eastern Time.

[9] BATS Rule 1.5(c) defines ''User'' as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

[10] BATS Rule 1.5(r) defines the ''Pre-Opening Session'' as the time between 8 a.m. and 9:30 a.m. Eastern Time.

[11] Proposed BATS Rule 11.23(a)(8) defines ''Eligible Auction Orders'' as any MOO, LOO, LLOO, MOC, LOC, or LLOC order that is entered in compliance with its respective cutoff for an Opening or Closing Auction, any RHO order prior to the Opening Auction, and any limit or market order not designated to exclusively participate in the Opening and Closing Auction entered during the Quote-Only Period of an IPO or Halt Auction.

[12] The Quote-Only Period is a period of time prior to an IPO or Halt Auction during which the Exchange will permit Users to submit orders but the Exchange will not execute any transactions in the applicable security (*i.e.,* there are no Continuous

Halt Auction would commence five minutes prior to such Halt Auction and with respect to an IPO Auction would commence fifteen minutes plus a short random period prior to such IPO Auction. Any Eligible Auction Orders associated with an IPO or Halt Auction would be queued until the end of the Quote-Only Period at which time they would be eligible to be executed in the associated auction. The Exchange proposes to require that all orders associated with IPO or Halt Auctions be received prior to the end of the Quote-Only Period in order to participate in the auction. The Exchange would permit Eligible Auction Orders associated with an IPO or Halt Auction to be cancelled at any time prior to execution. Coinciding with the beginning of the Quote-Only Period for a security, the Exchange further proposes to disseminate and update the BATS Auction Feed associated with the IPO or Halt Auction every five seconds thereafter via electronic means.

## III. Discussion

After careful consideration of the proposed rule change, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] The Commission believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

BATS notes that the current proposal is integral to its listing rules,[15] and would provide companies with an alternative venue to list and trade securities in an orderly fashion at the open and close of trading, as well as in the context of an IPO or halted trading in the security.[16] The Exchange believes that operation of Exchange Auctions for securities listed on the Exchange will assist in the price discovery process and help to ensure a fair and orderly market for securities listed on the Exchange.[17]

The Commission notes that the Exchange has proposed to operate Exchange Auctions as a single price Dutch auction to match buy and sell orders at the price at which most shares would execute. The Exchange has designed Exchange Auctions to be conducted within specified periods of time and in accordance with specified order entry, cancellation, pricing, and execution priority parameters. The Exchange may adjust the timing of or suspend Exchange Auctions with prior notice to Members whenever, in the judgment of the Exchange, it would be required by the interests of a fair and orderly market.[18] The Exchange also has designed the BATS Auction Feed to disseminate information regarding the current status of price and size information related to auctions being conducted. The Exchange has represented that the BATS Auction Feed will be available to data recipients equally and without charge.[19]

The Commission believes that the proposal is designed to assist the price discovery process, should help minimize price volatility, and should promote a fair and orderly market for securities listed on the Exchange. The Commission believes that the BATS Auction Feed should enhance transparency and promote competition among orders by facilitating the public dissemination of current trading interest in a particular security during Exchange Auctions.

## IV. Conclusion

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–BATS–2011–032) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Kevin M. O'Neill,**

*Deputy Secretary.*

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**BILLING CODE 8011–01–P**

Book executions occurring while orders are collected). *See* Notice *supra* note 3, at 76 FR 56252.

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] The Commission notes that the Exchange separately proposed, and the Commission approved, rules for the qualification, listing, and delisting of companies on the Exchange. *See* Securities Exchange Act Release No. 34–65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[16] *See* Notice, *supra* note 3, 76 FR at 56253.

[17] *See id.* at 56253.

[18] *See* Proposed BATS Rule 11.23(g).

[19] The Commission notes that should the Exchange determine to charge fees associated the BATS Auction Feed, the Exchange would submit a proposed rule change to the Commission in order to implement those fees.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–65615; File No. SR–CHX–2011–17]**

## Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice and Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment No. 1, Regarding the Submission of Clearing-Related Information for Trades Executed Otherwise Than on the Exchange

October 24, 2011.

## I. Introduction

On July 7, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change regarding the submission of clearing-related information for trades executed otherwise than on the CHX. The proposed rule change was published for comment in the **Federal Register** on July 26, 2011.[3] The Commission received one comment in support of the proposal.[4] CHX filed Amendment No. 1 to the proposed rule change on October 24, 2011.[5] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

## II. Description of the Proposal

The text of the proposed rule change, as modified, is reproduced below. Additions are *italicized*, deletions are **[**bracketed**]**.

**Rules of Chicago Stock Exchange, Inc.**

* * * * *

**Article 1.**

**Definitions and General Information**

**Rule 1. Definitions**

Whenever and wherever used in these Rules, unless the context requires otherwise, the following terms shall have the respective meanings ascribed to them below:

(a)—(dd) Unchanged

*(ee) ''Clearing Participant'' means a Participant which has been admitted to membership in a Qualified Clearing Agency pursuant to the provisions of the Rules of the Qualified Clearing Agency.*

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 64937 (July 20, 2011), 76 FR 44638 (''Notice'').

[4] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Christopher Meyer, Chief Compliance Officer, E*Trade Capital Markets, LLC dated August 16, 2011.

[5] *See* Amendment No. 1, dated October 24, 2011.

*(ff) ''Qualified Clearing Agency'' means a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services.*

* * * * *

**Article 21.**

**Clearance and Settlement**

**Rule 1. Trade Recording with a Qualified Clearing Agency**

(a)—(d) Unchanged

**[**• • • Interpretations and Policies:

.01 Definition of Registered Clearing Agency

The term ''Registered Clearing Agency'' shall mean a clearing agency as defined in Section 3(a)(23) of the Exchange Act which is registered with the Commission pursuant to the provisions of the Section 17A(b)(2) of the Exchange Act or has obtained from the Commission an exemption from registration granted specifically to allow the clearing agency to provide confirmation and affirmation services..

.02 Definition of Fully-Interfaced Clearing Agency

The term ''Fully-Interfaced Clearing Agency'' shall mean a Registered Clearing Agency which, in conjunction with the Registered Clearing Agency selected by the contra-party to the contract, has established systems for the clearance and settlement of securities contracts in a manner which does not require each party to a contract to be a participant in the same Registered Clearing Agency.

.03 Definition of a Qualified Clearing Agency

For purposes of this Rule, the term ''Qualified Clearing Agency'' shall mean a Fully Interfaced Clearing Agency which has entered into an agreement with the Exchange pursuant to which it will (i) Provide such services to the Exchange and its Participants as the Exchange, and such Qualified Clearing Agency shall from time to time agree, (ii) maintain facilities through which Exchange Contracts may be recorded, cleared and settled, and (iii) supply the Exchange with data reasonably necessary and requested in order to permit the Exchange to enforce compliance by its Participants with the provisions of the Exchange Act, the rules and regulations thereunder and the Rules of the Exchange.**]**

* * * * *

***Rule 6. Submission of Clearing Information for Transactions Executed Off-Exchange***

*The Exchange shall make clearing submissions for non-Exchange trades only in the following manner:*

*(a) Substitution of Participants in Off-Exchange Transactions.*

*(1) An Institutional Broker registered with the Exchange and acting as an authorized agent of a Clearing Participant may enter a non-tape, clearing-only submission into the Exchange's systems for trades executed otherwise than on the Exchange for the purpose of transferring securities from one Clearing Participant to another, provided that the transfer does not constitute a transaction in securities that is otherwise subject to trade reporting that has not, in fact, been previously and separately reported as a transaction. The Exchange shall make such submissions to a Qualified Clearing Agency. Each such Institutional Broker must be party to an agreement with the Clearing Participant in which name the submissions are made under which the Institutional Broker has received authorization from the Clearing Participant to act on its behalf. Copies of these agreements shall be filed by the Institutional Broker with the Exchange.*

*(2) A Participant can only use a non-tape, clearing-only submission for a trade that has been reported in the market in which it was effected.*

*(3) An Institutional Broker must enter all non-tape, clearing-only submissions into the Exchange's systems pursuant to this subparagraph (a) for a given non-Exchange transaction within three (3) hours of the execution of such transaction.*

*(b) Non-Tape, Clearing-Only Riskless Principal Submissions*

*(1) An Institutional Broker registered with the Exchange may make non-tape, clearing-only submissions into the Exchange's systems for submission to clearing to facilitate riskless principal transactions as defined in Article 9, Rule 14 (''riskless principal transactions'') taking place on another national securities exchange, or over-the-counter, only as follows. For riskless principal transactions in which an Institutional Broker, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the Institutional Broker shall make, for the offsetting ''riskless principal'' portion of the transaction, a clearing-only submission. If the order is executed in multiple transactions, the Institutional Broker may enter a non-tape, clearing-only submission at the volume-weighted average price (''average price'') of those transactions. The Institutional Broker shall provide to the Exchange records sufficient to identify such transactions as ''riskless principal.''*

*(2) A Participant can only use a non-tape, clearing-only submission for a trade that has been reported in the market in which it was effected.*

*(3) An Institutional Broker must enter all non-tape, clearing-only submissions into the Exchange's systems pursuant to this subparagraph (b) for a given non-Exchange transaction within twenty (20) minutes of the execution of such transaction. For clearing submissions reported at the average price of multiple trade executions, the Institutional Broker shall enter the non-tape, clearing-only submission into the Exchange's systems within twenty (20) minutes of the last component trade execution.*

*(c) Each Clearing Participant which is a party to a non-tape, clearing-only submission under this rule will pay a Trade Processing Fee in the amount specified in the Exchange's Fee Schedule.*

*• • • Interpretation and Policies:*

*.01 An Institutional Broker making a submission pursuant to this rule must obtain documentary evidence of a non-Exchange trade execution no later than the close of business on the day of the trade and submit such evidence to the Exchange in a format acceptable to it and within such timeframe that the Exchange shall designate, but in no event later than T+1.*

*.02 An Institutional Broker entering a non-tape, clearing-only submission shall be responsible for ensuring that all clearing information is accurate and complete prior to its submission.*

*.03 Post-trade cancellations and corrections: price, volume and security changes. No later than T+1, Exchange operations personnel may cancel a clearing submission and enter a new corrective submission if the Institutional Broker which entered the original submission provides documentary evidence that the original trade execution was cancelled and re-entered at the same price, quantity and/or security of the corrective clearing submission. Exchange operations personnel may also correct a clearing submission if it was erroneously entered on terms which differed from the reported trade execution, if provided with documentary evidence of the original trade execution. Exchange operations personnel may also enter a clearing submission which the Institutional Broker failed to enter or which was not processed due to systems error, if provided with documentary evidence of the original trade execution. In all cases, the documentary evidence must be provided to the Exchange Operations personnel prior to entry of the corrective submission. In extraordinary circumstances, corrective submissions can be made after T+1 subject to the approval of an officer of the Exchange.*

*.04 Post-trade cancellations and corrections: Clearing Participant changes. Either Exchange Operations personnel or Institutional Brokers may cancel a clearing submission and enter a new corrective submission to correct a misidentification of the Clearing Participant, by no later than T+1. Before the corrective submission is made, the Institutional Broker must obtain documentary evidence of the misidentification of the Clearing Participant, and provide it to the Exchange Operations personnel if the latter are making the corrective submission. In extraordinary circumstances, corrective submissions can be made after T+1 subject to the approval of an officer of the Exchange.*

* * * * *

The Exchange is proposing to adopt Rule 6 to Article 21 to set forth the terms upon which the Exchange will submit information for clearance and settlement to the National Securities Clearing Corporation, (''NSCC'') and to amend Article 1, Rule 1 to add updated definitions and Article 21, Rule 1 to delete definitions. Rule 6 provides for the submission of clearing related information to a Qualified Clearing Agency *i.e.,* NSCC. The CHX submits clearing information to NSCC through

the Regional Interface Operation (''RIO'') system.[6]

Proposed Rule 6(a) addresses clearing submissions made via CHX systems, *i.e.,* Brokerplex,[7] for transactions executed on another exchange or in the over-the-counter (''OTC'') market. These submissions will be made by the Exchange only on behalf of an Institutional Broker acting as an authorized agent of a Clearing Participant.[8] The Institutional Broker may submit a clearing-only entry to Brokerplex for the purpose of transferring securities from one Clearing Participant to another, as long as the trade has been properly reported for transaction reporting purposes.

Proposed Section (a)(3) of Rule 6 would require an Institutional Broker to enter all non-tape, clearing-only entries into the Exchange's systems for a given non-Exchange transaction within three hours of the execution of the transaction. According to the CHX, the complex nature of these transactions, which frequently involve multiple contraparties, and are often of large size such that the Clearing Participant separately confirms the terms of the transaction with the Institutional Broker to ensure the creditworthiness of the counter-party, necessitates an extended period of time for submission of clearing information to NSCC. Once all of the final clearing allocations have been entered in Brokerplex for submission to NSCC, the CHX deems them to be ''locked in'' for purposes of comparison and settlement.[9]

CHX provided three scenarios wherein Institutional Brokers would make clearing entries under paragraph (a) of Rule 6. First, an Institutional Broker may buy or sell securities on another trading center as a correspondent of a clearing member of that trading center. Any resulting execution report would be ''flipped'' from the executing clearing member via entries in Brokerplex to the trading account of the Institutional Broker or the CHX Clearing Participant on whose behalf the Institutional Broker is acting.[10]

Second, an Institutional Broker may execute or instruct a third party broker-dealer to execute a cross-transaction in the OTC market and report the transaction to a Trade Reporting Facility (''TRF'') using the Institutional Broker's trading symbol or the symbol of the Institutional Broker's clearing firm when reporting the trade to the Consolidated Tape.[11] The Institutional Broker may then enter the transaction information in Brokerplex and transfer the positions from its own trading account (or the account of its clearing firm) to the accounts of the ultimate beneficiaries of the trade. Once all components of the transaction are properly allocated, the information in Brokerplex is forwarded to the NSCC via RIO for clearance and settlement.

Third, transactions may be executed on another trading center by a third party broker-dealer, which then utilizes an Institutional Broker as its agent for handling the allocation of the clearing information. These third party transactions may include both cross-transactions executed OTC and reported to a TRF by the third party broker-dealer, as well as purchases or sales of securities by the third party broker-dealer on another exchange or OTC.[12] The third party broker-dealer instructs the Institutional Broker how to handle any substitution of Clearing Participants and allocate the trade. In either the second or third scenario, the trade may have been executed with broker-dealer A as the selling firm and broker-dealer B as the buyer. After the trade has been executed, broker-dealer B may step out of the transaction in favor of broker-dealer C.[13] The Institutional Broker making the clearing submission would be responsible for substituting the various parties based upon instructions of those parties or their agents. Clearing information for third-party cross-trades and single-sided purchases or sales is then recorded in Brokerplex and submitted to NSCC in the same manner as if the trades had been executed by the Institutional Broker.

Rule 6(a) requires Institutional Brokers that make these submissions to have an agreement with the Clearing Participant in whose name the entries are submitted. The agreement must authorize the Institutional Broker to act on behalf of the Clearing Participant.[14] The Institutional Broker must file copies of these agreements with the Exchange. The Exchange has developed functionality within the Brokerplex application to validate that such agreements are in place before an Institutional Broker is able to submit clearing entries to Brokerplex.[15] The Exchange will monitor clearing submissions to ensure that the Institutional Brokers involved in these transactions have the appropriate agreements in place and will take disciplinary action to enforce this requirement.

CHX's system for making clearing submissions does not provide a fully-automated comparison feature.[16] CHX states that its rules provide procedural safeguards to ensure that the manual comparison is valid. Furthermore, a Participant is prohibited from using a non-tape, clearing-only submission for the purpose of effecting a transaction required to be trade reported which has not been trade reported or for reporting a trade for regulatory purposes.[17] Proposed Interpretation and Policy .01 to Rule 6 will require that an Institutional Broker submitting an entry for a transaction executed otherwise than on the Exchange obtain documentary evidence of the non-Exchange trade execution no later than the close of trading and submit such evidence to the Exchange in a format acceptable to it and within such

[6] RIO is a service offered by NSCC to regional exchanges to make clearing submissions.

[7] The Brokerplex® system is an order entry, management and recordation system provided by the Exchange for use by Institutional Brokers. *See* Article 17, Interpretations and Policies .03.

[8] Institutional Brokers are an elective sub-category of Exchange Participants who register with the Exchange and are subject to the obligations of Article 17 of the CHX rules, in addition to the other provisions of Exchange rules.

[9] The Exchange will identify non-CHX trades as distinct from transactions executed in the CHX's Matching System in submissions to NSCC.

[10] *See* Notice, *supra* note 3.

[11] The ability of an Institutional Broker to directly execute a transaction in the OTC market is predicated on the Commission's approval of a separate proposal which would establish that Institutional Brokers are not operating directly on the Exchange. (SR–CHX–2011–29). *See* Securities Exchange Act Release No. 65354 (September 19, 2011), 76 FR 59476 (September 26, 2011). Institutional Brokers who execute transactions in the OTC market must be members of FINRA. *See* Section 15(b)(8) of the Act.

[12] The Institutional Broker may be instructed to allocate the trades at an average price of the transactions executed by the third party broker-dealer.

[13] There may be multiple broker-dealers (*e.g.,* broker-dealers D, E, and F) who ''step in'' to one or both sides of the transaction because many of the transactions handled by Institutional Brokers arise out of transactions on a derivatives exchange, either as a hedge or part of a combination stock-options order (such as a buy-write trade).

[14] In addition, the Exchange requires Clearing Participants to sign a clearing agreement by which the latter accept responsibility for non-Exchange transactions submitted to NSCC through the auspices of an authorized Institutional Broker. *See* Amendment 1 at note 11.

[15] *See* Amendment No. 1, *supra* note 5.

[16] The Commission understands that Nasdaq's ACT system provides a fully automated comparison process. CHX has committed to develop such a system by December 2011. *See* Amendment No. 1 at notes 5 and 13.

[17] As detailed in a letter to Kathy England, Assistant Director, Division of Trading and Markets, Commission, and Mark Donohue, Assistant Director, Office of Compliance, Inspections and Examinations, Commission dated October 24, 2011, the Exchange plans to monitor the activity of Participants that make clearing-only submissions for compliance with applicable trade reporting rules. In addition, the Exchange has made arrangements to share data regarding its clearing submissions for non-Exchange trades with FINRA in order to assist in its efforts to oversee trading activity in the over-the-counter marketplace.

timeframe that the Exchange shall designate, but in no event later than T+1. CHX believes this requirement will strengthen the safeguards associated with submitting trades for comparison and provide CHX with the necessary data to perform surveillance of the transactions.[18]

Proposed Interpretation and Policy .02 states that an Institutional Broker that enters a non-tape, clearing-only record is responsible for ensuring that all clearing information is accurate and complete before the clearing information is submitted to NSCC. Section (b) of Rule 6 governs non-tape riskless principal submissions.[19] It permits an Institutional Broker to enter non-tape submissions in Brokerplex which are submitted to clearing to facilitate riskless principal transactions that occurred otherwise than on the Exchange. For riskless principal transactions in which an Institutional Broker, after having received an order to buy a security, purchases the security at the same price to satisfy the order to buy, or, after having received an order to sell, sells the security at the same price to satisfy the order to sell, the Institutional Broker will submit a clearing-only report for the offsetting riskless portion of the transaction. If the order is executed in multiple transactions, the Institutional Broker may submit a non-tape, clearing-only report at the volume-weighted average price (''average price'') of those transactions. Entries in Brokerplex must be made within twenty minutes of the execution, or for multiple trade executions reported at an average price, within twenty minutes of the last component trade execution. The Institutional Broker must provide CHX records sufficient to identify the transactions as riskless principal transactions.[20]

Proposed Interpretation and Policy .03 governs post-trade cancellations and corrections of clearing-related information entered pursuant to proposed Rule 6.[21] It would permit Exchange personnel, generally no later than T+1, to cancel a clearing submission and enter a corrected submission if the Institutional Broker that entered the original submission provides documentary evidence that the trade was cancelled in the marketplace in which it was originally executed and re-entered at the price, quantity, and/or security of the corrected clearing submission. Exchange operations personnel may also enter a clearing submission which an Institutional Broker failed to enter[22] or which was not processed due to a systems error, if operations personnel have been provided documentary evidence of the original trade execution. Proposed Interpretation and Policy .04 would permit either Exchange Operations personnel or Institutional Brokers to cancel a clearing submission and enter a new corrective submission to correct a misidentification of the Clearing Participant, generally, by no later than T+1. Before the corrective submission is made, the Institutional Broker must obtain documentary evidence of the misidentification of the Clearing Participant, and provide it to the Exchange Operations personnel if the latter are making the corrective submission. Authorizing Exchange personnel to make these cancellations and corrections should prevent unnecessary and unwanted failures to clear and should help ensure transactions settle in an accurate manner.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File No. SR–CHX–2011–17 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–CHX–2011–17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CHX–2011–17 and should be submitted on or before November 21, 2011.

## IV. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[23] and, in particular, Section 6(b)(5) of the Act,[24] which, among other things, requires that

[18] For transactions which originated with the Institutional Broker and were handled in the Brokerplex system, the execution report provided either directly from the away trading center or a drop copy thereof will constitute the written evidence of the non-Exchange trade execution. If the trade was executed by a third-party broker-dealer, the Institutional Broker must provide a record which evidences the away market trade execution (such as a confirmation or other record from the executing trading center) to the Exchange in a specified format to be communicated by the Exchange. *See* Amendment No. 1 at notes 14 and 18.

[19] Article 9, Rule 14 (Reporting Riskless Principal Transactions) describes the manner in which Exchange Participants are required to report riskless principal transactions for trade reporting purposes.

[20] The information necessary to identify riskless principal transactions is normally provided to the Exchange either directly via Brokerplex in the form of the execution report from the other trading center or a ''drop copy'' of the execution report (which can be systematically linked to the original order and the clearing submission), which must be provided by the Institutional Broker pursuant to Article 11, Rule 4. The Exchange plans to add a riskless principal identifier to these records.

[21] CHX states that the need to correct a clearing record is typically identified by an order-sending firm or Institutional Broker where there is a clearing break and the parties are looking for a position which does not show up or they have a position they did not expect to have. *See* Amendment No. 1 at 17.

[22] If an Institutional Broker fails to enter the clearing submission within the timeframes specified in the Rule 6, it will be in violation of the rule.

[23] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the Exchange's proposal will facilitate the clearance and settlement of complex transactions that occur otherwise than on the CHX.

Rule 6 sets forth the requirements for Institutional Brokers who utilize CHX's systems to provide a clearance service for transactions executed otherwise than on the Exchange.[25] The filing permits Institutional Brokers to provide a clearing service by entering information with respect to trades that have occurred in multiple venues in Brokerplex for submission to NSCC. Proposed Rule 6(a) requires Institutional Brokers to have an agreement with the Clearing Participant in whose name the entries are made and to file a copy of the agreement with the Exchange, which should ensure Institutional Brokers have the appropriate authorization to act on behalf of a particular Clearing Participant. The Exchange will provide a functionality within Brokerplex to validate that an agreement is in place before an Institutional Broker may submit clearing entries in Brokerplex. CHX requires Clearing Participants to sign a clearing agreement accepting responsibility for non-Exchange transactions submitted to NSCC through an Institutional Broker.[26] CHX will distinguish non-CHX trades from CHX-trades in its submissions to NSCC.[27] These requirements should increase transparency regarding the clearing service that Institutional Brokers provide for non-exchange trades and should enable the Exchange and other regulators to surveil the clearing activity to ensure that Institutional Brokers and Clearing Participants are acting consistent with the provisions of the rule.

In addition, CHX has represented that it will develop an automated system for the submission of clearing information such that trades for which clearing information has been submitted are locked-in before the clearing information is submitted to NSCC. Locked-in trades eliminate the risk to NSCC that after a clearing entry has been submitted to it, one of the parties to the transaction will disavow the transaction. Further, for submissions pursuant to proposed Rule 6(a), the Institutional Broker must make clearing entries involving substitution of parties within three hours of the execution of the transaction, and provide documentation to the Exchange of a non-Exchange execution no later than the close of business on the day of the trade. These aspects of the rule should assist the Exchange as well as other regulators to more effectively monitor this clearing activity. The Commission urges CHX to continue to review the amount of time Institutional Brokers have to provide clearing information to CHX.

Rule 6(b) will permit Institutional Brokers to submit non-tape, clearing only entries for riskless principal transactions. Institutional Brokers must provide the Exchange records to demonstrate that the transactions were riskless principal transactions. The Institutional Broker must make all clearing entries within twenty minutes of the execution of the transaction, or, in the case of multiple transactions, of the last component trade execution, and provide to the Exchange documentation of a non-Exchange trade execution no later than the close of business on the day of the trade. These aspects of the rule should assist the Exchange as well as other regulators in more effectively monitoring clearing activity.

Furthermore, the Commission notes that, with respect to either category of submissions of clearing information for trades executed other than on the Exchange, CHX's proposed rule forbids Participants from using CHX's clearing submission services to avoid any regulatory trade reporting obligations.[28] The Commission understands that CHX will share data regarding its clearing submissions for non-Exchange trades with FINRA in order to assist FINRA in supervising the over-the-counter component of this activity.[29] The rule should provide CHX with additional information and documentation regarding the clearing activities of Institutional Brokers and thus enhance CHX's ability to surveil non-tape, clearing-only entries related to transactions executed otherwise than on the Exchange.

Finally, the rule permits Exchange personnel, under prescribed circumstances, to cancel and/or correct clearing submissions and codifies that Institutional Brokers are responsible for ensuring that all clearing information is complete and accurate for non-tape, clearing-only submissions. The Commission believes that the limitations regarding changes to clearing entries are appropriate, however, the Commission expects CHX to monitor the changes made by Exchange personnel to ensure that they are only making changes that are permitted by the rule and only when they have the appropriate documentation indicating the need for the change to the clearing records. The limitations in the rule should help avoid abuse of the process by Institutional Brokers.

The Commission finds good cause to approve the filing, as modified by Amendment No. 1, before the 30th day after the date of publication in the **Federal Register**, because the changes made in Amendment No. 1 clarify the activity that will be permitted under the rule and add limitations to make the rule more effective. As discussed, NASDAQ provides a similar service for its members.

## IV. Conclusion

*It Is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–CHX–2011–17), as amended, be, and hereby is, approved, on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–28046 Filed 10–28–11; 8:45 am]

**BILLING CODE 8011–01–P**

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## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## In the Matter of Accesspoint Corp., Aero Performance Products, Inc., Apex Resources Group, Inc., Aradyme Corp., Bancroft Uranium, Inc., Fightersoft Multimedia Corp., Fortress Financial Group, Inc., and Global Aircraft Solutions, Inc.; Order of Suspension of Trading

October 27, 2011.

It appears to the Securities and Exchange Commission that there is a

[25] NASDAQ Rule 7038 permits the use of step-outs by member firms for trades effected otherwise than on NASDAQ. Rule 7042 governs clearing entries for riskless principal transactions. FINRA also permits the use of non-tape, clearing only entries for riskless principal transactions. *See e.g.,* Rule 6282.

[26] *See* Article 21, Rule 4. The Commission expects that CHX will maintain copies of these agreements.

[27] *See* Amendment No. 1, *supra* note 5.

[28] *See* proposed Rule 6(a)(2) and 6(b)(2).

[29] *See* Amendment No. 1, *supra* note 5.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

lack of current and accurate information concerning the securities of Accesspoint Corp. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aero Performance Products, 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 Apex Resources Group, Inc. because it has not filed any periodic reports since the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aradyme Corp. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bancroft Uranium, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Fightersoft Multimedia Corp. 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 Fortress Financial Group, Inc. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Global Aircraft Solutions, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

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 October 27, 2011, through 11:59 p.m. EST on November 9, 2011.

By the Commission.

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2011–28226 Filed 10–27–11; 11:15 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12768 and #12769]**

### Puerto Rico Disaster Number PR–00014

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 5.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Puerto Rico (FEMA–4017–DR), dated 08/27/2011.

*Incident:* Hurricane Irene.

*Incident Period:* 08/21/2011 through 08/24/2011.

*Effective Date:* 10/24/2011.

*Physical Loan Application Deadline Date:* 11/25/2011.

*EIDL Loan Application Deadline Date:* 05/28/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the Commonwealth of Puerto Rico, dated 08/27/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/25/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28147 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12815 and #12816]**

### Texas Disaster Number TX–00381

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 7.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–4029–DR), dated 09/09/2011.

*Incident:* Wildfires.

*Incident Period:* 08/30/2011 and continuing.

*Effective Date:* 10/24/2011.

*Physical Loan Application Deadline Date:* 12/08/2011.

*EIDL Loan Application Deadline Date:* 06/06/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of Texas, dated 09/09/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/08/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28164 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12780 and #12781]**

### New Jersey Disaster Number NJ–00023

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 4.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4021–DR), dated 08/31/2011.

*Incident:* Hurricane Irene.

*Incident Period:* 08/27/2011 through 09/05/2011.

**DATES:** *Effective Date:* 10/24/2011.

*Physical Loan Application Deadline Date:* 11/30/2011.

*EIDL Loan Application Deadline Date:* 05/31/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance,

U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for the State of New Jersey, dated 08/31/2011 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 11/30/2011.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28159 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12836 and #12837]**

### Maryland Disaster Number MD–00016

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA–4034–DR), dated 09/16/2011.

*Incident:* Hurricane Irene.

*Incident Period:* 08/24/2011 through 09/05/2011.

*Effective Date:* 10/21/2011.

*Physical Loan Application Deadline Date:* 11/15/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/18/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Maryland, dated 09/16/2011, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:*

Baltimore City, Baltimore.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28178 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12824 and #12825]**

### New York Disaster Number NY–00110

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 6.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4031–DR), dated 09/13/2011.

*Incident:* Remnants of Tropical Storm Lee.

*Incident Period:* 09/07/2011 through 09/11/2011.

*Effective Date:* 10/21/2011.

*Physical Loan Application Deadline Date:* 11/14/2011.

*EIDL Loan Application Deadline Date:* 06/13/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of New York, dated 09/13/2011 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Counties:* (Physical Damage and Economic Injury Loans): Herkimer, Schoharie.

*Contiguous Counties:* (Economic Injury Loans Only): New York: Saint Lawrence.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28182 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12858 and #12859]**

### New York Disaster Number NY–00113

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 5.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4031–DR), dated 09/23/2011.

*Incident:* Remnants of Tropical Storm Lee.

*Incident Period:* 09/07/2011 through 09/11/2011.

*Effective Date:* 10/21/2011.

*Physical Loan Application Deadline Date:* 11/22/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/25/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 09/23/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Herkimer, Schenectady.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28173 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**Disaster Declaration #12803 and #12804**

### Massachusetts Disaster Number MA–00040

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Massachusetts (FEMA–4028–DR), dated 09/03/2011.

*Incident:* Tropical Storm Irene.

*Incident Period:* 08/27/2011 through 08/29/2011.

**DATES:** *Effective Date:* 10/20/2011.

*Physical Loan Application Deadline Date:* 11/02/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 06/05/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Massachusetts, dated 09/03/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Barnstable, Bristol, Dukes, Norfolk, Plymouth.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–28168 Filed 10–28–11; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2011–46]**

### Petition for Exemption; Summary of Petition Received

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

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before November 10, 2011.

**ADDRESSES:** You may send comments identified by Docket Number FAA–2011–1081 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at (202) 493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Privacy:* We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

*Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Keira Jones (202) 267–4024, Tyneka Thomas (202) 267–7626, or David Staples (202) 267–4058, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 25, 2011.

**Dennis R. Pratte,**

*Acting Director, Office of Rulemaking.*

### Petition for Exemption

*Docket No.:* FAA–2011–1081.

*Petitioner:* North American Air Charter.

*Section of 14 CFR Affected:* 14 CFR SFAR 77.

*Description of Relief Sought:* North American Air Charter requests relief to be allowed to conduct operations between points outside of Iraq and Erbil, Iraq ORER (ICAO designator). These flight operations will be conducted under part 135 using 2 long-range, turbojet aircrafts that will transport key executives and others in furtherance of the business interests of the owner of one of the aircraft in a firm that is exploring and developing oil fields located in the Kurdistan region of Iraq.

[FR Doc. 2011–28145 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0189]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition.

**SUMMARY:** FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

**DATES:** The exemptions are effective October 31, 2011. The exemptions expire on October 30, 2013.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or

Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

## Background

On September 7, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 55465). That notice listed 16 applicants' case histories. The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to each of them.

## Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including enucleation, prosthesis, complete loss of vision, macular scarring, retinal and iris coloboma, amblyopia, optic atrophy, optic neuropathy, and retinal damage. In most cases, their eye conditions were not recently developed. Six of the applicants were either born with their vision impairments or have had them since childhood. The 10 individuals who developed their vision conditions as adults have had them for periods ranging from 3 to 28 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 47 years. In the past 3 years, none of the drivers was involved in a crash and two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 7, 2011, notice (76 FR 55465).

## Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' vision, their driving records, and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers meeting the same qualifying conditions as those required by the waiver program are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies building on that model concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors.

These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, none of the applicants was involved in crashes and two of the applicants were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the notice of September 7, 2011 (76 FR 55465).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following:

(1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

**Discussion of Comments**

FMCSA received four comments in this proceeding. The comments were considered and discussed below.

Robert C. Jeffries, Tadd R. Jeffries, Scott Kappleman and Christ Metz are all in favor of granting a Federal vision exemption to Jeffery Mueller, they indicated that they have all worked with the applicant and have no objections to FMCSA granting him a vision exemption.

**Conclusion**

Based upon its evaluation of the 16 exemption applications, FMCSA exempts Darrell G. Anthony, Jerry W. Branning, Stacey J. Buckingham, Gary E. Butler, Ronnie J. Fieck, James E. Knarr, Sr., Michael A. Lawson, Thomas J. Malama, Jeffrey A. Mueller, Harold L. Pearsall, Phillip M. Pridgen, Sr., Eric W. Schmidt, Gerald D. Stidham, Douglas A. Suraci, Michael L. Watters, Sr., and Keith Wentz from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 17, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–28040 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–EX–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2011–0276]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of applications for exemptions; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from 4 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

**DATES:** Comments must be received on or before November 30, 2011.

**ADDRESSES:** You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0276 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–(202) 493–2251.

*Instructions:* Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

*Docket:* For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Papp, Chief, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 4 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

## Qualifications of Applicants

*Tracey L. Butcher*

Mr. Butcher, age 39, has had central scotoma in his right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his right eye 20/3000 and in his left eye, 20/20. Following an examination in 2011, his optometrist noted, ''In my opinion, has sufficient vision to perform driving tasks required in the operation of a commercial vehicle.'' Mr. Butcher reported that he has driven straight trucks for 10 years, accumulating 650,000 miles and tractor-trailer combinations for 13 years, accumulating 201,500 miles. He holds a Class A Commercial Driver's License (CDL) from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Keith M. Calvert*

Mr. Calvert, 60, has had central scotoma in his left eye for the past 20 years. The best corrected visual acuity in his right eye 20/20 and in his left eye, 20/200. Following an examination in 2011, his ophthalmologist noted, ''It is my opinion that he has sufficient vision with glasses to operate a commercial vehicle, I believe that his condition is stable.'' Mr. Calvert reported that he has driven straight trucks for 5 years, accumulating 750,000 miles, tractor-trailer combinations for 6 years, accumulating 1.6 million miles and buses for 2 years, accumulating 100,000 miles. He holds a Class C operator's License from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*Terry G. Howard*

Mr. Howard, 44, has had refractive amblyopia in his left eye since birth. The best corrected visual acuity in his right eye 20/20 and in his left eye, 20/400. Following an examination in 2011, his optometrist noted, ''In my medical opinion, Terry Howard has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Howard reported that he has driven tractor-trailer combinations for 4 years, accumulating 280,000 miles. He holds a Class D operator's license from Kentucky. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

*David M. Taylor*

Mr. Taylor, 49, has a prosthetic left eye due to a traumatic injury since he was two years old. The best corrected visual acuity in his right eye 20/120. Following an examination in 2011, his optometrist noted, ''Dave has sufficient vision to perform the operation of commercial vehicles.'' Mr. Taylor reported that he has driven straight trucks for 6 years, accumulating 510,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

## Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business November 30, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: October 17, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

[FR Doc. 2011–28039 Filed 10–28–11; 8:45 am]

BILLING CODE 4910–EX–P

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# DEPARTMENT OF TRANSPORTATION

## Maritime Administration

## Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and

approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 15, 2011, and comments were due by September 13, 2011. No comments were received.

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

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gearhart, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. *Telephone:* (202) 366–1867; or *email: beth.gearhart@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:** Maritime Administration (MARAD).

*Title:* Shipbuilding Orderbook and Shipyard Employment.

*OMB Control Number:* 2133–0029.

*Type of Request:* Extension of currently approved collection.

*Affected Public:* Owners of U.S. shipyards who agree to complete the requested information.

*Forms:* MA–832.

*Abstract:* MARAD collects this information from the shipbuilding and ship repair industry primarily to determine if an adequate mobilization base exists for national defense and for use in a national emergency.

*Annual Estimated Burden Hours:* 400.

**ADDRESSES:** Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, *Attention:* MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

By the Order of the Maritime Administrator.

Dated: October 25, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28028 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0140]**

### Information Collection Available for Public Comments and Recommendations

**ACTION:** Notice and request for comments

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD) intentions to request approval of the Office of Management and Budget (OMB) to conduct a new information collection entitled, ''the Maritime Administration's Panama Canal Expansion Study Outreach Program.'' This program is being implemented as part of MARAD's comprehensive study of the 2014 Panama Canal Expansion (Study) and its anticipated impacts on U.S. Ports and infrastructure.

**DATES:** Comments should be submitted on or before December 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, 1200 New Jersey Avenue SE., W21–309, Washington, DC 20590, *Telephone:* (202) 366–0926 or *Email: mailto:Yvette.Fields@dot.gov.* Copies of this collection also can be obtained from that office.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Maritime Administration's Panama Canal Expansion Study Outreach Program.

*Type of Request:* New Collection.

*OMB Control Number:* 2133–NEW.

*Forms:* Shipper Survey.

*Expiration Date of Approval:* Three years from date of approval by OMB.

*Summary of Collection of Information:* This three-tiered information collection process will directly support MARAD's efforts to evaluate and assess the impacts of the Panama Canal Expansion on U.S. Ports and infrastructure when the project is completed in 2014. First, a series of up to five (5) public meetings (Listening Sessions) will be conducted to provide a forum for stakeholders to present their views on the issues that MARAD should consider in the development of the Study and to assess the various infrastructure requirements that will be associated with future trade involving the Panama Canal. Second, one-on-one interviews will be conducted with approximately 80 key executives from various U.S. ports, port operators, manufacturers, and transportation service providers to identify their specific plans, investment strategies, and perspectives concerning market trends, which are a critical part of the subject of the Study. Finally, MARAD's on-line Panama Canal Shipper Survey will be conducted to garner information regarding the current decision processes used by ''Beneficial Cargo Owners'' to determine potential changes to their logistics networks and the contingency plans that have been developed (or will be developed) to address the potential impacts on their costs and routing strategies as a result of the Panama Canal Expansion.

*Need and Use of the Information:* The information obtained through this process will be used to present to Federal leaders considerations for policy, investment, and funding options as well as recommendations for policy changes that will favorably impact the overall shift in the Nation's trade patterns.

*Description of Respondents:* Ports and Port Operators, Manufacturers, Service Providers, Shippers, (Railroad/Trucking/Third Party Logistics [3PLs]), Investors and Investment Institutions, Industry Associations, Academic/Research Institutions and State and local governmental planning and development agencies.

*Annual Responses:* 1,480 responses.

*Annual Burden:* 4,075 hours.

*Comments:* Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov.* Specifically address whether this information collection is necessary for the proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT* (*or EST*), Monday through Friday, except Federal holidays. An electronic version

of this document is available on the World Wide Web at *http://www.regulations.gov.*

*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 19477–78) or you may visit *http://www.regulations.gov.*

**Authority:** 49 CFR 1.66.

By Order of the Maritime Administrator.

Dated: October 25, 2011.

**Julie Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28027 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0139]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel DURABO; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0139. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email Joann.Spittle@dot.gov.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel DURABO is:

INTENDED COMMERCIAL USE OF VESSEL: ''day time passengers—no overnight.''

GEOGRAPHIC REGION: ''Florida.''

The complete application is given in DOT docket MARAD–2011–0139 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28026 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011–0132]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KAUHALE KAI III; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0132. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel KAUHALE KAI III is: INTENDED COMMERCIAL USE OF VESSEL: ''Short term private charter.'' GEOGRAPHIC REGION: ''California, Oregon, Washington, Hawaii.''

The complete application is given in DOT docket MARAD–2011–0132 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-

flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.
Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28022 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0133]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel BEIJA FLOR; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0133. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel BEIJA FLOR is: INTENDED COMMERCIAL USE OF VESSEL: ''Short term private charters.'' GEOGRAPHIC REGION: ''California, Oregon, Washington, Florida, Georgia, South Carolina, North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, Massachusetts, New Hampshire, Maine.''

The complete application is given in DOT docket MARAD–2011–0133 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**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 19477–78).

By Order of the Maritime Administrator.
Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28016 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0137]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel d' ARTAGNAN; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0137. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov*.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended

service of the vessel d' ARTAGNAN is: INTENDED COMMERCIAL USE OF VESSEL: ''Six passenger charter.'' GEOGRAPHIC REGION: ''Hawaii, California, Oregon.''

The complete application is given in DOT docket MARAD–2011–0137 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28019 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0131]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel THE GIFT; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0131. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel THE GIFT is: INTENDED COMMERCIAL USE OF VESSEL: ''Passenger carrying.'' GEOGRAPHIC REGION: ''ME, NH, MA, RI, CT, NY, NJ, DE, MD, DC, VA, NC, SC, GA, FL, AL, MS, LA, TX.''

The complete application is given in DOT docket MARAD–2011–0131 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28021 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0138]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ACERO AZUL; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0138. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime

Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ACERO AZUL is: INTENDED COMMERCIAL USE OF VESSEL: ''Passenger for hire.'' GEOGRAPHIC REGION: ''California, Oregon, Washington, Alaska.''

The complete application is given in DOT docket MARAD–2011–0137 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.
Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28025 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0136]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ABOUT TIME; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0136. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel ABOUT TIME is: INTENDED COMMERCIAL USE OF VESSEL: ''Uninspected passenger vessel.'' GEOGRAPHIC REGION: ''Florida.''

The complete application is given in DOT docket MARAD–2011–0136 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.
Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28024 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD–2011 0128]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel LINDA GRACE; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0128. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents

entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel LINDA GRACE is: INTENDED COMMERCIAL USE OF VESSEL: ''2 to 8 hour day sails, week-end charters in the San Juan and/or Canadian islands.'' GEOGRAPHIC REGION: ''Washington.''

The complete application is given in DOT docket MARAD–2011–0128 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28020 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0135]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel KIWI CAT; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0135. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel KIWI CAT is: INTENDED COMMERCIAL USE OF VESSEL: ''Small vessel 12 person chartering service for the San Francisco Bay, CA.'' GEOGRAPHIC REGION: ''California.''

The complete application is given in DOT docket MARAD–2011–0135 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 25, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28017 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0130]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel ELYATT; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0130. Written comments may be submitted by

hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

As described by the applicant the intended service of the vessel ELYATT is: INTENDED COMMERCIAL USE OF VESSEL: ''Private charters/tours.'' GEOGRAPHIC REGION: ''Hawaii, California, Oregon, Washington.''

The complete application is given in DOT docket MARAD–2011–0130 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28015 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket No. MARAD 2011 0129]**

### Requested Administrative Waiver of the Coastwise Trade Laws: Vessel CELTIC TRAVELLER; Invitation for Public Comments

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before November 30, 2011.

**ADDRESSES:** Comments should refer to docket number MARAD–2011–0129. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, Email *Joann.Spittle@dot.gov.*

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel CELTIC TRAVELLER is: INTENDED COMMERCIAL USE OF VESSEL: ''sailing charters, dinner cruises.'' GEOGRAPHIC REGION: ''California.''

The complete application is given in DOT docket MARAD–2011–0129 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**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 19477–78).

By Order of the Maritime Administrator.

Dated: October 24, 2011.

**Julie P. Agarwal,**

*Secretary, Maritime Administration.*

[FR Doc. 2011–28014 Filed 10–28–11; 8:45 am]

**BILLING CODE 4910–81–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** The Charter for the Internal Revenue Service Advisory Council (IRSAC), has been renewed for a two-year period beginning October 20, 2011.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lorenza Wilds, National Public Liaison, at **Public_Liaison@irs.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the

approval of the Secretary of the Treasury to announce the renewal of the Internal Revenue Service Advisory Council (IRSAC). The primary purpose of the advisory council is to provide an organized public forum for Internal Revenue Service officials and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or makes recommendations with respect to emerging Federal tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggest improvements with respect to issues having substantive effect on Federal tax administration. Conveying the public's perception of IRS activities to Internal Revenue Service officials, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, international, wage and investment taxpayers and the applicant's knowledge of Circular 230.

Dated: October 24, 2011.

**Candice Cromling,**

*Director, National Public Liaison.*

[FR Doc. 2011–28174 Filed 10–28–11; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Computer Matching Program Between the Department of Veterans Affairs (VA) and the Department of Defense (DoD)

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice of Computer Matching Program.

**SUMMARY:** Notice is hereby given that the Department of Veterans Affairs intends to conduct a recurring computer matching program. This will match personnel records of the Department of Defense with VA records of benefit recipients under the Montgomery GI Bill.

The goal of these matches is to identify the eligibility status of veterans, servicemembers, and reservists who have applied for or who are receiving education benefit payments under the Montgomery GI Bill. The purpose of the match is to enable VA to verify that individuals meet the conditions of military service and eligibility criteria for payment of benefits determined by VA under the Montgomery GI Bill.

The authority to conduct this match is found in 38 U.S.C. 3684A(a)(1).

The records covered include eligibility records extracted from DOD personnel files and benefit records that VA establishes for all individuals who have applied for and/or are receiving, or have received education benefit payments under the Post-9/11 GI Bill. These benefit records are contained in a VA system of records identified as 58VA21/22/28 entitled: Compensation, Pension, Education and Vocational Rehabilitation and Employment Records—VA, first published in the **Federal Register** at 74 FR 9294 (March 3, 1976), and last amended at 74 FR 29275 (June 19, 2009), with other amendments as cited therein.

**DATES:** This match will commence on or about November 30, 2011 or 40 days after the OMB review period, whichever is later and continue in effect for 18 months. At the expiration of 18 months after the commencing date the Departments may renew the agreement for another 12 months.

**ADDRESSES:** Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Eric Patterson (225B), Strategy and Legislative Development Team Leader, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9830.

**SUPPLEMENTARY INFORMATION:** Further information regarding the matching program is provided below. This information is required by paragraph 6c of the ''Guidelines on the Conduct of Matching Programs'' issued by the Office of Management and Budget (OMB) (54 FR 25818), as amended by OMB Circular A–130, 65 FR 77677 (2000). A copy of the notice has been provided to both Houses of Congress and OMB. The matching program is subject to their review.

Approved: October 11, 2011.

**John R. Gingrich,**

*Chief of Staff, Department of Veterans Affairs.*

[FR Doc. 2011–28163 Filed 10–28–11; 8:45 am]

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Part II

## Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Frequency Regulation Compensation in the Organized Wholesale Power Markets; Final Rule

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 35**

**[Docket Nos. RM11–7–000 and AD10–11–000; Order No. 755]**

## Frequency Regulation Compensation in the Organized Wholesale Power Markets

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to section 206 of the Federal Power Act, the Commission is revising its regulations to remedy undue discrimination in the procurement of frequency regulation in the organized wholesale electric markets and ensure that providers of frequency regulation receive just and reasonable and not unduly discriminatory or preferential rates. Frequency regulation service is one of the tools regional transmission organizations (RTOs) and independent system operators (ISOs) use to balance supply and demand on the transmission system, maintaining reliable operations. In doing so, RTOs and ISOs deploy a variety of resources to meet frequency regulation needs; these resources differ in both their ramping ability, which is their ability to increase or decrease their provision of frequency regulation service, and the accuracy with which they can respond to the system operator's dispatch signal.

The Commission finds that current frequency regulation compensation practices of RTOs and ISOs result in rates that are unjust, unreasonable, and unduly discriminatory or preferential. Specifically, current compensation methods for regulation service in RTO and ISO markets fail to acknowledge the inherently greater amount of frequency regulation service being provided by faster-ramping resources. In addition, certain practices of some RTOs and ISOs result in economically inefficient economic dispatch of frequency regulation resources.

By remedying these issues, the Commission is removing unduly discriminatory and preferential practices from RTO and ISO tariffs and requiring the setting of just and reasonable rates. Specifically, this Final Rule requires RTOs and ISOs to compensate frequency regulation resources based on the actual service provided, including a capacity payment that includes the marginal unit's opportunity costs and a payment for performance that reflects the quantity of frequency regulation service provided by a resource when the resource is accurately following the dispatch signal.

**DATES:** *Effective Date:* This Final Rule will become effective December 30, 2011.

**FOR FURTHER INFORMATION CONTACT:** Robert Hellrich-Dawson (Technical Information), Office of Energy Policy & Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–6360, *bob.hellrich-dawson@ferc.gov*. Eric Winterbauer (Legal Information), Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–8329, *eric.winterbauer@ferc.gov.*

**SUPPLEMENTARY INFORMATION:**

**UNITED STATES OF AMERICA**

**FEDERAL ENERGY REGULATORY COMMISSION**

Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Frequency Regulation Compensation in the Organized Wholesale Power Markets Docket Nos. RM11–7–000; AD10–11–000

**ORDER NO. 755**

**FINAL RULE**

(Issued October 20, 2011)

1. Pursuant to section 206 of the Federal Power Act (FPA),[1] the Commission is revising its regulations to remedy undue discrimination in the procurement of frequency regulation in the organized wholesale electric markets and ensure that providers of frequency regulation receive just and reasonable and not unduly discriminatory or preferential rates. Frequency regulation service is one of the tools regional transmission organizations (RTOs) and independent system operators (ISOs) use to balance supply and demand on the transmission system, maintaining reliable operations. In doing so, RTOs and ISOs [2] deploy a variety of resources to meet frequency regulation needs; these resources differ in both their ramping [3] ability, which is their ability to increase or decrease their provision of frequency regulation service, and the accuracy with which they can respond to the system operator's dispatch signal. In this instance, the ability to provide more accurate frequency regulation service means to follow the system operator's dispatch signal more closely.

2. The Commission finds that current frequency regulation compensation practices of RTOs and ISOs result in rates that are unjust, unreasonable, and unduly discriminatory or preferential. Specifically, current compensation methods for regulation service in RTO and ISO markets fail to acknowledge the inherently greater amount of frequency regulation service being provided by faster-ramping resources.[4] In addition, certain practices of some RTOs and ISOs result in economically inefficient economic dispatch of frequency regulation resources.

3. By remedying these issues, the Commission is removing unduly discriminatory and preferential practices from RTO and ISO tariffs and requiring the setting of just and reasonable rates. Specifically, this Final Rule requires RTOs and ISOs to compensate frequency regulation resources based on the actual service provided, including a capacity payment that includes the marginal unit's opportunity costs and a payment for performance that reflects the quantity of frequency regulation service provided by a resource when the resource is accurately following the dispatch signal.

## I. Background

### *A. Frequency Regulation Service*

4. Frequency regulation[5] service is the injection or withdrawal of real power by facilities capable of responding

[1] 16 U.S.C. 824e. *Accord* 16 U.S.C. 824d (providing that rates must be just and reasonable).

[2] The following RTOs and ISOs have organized wholesale electricity markets: PJM Interconnection, LLC (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (MISO); ISO New England Inc. (ISO–NE); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

[3] ''Ramping'' or the ability to ''ramp'' is traditionally defined as the ability to change the output of real power from a generating unit per some unit of time, usually measured as megawatts per minute (MW/min). A generator ramps up to produce more energy and ramps down to produce less. A storage device ramps up by discharging energy and ramps down by charging. A demand response resource, in the context of the provision of frequency regulation, ramps up by consuming less energy and ramps down by consuming more.

[4] Both existing market participants and potential entrants are affected by inefficient pricing. It is possible that existing market participants would offer faster ramping capabilities to the system operator in response to a pricing scheme that recognized such service.

[5] Frequency regulation, or secondary frequency control, is distinguishable from frequency response, or primary frequency control, for the purposes of this rulemaking. The latter, *i.e.,* frequency response, involves the automatic, autonomous and rapid action of turbine governor control to change a generator's output and of demand response resources to change consumption in automatic response to changes in frequency. This occurs independently of any dispatch signal from a system operator. On January 20, 2011, the Commission released for public comment a staff study evaluating the use of frequency response metrics as a tool to assess the reliability impacts of varying resource mixes on the transmission grid.

appropriately to a transmission system operator's automatic generator control (AGC) signal. When dispatched generation does not equal actual load plus losses on a moment-by-moment basis, the imbalance will cause the grid's frequency to deviate from 60 Hertz, the standard in the U.S. While the system does deviate from 60 Hz in the normal operation of the grid, frequency deviations outside an acceptable range negatively affect energy consuming devices; major deviations cause generation and transmission equipment to disconnect from the grid, in the worst case leading to a cascading blackout. Frequency regulation service can help to prevent these adverse consequences by rapidly correcting deviations in the transmission system's frequency to bring it within an acceptable range.[6] The system operator calibrates the AGC signal sent to frequency regulation resources to respond to actual and anticipated frequency deviations or interchange power imbalance, both measured by area control error (ACE).

5. Today, frequency regulation is largely provided by generators (*e.g.,* water, steam and combustion turbines) that are specially equipped for this purpose. Provision by other resources is emerging, as technologies develop and tariff and market rules adapt to accommodate new resources. For example, the Texas Interconnection and MISO currently use controllable demand response in addition to generators to provide frequency regulation service. Such ''regulation capable'' generation, storage devices, and demand response resources can respond automatically to signals sent by the RTO or ISO, through AGC, to increase or decrease real power injections or withdrawals and thereby correct actual or anticipated frequency deviations or interchange schedule imbalance, as measured by the ACE. The faster a resource can ramp up or down, the more accurately it can respond to the AGC signal and avoid overshooting.[7] Alternatively, when a resource ramps too slowly, its ramping limitations may cause it to work against the needs of the system and force the system operator to commit additional regulation resources to compensate.

*B. Current RTO and ISO Compensation Practices*

6. In the RTO and ISO markets, compensation for frequency regulation service is presently based on several components. Depending on the RTO or ISO, these payments include consideration for capacity set aside to provide the service[8] as well as some of the following: the net energy that the resource injects into the system; accurately following the RTO's or ISO's dispatch signal; and the absolute (rather than net) amount of energy injected or withdrawn. These payments are intended to cover the range of costs incurred in providing frequency regulation service, *e.g.,* operation and maintenance costs, and loss of potential revenue from foregone sales of electricity.

7. The payment for capacity is essentially an option payment to the resource to keep a certain amount of capacity out of the energy or other markets in order to provide frequency regulation service, typically based on a market clearing price per MW of capacity sold. ISO–NE, NYISO, MISO, California ISO, and PJM incorporate into this payment the opportunity cost of foregone energy sales incurred by a resource that provides frequency regulation service. However, ISO–NE and PJM do not apply the opportunity cost payment uniformly to all cleared resources, but rather make *ex post* resource-specific opportunity cost payments.

8. Compensation for frequency regulation service also includes payments or charges for the net energy the resource injects into or withdraws from the system. All RTOs and ISOs currently provide a payment for the net energy injected by a resource providing regulation service during the operating hour, calculated as the amount of energy injected less energy withdrawn multiplied by the real-time energy price.

9. Accuracy of performance can also be incorporated into payments for frequency regulation service. Currently, NYISO incorporates accuracy into its compensation for frequency regulation service through a penalty that reflects the accuracy with which the resource follows its dispatch instruction.[9] This is done through a performance index that tracks how accurately a resource follows the dispatch signal.[10]

10. ISO–NE makes payments for frequency regulation service to reflect the amount of work performed by a resource by reflecting the absolute amount of energy injected and withdrawn, sometimes referred to as a ''mileage'' payment. Mileage payments are intended to reward those resources that perform more regulation service instead of simply netting the total amount of energy injected by the resource.[11]

11. In general, when a resource submits its frequency regulation bid to the RTO or ISO, the bid is typically required to include its ramp rate in MW/min, its cost per megawatt-hours (MWh) of ramping ability, and the total capacity it is offering for frequency regulation.[12] The resource's total amount of capacity is based on and limited by its ability to ramp up or down.[13] For example, a resource with a relatively large amount of capacity, but a relatively slow ramp rate would be limited in how much capacity it could offer as frequency regulation capacity. If the resource can ramp one MW per minute, it would only be able to offer five MW of regulation capacity (for a five minute dispatch) regardless of its total capacity. On the other hand, a smaller capacity, faster ramping resource might not face such a constraint. For instance, a storage device that can hold a 20 MW charge and ramp at 10 MW per minute, could offer its full 20 MW of capacity for five minutes.

12. The Commission recognizes that some RTOs and ISOs are considering changes to their frequency regulation markets.[14] For example, in February of

[6] A balancing authority achieves acceptable ranges by being in compliance with Control Performance Standards 1 and 2 as defined in the Commission-approved Reliability Standard BAL–001–0.1a.

[7] *See* Beacon Power Corporation (Beacon), Technical Conference Speaker Materials, at Figure 3, which shows the difference between ISO–NE's ACE control signal, Beacon's flywheel response, and the allowable response rate under current ISO–NE rules. Here, ''allowable response rate'' means the rate at which the resource must respond to be considered in compliance with the dispatch signal. *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Docket No. AD10–11–000 (May 26, 2010).

[8] This type of capacity payment is distinguishable from capacity payments associated with the procurement of resources to meet planning reserve margin requirements.

[9] NYISO, *Ancillary Services Manual, Manual 2* (Nov. 2010), *http://www.nyiso.com/public/webdocs/documents/manuals/operations/ancserv.pdf.*

[10] NYISO uses telemetry data to track how closely a frequency regulation resource's output is to the dispatch signal. NYISO then adjusts the resource's payments to reflect its accuracy. For example, if the resource's response falls outside an acceptable range 10 percent of the time, for a performance index of 0.9, it will receive 90 percent of its payment.

[11] ISO–NE., *Market Operations Manual M–11,* at 3–11 (Dec. 2010), *available at http://www.iso-ne.com/rules_proceds/isone_mnls/m_11_market_operations_revision_35_12_01_10.doc.*

[12] *See, e.g.,* NYISO, *Ancillary Services Manual, Manual 2,* at 4–8 (Nov. 2010).

[13] A resource's capacity is limited by the amount it can ramp in five minutes because the system operator in most RTOs and ISOs dispatch resources every five minutes. CAISO dispatches every 10 minutes, and so a frequency regulation resource's capacity in that market is bound by the total capacity it can ramp in 10 minutes.

[14] In addition to the examples cited here, SPP is in the process of developing its integrated marketplace that will include a day-ahead market and consolidated ancillary services market.

this year PJM established a ''Regulation Performance Senior Task Force'' to examine the existing PJM regulation market's inability to distinguish between resources' various levels of performance and the absence of additional compensation for the resources to perform at a high level once they have qualified for the regulation market.[15] Therefore, the Commission believes that this Final Rule is timely, in that it will help guide these various stakeholder processes.

*C. Commission Inquiries Leading to This Rulemaking*

13. On May 26, 2010, the Commission hosted a publicly noticed technical conference[16] inviting various stakeholders, including representatives from the RTOs and ISOs, industry, and academia to share their views on whether current frequency regulation market designs reflect the value of the service provided, and whether the use of faster-ramping resources for frequency regulation has the potential to provide benefits to the organized markets.

14. On February 17, 2011, the Commission issued a Notice of Proposed Rulemaking in this proceeding,[17] seeking comment on its proposal to require both a uniform price for frequency regulation capacity paid to all cleared resources as well as a performance payment for the provision of frequency regulation service, with the latter payment reflecting a resource's accuracy of performance.[18]

**II. Discussion**

*A. The Need for Reform*

15. As discussed below, the Commission finds that current frequency regulation compensation practices in organized wholesale electricity markets which fail to compensate resources for all of the service they provide as part of that service are unjust, unreasonable, and unduly discriminatory or preferential.

1. NOPR Preliminary Finding

a. Unduly Discriminatory Pricing

16. In the NOPR, the Commission stated that the current rules that govern pricing and compensation for frequency regulation services in RTOs and ISOs may be unduly discriminatory, because resources are compensated at the same level even when providing different amounts of frequency regulation service.[19]

17. Specifically, the Commission was concerned that under some existing frequency regulation compensation methods, resources may not be compensated for all of the service they provide even when given preference in the dispatch order and asked to provide more frequency regulation service than other resources. The Commission noted, for example, that CAISO, NYISO, MISO, and PJM pay a capacity payment to all resources that clear the frequency regulation market, and then net the amount of regulation up and regulation down provided by these resources in order to compensate for the energy costs they incur. The Commission preliminarily found that this compensation method does not acknowledge the greater amount of frequency regulation service being provided by faster-ramping resources.[20] It stated that, as a result, slower-responding resources are compensated as if they are providing the same amount of service when, in reality, they are not,[21] and that slower, larger resources are being given a compensatory advantage for their size while faster, smaller resources do not similarly receive compensation for their ramping speed and actual service provided.

18. The Commission also expressed concern that the manner in which some resources that provide frequency regulation service are compensated for their opportunity costs[22] may be unduly discriminatory.[23] For instance, while PJM provides an *ex ante* estimate of opportunity costs that is included in the uniform clearing price, it also provides *ex post* ''make whole'' payments based on individual unit opportunity costs, something that is not reflected in the uniform market clearing price calculation;[24] ISO–NE pays opportunity costs on a resource-specific basis so that the market-clearing price for frequency regulation service does not reflect any opportunity costs. Both of these methods have the potential to inefficiently select regulating resources and also fail to reflect the marginal cost (including opportunity cost) that determines the market-clearing price paid to all cleared suppliers. Therefore, the NOPR proposed to require that all resource bids include opportunity costs and that all cleared frequency regulation resources be paid the single market clearing price, which reflects the total marginal costs of the marginal cleared unit.[25]

b. Potential Market Efficiency Gains

19. The NOPR also preliminarily found that the use of faster-ramping resources for frequency regulation has the potential to improve operational and economic efficiency and, in turn, lower costs to consumers in the organized markets. Faster-ramping resources may be able to replace resources that currently provide frequency regulation, so that RTOs and ISOs may be able to procure less regulation capacity, thereby lowering costs to load.

2. Comments

a. Unduly Discriminatory Pricing

20. Many commenters expressly support the NOPR's proposed performance payment to reflect the amount of frequency regulation provided by a resource.[26] They

[15] *See* PJM Regulation Performance Senior Task Force Charter at 1 (2011) and ISO–NE., *Report of ISO New England Inc. Regarding the Implementation of Market Rule Changes to Permit Non-Generating Resources to Participate in the Regulation Market,* Docket No. ER08–54–014, at 5 (June 17, 2010).

[16] *See* Final Agenda, *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* Docket No. AD10–11–000 (May 26, 2010).

[17] *Frequency Regulation Compensation in the Organized Wholesale Power Markets,* 76 FR 11,177, 134 FERC ¶ 61,124 (2011) (NOPR).

[18] *See* Appendix for a list of commenters.

[19] NOPR, 134 FERC ¶ 61,124 at P 27.

[20] A simplified example would be to consider two resources that clear with the same amount of capacity and are directed to provide regulation up and regulation down over the course of a five-minute interval. The fast-ramping resource might be directed to move around an initial output level up five MW, then down three MW, up one MW, down ten MW, and finally up nine MW. A netting approach to compensation would determine that the resource provided an additional two MW of energy to the system (+ 5 − 3 + 1 − 10 + 9 = + 2) during that five minute interval. Meanwhile, a slower-ramping resource may be directed to move up three MW and then down one MW for a net of two MW in relation to its initial output level. The operator is not able to direct more movement because the slower-ramping resource would not be able to respond in the requisite time frame. Both resources would receive identical compensation for their movement, despite the first resource providing more ACE correction.

[21] NOPR, 134 FERC ¶ 61,124 at P 28.

[22] When participating in the energy and frequency regulation markets, a resource is dispatched at a set-point below its maximum capacity. Because this amount of capacity is held in reserve to provide frequency regulation, the resource misses the opportunity to provide energy at the current LMP.

[23] NOPR, 134 FERC ¶ 61,124 at P 31.

[24] PJM, *Manual 18: Operating Agreement Accounting,* at 12–16, *available at http://www.pjm.com/~/media/documents/manuals/m28.ashx.*

[25] NOPR, 134 FERC ¶ 61,124 at P 31.

[26] A123, Alcoa, Beacon, CESA, Duke, ESA, EDF, EPSA, ELCON, ENBALA, EnerNOC, Invenergy, ISO–NE., Manitoba Hydro, MISO, MSCG, NaturEner, NECPUC, NEPOOL, OMS, PaPUC, PG&E, Powerex, Primus Power, PIOs, PJM, SoCal Edison, Starwood/Premium, SunEdison, VCharge, Viridity, and Xtreme Power all submitted comments supporting the proposal to require a performance payment. Some have offered alternative means to accomplish the same goal, as described below.

generally argue that for a frequency regulation compensation mechanism to be just and reasonable it must compensate providers for the service they actually provide to the grid. They argue that the compensation systems currently used in the RTOs and ISOs are not only unduly discriminatory but also problematic because they send inefficient price signals. In addition, they generally advocate that a performance payment for regulation will incent participants to offer more flexibility to the system operator and will compensate resources for the value they provide the grid.[27]

21. Alcoa supports the proposal that compensation for frequency regulation service reflect the absolute (rather than net) energy the resource injects into or withdraws from the system. Alcoa states that compensating for the amount of movement creates strong market signals because it ensures that those resources that are performing more work to correct system deviations are rewarded more. It contends that this aligns with the physical reality that the more the resource is moved, the more wear will occur on the equipment and the higher the cost of supplying the service.[28]

22. Beacon contends that, currently, all resources (except in ISO–NE), regardless of how frequently they are deployed or how much of the ACE correction they provide, are paid the same price per MW for their capacity offered. Beacon contends that no payment is based on how much the resource is actually deployed to provide frequency regulation.[29] Beacon argues that this is unjust and unreasonable. Similarly, PIOs argue that NYISO's and MISO's frequency regulation markets fail to ensure just and reasonable treatment of faster-ramping regulation resources, and do not provide the proper economic incentive for efficient market participation.[30]

23. In order to illustrate the undue discrimination that can occur in frequency regulation markets, Beacon provides data from its own 1 MW flywheel operating in the ISO–NE market, contending that these data demonstrate that its resource provides more than four times as much frequency regulation service to ISO–NE as would a 1 MW resource with an allowable ramp rate of 1 MW/5 minutes.[31] It contends that the flywheel provides 0.48 MWh while the slower ramping resource provides 0.11 MWh. Beacon states that the reason its flywheel is able to provide more frequency regulation service is not just because of its faster ramping ability, but also because it is able to switch the direction of the resource nearly instantaneously.[32] In a frequency regulation market paying only a capacity payment, Beacon's flywheel will have performed a greater amount of frequency regulation service, yet received the same payment as the other resource.

24. Beacon and ESA argue that a performance payment system is needed in order to send efficient price signals and to compensate resources that are asked to do more work. Beacon and ESA maintain that this form of pricing will appropriately compensate resources and encourage the RTOs and ISOs to improve operational and economic efficiencies, thereby lowering costs to consumers.[33] In support of its arguments, Beacon points to operating data from its flywheel in NYISO comparing the actual performance of its flywheel to a hypothetical, similarly sized slower resource to determine how much each resource would contribute to frequency regulation service.[34] Beacon states that even though the flywheel would have been dispatched to provide more than twelve times as much frequency regulation service, its flywheel would have actually been paid less than the slower-responding resource that provided less service to the system.[35]

25. Beacon also provides an example of five 20 MW resources with different ramp rates—two average resources, two slower resources, and one faster resource—that are dispatched and paid based only on the amount of capacity offered. Beacon asserts that if these resources were to be paid for both capacity and performance, the system operator could reduce the amount of capacity procured by 40 percent while obtaining the same amount of regulation service. Assuming a $10 decrease in the capacity price and a $1.00/MW mileage rate, Beacon estimates a reduction in total regulation cost of 27 percent, in addition to releasing 40 MW of generation to provide energy or other reserves.[36]

26. PJM states that it strongly supports a performance-based methodology. PJM claims that a performance payment provides an appropriate incentive to provide high quality regulation service by tying a portion of the total compensation to a resource's performance. In addition, PJM asserts that a performance payment will ensure resources provide accurate responses to control signals, in contrast with the current structure that provides no incentive to perform above a minimum threshold.[37]

27. Among the RTOs and ISOs, only CAISO makes the claim that its markets are not unduly discriminatory or preferential. CAISO asserts that the Commission cannot declare the existing rate unjust and unreasonable or unduly discriminatory based on an unsupported conclusion that all markets require more ACE correction.[38] Indeed, CAISO argues that its operational and reliability requirements, including ACE correction, have been and continue to be adequately met by existing regulation services and resources. Furthermore, CAISO argues that its rates for regulation apply to all resources equally so long as the resource meets the minimum operating and technical requirements to provide regulation because the amount of capacity a resource may bid for regulation is based upon the resource's certified ramp rate over a ten minute interval. It contends that, therefore, a faster-ramping resource can sell more regulation capacity than a slower ramping resource. It argues that these terms and conditions of service provide comparable treatment for all resources certified to provide regulation.[39] CAISO also argues that while its energy management system does not include a priority dispatch for resources with faster-ramping capability, its system will send control

[27] *See, e.g.,* EDF May 2, 2011 Comments at P 14 and P 16, CESA May 2, 2011 Comments at 2 and 8, ENBALA May 2, 2011 Comments at 8, ELCON May 2, 2011 Comments at 4, Manitoba Hydro April 27, 2011 Comments at 2 (citing Prowse, D. ''Improvements to a Standard Automatic Generation Control Filter Algorithm'' IEEE/PES Summer Power Meeting, 92 SM 451–5 PWRS), OMS May 2, 2011 Comments at 6, Primus Power April 18, 2011 Comments at 5–6, PIOs May 3, 2011 Comments at 5–7, PJM May 2, 2011 Comments at 6, SoCal Edison May 2, 2011 Comments at 3, Starwood/Premium May 2, 2011 Comments at 4–5, Viridity May 2, 2011 Comments at 1, Xtreme Power May 2, 2011 Comments at 6–7.

[28] Alcoa May 2, 2011 Comments at 3–4.

[29] Beacon May 2, 2011 Comments at 20–21, ESA May 2, 2011 Comments at 19–20.

[30] PIOs May 2, 2011 Comments at P 16.

[31] Beacon May 2, 2011 Comments at 6–7. These data are the same data on which the table in Appendix A of the NOPR is based.

[32] Beacon May 2, 2011 Comments at 7.

[33] Beacon May 2, 2011 Comments at 26–27, ESA May 2, 2011 Comments at 24–25.

[34] *See* Beacon May 2, 2011 Comments at 22–24.

[35] Beacon May 2, 2011 Comments at 24 (citing NYISO Tariff, Section 15.3.2.1(d), Regulation Service Offers from Limited Energy Storage Resources. ''The ISO may reduce the real-time Regulation Service offer (in MWs) from a Limited Energy Storage Resource to account for the Energy storage capacity of such Resource.''). *See also* ESA May 2, 2011 Comments at 21–23 (providing a numerical example of how a two-part payment system can result in cost savings in the procurement of frequency regulation capacity and service).

[36] Beacon May 2, 2011 Comments at 33–36.

[37] PJM May 2, 2011 Comments at 6.

[38] CAISO May 2, 2011 Comments at 6–7.

[39] CAISO May 2, 2011 Comments at 8.

signals to faster ramping resources if it requires a fast response to correct ACE. Control signals are sent in part based on a resource's operating range and ramping capability.[40]

28. Some commenters argue that the Commission has failed to show a sufficient basis for exercising its section 206 authority to mandate revisions to existing RTO and ISO tariff provisions.[41] CAISO argues it has and continues to meet its operational and reliability requirements, and pays equally all resources capable to meet the requirement. As such, CAISO argues, its markets are not unduly discriminatory or preferential.

29. EEI contends that the Commission has not shown that changing the compensation mechanism to increase compensation for faster ramping resources will result in enhanced reliability or enable system operators to more easily meet reliability standards; that the Commission is looking at only one of the three elements of frequency response (inertial response and governor response being the others) and in doing so has failed to provide the necessary technical basis to demonstrate that its assumptions that resources providing frequency regulation are more valuable than resources providing the other services and that the resulting payments are unduly discriminatory. Similarly, NGSA argues that regulatory policies that focus singly on special forms of compensation and incentives for some forms of ancillary and balancing services, but not others, are likely to result in distorted market signals and a mix of services and products that are sub-optimal for meeting system balancing requirements. NGSA contends that there is a direct interrelationship between primary and secondary frequency control, and compensation for frequency regulation cannot be considered in isolation.[42]

30. TAPS also argues that the existing total compensation for frequency regulation has not been shown to be unjust and unreasonable. TAPS contends that any increased payments to faster-ramping resources must be balanced by savings through reduced regulation procurement or lower payments to slower resources, such that costs to consumers are reduced.[43]

31. Duke argues that the Commission should not favor or subsidize one type of resource over another.[44] It contends that both fast- and slow-ramping resources have a role to play and there will be instances when operators will not need faster-ramping resources to address frequency deviations. As an example, Duke states that there will be a need for slower-ramping resources that ramp with the load over a five minute period (*e.g.,* load following).[45]

32. EEI argues that the Commission failed to support the NOPR proposal as just and reasonable, because, according to EEI, the Commission did not explain how the two-part payment mechanism will enhance reliability or make compliance with reliability rules easier or cheaper for system operators. EEI claims that no substantial pilot programs have been conducted to evaluate the system cost and reliability impacts of substituting non-traditional resources for existing resources. EEI suggests that the Commission encourage the development of network pilot programs before requiring a revision of frequency regulation service.[46]

33. Several commenters express concern that the Commission will act prematurely, without a full record addressing the various issues to which the NOPR was addressed.[47] For example, NGSA, among others, cited Commissioner Spitzer's dissent to the NOPR, arguing that feedback is needed from a broad spectrum of industry participants; otherwise the record on which to make the proposed changes to the Commission's regulations may be undermined.[48] The NY TOs contend that the record is insufficient to support a conclusion that the NYISO-administered markets fail to adequately compensate fast response resources.[49]

b. Potential Market Benefits

34. The primary economic benefit that some commenters expect to see is reduced costs of procuring frequency regulation capacity, with a secondary benefit of reduced energy costs.[50] Commenters argue that faster-ramping resources are able to provide more frequency regulation service from the same amount of frequency regulation capacity because faster-ramping resources can provide more ACE correction in real-time. Commenters conclude that this will result in a system operator needing to procure less frequency regulation capacity.[51] Commenters further explain that, as these faster-responding resources displace slower-ramping resources, existing generators that are displaced can be shifted to provide an even greater amount of energy. These traditional resources can then run at their full capacity at their preferred steady-state operating point which improves their heat rate and reduces the wear and tear on their equipment, thereby lowering their cost to operate.[52]

35. Commenters cite several studies to support the argument that faster-responding resources will result in economic benefits. Among them is PNNL's study showing that fast-ramping energy storage resources (such as flywheels and batteries) could be as much as 17 times more effective than conventional ramp-limited regulation resources because of how quickly and accurately they respond to a system imbalance;[53] and a California Energy Commission study which showed that ''on an incremental basis, storage can be up to two to three times as effective as adding a combustion turbine to the system for regulation purposes.''[54]

36. Commenters also pointed to ISO–NE and NYISO as examples of markets that have a relatively high number of faster-responding frequency regulation resources. In both cases, the system operator is able to procure a relatively smaller amount of frequency regulation capacity, compared to other RTOs and ISOs. Beacon notes that ISO–NE. the only RTO or ISO to both dispatch faster-ramping resources first and then compensate resources based on performance, is able to procure the least frequency regulation capacity, measured

[40] *Id.* at 9.

[41] EEI May 2, 2011 Comments at 9–10, TAPS May 2, 2011 Comments at 5.

[42] NGSA May 2, 2011 Comments at 4.

[43] TAPS May 2, 2011 Comments at 5.

[44] *See also* CAREBS May 2, 2011 Comments at 5–6, AWEA May 2, 2011 Comments at 3–4, Duke May 2, 2011 Comments at 4–5, ELCON May 2, 2011 Comments at 6, SoCal Edison May 2, 2011 Comments at 6.

[45] Duke May 2, 2011 Comments at 4–6.

[46] EEI May 2, 2011 Comments at 9.

[47] CAISO May 2, 2011 Comments at 11–12, Duke May 2, 2011 Comments at 2, EEI May 2, 2011 Comments at 10 (supported by Dayton, Detroit Edison, and FirstEnergy), Jack Ellis May 2, 2011 Comments at 7, MISO TOs May 2, 2011 Comments at 5.

[48] Natural Gas Supply Association May 2, 2011 Comments at 5.

[49] New York Transmission Owners May 2, 2011 Comments at 1.

[50] *See, e.g.,* Beacon May 2, 2011 Comments at 5, ESA May 2, 2011 Comments at 3, EDF May 2, 2011 Comments at P 5–7, EDF May 2, 2011 Comments at P 9, ENBALA May 3, 2011 Comments at 3, NEPOOL May 2, 2011 Comments at 6, PaPUC May 2, 2011 Comments at 5, PJM May 2, 2011 Comments at 3–4.

[51] SoCal Edison May 2, 2011 Comments at 3.

[52] Beacon May 2, 2011 Comments at 11, CESA May 2, 2011 Comments at 5, ENBALA May 3, 2011 Comments at 4, ESA May 2, 2011 Comments at 11, and PaPUC May 2, 2011 Comments at 5 and Snowberger Affidavit at 8.

[53] Makarov, Y.V., Ma, J., Lu, S., Nguyen, T.B., ''Assessing the value of Regulation Resources Based on Their Time Response Characteristics,'' Pacific Northwest National Laboratory, PNNL—17632, June 2008.

[54] Beacon May 2, 2011 Comments at 8–9 (citing KEMA, ''Research Evaluation of Wind Generation, Solar Generation, and Storage Impact on the California Grid'' (prepared for the California Energy Commission), June, 2010).

as a percentage of peak load.[55] EDF also notes that ISO–NE and NYISO, two balancing authority areas with relatively high concentrations of faster-responding resources, procure relatively less frequency regulation capacity.[56]

37. ISO–NE agrees that fast-ramping resources provide benefits in the regulation market and states that the participation of fast-ramping resources in the New England regulation market is a factor in New England's low current regulation requirement. ISO–NE also states that all other things being equal, faster response is clearly better than slower response, for the reasons explained in the NOPR. PJM also argues the importance of procuring a mix of frequency regulation resources, some of which will have the ability to sustainably maintain their response.[57] Likewise, SoCal Edison states that the use of faster-ramping regulation resources, in conjunction with an efficient regulation dispatch algorithm and effective unit compliance with the dispatch signal should reduce the total amount of regulation capacity needed to perform regulation service.[58]

38. PIOs state that PJM estimates that a 10 percent or 20 percent reduction in its frequency regulation capacity procurement could result in a $25 million or $50 million, respectively, reduction in costs to consumers. PIOs state that this savings is large in comparison to the modest software costs required to implement these market rules.[59]

39. To illustrate the potential benefits of faster-ramping resources providing frequency regulation service, Primus Power extends the Beacon Power example[60] to one that applies more generally. Primus Power simulates the output of both what they define as a traditional resource and a fast-response resource. Both resources were assumed to have a capacity of 1 MW; the traditional resource could ramp 1 MW in 5 minutes, while the faster-response resource could ramp faster, mimicking the actual ability of a Primus Power energy storage resource. Primus Power's result supports that of Beacon, with the faster-responding resource following the AGC signal nearly perfectly, while the slower-ramping resource lags to the point of working against needed ACE correction.[61] Primus Power claims that this results in the faster-ramping resource providing approximately 76 percent more ACE correction.[62]

40. Commenters also mention the potential for reliability benefits stemming from the NOPR proposal. A123, Alcoa, Beacon, CESA, ESA, PIOs, and PJM all state that system operators can also expect to see reliability benefits from the integration of more faster-responding resources. PIOs state that the integration of more faster-responding resources will result in enhanced reliability because their ability to more quickly and accurately follow dispatch instructions will allow the system operator to better maintain system balance. Further, PIOs state that the concern over sustainability is unfounded. First, PIOs state that there is little reason to believe that faster-responding resources will completely displace traditional resources in the short or near term. Second, PIOs state that, given the short dispatch window system operators use, *i.e.* 5 or 10 minute dispatch intervals, storage systems can be assured of maintaining appropriate charge.[63]

41. Xtreme Power argues that the advantages of fast response storage systems is that they do not have problems such as efficiency degradation, emissions, exposure to peaking fuel prices, accelerated O&M, and typical siting issues. Xtreme Power also states that fast response storage systems do not require air quality permits like conventional fossil-fired generation resources, and can therefore be deployed to satisfy RTO or ISO needs for additional regulation service more quickly than new fossil-fired generation.[64]

42. A123 presents data from ERCOT indicating that incorporating storage resources capable of responding to a ''ramp-focused'' signal from the system operator will result in net ACE remaining within allowable NERC standards 100 percent of the time (as opposed to only 71 percent of the time when relying on traditional resources responding to a slower signal). A123 argues that this improvement will provide the system operator with a larger reliability margin. A123 presents this analysis as an illustration of the difference between traditional slower-ramping, unlimited energy resources and faster-ramping, limited energy resources.[65]

43. Alcoa contends that the NOPR proposal is likely to result in increased efficient operation of demand side resources and therefore a decrease in the amount of resources dedicated to frequency regulation service.[66] Alcoa contends that there are reliability benefits from integrating more direct load control demand response into system operations because these resources can ramp faster and therefore help restore system frequency more rapidly in the event of a system upset. Alcoa states that because this response can happen within seconds, it can help avert cascading system instability.[67]

44. PJM states that the use of faster-ramping resources will enhance system control. Better control will then lead to a reduction in uncompensated flows imposed on the system by a given balancing authority and will provide better individual control by that balancing authority.[68]

45. Beacon and ESA agree that the use of faster-ramping resources can result in reliability benefits, based on the expectation that the United States will add 145,000 MW of wind generation to the grid over the next ten years. They argue that this will result in increased supply variability, requiring increased system flexibility.[69] In the same vein, Beacon and ESA both cite CAISO's 20 percent renewable portfolio standard study, which showed that CAISO will require an additional 37 percent of regulation up and 11 percent of regulation down in the summer season.[70]

46. In addition Beacon and ESA assert that NYISO expects to need increased regulation and reserve resources as more wind is integrated into its system.[71] Beacon, CESA, and ESA also points to the Commission-sponsored, Lawrence Berkeley National Laboratory (LBNL)

[55] Beacon May 2, 2011 Comments at 9–10. *See also* ESA May 2, 2011 Comments at 9–10.

[56] EDF May 2, 2011 Comments at P 8.

[57] PJM May 2, 2011 Comments at 4.

[58] SoCal Edison May 2, 2011 Comments at 3.

[59] PIOs May 2, 2011 Comments at P 20 (citing PJM Staff, ''Problem Statement,'' Jan. 19, 2011), *available at http://www.pjm.com/~/media/committees-groups/committees/mrc/20110216/20110216-item-05-regulation-resource-performance-problem-statement.ashx.* The Problem Statement was presented to the PJM Markets and Reliability Committee, and led to the establishment of a PJM Regulation Performance Senior Task Force.

[60] Primus Power May 2, 2011 Comments at 2.

[61] *Id.* at 3.

[62] *Id.* at 5.

[63] PIOs May 2, 2011 Comments at P 22–23.

[64] Xtreme Power May 2, 2011 Comments at 4–5.

[65] A123 May 2, 2011 Comments at 6.

[66] Alcoa May 2, 2011 Comments at 5.

[67] *Id.* at 4.

[68] PJM May 2, 2011 Comments at 3.

[69] Beacon May 2, 2011 Comments at 11–12, ESA May 2, 2011 Comments at 11, (citing Rick Sergel, President and CEO, North American Electric Reliability Corporation, Executive Remarks, FERC Technical Conference on Integrating Renewable Resources into the Wholesale Electric Grid, March 2, 2009).

[70] Beacon May 2, 2011 Comments at 12, ESA May 2, 2011 Comments at 11–12 (citing CAISO, ''Integration of Renewable Resources: Operational Requirements and Generation Fleet Capability at 20% RPS,'' at 52, table 3.3 (2010), *available at: http://www.caiso.com/2804/2804d036401f0.pdf*).

[71] Beacon May 2, 2011 Comments at 12, ESA May 2, 2011 Comments at 11 (citing NYISO, ''Integration of Wind into System Dispatch White Paper,'' October 2008).

report that identified reliability concerns due to the declining frequency responsiveness of the US interconnections. In order to address these reliability concerns, LBNL recommends expanding the frequency control capability of the RTO and ISO interconnections using advanced technologies such as energy storage.[72]

47. Certain commenters [73] argue that the integration of additional faster-responding resources into the mix of frequency regulation resources will result in environmental benefits. For example, Beacon, CESA, and ESA cite to a 2007 KEMA and an October 2008 Carnegie Mellon University study in support. The KEMA study demonstrated that continued reliance on thermal generating units to meet increased regulation requirements could actually increase emissions of carbon dioxide ($CO_2$), nitrogen oxides ($NO_X$) and other pollutants, thereby defeating one of the main benefits of wind generation.[74] The Carnegie Mellon University study estimated that 20 percent of the $CO_2$ emission reduction and up 100 percent of the $NO_X$ emission reduction expected from introducing wind and solar power will be lost because of the extra ramping requirements they impose on traditional generation.[75] Finally, CPUC states that while the Commission's proposal is resource-neutral, it provides an economic incentive for resources to assist in reducing greenhouse gas emissions, compensate for variability of intermittent resources, and reduce costs to consumers through decreased regulation procurement requirements.[76]

48. Other commenters offer cautious support. For example, while Duke Energy concurs that the faster-ramping resource should be compensated for the actual amount of work that it performs, it cautions that faster-ramping resources may not always be needed, and that micromanaging power swings with faster resources may even result in over-control of the system.[77]

49. Some commenters argue that the Commission has not justified the increased costs that its compensation proposal may impose on load serving entities and other network integration transmission service customers.[78] Others state that the Commission failed to consider the impact on customers, who EEI states will ultimately bear the greatest share of costs, by balancing increased payments to faster ramping resources with savings through reduced regulation procurement or lower payments to slower resources. As a result, EEI argues, load will likely pay more for regulation service without any demonstrated reliability benefit or decrease in the need for other resources.[79] NY TOs, for example, request that the Commission require NYISO to estimate the net savings to consumers that would result if offering incentives for increased participation by dedicated frequency regulation resources induces more traditional capacity to shift away from the regulation market and into the energy market.[80] NaturEner requests that the Commission be vigilant against possible unintended consequences, such as increasing frequency regulation cost or requiring a greater volume of frequency regulation resources.

50. Invenergy cautions the Commission to evaluate whether alternative compensation structures, in addition to being higher cost, will also result in better quality regulation, lower quantities of regulation, and improved reliability.[81]

51. EPSA states that while it supports RTOs and ISOs employing a mileage component similar to that employed in the ISO–NE regulation market, that measure should be used to meet the objectives of regulation service and not require incremental performance levels, which do not yield incremental benefits.[82] EPSA states that adequate frequency is being achieved currently under NERC ACE control standards through reliability requirement CPS1 by each of the RTO and ISO balancing authorities. Thus, EPSA encourages the Commission to recognize that payment for enhanced performance should only be made if there is a material need for that performance.[83] Duke agrees, stating that no study has been conducted that indicates faster response is necessary for reliable system operations.[84] While CAISO notes that it is considering development of a performance payment for regulation service, it cautions the Commission against requiring a specific performance payment absent a conclusion that faster-ramping resources are required in all markets.[85]

52. Jack Ellis contends that the Commission's proposal to require a payment for performance has several flaws that cannot be easily corrected.[86] He argues that the first flaw is that the rate is likely to be administratively-determined. Mr. Ellis contends that there is no straightforward way for both the mileage payment and the capacity payment to be established through competitive offers. Therefore, he argues, the subjective judgment of the Commission and the operators of RTOs and ISOs will replace market forces in determining the value of frequency regulation service. Second, Mr. Ellis argues that because the rate will be administratively-determined, it will be controversial and subject to litigation. Third, Mr. Ellis contends that the performance payment will increase payments that must be recovered through uplift, complicating existing settlement procedures and efforts to reduce uplift. Fourth, Mr. Ellis argues that a performance payment will unduly discriminate against existing technologies that could respond faster but for the presence of barriers that have not, to date, presented themselves as obstacles. He explains that these barriers include the use of static ramp rates that reflect typical performance under all conditions rather than peak performance under conditions that exist at a point in time. Finally, Mr. Ellis contends that multi-part offers require complex rules to deter market manipulation because it is difficult to differentiate between legitimate and illegitimate bidding behavior.[87] Mr. Ellis asserts that it is neither reasonable nor cost-effective to pay a premium for faster ramping capability in situations where adequate ramping capability is available to meet the grid operator's needs.[88]

53. TAPS recommends that the Commission direct each of the affected regions to evaluate its own frequency regulation market rules, and change them only if they make a regionally-

[72] Beacon May 2, 2011 Comments at 13–14, CESA May 2, 2011 Comments at 6, ESA May 2, 2011 Comments at 13–14 (citing Joseph H. Eto, Use of Frequency Response Metrics to Assess the Planning and Operating Requirements for Reliable Integration of Variable Renewable Generation Lawrence Berkeley National Laboratory, LBNL–4142E, 2010, *available at http://certs.lbl.gov/pdf/lbnl-4142e.pdf*).

[73] *See e.g.*, EDF May 2, 2011 Comments at P10.

[74] Beacon May 2, 2011 Comments at 13, CESA May 2, 2011 Comments at 5, and ESA May 2, 2011 Comments at 12–13 (citing KEMA, Emissions Comparison for a 20MW Flywheel-based Frequency Regulation Power Plant, May 18, 2007).

[75] Beacon May 2, 2011 Comments at 13, ESA May 2, 2011 Comments at 13 (citing Katzenstein, W., and Jay Apt. Air Emissions Due To Wind and Solar Power. *Environmental Science & Technology.* 2009, 43, 253–258. (*available at http://pubs.acs.org/doi/pdf/10.1021/es801437t*)).

[76] CPUC May 2, 2011 Comments at 2–3.

[77] Duke May 2, 2011 Comments at 7.

[78] EEI May 2, 2011 Comments at 12, TAPS May 2, 2011 Comments at 4–5; Invenergy May 2, 2011 Comments at 2–3.

[79] EEI May 2, 2011 Comments at 12.

[80] NY TOs May 2, 2011 Comments at 5.

[81] Invenergy May 2, 2011 Comments at 2–3.

[82] EPSA May 2, 2011 Comments at 7.

[83] *Id.* at 6.

[84] Duke May 2, 2011 Comments at 2.

[85] CAISO May 2, 2011 Comments at 11–12.

[86] Jack Ellis April 12, 2011 Comments at 2.

[87] Jack Ellis April 12, 2011 Comments at 2–3.

[88] *Id.* at 3.

specific showing that the changes will increase consumer welfare.[89]

54. Some commenters dispute the position that the integration of more faster-responding resources for frequency regulation service will result in lower costs to consumers. Jack Ellis argues that, while it is possible that RTOs and ISOs could reduce the *short-term* cost of serving load by procuring less regulation, *long-term* costs would likely increase as supply resources that are pushed out of the frequency regulation market demand higher prices in other joint product markets such as capacity, energy, and other ancillary services markets. Mr. Ellis argues that this will happen because these resources will be losing revenue and will make up for that lost revenue by bidding in at higher levels in these other markets.[90] Mr. Ellis concedes that long-term savings could accrue, but only if resource adequacy requirements also decrease by an equal or greater amount or if the integration of more faster-responding resources allows a reduction in the amount of incremental resources that must be procured to deal with increases in variable generation.[91]

55. The NY PSC recognizes the potential benefits of the NOPR proposal, but it is uncertain what the cost and benefits of any proposed changes to the compensation mechanism would be within the NYISO.[92] Finally, PG&E argues that while the benefits expected by others might be seen, a cost-benefit analysis is appropriate.[93]

56. EEI, NY TOs, TAPS and Invenergy also express concern that the NOPR proposal will result in increased costs to load. EEI argues that load will likely pay more for regulation service without any demonstrated reliability benefit or decrease in the need for other resources. NY TOs requests that the Commission require NYISO to estimate the net savings that would result if the NOPR's compensation mechanism causes more traditional capacity to shift away from the frequency regulation market and into the energy market.

57. CAISO states that while it has conducted studies that indicate a preliminary need for additional ramping capability, the full scope of its intended studies is not complete and the benefits have not been quantified. CAISO claims that studies conducted to identify system needs under a 20 percent renewable portfolio standard indicate a potential need for dispatchable down ramping capability. However, CAISO argues that studies for a 33 percent Renewable Portfolio Standard are still ongoing, and that the Commission should not impose a specific compensation model for regulation resources without quantifying the needs and benefits of such a model.[94]

58. EPSA asserts that the argument that slow resources work against the system operator assumes a regulation performance standard that exceeds existing requirements. EPSA states that RTOs and ISOs are currently required to maintain ACE within acceptable limits over a ten-minute period, consistent with NERC standards (CPS1 and CPS2). Because AGC signals are sent on a four-second cycle, the benefits of fast-ramping resources that are realized within that cycle, such as increased ramping mileage, may not materially improve the operator's ability to regulate ACE on a ten-minute basis. EPSA argues that RTOs and ISOs already design and adjust regulation software to account for differing characteristics of regulation resources, and requiring increased payments is therefore unnecessary.[95]

59. While MISO states that it supports a mileage payment that compensates regulating resources for the wear and tear associated with performance, it also contends that there is presently no benefit to consumers within the MISO system that would justify payment for the provision of down regulation in addition to the capacity payment such market participants already receive. MISO recommends that the Commission continue to allow RTOs and ISOs to address whether netting or some other mechanism is appropriate to compensate regulating resources.[96]

c. Standardization of Market Rules

60. Several entities further oppose a uniform approach, arguing that existing market rules are different in the various RTOs and ISOs and disparate resources available in those markets creates a preference for a regional approach.[97] While PJM and some other RTOs support the goal of the proposed regulation, stating that it will result in more efficient price signals and more accurate payment for the provision of frequency regulation service, a subset of the RTOs and ISOs seek flexibility to, for example in the case of ISO–NE, allow compensation for performance using the ''mileage'' paradigm that has been used since 2003.[98] CAISO contends that there is not a single approach to incentivize resources to provide faster-ramping service, nor a single compensation scheme that fits all markets. Instead, CAISO recommends that the Commission direct RTOs and ISOs to examine through their stakeholder processes potential payment mechanisms that will address the Commission's concerns.[99] MISO adds that if the Commission determines in this Final Rule that compensation of frequency regulation providers requires further examination, the Commission should allow each RTO and ISO to develop the compensation mechanisms that are best for its region.[100] Duke and the NY PSC argue that every RTO and ISO has different operations and market mechanisms, and each RTO and ISO should determine fair and just compensation methodologies for frequency regulation resources, including faster ramping ones, that are specifically tailored for their market.[101]

61. Dominion recommends that, instead of standardizing compensation for frequency regulation, the Commission should direct the RTOs and ISOs to revise their frequency regulation markets so that they appropriately value faster-ramping resources. Dominion states that each region operates differently and that each RTO or ISO and its stakeholders are in the best position to develop changes to the compensation mechanism.[102]

62. PG&E argues that accuracy payments alone (without any up and down mileage component) could be equally effective in addressing the Commission's NOPR objectives, or alternatively, there may be entirely different approaches such as new regulation ramp-rate constraints and market components.[103]

63. Starwood/Premium supports the Commission's proposal for a performance payment and recommends that the Commission require that all RTOs and ISOs have standardized tariff provisions for the compensation of frequency regulation resources. They argue that a lack of standardization

[89] TAPS May 2, 2011 Comments at 2–3.

[90] Jack Ellis April 12, 2011 Comments at 6 (emphasis in original).

[91] *Id.* at 7.

[92] NY PSC May 2, 2011 Comments at 3.

[93] PG&E May 2, 2011 Comments at 8.

[94] CAISO May 2, 2011 Comments at 14–16.

[95] EPSA May 2, 2011 Comments at 7–9.

[96] MISO May 2, 2011 Comments at 6.

[97] Detroit Edison May 2, 2011 Comments at 2–4. Duke May 2, 2011 Comments at 203. EEI May 2, 2011 Comments at 13–14, IRC May 2, 2011 Comments at 8, MISO TOs May 2, 2011 Comments at 5–7, NYISO May 2, 2011 Comments at 5–6, PG&E May 2, 2011 Comments at 3–4, SCE May 2, 2011 Comments at 2, TAPS May 2, 2011 Comments at 4–5.

[98] ISO–NE May 2, 2011 Comments at 6. *See also,* NECPUC May 2, 2011 Comments at 4, NEPOOL May 2, 2011 Comments at 8–9.

[99] CAISO May 2, 2011 Comments at 2.

[100] MISO May 2, 2011 Comments at 7.

[101] Duke Energy May 2, 2011 Comments at 2, NYPSC May 2, 2011 Comments at 4.

[102] Dominion May 2, 2011 Comments at 3–4.

[103] PG&E May 2, 2011 Comments at 8–9.

leads to inefficient long-term investment and makes it more difficult for potential market entrants to analyze the economic viability of entering one market or another.[104] Xtreme Power seeks prompt implementation of the NOPR's proposed reforms, recommending that the Commission establish an expedited timeline for RTOs and ISOs to comply with the Final Rule.[105]

3. Commission Determination

a. Unduly Discriminatory Pricing

64. After developing and reviewing an extensive record in this proceeding compiled through a technical conference in which 11 experts in the field participated and issuance of a NOPR, and consideration of responsive pleadings submitted by 53 commenters, the Commission finds, pursuant to FPA section 206, that existing market rules for the compensation of frequency regulation resources are unjust and unreasonable, and unduly discriminatory or preferential. Current rules in the RTO and ISO tariffs which govern pricing and compensation for frequency regulation services in the RTO and ISO markets are unduly discriminatory, because resources are compensated at the same level even when providing different amounts of frequency regulation service; existing frequency regulation compensation methods fail to compensate certain resources for all of the service they provide, even when the system operator directs them to provide more frequency regulation service than other resources.

65. Beacon, Primus Power, and others argue and present evidence showing that current market rules allow for unduly discriminatory compensation among frequency regulation resources. Beacon provides data from its operations in ISO–NE [106] and NYISO [107] showing that two resources being asked to provide different amounts of frequency regulation service in real-time can be compensated at the same level. Beacon shows that it is even possible for the resource asked to provide more service to be paid less. Primus Power also provides evidence that resources that have different ramping capabilities can perform different amounts of work.[108] Given current market rules these resources would not be compensated in a way that reflects the different amount of work they have performed. Support for this proposal also comes from the RTOs and ISOs. PJM states that a performance payment provides an appropriate incentive to provide high quality regulation service by tying a portion of the total compensation to a resource's performance. In addition, PJM asserts that a performance payment will ensure resources provide accurate responses to control signals, in contrast with the current structure that provides no incentive to perform above a minimum threshold. We are convinced by the evidence presented by commenters that current market designs can result in rates that are unduly discriminatory and unjust and unreasonable.

66. As such, compensating resources for their capacity without compensating for the different amounts of frequency regulation service different resources provide fails to compensate for the additional work performed by the resources. Thus, contrary to CAISO's position that its market rules are not unduly discriminatory or preferential because they allow a faster-ramping resources to offer a relatively greater amount of capacity into the regulation market than a slower ramping resources with the same capability, we find that this fails to differentiate between the different amounts of frequency regulation service different resources provide, and therefore fails to compensate for the additional work one resource may be asked to do by the system operator compared to another resource. In this respect, CAISO's market design is no different from other RTOs and ISOs in that it compensates frequency regulation resources in a manner we find to be unduly discriminatory.[109]

67. Where the Commission finds an existing rate to be unjust, unreasonable, unduly discriminatory, or preferential, the Commission has a statutory mandate to set the just and reasonable rate.[110] The Commission agrees with commenters who argue that current methods used by RTOs and ISOs to compensate frequency regulation providers that fail to account for the actual service provided by resources are unduly discriminatory and that a resource's performance in following the AGC signal of the RTO or ISO should be taken into consideration when compensating that resource for providing frequency regulation service. We find that including a performance payment system will ensure just and reasonable rates, based on the actual service provided at costs established by competitive processes, and resulting in efficient price signals and appropriately compensating resources that are asked to do more work. [111]

b. Potential Market Benefits

68. The Commission's setting of a just and reasonable rate here is further supported by the many comments received in response to the NOPR's contention that faster responding resources have the potential to improve the operational and economic efficiency of the frequency regulation market. Commenters point to the more efficient utilization of all resources capable of providing frequency regulation when the payment to resources is structured to justly compensate resources for the work performed, thus freeing other resources to perform services more in line with their operational characteristics and increasing the efficiency of doing so. We find these comments persuasive. A123, Beacon, PNNL, CESA and ESA provide evidence demonstrating that faster-responding resources have the potential to lower frequency regulation capacity requirements, thereby improving market efficiencies. Further, experience in the organized markets that already have higher concentrations of faster-responding resources shows that less frequency regulation capacity procurement is required due to the availability of faster-responding resources to provide that capacity.[112]

69. We are not persuaded by commenters, like EEI, that argue that the Commission should encourage pilot programs to measure reliability benefits before adopting the NOPR proposal. First, we note that ISO–NE has carried out just such a pilot program.[113]

[104] Starwood/Premium May 2, 2011 Comments at 3.

[105] Xtreme Power May 2, 2011 Comments at 8.

[106] Beacon May 2, 2011 Comments at 6–7.

[107] *Id.* at 22–24.

[108] Primus Power April 18, 2011 Comments at 5.

[109] This is irrespective of whether the energy management system includes a priority dispatch for resources with faster-ramping capability or the system dispatcher sends control signals to the resource.

[110] 16 U.S.C. 824e.

[111] *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities,* Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 at 31,684 (1996), *order on reh'g,* Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g,* Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g,* Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC,* 535 U.S. 1 (2002). (''In the context of an emerging competitive market in generation, discriminatory practices that once did not constitute undue discrimination must be reviewed to determine whether they are being used to prevent the benefits of competition in generation from being achieved.'').

[112] Beacon May 2, 2011 Comments at 9–10, ESA May 2, 2011 Comments at 9–10, EDF May 2, 2011 Comments at P 8.

[113] *See* ISO–NE, *Market Rule 1, Appendix J, Alternative Technologies Regulation Pilot Program,*

Second, the Commission has determined that it must act to remedy undue discrimination in the current compensation for frequency regulation; the Commission is ensuring just and reasonable rates and protecting against undue discrimination among resources in doing so. It is irrelevant to this finding that the RTOs and ISOs currently comply with the relevant NERC standards, as argued by EPSA. EPSA's argument does not take away from the unduly discriminatory way in which the RTOs and ISOs compensate the resources that they procure in order to meet the NERC reliability standards. The reforms required here are necessary to remedy unduly discriminatory rates, but they will also enable greater competition in the organized markets and allow existing generation to provide more capacity in the energy markets and to run closer to their optimal output levels.

70. Contrary to EEI's arguments, the justness and reasonableness of the compensation mechanism directed here does not hinge on a finding that it will improve reliability. It is important to note, however, as discussed in the comments submitted by PJM, a resource's ability to quickly and accurately follow dispatch instructions will allow the system operator to better maintain system balance.[114]

71. We also disagree with the contention that, while short-run costs might decrease, long-run costs will increase due to displaced frequency regulation resources demanding higher prices in the energy market to make up for their lost frequency regulation revenue. There is no reason to believe that energy costs would increase when the supply of available energy capacity increases. If markets currently clear with a sufficient level of capacity, adding new capacity at a higher cost would not change that and would not lead to higher market-clearing prices in the energy market. Any market participant that chooses to raise its offer price runs the risk of its capacity not clearing in the energy market. And because energy resources would be able to operate at more efficient heat rates, they would be able to offer their capacity into the energy markets at a lower price.

72. We find persuasive the arguments made by commenters that we can expect to see market efficiency gains and reduced costs to consumers. For example, Beacon, ESA, Alcoa, Primus Power, and other commenters argue convincingly that sending efficient price signals will remove barriers to the entry of faster-ramping and more accurate frequency regulation resources. This in turn should lead to reductions in the amount of frequency regulation capacity that each balancing area authority needs to procure in order to maintain reliability. As the needed quantity of frequency regulation decreases, the net result should be a reduction in expenditures on frequency regulation, and ultimately a lower cost for electricity for consumers.[115] Commenters cite studies from PNNL, the California Energy Commission, and PJM, and data from ISO–NE and NYISO, that support this conclusion. PNNL showed that faster-ramping frequency regulation resources could be as much as 17 times more effective than conventional ramp-limited regulation resources[116] and the California Energy Commission found that storage resources can be up to two to three times as effective as adding a combustion turbine to the system for regulation purposes.[117] In addition, Xtreme Power notes that many newer technologies can operate in the frequency regulation market at lower costs than other, older technologies.[118] Therefore, we expect lower costs for consumers will result because less total capacity must be procured and because the capacity that is procured will be from lower-cost resources entering the market. Further, we share the view that the displacement of existing resources may result in those resources being able to more efficiently operate in the energy markets, submitting lower offers to supply energy, and thereby lowering costs to consumers in that market. Further, in the long-run, efficient price signals will also incent the efficient mix of resources to enter the market, thereby leading to lower long-run costs to consumers. We note that many commenters also cite potential reliability[119] and environmental[120] benefits that could be seen from the use of faster-ramping resources. Thus, we find that the changes mandated by this Final Rule will not only remedy the undue discrimination existing in current market designs, but have the potential to result in lower costs to consumers.

73. While Duke argues that faster-ramping resources may not always be needed to ensure the reliability of the system, and that the markets are currently operating without performance payments, the Commission finds that adding a performance payment to the compensation system will remedy undue discrimination and improve the efficiencies in the market and allow resources to provide those services that best suit them. Resources, no matter their type, will only receive the performance payment when they are actually called on to provide frequency regulation service, and they do so accurately. We also reject MISO's recommendation that we allow RTOs and ISOs to continue to only net energy balances and provide a capacity payment as compensation for frequency regulation service. As we state above, doing so can result in unduly discriminatory treatment of frequency regulation resources.

74. MISO's claim that its customers derive no benefit from down regulation is based on the presumption that MISO never directs any regulation resources to provide frequency regulation in that direction. Even if this is true, and MISO provided no data showing that it is, it does not change the fact that relying only on the capacity payment and net energy balancing results in discriminatory compensation when one resource is asked to provide more movement than others, a situation that can occur even if MISO only ever directs its resources to provide up regulation. Accordingly, as discussed further in the compliance section below, we will require the ISOs and RTOs to include a performance payment in their frequency regulation pricing mechanism.

c. Standardization of Market Rules

75. In response to certain commenters express concerns with requiring a uniform approach to compensation for frequency regulation, as described below, we will allow the RTOs and ISOs flexibility to design market rules that accommodate their markets, while at the same time addressing existing unduly discriminatory rates. In response to Starwood/Premium, it is not practical for the Commission to mandate that all RTOs and ISOs have identical provisions in their tariffs for the

*available at http://www.iso-ne.com/regulatory/tariff/sect_3/mr1_append-j.pdf.* The most recent informational filing from ISO–NE describing this program can be found at *http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=12768589* (Sept. 19, 2011).

[114] PJM May 2, 2011 Comments at 3–4.

[115] Primus Power May 2, 2011 Comments at 7.

[116] Makarov, Y.V., Ma, J., Lu, S., Nguyen, T.B., ''Assessing the value of Regulation Resources Based on Their Time Response Characteristics,'' Pacific Northwest National Laboratory, PNNL—17632, June 2008.

[117] Beacon May 2, 2011 Comments at 8–9 (citing KEMA, ''Research Evaluation of Wind Generation, Solar Generation, and Storage Impact on the California Grid'' (prepared for the California Energy Commission), June, 2010).

[118] Xtreme Power May 2, 2011 Comments at 5.

[119] *See generally* A123, Alcoa, Beacon, CESA, ESA, PIOs, and PJM.

[120] *See generally* Beacon, CESA, CPUC, ESA, and EDF.

compensation of frequency regulation resources. First, the RTOs and ISOs do not now have identical provisions for other market operations; mandating identical provisions in this regard could require completely overhauling all RTO and ISO tariffs. Second, identical tariff provisions are not necessary so long as all tariffs provide for just and reasonable and not unduly discriminatory or preferential rates.

76. PG&E suggests that an accuracy component alone could suffice to remedy undue discrimination in the compensation of frequency regulation resources. While this would account for the difference in the accuracy of resources, it would fail to acknowledge the different levels of work requested of each. Further, the Final Rule does not create a special class of resource or otherwise compensate any one type of resource to the exclusion of others. This Final Rule is resource-neutral, requiring that compensation reflect the frequency regulation service provided, no matter the resource.

77. Thus, we will require certain things of all RTOs and ISOs: to institute a two-part payment for frequency regulation and to account for a resource's accuracy in its compensation. However, as described below, in many instances we will leave to the individual RTOs and ISOs how best to meet these requirements.

*B. Specific Proposals*

78. The NOPR set forth a frequency regulation compensation mechanism for the RTO and ISO markets to ensure that pricing and compensation of frequency regulation service is just and reasonable and not unduly discriminatory or preferential. Specifically, the Commission proposed to require RTOs and ISOs to change their tariffs so that regulation resources receive a two-part payment. The first part of the payment is a capacity, or option, payment to have a certain amount of capacity held in reserve and not participate in the energy market in order to provide frequency regulation service. To produce the efficient market outcome, this proposed payment includes the marginal regulating resource's opportunity costs. The NOPR also set forth a second payment based on performance, as measured by the amount of MWh up and down movement the resource provides in response to the system operator's dispatch signal.[121] This performance payment takes into consideration a resource's accuracy in responding to that signal. The Commission preliminarily found that this compensation structure is necessary to ensure that pricing schemes for frequency regulation service in the organized wholesale electricity markets result in rates that are just and reasonable, and not unduly discriminatory or preferential.

1. Capacity Payment and Opportunity Cost

a. NOPR Proposal

79. The Commission proposed to require that each regulating resource be paid a uniform capacity payment that includes the opportunity cost of the marginal regulating resource. As discussed above, some RTOs and ISOs currently pay resource-specific opportunity costs or make-whole payments in addition to a capacity payment, while others incorporate the marginal unit's opportunity cost into a uniform regulation market clearing capacity price. In order to send an efficient price signal to frequency regulation resources, the Commission proposed that RTOs and ISOs base the clearing price for frequency regulation on the marginal resource's costs, including opportunity cost. The NOPR explained that paying a unit-specific opportunity cost distorts the market by basing the commitment of regulating units on incomplete market information, potentially leading to committing units with higher costs than other units not committed. This problem is especially glaring in a market such as this where some resources have no opportunity costs, resulting in disparate payments to resources.[122] Accordingly, the Commission preliminarily found that a frequency regulation compensation mechanism that includes a uniform clearing price with accurately determined opportunity costs will reduce errors in selecting the optimal portfolio of regulation suppliers each hour (and each day), which reduces total regulation costs to consumers and ensures that rates are just and reasonable and not unduly discriminatory or preferential.

80. In addition, the Commission preliminarily found that cross-product opportunity costs[123] should be calculated by the RTO or ISO, as it has the best information to determine a frequency regulation resource's opportunity cost due to not participating in the energy market. Further, the Commission proposed that, where appropriate, resources should be permitted to include inter-temporal opportunity costs in their capacity bid.[124] The Commission sought comment on its proposal to require each regulating resource to be paid a uniform capacity payment that includes the opportunity cost of the marginal regulating resource.

b. *Comments*

i. *The Capacity Payment*

81. A number of commenters support the Commission's capacity payment proposal.[125] They agree that this proposal will result in a price signal that will more efficiently select the portfolio of resources between the energy and regulation markets.[126] OMS states that it believes that when a consistent definition of opportunity cost is used and reflected in the market price, the optimal solution for commitment and dispatching across energy and reserves is accomplished.[127] Xtreme Power states that it supports the NOPR's proposal because a uniform capacity payment will help entice new entry into the frequency regulation market, thereby enhancing competition, whereas unit-

[121] This applies whether an RTO or ISO allows resources to sell regulation up and regulation down separately or requires resources to offer both regulation up and down as one product.

[122] For example, a storage resource that is only allowed to participate in the frequency regulation market has no opportunity costs related to the energy market, unlike a traditional generator. Therefore, the storage resource's capacity payment could be lower than the generator's capacity payment. These payments send inefficient signals to market participants.

[123] A cross-product opportunity cost, in this case, is the revenue a regulation provider loses because it is on stand-by to provide regulation and is not providing energy or another product.

[124] An inter-temporal opportunity cost represents the foregone value when a resource must operate at one time, and therefore must either forego a profit from selling energy at a later time or incur costs due to consuming at a later time. The trade-off presented to thermal storage provides an example of inter-temporal opportunity costs. A thermal storage operator would prefer to ''charge'' (heat bricks or freeze water) when prices are low. If such a resource were to provide frequency regulation, it could be asked to stop charging during low price periods and then be forced to charge during high price periods.

[125] Alcoa May 2, 2011 Comments at 3, Beacon May 2, 2011 Comments at 15–16, CESA May 2, 2011 Comments at 2, Dominion May 2, 2011 Comments at 4, Duke May 2, 2011 Comments at 6, EDF May 2, 2011 Comments at 5, ELCON May 2, 2011 Comments at 2–4, EPSA May 2, 2011 Comments at 5, ENBALA May 2, 2011 Comments at 8, ESA May 2, 2011 Comments at 16–18, IRC May 2, 2011 Comments at 7, ISO–NE May 2, 2011 Comments at 2 and 13, NEPOOL May 2, 2011 Comments at 7–8, NYISO May 2, 2011 Comments at 2, OMS May 2, 2011 Comments at 4, PG&E May 2, 2011 Comments at 7, PJM May 2, 2011 Comments at 5, Powerex May 2, 2011 Comments at 4, Primus Power May 2, 2011 Comments at 6, SoCal Edison May 2, 2011 Comments at 4, VCharge April 27, 2011 Comments at 2, and Xtreme Power May 2, 2011 Comments at 6.

[126] Dominion May 2, 2011 Comments at 4, ELCON May 2, 2011 Comments at 2–3,

[127] OMS May 2, 2011 Comments at 4.

specific capacity costs, paid on a unit-specific basis, will distort the market.[128]

82. Beacon, CESA, EDF, PG&E, Powerex, ENBALA, and ESA [129] agree that the capacity payment should be based on the marginal unit's costs, including its opportunity cost, in part because, as some parties note, a large part of a traditional resource's cost to provide frequency regulation is the lost opportunity cost associated with not providing energy. Several parties also note that RTOs and ISOs that pay unit-specific opportunity costs send a distorted market signal, possibly resulting in a higher cost resource being selected to provide service in lieu of a lower-cost resource. These commenters assert that a uniform capacity payment that includes opportunity cost will send the strongest price signal to low cost resources, and that the grid should experience a reduction in the overall market costs as low cost providers are encouraged to enter the market.[130] Specifically, Beacon states that such a payment will remove an economic barrier to entry of new alternative regulation technologies by ensuring that the capacity payment reflects the full value of that service.[131]

83. EPSA agrees that the most efficient dispatch and fairest regulation market design is one in which all resources compete on the same basis for the same price. EPSA states that the regulation market should consider each resource's as-bid cost plus any opportunity cost, such that the marginal as-bid plus opportunity cost of the resources selected should set a uniform clearing price paid to all. It argues that a uniform market clearing price will ensure consideration of all appropriate marginal costs for all regulation market participants and will result in price signals that will properly incent efficient future infrastructure investment.[132]

84. ENBALA notes that individual side payments made to resources are generally confidential and hidden in a broader declaration of total payments, only adding complexity and inefficiency to the markets. On the other hand, it states that an optimized total cost solution that calculates a uniform price utilizing opportunity costs provides transparency and clarity.[133]

85. PIOs state that not including opportunity costs in a uniform clearing price discriminates against newer resources with lower opportunity costs that, in a full marginal clearing price auction, would generally be more economic than traditional generators with higher opportunity costs stemming from operating at less than maximum capacity.[134] PIOs state that the proposed method would ensure that the market-clearing capacity price would reflect the total marginal costs of the last cleared unit, thereby eliminating the unlevel playing field that out-of-market opportunity cost payments currently impart.[135]

86. Beacon, CESA, and ESA note that PJM has recently filed with the Commission tariff revisions that will alter how it calculates opportunity costs for regulation capacity. In it's filing, PJM states that these revisions ''[h]elp to reduce after-the-fact, non-market changes to Regulation resource compensation, and enhance price signals that will better enable new, innovative resources and technologies to meet the system's Regulation needs * * *.'' [136] Beacon and CESA also contend that PJM has acknowledged that the value of frequency regulation capacity has been upwards of 33 percent higher than is reflected in market clearing prices,[137] a statement they assert is supported by PJM's market monitor.[138]

87. EPSA argues that ISO–NE pays unit-specific opportunity costs, which, according to EPSA, risks understating the regulation clearing price where a unit with an opportunity cost is the marginal resource.[139] Beacon, CESA, and ESA also note that at the technical conference, ISO–NE stated that it is moving in the direction of paying a uniform clearing price.[140] Beacon, ESA, CESA, and NEPOOL state that at the November 2010 NEPOOL Markets Committee meeting ISO–NE stated that a ''uniform clearing price provides more efficient long run investment signals.'' [141] NEPOOL states that ISO–NE indicated that it is open to considering the Commission's proposal for rules that would include opportunity costs in the uniform capacity payment, and that it was in the process of evaluating market rule changes that would accomplish this goal.[142]

88. At the same time, some commenters express concerns regarding the inclusion of opportunity costs in the market clearing price for frequency regulation capacity. In general, Duke agrees with the Commission's proposal to require the market clearing price for frequency regulation capacity to be uniform and reflect the marginal clearing unit's opportunity costs. However, Duke argues that it is uncertain how some storage devices would fit into a capacity payment mechanism. For instance, for a resource that is charging part of the time and discharging part of the time, Duke believes that when this resource is charging (*i.e.* acting like a load), it should not receive a capacity payment.[143]

89. NEPOOL and IRC request that the Final Rule afford ISO–NE and stakeholders sufficient flexibility to develop a solution that accomplishes the Commission's goals, given the current market design's consistency with the NOPR proposal and circumstances in the region.[144]

90. SoCal Edison argues that, while the CAISO day-ahead market is efficient in that it incorporates opportunity costs into a uniform clearing price for frequency regulation capacity, the real-time market has difficulties capturing inter-temporal opportunity costs due to its limited look-ahead time frame.[145]

91. PIOs recommend that after implementing the NOPR's proposed compensation approach in the RTOs and ISOs, the Commission should consider whether the capacity payment component of the method remains appropriate or whether, after some level of fast-acting resource penetration, the capacity payment proves no longer necessary.[146]

[128] Xtreme Power May 2, 2011 Comments at 6.

[129] EDF May 2, 2011 Comments at P 12–13 (citing Beacon Power June 25, 2010 Comments on May 26, 2010 Technical Conference (Docket No. AD10–11–000) at 44–45), PG&E May 2, 2011 Comments at 7, Powerex May 2, 2011 Comments at 4, Primus Power April 18, 2011 Comments at 6.

[130] Beacon May 2, 2011 Comments at 16, CESA May 2, 2011 Comments at 7, ESA May 2, 2011 Comments at 16, EDF May 2, 2011 Comments at P 12–13.

[131] Beacon May 2, 2011 Comments at 18.

[132] EPSA May 2, 2011 Comments at 5.

[133] ENBALA May 3, 2011 Comments at 8.

[134] PIOs May 2, 2011 Comments at P 7.

[135] *Id.* P 12.

[136] Beacon May 2, 2011 Comments at 17, CESA May 2, 2011 Comments at 7, ESA May 2, 2011 Comments at 16–17 (citing PJM's Proposed Package of Reforms to Establish Just and Reasonable Pricing for Operative Reserve Shortages in the PJM Region (Docket No. ER09–1063–004) at 3).

[137] Beacon May 2, 2011 Comments at 18 (citing Monitoring Analytics, LLC. ''2010 State of the Market Report for PJM.'' March 10, 2011).

[138] Beacon May 2, 2011 Comments at 18–19, ESA May 2, 2011 Comments at 17–18 (citing Monitoring Analytics, LLC. ''2010 State of the Market Report for PJM.'' March 10, 2011).

[139] EPSA May 2, 2011 Comments at 5.

[140] Beacon May 2, 2011 Comments at 17, CESA May 2, 2011 Comments at 7, ESA May 2, 2011 Comments at 17 (citing Transcript of May 26, 2010 Technical Conference at 149 (lines 15–16)).

[141] Beacon May 2, 2011 Comments at 17–18, ESA May 2, 2011 Comments at 17 (citing NEPOOL Markets Committee presentation, ''Alternative Technology Regulation Pilot Program.'' November 9, 2010).

[142] NEPOOL May 2, 2011 Comments at 6–7.

[143] Duke May 2, 2011 Comments at 6.

[144] NEPOOL May 2, 2011 Comments at 8, IRC May 2, 2011 Comments at 5–6.

[145] SoCal Edison May 2, 2011 Comments at 4–5.

[146] PIO May 2, 2011 Comments at 10.

ii. Calculation of Opportunity Costs

92. Most commenters state their belief that the RTO or ISO is in the best position to calculate a resource's opportunity costs. ENBALA, IRC, ISO–NE, NYISO, PIOs, PJM, and Xtreme Power state that the RTO or ISO should calculate cross-product opportunity cost for inclusion in the capacity payment, as the RTO or ISO has the best information to determine a frequency regulation resource's opportunity cost.[147] PJM states that the RTO or ISO is also in the best position to determine inter-temporal opportunity costs and should be allowed to calculate this as well.[148]

93. ISO–NE contends that if the resource owner were required to calculate its own cross-product opportunity costs, it would need to build into that bid an *ex ante* risk premium, to account for the possibility of large swings in the locational marginal price (LMP).[149] NECPUC shares ISO–NE's concerns over the possibility of *ex ante* determination of opportunity costs and requests that the Commission allow for flexibility to address the undue discrimination described in the NOPR.[150]

94. NEPOOL states that a proposal to include cross-product opportunity costs in the regulation clearing price was the subject of much discussion during original stakeholder consideration of the regulation market re-design in ISO–NE. At that time, according to NEPOOL, it was concluded that determining opportunity costs *ex ante* would be significantly more complex than the current ex post method and would entail higher implementation costs.[151] NEPOOL states that it has not explicitly considered the inclusion of inter-temporal opportunity costs, but it notes that there is no restriction on including these costs in a resource's bid.

95. ELCON is the only commenter to recommend that all opportunity costs be market-based and calculated by the supplier. ELCON states that the supplier is in the best position to determine these costs.[152]

96. ENBALA states that resources should submit regulation offers that reflect inter-temporal opportunity costs.[153] VCharge states that while it does incur inter-temporal opportunity costs, because it is a price-taker in the ISO–NE market where it operates, it is uncertain how the inclusion of this cost will affect its operation.[154]

97. Powerex generally supports inclusion of opportunity costs in the market clearing price. However, it argues that inter-temporal opportunity costs may be complicated to implement and lead to an uneconomic solution. In addition, Powerex believes that inter-temporal opportunity costs are unnecessary. Powerex states that resources that bid into a day-ahead regulation market will typically know its award by 1 p.m. prior to the delivery day. As such, the resource will have at least 11 hours to ensure its resource is at the desired state by participating in the wholesale energy market. Therefore, Powerex suggests that inter-temporal opportunity costs only be included in bids for resources that are precluded from participation in the wholesale energy market.[155] Powerex requests that the Commission clarify how inter-temporal opportunity costs will work in practice.[156]

98. CAISO states that its current market design allows a regulating resource to earn the marginal resource's opportunity cost, including cross-product opportunity costs. CAISO asserts that while there is no formal compensation mechanism for inter-temporal opportunity costs, bidding rules do not prevent scheduling coordinators from including them in supply bids. CAISO requests that the Final Rule not preclude the use of such informal compensation mechanisms to account for inter-temporal opportunity costs.[157]

c. Commission Determination

99. The Commission finds that paying to all cleared frequency regulation resources a uniform clearing price that includes the marginal resource's opportunity costs is just and reasonable. Accordingly, this Final Rule requires that all RTOs and ISOs with centrally-procured frequency regulation resources must provide for such opportunity costs in their tariffs. Further, this uniform clearing price must be market-based, derived from market-participant bids for the provision of frequency regulation capacity. As commenters recognize, contrary market pricing rules would consistently result in artificial and inaccurate prices that do not include the total cost of reserving regulation capacity. In addition, paying an out-of-market unit-specific opportunity cost, rather than a uniform clearing price, can result in the market basing the commitment of regulating units on bids that do not reflect the true cost of providing capacity, potentially leading to committing units with higher costs than other units not committed. By not paying a uniform clearing price, it is possible, for instance, to dispatch a unit with relatively low explicit capacity costs but very high opportunity costs, rather than a lower-cost unit which has relatively higher explicit capacity costs but low opportunity costs. This can result in distorted investment and entry decisions by market participants. Paying to all cleared frequency regulation resources a uniform price that includes opportunity costs will ensure that all appropriate costs are considered and will send an efficient price signal to current and potential market participants. This will also be consistent with long-standing Commission policy approving uniform clearing prices.[158]

100. We decline to specify, as requested by Duke, certain circumstances under which certain resources should not receive the capacity payment. Specifically, Duke provides the example of an energy storage resource, stating that it should not be eligible for a capacity payment during the time it charges in order to attain a charge state that allows it to provide frequency regulation service. Duke's example ignores the fact that a storage resource that is charging could be, at the same time, providing frequency regulation service at the direction of the system operator and therefore is appropriately paid for the capacity it sets aside to provide frequency regulation service. We recognize that some RTOs and ISOs manage the charge state of energy storage resources, while others do not. We find that it is appropriate to allow the RTOs and ISOs flexibility in addressing this issue and explaining any implications for compensation.

101. The Commission rejects PIOs' argument that the capacity payment should be wholly discontinued, in the event that it proves no longer necessary.

[147] ENBALA May 3, 2011 Comments at 8, IRC May 2, 2011 Comments at 7, ISO–NE May 2, 2011 Comments at 2, PIOs May 2, 2011 Comments at P 13, Xtreme Power May 2, 2011 Comments at 6.

[148] PJM May 2, 2011 Comments at 5.

[149] ISO–NE May 2, 2011 Comments at 13–14.

[150] NECPUC May 2, 2011 Comments at 3.

[151] NEPOOL May 2, 2011 Comments at 7.

[152] ELCON May 2, 2011 Comments at 4.

[153] ENBALA May 3, 2011 Comments at 8.

[154] VCharge April 27, 2011 Comments at 3.

[155] Powerex May 2, 2011 Comments at 6–8.

[156] *Id.* at 5.

[157] CAISO May 2, 2011 Comments at 17–18.

[158] *See, e.g., PJM Interconnection, L.L.C.,* 117 FERC ¶ 61,331, at P 141 (2006); *Commonwealth Edison Company,* 113 FERC ¶ 61,278, at P 43 (2005) (citing *New York Independent System Operator, Inc., order on reh'g,* 110 FERC ¶ 61,244, at P 65 n.76 (2005) (explaining that NYISO uses this method because ''under this model, the generator has the proper incentive to bid the lowest price that covers its marginal cost, knowing that if the market produces a higher price it will receive the market price'')); and *New England Power Pool,* 85 FERC ¶ 61,379 (1998), *reh'g denied,* 95 FERC ¶ 61,478, at 61,074 (2001) (approving market clearing prices in energy and ancillary services markets).

The capacity payment is necessary, because it exists in order to ensure that resources are indifferent between offering their capacity as a frequency regulation resource or as an energy resource. While the market-clearing price for frequency regulation service may eventually fall as lower-cost resources enter the market, the capacity payment provides resources that clear as frequency regulation capacity recompense for holding such capacity in reserve from the energy and other markets so that it is available to the system operator as frequency regulation capacity.

102. Regarding cross-product opportunity costs, which reflect the foregone opportunity to participate in the energy or ancillary services markets, the Commission finds that it is appropriate for the RTOs and ISOs to calculate this and include it in each resource's offer to supply frequency regulation capacity, for use when determining the market clearing price and which resources clear. Therefore we will require this. We agree with PJM, NYISO, IRC, and other commenters which state that the RTOs and ISOs have the necessary and accurate information for determining this cost. Further, ISO–NE and NEPOOL both express concern that requiring a resource to bid in its own cross-product opportunity costs could result in inefficient prices as resources include a risk premium. We disagree with ELCON's argument that the resource is in the best position to determine its cross-product opportunity costs. Because cross-product opportunity costs are calculated based on the clearing prices of other energy and ancillary service products, specific knowledge of the market variables used to formulate these prices is necessary in order to accurately calculate the opportunity cost of providing frequency regulation service. RTOs and ISOs have unique access to this information and, accordingly, RTOs and ISOs are in the best position to perform accurate cross-product opportunity cost calculations.

103. Regarding inter-temporal opportunity costs, there is little agreement on how these costs should be calculated, and to whom that responsibility should fall. The Commission will require the RTOs and ISOs to allow for inter-temporal opportunity costs to be included in a resource's offer to sell frequency regulation service, with the requirement that the costs be verifiable. We find that inter-temporal opportunity costs are a legitimate cost for a market participant to include in its offer to sell frequency regulation and thus must be allowed. However, we will allow the RTOs and ISOs to propose who is responsible for calculating such costs, whether the RTO or ISO itself or market participants.

2. Payment for Performance

a. NOPR Proposal

104. The Commission preliminarily found that requiring a component in the frequency regulation compensation mechanism that recognizes the resource's real-time provision of frequency regulation service is necessary to remedy undue discrimination and ensure just and reasonable rates in the organized wholesale electricity markets.[159] As stated in the NOPR, resources that provide more value to the grid by doing more of the work to correct ACE deviations, through the provision of frequency regulation service, should be paid more than resources doing less work. Accordingly, taking performance into consideration is a key element of ensuring that any frequency regulation compensation mechanism is just and reasonable. The Commission, therefore, proposed to require that all regulating resources be paid for their performance, for instance, with this payment taking the form of a payment for each MWh, up or down, provided by the resource in response to the system operator's dispatch signal. Specifically, an RTO or ISO would determine the total movement up and down and then multiply that sum by a price-per-MWh of ACE correction. The NOPR solicited comment on the proposed method and whether there are alternative payments for performance that address concern about undue discrimination.[160]

105. The Commission also proposed that the price-per-MWh of ACE correction be market-based. Specifically, resources would specify the capacity (in MW) available to provide regulation, a ramp rate (in MW/minute), and bid into the market a price-per-MW ramping capability or a price-per-MWh of ACE correction. The RTO or ISO would then determine the least cost set of resources and set the price-per-MWh of ACE correction based on the bid of the marginal regulating resource. The alternative to a market-based price is to use an administratively set price-per-MWh of ACE correction. The Commission sought comment on this proposal as well as the alternative of an administratively determined price, including how an administratively determined price could be set.

[159] NOPR, 134 FERC ¶ 61,124 at P 37.

[160] *Id.* P 37.

b. Comments

i. Market-Based Pricing Versus Administratively-Determined Prices

106. Regarding whether the price used to calculate the performance payment should be market-based or administratively-determined, the majority of commenters who commented on this topic expressed a preference for a market-based option.[161] They argue that market-based pricing will encourage resources with the lowest costs to provide regulation movement to enter the market and ensure that rate-payers receive the benefit of new low-cost resources competing in the market. According to commenters, allowing the market to establish the compensation for resources' performance will allow more economically efficient outcomes and create appropriate incentives for market participants. Specifically, they contend, a market-based price would encourage resources to make bids that accurately reflect their costs of ramping up and down, and thus would ensure that resources which can provide ramping capability most cost-effectively will be selected and, in turn, should lower costs to customers.[162]

107. Powerex claims that use of a forecast for ACE correction would allow RTOs and ISOs to include the mileage payment in their co-optimization and determine an appropriate market clearing price for the mileage payment.[163] PJM states that the proposed dollars-per-MW bidding and market-clearing mechanisms best capture the market-based value of ramping regulating units, and can be efficiently and accurately modeled in market-clearing algorithms. PJM suggests that on-going updates to these models will be required to ensure that market results and compensation correctly align with resource performance.[164]

108. TAPS argues that to require that performance payments for frequency regulation service be administratively-determined would be especially disruptive to region-specific market designs and unwarranted. It argues that it would not be in the public interest to then require that prices in this market segment be administratively-

[161] Beacon May 2, 2011 Comments at 30, ESA May 2, 2011 Comments at 29, EDF May 2, 2011 Comments at P 17, ELCON May 2, 2011 Comments at 4, PJM May 2, 2011 Comments at 7, Powerex May 2, 2011 Comments at 8–9, SoCal Edison May 2, 2011 Comments at 10, TAPS May 2, 2011 Comments at 8, Xtreme Power May 2, 2011 Comments at 7.

[162] Xtreme Power May 2, 2011 Comments at 7.

[163] Powerex May 2, 2011 Comments at 8.

[164] PJM May 2, 2011 Comments at 7.

determined.[165] TAPS notes that no showing has been made, and there is no reason to expect, that the maximum necessary price to elicit frequency response offers cannot be revealed through a properly structured bid-based market.[166]

109. Although supporting a market-based price, Powerex argues that if the Commission finds that an administratively-set price is appropriate, that price should be based on the frequency regulation capacity price, in order to provide transparency and certainty for market participants.[167]

ii. Calculating the Performance Payment and Bidding Parameters

110. Regarding the form a performance payment should take, Beacon and ESA both state that they support a performance payment that takes the form of a payment for each MW, up or down, provided by the resource in response to the system operator's dispatch signal multiplied by a market-based price per MW-movement based on the marginal unit's cost to ramp up and down.[168] Beacon argues that this would correspond to each resource's contribution to ACE correction and is consistent with what it views as industry best practices, *i.e.* the current policy in ISO–NE.[169] Beacon cites data from its ISO–NE operation to show that the mileage payment it receives is approximately three times that of an allowable slower-responding resource, yet it actually does more than three times the work.[170]

111. Beacon and ESA contend that a payment to all resources based on their MW movement, up and down, will encourage all resources to offer as much ramp-rate capability as possible because the resource will be compensated for the additional movement (and additional costs it incurs) to provide this service.[171] Beacon and ESA further argue that having bidding parameters that match the way payments are ultimately calculated will aid resources in determining their bidding strategy.[172] Beacon and ESA recommend that the appropriate bidding parameters include the total MW offered for frequency regulation and the $/MW of ramping capability. They contend that the cost for ramping up and down in response to an RTO or ISO control signal is the increased fuel costs of operating in a non-steady state condition, the increased costs of operations and maintenance due to additional ''wear and tear'' on the equipment, and potentially the cost of decreased cycle life.[173]

112. CESA recommends that each resource should bid in its price-per-MW of movement for regulation service and the system operator should set the price-per-MW used in the performance payment at the price of the marginal unit's bid. While CESA notes that another method for calculating the performance payment would be to base it on the total amount of MWh of ACE correction, no matter the method used, it is most important that the bidding parameters match the way compensation is calculated so that resources can most easily determine their bidding strategy.[174]

113. CAISO questions whether the ISO's bid optimization and ultimate performance payment should reflect a resource's pre-certified ramping capability or a resource's actual performance for which a resource would receive a payment for moving in either the up or down direction.[175]

114. OMS and VCharge ask the Commission to clarify the need for both a price-per-MWh ramping capability and price-per-MW of ACE correction parameters in a frequency regulation service offer.[176] OMS indicates that it is not consistent to have both of these pricing parameters in the ramping portion of the frequency regulation offer. OMS states that it interprets price-per-MWh as a parameter on which the system operator would make dispatch decisions, while price-per-MW of ACE correction would be a parameter used for determining the market-clearing price for ramp. Once a clarification is made, OMS requests further time to comment on that clarification.[177]

115. ENBALA argues that compensating resources based on a price-per-MW of ACE correction bid is not advisable. It argues that calculating such a bid price would be difficult for the resource, as would be verification of the bid. It contends that settlement would also be complex. ENBALA recommends instead that resources submit a price-per-MW ramping ability, which would reflect the costs associated with movement of the device, *i.e.* variable O&M costs such as fuel consumption and mechanical fatigue.[178]

116. Primus Power recommends that compensation for performance be based on the net energy contribution of a resource. Primus Power defines this as the total MWh delivered by the resource in the direction of the control signal minus the total MWh delivered against the control signal (or delivered in excess of the control signal). This would determine the quantity for which the frequency regulation service provided would be compensated. To determine the price, Primus Power proposes using the market clearing price for frequency regulation capacity as a basis. Specifically, Primus Power recommends multiplying the capacity price by some weight, and then multiplying this by the MWh the resource delivered over the settlement period, as a fraction how much an ''ideal'' resource would have delivered.[179]

117. Regarding how resources would bid their costs into such a market, NEPOOL states that the ISO–NE regulation market currently operates on a system that minimizes total customer payment, and it supports the continued application of the current market design.[180]

118. TAPS argues that a resource's offering price-per-MW of ACE correction should be expected to typically reflect only variable operating costs for oscillating a resource's output instead of holding it steady. TAPS provides an example to illustrate that the resource's offer price for frequency regulation service ought to reflect the amount of revenue that would make the resource indifferent between being dispatched up and down around its set point over some period of time and sitting constant at the set point. This offer can be calculated by the resource.[181] In addition, TAPS notes that bids for frequency regulation may require mitigation in certain circumstances. TAPS states that regional market designs should provide for mitigation, and the Commission should defer to the regions to decide what mitigation scheme would be effective.[182]

119. SoCal Edison encourages the Commission to consider both *ex ante* and *ex post* calculation of market prices. SoCal Edison states that an *ex ante* approach will likely make it easier to

[165] TAPS May 2, 2011 Comments at 8.

[166] *Id.* at 9–10.

[167] Powerex May 2, 2011 Comments at 9.

[168] Beacon May 2, 2011 Comments at 19, ESA May 2, 2011 Comments at 27–28.

[169] Beacon May 2, 2011 Comments at 27.

[170] *Id.* at 28.

[171] Beacon May 2, 2011 Comments at 29, ESA May 2, 2011 Comments at 28.

[172] Beacon May 2, 2011 Comments at 29, ESA May 2, 2011 Comments at 28.

[173] Beacon May 2, 2011 Comments at 30, ESA May 2, 2011 Comments at 29.

[174] CESA May 2, 2011 Comments at 9.

[175] CAISO May 2, 2011 Comments at 19.

[176] OMS May 2, 2011 Comments at 7, VCharge May 2, 2011 Comments at 4 (citing the NOPR at P 37).

[177] OMS May 2, 2011 Comments at 7–8.

[178] ENBALA May 2, 2011 Comments at 8.

[179] Primus Power April 18, 2011 Comments at 6.

[180] NEPOOL May 2, 2011 Comments at 9.

[181] TAPS May 2, 2011 Comments 9–10.

[182] *Id.* at 10.

establish a clearing price for the service, whereas an *ex post* performance payment ensures the market only pays for what was delivered.[183]

120. Both ESA and Beacon recommend that the Commission allow the RTOs and ISOs to base their compensation schemes on a single bid if it so chooses; that is, as is done in ISO–NE, one bid can be submitted reflecting the costs of frequency regulation capacity, and from this, the payment for both capacity and performance can be determined. Beacon and ESA state that this has been used successfully in ISO–NE, where the split of compensation is administratively determined in order for an ''average'' resource to receive half its compensation from the capacity payment and half from its performance payment. Both ESA and Beacon state that while this does not allow ISO–NE to optimize in real-time like a two-bid market would, it does send the correct price signals to market participants.[184]

iii. Creating a New Ancillary Service Product

121. Various commenters suggest that the Commission specifically define faster- and slower-ramping resources, or use speed to distinguish various resources for purposes of calculating the performance payment.

122. For example, Viridity and Starwood/Premium recommend that ''fast'' and ''slow'' resources be treated as different products or offering different services.[185] Viridity further recommends that the Commission not change how slow resources are compensated for the provision of frequency regulation service, *i.e.* make no performance payment to slow resources. However, Viridity would have the Commission require that a performance payment be made to fast resources providing frequency regulation service.

123. Viridity also suggests that the performance payment made to fast responding resources be based on the price-per-MWh of ACE correction, rather than a price-per-MW of ACE correction.[186]

124. Manitoba Hydro asserts that when regulation prices are market-based, ancillary market design should establish a clearing price that preserves the value ratio between fast and slow ramping resources. Manitoba Hydro suggests that this could be accomplished by establishing fast, medium and slow regulation products, and clearing the market with the constraint that more valuable products must clear at a higher price.[187]

125. CAISO argues that system operators could define a fast-ramping ancillary service product with a ramp requirement based upon a change in output over a period of time, such as four seconds. It contends that System operators would then use fast-ramping resources as primary responders to changes in ACE.

iv. Other Comments Regarding the Performance Payment

126. SoCal Edison adds that after market system design, each market will have to be scrutinized for criteria such as barriers to entry. If analyzing the new system does not reveal workable competition, then the Commission will have to define market power mitigation before letting such markets run.[188]

127. TAPS does allow that in some necessary instances, regional market designs should provide for mitigation, and it may well be appropriate to mitigate offers down to an administratively-determined level where the resource is indifferent between providing frequency regulation service (actual movement up and down) and remaining steady at a given set point.[189]

c. Commission Determination

i. Market-Based Pricing Versus Administratively-Determined Prices

128. The Commission will require use of a market-based price, rather than an administratively-determined price, on which to base the frequency regulation performance payment. This price must reflect the market participant bids submitted by resources for the provision of frequency regulation service. As commenters note, a market-based price for frequency regulation will encourage market participants to accurately bid their cost to provide the service. A resource that chooses to increase its offer price could find itself in a position of not being dispatched and, therefore, losing potential revenues. Additionally, unlike an administratively-based price, which could be subject to a potentially lengthy stakeholder and/or adjudicative process each time the price was changed, a market-based price will better reflect current system conditions and need for frequency regulation, thereby providing market participants with an efficient price signal.

129. Further, as PJM states, a market-based price can be efficiently and accurately modeled in the market-clearing algorithm. For these reasons, we find it just and reasonable to require that all RTOs and ISOs base their payment for frequency regulation service on a market-based price.

130. However, as described more fully in the next section, unlike what was proposed in the NOPR, we will not require a specific methodology for how that market-based price shall be determined. We will not mandate specific bidding parameters or other technical details that will determine the pricing methodology. We will require two-part bidding; though we are mindful that CAISO and ISO–NE each noted the expected difficulty or ease with which the proposed NOPR changes can be integrated into existing market solution software. ISO–NE's concerns about two-part bidding, in particular, are addressed by the flexibility we will allow in the bidding parameters that the RTOs and ISOs may use and in that we will not mandate a specific method by which the RTOs and ISOs must specify their market-clearing algorithms that determine dispatch. The Commission recognizes that two-part bidding solutions are not insignificant problems.[190] However, they can be overcome, and we believe the time-frame that we have required will allow sufficient time to overcome such hurdles. Beyond this, the Commission will withhold judgment on the RTOs and ISOs' specific proposals until receiving the compliance filings ordered below. As TAPS states, market participants have invested heavily in market software and hardware, and the different regional markets operate slightly differently in how their markets function. We conclude that mandating a standardized solution on this issue could result in significant costs and disruption of existing stakeholder processes. Therefore, we will allow the RTOs and ISOs to determine how to implement the market-based pricing we are mandating, as discussed in the compliance section below.

ii. Calculating the Performance Payment and Bidding Parameters

131. Because RTO and ISO markets do not all operate in the same manner, the Commission will not mandate a

[183] SoCal Edison May 2, 2011 Comments at 10.

[184] Beacon May 2, 2011 Comments at 31–33, ESA May 2, 2011 Comments at 30–32.

[185] Viridity May 2, 2011 Comments at 2.

[186] More explanation can be found below in our discussion of accuracy, where Viridity's proposal for an accuracy measure is discussed. Viridity May 2, 2011 Comments at 6.

[187] Manitoba Hydro May 2, 2011 Comments at 4.

[188] SoCal Edison May 2, 2011 Comments at 10.

[189] TAPS May 2, 2011 Comments 10.

[190] The problem of simple scoring rules used to solve two-part bids is illustrated, for example, in Swider, Derk J. ''Efficient Scoring-Rule in Multipart Procurement Auctions for Power System Reserve'' *IEEE Transactions on Power Systems,* 22(4): 1717–1725.

particular form that the performance payment must take. Nor will we mandate specific bidding parameters or other technical specifications (including requirements for qualification as a regulation resource). Given regional differences, we direct the RTOs and ISOs to propose the specific technical requirements that will meet the requirements of this Final Rule. We will require, however, that the clearing performance price be paid uniformly to all resources cleared during the same settlement period, for the same reasons discussed above. A uniform clearing price sends an efficient price signal to all current and potential market participants. Further, paying a uniform clearing price in this instance is consistent with long-standing Commission policy.[191]

132. While several commenters state their preference for a particular method for calculating the performance payment, there is no compelling evidence that one method will work best in all RTOs and ISOs. As CESA notes, there could be more than one efficient way to compensate performance; but resources should be paid a uniform price for their frequency regulation service.

133. In addition, we clarify that the NOPR proposal was not intended to tie the performance payment explicitly to a resource's ACE correction. The performance payment proposed in the NOPR was based on the amount of up and down movement, in megawatts, the resource provides in response to a control signal.[192] We recognize that, if an RTO or ISO were to compensate a resource based on how well it corrects ACE, resources would have the incentive to try to second-guess dispatch signals in an effort to meet this potentially contradictory goal. A resource's performance must be measured based on the absolute amount of regulation up and regulation down it provides in response to the system operator's dispatch signal.

134. In response to SoCal Edison's argument that any performance payment system should only pay for services actually provided, the Commission agrees and believes that measuring accuracy, as is required below, will account for this. In response to OMS and VCharge, who question the need for both a price-per-MWh ramping capability and price-per-MW of ACE correction, the Commission did not intend to state that there was a need for both alternatives.[193]

iii. Creating a New Ancillary Service Product

135. In response to Manitoba Hydro and other comments, we do not believe it is necessary to define faster- and slower-ramping resources or use speed to distinguish among resources to create new ancillary services products based on the ramping speed in the context of this rulemaking. The purpose of this Final Rule is to remedy undue discrimination in compensation for the existing frequency regulation service employed by RTOs and ISOs by ensuring that frequency regulation resources are compensated based on individual performance and ensure that all eligible resources, not just traditional resources and not just non-traditional resources, providing frequency regulation service within RTO or ISO regulation markets are compensated at the just and reasonable rate. While we do not choose to require additional categories of ancillary services based on ramping speeds in the context of this rulemaking, we do recognize that there may be value in having a certain level of granularity in defining the ancillary service products. Most of the ancillary services are defined by certain characteristics, and we understand that numerous different ancillary service products could be created based on the characteristics of different suppliers. We understand that the RTOs and ISOs and market monitors will continue examining the ancillary service product definitions and may propose to create new ancillary services as market needs evolve.[194]

iv. Other Comments Regarding the Performance Payment

136. As to SoCal Edison's and TAPS's concerns about the issue of market power mitigation, we agree that there may be circumstances under which an RTO or ISO may wish to test for market power and potentially impose mitigation. We note that the Commission has approved market power mitigation in frequency regulation markets.[195] This rule requires fundamental changes to the way RTOs and ISOs procure and compensate frequency regulation resources, which may render existing RTO and ISO market power rules insufficient for purposes of addressing market power concerns. Given the Commission's recognition of the need for proper mitigation methods in the current RTO and ISO markets, we will require the RTOs and ISOs either to submit tariff provisions for market power mitigation methods appropriate to redesigned frequency regulation markets or to explain how their current mitigation methods are sufficient to address market power concerns given the changes required in this rulemaking.

3. Accuracy

a. NOPR Proposal

137. The Commission proposed that the performance payment reflect the resource's accuracy in following the system operator's dispatch signal. Specifically, the Commission proposed that the accuracy be measured by the RTO or ISO using currently available telemetry technology. If an RTO or ISO receives telemetry data every 10 seconds, for instance, it would be able to measure over the course of 5 minutes how often the resource was delivering exactly the megawatts requested. The resource would then be compensated for the fraction of its mileage that met the dispatch signal. This would provide a disincentive to deviate from the dispatch signal, which incorporates actual ramping ability.

138. The Commission noted that there was little agreement among the technical conference panelists on how accuracy should be incorporated into the frequency regulation market design. Therefore, the NOPR sought comments on alternative methods, including methods to incorporate accuracy into the ACE correction calculation. The Commission posited that it is possible to approximate how a resource contributes to correcting ACE by taking the difference between the energy it provides that was in the direction needed to correct ACE at any moment and the energy that was in the direction opposite to what was needed to correct ACE. Thus, a resource's payment for ACE correction could only include the MWh that were actually correcting ACE. The Commission sought comments on how to structure payments for frequency regulation that compensate a resource for its contribution to ACE correction. We sought comment on whether this method could result in a resource being penalized through lower mileage even

[191] *See supra* n.153.

[192] NOPR, 134 FERC ¶ 61,124 at P 34 and 37.

[193] *See* 134 FERC ¶ 61,124 at P 38. The sentence should have read ''Specifically, resources would specify the capacity (in MW) available to provide regulation, a ramp rate (in MW/min), and bid into the market a price-per-MWh ramping capability or price-per-MW of ACE correction.''

[194] *See, e.g.,* CAISO's flexible ramping constraint, *available at http://www.caiso.com/informed/Pages/StakeholderProcesses/FlexibleRampingConstraint.aspx.*

[195] *See PJM Interconnection, LLC,* 125 FERC ¶ 61,231 (2008).

when it is following the system operator's dispatch signal.[196]

b. Comments

139. A number of commenters state their support for some form of accuracy adjustment for frequency regulation service performance payments.[197] Most, however, are clear in their recommendation that an accuracy measure reflect how accurately a resource follows the system operator's dispatch signal and not be based on any measure of how the resource contributes to ACE correction. Several also emphasize the importance of allowing RTOs and ISOs flexibility in how they devise their own accuracy measures.

140. Beacon, CESA, and ESA state that an accuracy metric will encourage resources to accurately respond to the control signal sent by the ISO and will ensure that the performance payment is truly tied to the resource's actual service provided.[198] Beacon and ESA state that the NYISO's performance index is a good example of an accuracy metric. Beacon also states that, while NYISO provides a good model, the 30 second snapshot of accuracy is too slow to capture the accuracy of a storage resource that can dramatically change its output each 6 second AGC cycle. Therefore, Beacon recommends that any accuracy metric be capable of measuring performance each AGC dispatch cycle and account for any latency in the ISO's dispatch software.[199] Further, Beacon and ESA warn that compensating a resource for accuracy alone is not sufficient to send efficient price signals. They contend that the accuracy adjustment must be tied to a performance payment.[200]

141. ENBALA believes that a real-time accuracy metric should be calculated by the RTO or ISO to reflect how accurately the regulation provided by a resource follows the regulation requested. But ENBALA cautions that the accuracy metric should take into account the time needed to communicate data and the frequency with which the dispatch signal can change.[201] Like ENBALA, Manitoba Hydro supports an accuracy measure provided that telemetry update frequency and latency are adequately considered.[202]

142. In response to the Commission's inquiry about whether a resource should be compensated for performance when it is moving in a direction that is against ACE, Beacon, CESA, and ESA recommend subtracting from the sum of the resource's total MW of up and down movement any movement that is not in the direction of correcting ACE. They state that this could penalize a resource even when it is following the system operator's dispatch signal, but that this is appropriate because it further aligns the payment the resource receives with the value it provides to the grid.[203] At the same time, Beacon and ESA acknowledge that a reward or penalty structure should not change the requirement that a resource follow the operator's dispatch signal.[204]

143. Duke agrees with the Commission's proposal that a resource's accuracy in following a dispatch signal should be compensated through a performance payment. However, Duke does not agree with the proposal that a resource be penalized if its MWh contribution works against needed ACE correction yet is compliant with the system operator's dispatch signal. Duke cites the situation where a system operator is dispatching resources, but the dispatch signal is not designed just to correct ACE.[205]

144. The IRC, ISO–NE, NEPOOL, CAISO, PJM, MISO, NYISO, OMS, and SoCal Edison recommend that the accuracy metric should be designed to provide an incentive to follow operational instructions that facilitate compliance with the system operator's dispatch signal, rather than focusing narrowly on rewarding ACE correction efforts.[206] ISO–NE asserts that compensation for accuracy should not be based solely on how well resource output tracks ACE. It contends that this creates an incentive for a resource owner to ignore, or second-guess, an ISO's dispatch signal. ISO–NE explains that central dispatch allows an ISO to take advantage of its superior information to produce a coordinated AGC dispatch that produces the lowest cost result. This dispatch may differ from the outcome that would result from resources individually chasing after the expected ACE needs or otherwise second-guessing the operator's dispatch signal. CAISO suggests that paying for response to a control signal rather than ACE correction would be easier to implement, avoids potential adverse impacts to slow resources, and does not tie compensation to one measure of ACE.

145. At the same time, ISO–NE warns that compensation not be based solely on how closely a resource tracks its AGC dispatch signal. ISO–NE imagines a situation where frequency regulation resources actually reduce their reported ramping capability and offer in less capacity in order to more easily follow the dispatch signal. ISO–NE states that this could defeat the entire purpose of paying for performance.[207] With this in mind, ISO–NE recommends that the Commission adopt a final rule that provides the flexibility for accuracy considerations to be incorporated into the determination of frequency regulation service eligible for compensation, or into other measures of regulation performance that may be more appropriate for RTOs and ISOs in different regions of the country.[208] ISO–NE also notes that measuring accuracy is complex because it requires knowing the realistic performance characteristics of each resource and presumes reliable instrumentation and dependable communications.[209] NEPOOL supports retaining ISO–NE's current method of measuring performance.[210]

146. In addition, CAISO argues that linking the performance payment to ACE correction adds unnecessary complexity to settlement of regulation transactions.[211] MISO also raises the concern that the introduction of an accuracy consideration to the performance payment could require substantial modifications to existing

[196] NOPR, 134 FERC ¶ 61,124 at P 40.

[197] Alcoa May 2, 2011 Comments at 2, Beacon May 2, 2011 Comments at 38–39, CESA May 2, 2011 Comments at 11, ESA May 2, 2011 Comments at 34–36, Duke May 2, 2011 Comments at 7, EDF May 2, 2011 Comments at 21, ENBALA May 2, 2011 Comments at 3, IRC May 2, 2011 Comments at 3–4, ISO–NE May 2, 2011 Comments at 6–8, NEPOOL May 2, 2011 Comments at 10, Manitoba Hydro May 2, 2011 Comments at 3, NYISO May 2, 2011 Comments at 2 and 4–5, OMS May 2, 2011 Comments at 6–7, PJM May 2, 2011 Comments at 7–8, Powerex May 2, 2011 Comments at 9–10, Primus Power May 2, 2011 Comments at 6, SoCal Edison May 2, 2011 Comments at 2, Viridity May 2, 2011 Comments at 4–5, and Xtreme Power May 2, 2011 Comments at 7.

[198] Beacon May 2, 2011 Comments at 38, CESA May 2, 2011 Comments at 11, ESA May 2, 2011 Comments at 34.

[199] Beacon May 2, 2011 Comments at 38.

[200] Beacon May 2, 2011 Comments at 38, ESA May 2, 2011 Comments at 35.

[201] ENBALA May 3, 2011 Comments at 3.

[202] Manitoba Hydro May 2, 2011 Comments at 3.

[203] Beacon May 2, 2011 Comments at 39, CESA May 2, 2011 Comments at 11, ESA May 2, 2011 Comments at 35–36.

[204] Beacon May 2, 2011 Comments at 40, ESA May 2, 2011 Comments at 36.

[205] Duke May 2, 2011 Comments at 7.

[206] IRC May 2, 2011 Comments at 3–4, ISO–NE May 2, 2011 Comments at 6–8, NEPOOL May 2, 2011 Comments at 10, CAISO May 2, 2011 Comments at 12–14 and 18–19, PJM May 2, 2011 Comments at 7–8, MISO May 2, 2011 Comments at 7–8, NYISO May 2, 2011 Comments at 2, OMS May 2, 2011 Comments at 6–7, SoCal Edison May 2, 2011 Comments at 2.

[207] ISO–NE May 2, 2011 Comments at 6–7.

[208] *Id.* at 8.

[209] *Id.* at 6.

[210] NEPOOL May 2, 2011 Comments at 10.

[211] CAISO May 2, 2011 Comments at 18–19.

RTO and ISO algorithms, and other dispatch and accounting tools.[212]

147. OMS is concerned both about technical issues, such as needed telemetry, as well as, for example, a situation where a resource is following dispatch instructions, but those dispatch instructions are contrary to ACE. In that case, a resource following the dispatch instruction should not be penalized, OMS says.[213]

148. Primus Power and Viridity generally support the Commission's proposal but offer their own versions of how accuracy should be measured. As describes above, Primus Power recommends that ''net energy contribution'' be the metric used to determine performance payment. It defines this as the total MWh delivered by the resource in the direction of the control signal minus the total MWh delivered against the control signal (or delivered in excess of the control signal). Primus Power would use this as the basis on which to base a resource's performance payment.[214]

149. Viridity recommends an accuracy measure that can be broken into three types of performance. A resource that performs perfectly delivers exactly the MWh as dispatched by the system operator. This resource would receive 100 percent of its performance payment. A resource that does not deliver the exact amount requested through the dispatch signal, but which nonetheless is delivering frequency regulation service in the direction requested would only receive a fraction of its performance payment. Resources that move in the opposite direction of the dispatch signal will face a charge.

150. Viridity recommends that accuracy be measured over what it describes as a reasonable number of intervals of the frequency regulation signal. It cites 4 intervals, or every 16 seconds in the case of a 4 second signal.[215]

c. Commission Determination

151. The Commission finds that measuring and accounting for accuracy in a resource's compensation is just and reasonable and will encourage resources to report accurately their achievable ramp rate and to follow the system operator's dispatch instructions. The Commission also finds it appropriate to base a resource's accuracy on how well it follows the dispatch signal and not on its contribution to correcting ACE. Indeed, we note that no commenters argue against accounting for frequency regulation service providers' accuracy.

152. First, as the RTOs and ISOs and others note, the system operator does not always use the AGC signal to correct ACE to zero. There are situations where a resource can be given an AGC signal that is calibrated to anticipate changes in ACE. Second, as noted above, to base accuracy on ACE correction would be to open the door to resources second-guessing dispatch signals and under-reporting their actual ramping capability. Neither of these would be a desirable outcome. Indeed, a system operator faced with a fleet of resources with suddenly slower ramp rates would be forced to procure more frequency regulation capacity in order to be sure of reliable operations. Further, the system operator needs to have the confidence that when a dispatch signal is sent, resources will respond to it as directed. This is best accomplished by providing resources with an economic incentive to follow dispatch signals.

153. Therefore, we will require all RTOs and ISOs to account for frequency regulation resources' accuracy in following the AGC dispatch signal when determining the performance payment compensation. However, we will not mandate a certain method for how accuracy is measured. For instance, we will not, contrary to Beacon's request, mandate that the system operator measure response on the same frequency as the AGC signal (*i.e.,* every 4 or 6 seconds). In combination with the performance payment, accounting for accuracy by tracking how closely a resource follows its dispatch signal will meet the goal of having compensation reflect the work that frequency regulation resources perform for the system operator. We direct the RTOs and ISOs to determine the technical specifications of measuring accuracy. We will not pre-judge the methods of measuring accuracy presented by Primus Power and Viridity. Any stakeholder may use the standard RTO and ISO stakeholder processes to suggest how best to measure accuracy. The RTOs and ISOs are in the best position in the first instance to design a method for measuring accuracy which works with their system.

154. However, we will require the RTOs and ISOs to use the same accuracy measurement method for all resources. That is, the RTO or ISO may not develop an accuracy metric that applies to one class of resources and another accuracy metric that applies to other resources. Doing so would move in the direction of creating a ''fast'' and ''slow'' regulation service which we have declined to do. The RTOs and ISOs will have flexibility in how the designed method is used to determine accuracy (*e.g.,* the method could be used to define an accuracy threshold or it could be used to define a resource-specific performance payment multiplier), but all resources have to be measured on the same basis. This flexibility will address comments that we should allow RTOs and ISOs to acknowledge the realistic performance characteristics of the resources providing frequency regulation service.

4. Net Energy

a. NOPR Proposal

155. As explained in the NOPR, currently, regulating resources receive a payment (or charge) for the net energy injected (or withdrawn) as a result of providing regulation service in every RTO and ISO market. The Commission sought comment on the appropriateness of retaining net energy payments in light of the two-part payment proposed in the NOPR.[216] Specifically, the Commission sought comment on whether the provisions in existing tariffs for net energy payments are redundant given the proposed requirement discussed herein that all RTOs and ISOs must pay regulating resources a mileage payment for the ACE correction service they provide, or whether this payment is a necessary, appropriate feature of day-ahead and real-time energy account balancing and settlement.

b. Comments

156. Many commenters support retaining net energy balancing. ESA and CESA state that hourly net-energy payments and Performance Payments are not redundant. ESA and CESA state that both types of payments are needed to ensure appropriate compensation of frequency regulation providers.[217] ENBALA agrees that net energy payments in the existing tariffs should be maintained.[218] Occidental also agreed, stating that net energy payments must be maintained in order to (1) recognize the true cost of frequency regulation service, (2) avoid subsidization of inefficient providers and (3) avoid inefficient market outcomes.[219] Powerex suggests that the Commission should require RTOs and ISOs to continue to settle net energy in each five-minute interval.[220] Xtreme Power reasons that frequency regulation resources should be paid—or pay for—

[212] MISO May 2, 2011 Comments at 8.

[213] OMS May 2, 2011 Comments at 7.

[214] Primus Power April 18, 2011 Comments at 6.

[215] Viridity May 2, 2011 Comments at 4–5.

[216] NOPR, 134 FERC ¶ 61,124 at P 41.

[217] ESA May 2, 2011 Comments at 36, CESA May 2, 2011 Comments at 12.

[218] ENBALA May 2, 2011 Comments at 10.

[219] Occidental May 2, 2011 Comments at 4.

[220] Powerex May 2, 2011 Comments at 10.

the energy they inject or withdraw. It argues that any net purchases of energy should be charged to storage-based frequency regulation providers at wholesale rates.[221] NEPOOL explained that while mileage payments compensate for what is done in the regulation market; hourly net-energy payments are part of the compensation for what is done, and not done, in the energy market.[222] Primus Power recommends retaining a separate payment for net energy, stating that this will ensure that capacity bids are not distorted by the volatility in the real-time energy market.[223]

157. SoCal Edison states that there are two fundamentally disparate ways to treat net energy balancing. One is to charge or credit a resource for its net real-time energy and the other is to exempt frequency regulation resources from such crediting and charging. Because, SoCal Edison states, the specific market design impacts the final outcome of using either method, it recommends that the Commission not mandate one particular method for treating net energy balances.[224]

158. On the other hand, Manitoba Hydro states that RTOs and ISOs should eliminate net energy balancing.[225] PIOs recommend that the Commission not allow what they view as a redundant payment mechanism. Instead, PIOs recommend that the Commission only allow the retention of net energy balancing and remuneration if the RTOs and ISOs can show that this payment is distinct from the service that will be compensated under the NOPR's proposal, and that such payment is necessary and not redundant.[226]

159. Beacon explains that tariffs that require energy storage facilities to purchase energy when providing ''regulation down'' without allowing for a corresponding energy settlement payment when the facility provides ''regulation up'' creates a financially infeasible situation within which these resources can operate. Tariffs that allow energy storage to settle their energy on a net basis will remove a significant barrier to the participation of energy storage projects connected at transmission.[227]

160. ISO–NE suggests that net energy payments not be mandated for storage resources in the Final Rule, as, for instance, expensive metering requirements designed for generators would preclude participation from a number of promising technologies that aggregate resources to provide regulation. ISO–NE asserts that small aggregated resources that take electric service at the retail level and are geographically dispersed should be afforded the opportunity to provide regulation without being required to participate in the wholesale energy market and meet the associated requirements that could be cost-prohibitive for small resources.[228] Other ISOs, however, have not incorporated net energy payments into their regulation markets. PJM argues that altering existing energy market provisions will likely result in other unintended consequences or will create a disincentive to provide frequency regulation service.[229]

c. Commission Determination

161. Upon consideration of the comments received, the Commission will take no action at this time on net energy balancing as it is currently used in the RTOs and ISOs; RTOs and ISOs may retain their current rules in this regard. Given the market rule changes being required above, the Commission currently does not find it necessary to require that RTOs and ISOs change their existing methods for netting injections and withdrawals of energy over the settlement period. In CAISO, for instance, there is no relation between the provision of frequency regulation service and netting of energy. In other markets, the treatment of net energy is different. SoCal Edison makes the valid point that the effect of the rules governing treatment of net energy balances depends on the specific market design into which they are integrated. As PIOs suggest, net energy balancing can be an integral part of the RTOs' and ISOs' accounting and system balancing and we will impose no requirements concerning this issue at this time.

162. Beacon states that a storage resource that must pay the real-time price when charging but is not likewise credited when discharging that power in response to a frequency regulation signal is put in an untenable financial position. We find that Beacon's concern is addressed by current RTO and ISO rules. Frequency regulation resources are charged at the real-time price for energy withdrawals and credited for energy injections.

5. Technical Issues

a. Comments

163. Several commenters raise concerns over a variety of technical issues ranging from the definition of ramp rate, to software issues, to the substitutability of new technologies for old.

164. On the issue of ramp rate, Alcoa states that existing market designs are ill suited for non-traditional resources, and RTOs and ISOs tend to develop models that force these resources to conform to the traditional design rather than create unique models. Alcoa refers to the current clearing mechanism, which multiplies a resource's ramp rate by five minutes. Alcoa argues that this design limits its ability to provide demand response, which is full range responsive in one minute, to nearly one fourth of its ramping capability. Alcoa claims that this leads to inefficient utilization of resources and increased costs.[230] Similarly, SunEdison asserts that limiting performance to a MW per minute ramp response discriminates against resources that can respond in MW per second.[231]

165. Concerning software, CAISO claims that implementation of the Final Rule would present considerable technical challenges. CAISO states that in addition to creating new charge codes, CAISO would have to develop a settlement system based on more granular telemetry than the current 10 minute settlement interval. According to CAISO, at least 12 months would be required to design, test and implement the Commission's proposed performance payment mechanism. As such, CAISO requests the Commission provide a minimum of 18 months after the issuance of the Final Rule to implement necessary systems and processes.[232]

166. Similarly, ISO–NE claims that formulating a design that seeks to co-optimize energy, reserves, and regulation, particularly where correctly determining inter-temporal opportunity costs for storage resources might require an optimization horizon spanning hours or days, is a daunting technical challenge. It argues that formulating such a design might require a complete overhaul of existing real-time dispatch algorithms.[233]

167. On the other hand, CESA states that the Commission should ensure implementation of the Final Rule is not

[221] Xtreme Power May 2, 2011 Comments at 8.
[222] NEPOOL May 2, 2011 Comments at 12.
[223] Primus Power May 2, 2011 Comments at 7.
[224] SoCal Edison May 2, 2011 Comments at 9.
[225] Manitoba Hydro May 2, 2011 Comments at 4.
[226] PIOs May 2, 2011 Comments at 9.
[227] Beacon May 2, 2011 Comments at 40–41.
[228] ISO–NE May 2, 2011 Comments at 14–15.
[229] PJM May 2, 2011 Comments at 9.
[230] Alcoa May 2, 2011 Comments at 5–6.
[231] SunEdison May 2, 2011 Comments at 2–4.
[232] CAISO May 2, 2011 Comments at 20–22.
[233] ISO–New England May 2, 2011 Comments at 9–13.

delayed by computer software. CESA argues that there is no reason why the compensation method as set forth in the NOPR cannot be integrated into system operators' existing co-optimization algorithms.[234] Beacon and ESA argue that while some flexibility may be required, delaying the implementation of the Final Rule would send inappropriate price signals to investors in energy storage technology that would be detrimental to the industry.[235]

168. Raising concerns about technical substitutability of resources, EEI asserts that advantages in speed may be offset by a non-traditional resource's lack of sustainability or automatic response. EEI argues that pricing policies must consider the needs of the entire system including the proper mix of resources to minimize system impacts. EEI theorizes that excessive use of fast acting resources may cause a balancing authority to require more traditional resources to offset the risk of being shorted.[236]

169. Similarly, several commenters, including SoCal Edison, ISO–NE, CAREBS, and EPSA assert that over-emphasis on faster regulation resources without considering their ability to provide sustained energy (for as long as, for example, 15 minutes) may cause overcorrection, decreased reliability, and increased costs.[237] CAREBS suggests that the Commission should consider how to compensate resources that are both fast-ramping and long-duration.[238]

170. Likewise, CAISO argues that a fleet of resources that can respond accurately to dispatch signals for an appropriate duration is more valuable than resources that can respond quickly. CAISO therefore states that rules should compensate resources that respond accurately rather than simply quickly.[239]

171. ENBALA further expresses a concern that fast-responding resources could cause reliability issues in the power system by creating resonance conditions with inter-area oscillations if they respond to AGC signals with time constants less than 10 seconds. It explains that inter-area oscillations occur as a result of an imbalance of generation and system load. It argues that, within an interconnection, some generators will respond differently to load changes depending on their distance to the load center, which will cause some units to speed up or down more than others. As the generators change their speed by a small amount the power flow between the generators will change. Once this imbalance occurs, ENBALA contends, all generators will continually move with or against each other. When there is insufficient or negative damping, the oscillations will be sustained, or increase, which ENBALA states can cause damage to the power system.[240]

172. ENBALA argues that fast responding resources should be integrated in the regulation fleet, but it states that the response times of resources need to be maintained above a safe level so as to eliminate this reliability risk. It recommends that NERC be allowed to assess the potential reliability risk that AGC control action within this time-frame represents before the Commission accepts the proposed incentive structure for frequency regulation in the wholesale electricity market.[241]

173. EnerNOC claims that the Commission's proposed telemetry requirements represent a burden to demand response participation by end-use customers. EnerNOC asserts that an aggregated load management data system can meet reporting requirements without forcing each individual end-use customer to conform to a system operator's normal telemetry requirements. Accordingly, EnerNOC encourages the Commission to allow for flexible RTO or ISO telemetry requirements for frequency regulation services.[242]

174. Xtreme Power states that pilot programs in several ISOs have identified ''drift'' in their frequency regulation signal, whereby the amount of regulation up does not equal the amount of regulation down. Xtreme Power asserts that ''drift'' interferes with the ability of energy-limited resources to provide regulation service, and suggests that a net zero energy balance regulation signal be implemented to address this concern. In addition, Xtreme Power questions whether RTOs and ISOs use frequency regulation service to provide other functions due to legacy control practices, thereby placing an undue burden on buyers and sellers of regulation. Xtreme Power therefore urges the Commission to require each RTO and ISO report on the nature of drift in their frequency regulation markets, the causes of such drift, and options to mitigate drift to allow for fair competition between generators and other resources.[243]

175. ENBALA also raises the issue of what they term as an energy bias or lack of energy neutrality in the frequency regulation dispatch signal as a potential barrier to entry for energy storage devices and demand response.[244] ENBALA describes a method by which the signal could be split into two different signals, one that is sent only to energy-limited resources and that is energy neutral, and another signal that still contains the energy bias for other resources.

176. Jack Ellis recommends an examination of the costs, benefits, and technical feasibility of an approach that uses smaller market intervals and allows providers of flexibility to update their price/quantity offers more frequently than is typically the case today.[245] Mr. Ellis claims that this is simply an extension of intra-hour markets that most RTOs and ISOs currently operate, with two modifications. He contends that the first is that the time intervals will be shorter. Second, suppliers will be able to revise their price/quantity offers more frequently and closer to the start of the market interval; a resource would offer to sell or buy back a quantity of energy in an upcoming 30 second, one minute or five minute interval, rather than providing the grid operator with a ramp rate well ahead of time.[246] Mr. Ellis states that this interval could be, in theory, as short as the AGC signaling interval, typically four or six seconds, though market intervals of 30 seconds or one minute may be more practical and equally effective.

b. Commission Determination

177. Regarding Alcoa's concerns that existing market designs are ill-suited for non-traditional resources, we find, for the reasons stated above, that a mileage-based performance payment component, as required in this Final Rule, will provide compensation that appropriately recognizes a resource's actual ramp rate capability.

178. We reject SunEdison's request to redefine ramp rate. The expression of ramp rates in MW per minute does not limit the amount of capacity a resource with faster response times may offer into the frequency regulation market. Redefining ramp rate in MW per second would do no more than change the scale by which ramp rates are reported.

[234] CESA May 2, 2011 Comments at 10.

[235] Beacon May 2, 2011 Comments at 36–37; ESA May 2, 2011 Comments at 33–34.

[236] EEI May 2, 2011 Comments at 8–9.

[237] EPSA May 2, 2011 Comments at 6–7, SoCal Edison May 2, 2011 Comments at 5–6, CAREBS May 2, 2011 Comments at 6–8.

[238] CAREBS May 2, 2011 Comments at 6–8.

[239] CAISO May 2, 2011 Comments at 16.

[240] ENBALA May 2, 2011 Comments at 6–7.

[241] *Id.* at 7.

[242] EnerNOC May 2, 2011 Comments at 3.

[243] Xtreme Power May 2, 2011 Comments at 8–10.

[244] ENBALA May 2, 2011 Comments at 4–6.

[245] Jack Ellis April 12, 2011 Comments at 4.

[246] *Id.* at 4.

179. In response to concerns that faster-responding resources will result in less sustainable or accurate resources being procured for regulation service, we disagree. This Final Rule only modifies the way in which resources are compensated for providing frequency regulation. It does not address requirements for qualification as a resource eligible to participate in wholesale regulation markets. Resources that wish to provide frequency regulation service must be capable of sustained response for an appropriate period as determined by the system operator. Furthermore, linking the performance payment to accuracy as required in the Final Rule will provide an appropriate incentive for resources of any speed to accurately follow the system operator's control signal.

180. We agree with SoCal Edison's argument that each RTO or ISO should be allowed to determine whether the operator or the market participant is to be responsible for managing energy limitations. Nothing in this Final Rule affects how RTOs and ISOs manage energy limitations in their systems.

181. We further emphasize that nothing in this Final Rule requires payments for enhanced performance; rather, it requires that resources providing frequency regulation be paid for the amount of service actually provided. As to potential impacts from over-reliance on faster-responding resources, we note again that currently the RTOs and ISOs meet their NERC-required reliability standards. If an RTO or ISO finds that the integration of too much of one type of resource impacts its ability to meet NERC reliability standards, we expect that it will take the necessary steps to ensure reliability.

182. As to comments seeking compensation for resources that are both fast-responding and long-duration, we find that such resources will receive appropriate compensation under the Final Rule. In addition to receiving a performance payment that rewards the provision of frequency regulation service, these resources will be compensated for their long duration by being able to offer their full regulation capacity for a greater number of regulation intervals.

183. In response to EnerNOC's statement regarding telemetry requirements, we note that this Final Rule directs no new telemetry requirements. We also reiterate that RTOs and ISOs are allowed flexibility in complying with the Final Rule to accommodate regional differences and the needs of their particular region and market, including telemetry requirements.

184. We also reject as outside the scope of this proceeding Xtreme Power's requests to require reporting on ''drift'' or energy neutrality in the frequency regulation signal, as well as ENBALA's suggestion that RTOs and ISOs use different frequency regulation signals for different resources. These issues concern a technical issue of dispatch, not compensation. However, we note that some RTOs and ISOs have implemented changes to their markets that serve to mitigate the impact of drift on energy storage devices. For example, MISO and NYISO have developed market provisions that manage the charge state of energy storage devices,[247] while ISO–NE allows energy storage devices to update their bids more frequently.[248] We encourage entities to work together with stakeholders to analyze potential impediments to new technologies in all markets.

185. CAISO, ISO–NE, and CESA all submit comments on the expected difficulty or ease with which the proposed NOPR changes can be integrated into existing market solution software. CAISO and ISO–NE request that sufficient time be allowed for implementation, with ISO–NE going so far as to speculate that including inter-temporal opportunity costs might be infeasible and that two-part bidding schemes can be very complex. As a general matter, the Commission believes that the deadlines discussed in the compliance section below will allow sufficient time for all RTOs and ISOs to comply. First, we note that we are not requiring RTOs and ISOs to be responsible for calculating inter-temporal opportunity costs; though we do require that resources be able to include such verifiable costs in their bids. We agree with ISO–NE that the decision of who should calculate inter-temporal opportunity costs is best left to the RTOs and ISOs. Requiring the RTO or ISO to calculate this cost might burden the system operator too much; in other RTOs and ISOs, the system operator might find it easier to complete this task. Thus, we leave it to the individual RTOs and ISOs, in the first instance, to find the solution that best fits their needs. Second, with regard to ISO–NE's concerns about two-part bidding, while we do require two-part bidding, we have not specified the specific technical aspects of how those bids are then used in the market-clearing algorithm. The Commission recognizes that two-part bidding solutions are not insignificant problems that might need to be addressed.[249] However, we believe the time-frame set forth herein for submitting compliance filings will allow sufficient time to overcome such hurdles.

6. Definition of Frequency Regulation

a. Comments

186. Duke seeks clarification of the definition of ''frequency regulation,'' which Duke asserts is defined differently in the NOPR than in the NERC Glossary of Terms. It points out that NERC's definition includes both ''primary frequency control'' (*i.e.,* turbine governor response) and ''secondary frequency control'' (*i.e.,* AGC). In Duke's view, the NOPR was not clear as to whether both primary and secondary frequency controls are included, although Duke contends that the body of the NOPR suggests that only secondary frequency control is included. Duke asks the Commission to clarify this point or, in the alternative, to direct NERC and its stakeholders to examine the issue and propose a resolution.[250]

187. ISO–NE expresses concern that the NOPR defined frequency regulation too narrowly by focusing exclusively on responding to ACE to the exclusion of broader reliability criteria. It proposes a modified definition of frequency response that considers that the objective of the regulation market is to provide a means for the balancing authority to competitively procure sufficient frequency regulation resources to ensure compliance with the NERC CPS1 and CPS2 standards.[251]

188. MISO argues that the Commission's proposed definition of frequency regulation is inconsistent with the Commission-approved NERC definition. MISO contends that the proposed definition characterizes frequency regulation as a response to transmission system ACE, while frequency response is separated and defined as an autonomous response by generators to system frequency. MISO claims that NERC's definition, in contrast, refers to a system's ability to maintain scheduled frequency, and includes both AGC and governor response. MISO argues that there is not a direct correlation between scheduled frequency and ACE. Furthermore, MISO asserts that NERC's definition appears to encompass both frequency regulation and frequency response as defined by

[247] *See* MISO, Energy and Operating Reserve Markets Business Practice Manual, Attachment D, Section 3.26; NYISO, Ancillary Services Manual, Section 4.3.2.

[248] *See* ISO–NE, Market Rule 1, Appendix J.

[249] *See supra* note 190.

[250] Duke May 2, 2011 Comments at 3–4.

[251] ISO–New England May 2, 2011 Comments at 5–6.

the Commission. Accordingly, MISO requests that the Commission reconsider the proposed definition of frequency regulation to avoid potential confusion as a result of conflicting terms, or limiting the flexibility of the system operator to call on regulating resources to maintain system balance and reliability.[252]

189. In addition, Invenergy requests that the Commission create standard definitions and terminology for regulation, with the intention of avoiding confusion, inconsistency, and/or the creation of redundant or extraneous regulation products.[253]

190. IRC is also concerned that the proposed definition of frequency regulation in the NOPR is focused solely on ACE, which IRC argues is only one component of regulation service. Instead of rapid response, IRC advocates for ''smart response,'' which it describes as aligning the response characteristics of all available resources with system needs to provide the most efficient means of managing frequency regulation in each balancing authority Area. IRC notes that a resource with rapid response capability can provide significant response to the ACE (*i.e.,* following the ACE both up and down). But IRC argues that a significant part of that response may be unnecessary if the response was strictly utilized for a zero-averaging ACE. Alternatively, IRC explains that the response could provide significant value if it is directed against a non-zero averaging ACE, because in that case it would be utilized against the overall system needs rather than to merely ''chase'' ACE, which, as only one part of the operational equation, does not produce the most effective operational response.[254]

b. Commission Determination

191. The Commission disagrees with Duke's contention that the NOPR is not clear as to whether its definition of frequency regulation includes both primary and secondary frequency controls. The NOPR stated, ''Frequency regulation service is the injection or withdrawal of real power by facilities capable of responding appropriately to a transmission system's frequency deviations or interchange power imbalance, both measured by the ACE * * *. Frequency regulation is distinguishable from Frequency response.'' [255]

192. In response to ISO–NE., MISO, and the IRC's concerns that the Commission's proposed definition of frequency regulation in the NOPR is too narrow and is inconsistent with the Commission-approved NERC definition, we address this issue in section 3 infra by requiring that accuracy be measured in relation to the system operator's dispatch signal and by revisions to the proposed regulatory text. As described below, we have revised the regulatory text to define frequency regulation as ''the capability to inject or withdraw real power by resources capable of responding appropriately to a system operator's automatic generation control signal in order to correct for actual or expected Area Control Error needs.'' We also address Invenergy's request for a standard definition. The alteration to the proposed regulatory text, we believe, provides a sufficiently detailed definition of frequency regulation to avoid confusion. The definition avoids the implication that a system operator's dispatch signal for frequency regulation resources always aims to drive ACE to zero at any given moment in time, but also describes only secondary frequency control and does not include primary frequency control, *i.e.,* frequency response. Further, the Commission finds that the distinction between the *pro forma* OATT and this new language will not cause confusion because it applies only to the organized wholesale markets: the RTOs and ISOs.

7. Miscellaneous Issues

a. Comments

193. Several commenters discussed various issues pertaining to barriers to participation [256] and separating regulation up and regulation down,[257] and, a few commenters argue that the Commission should adopt various requirements related to NERC,[258] or storage facilities.[259]

b. Commission Determination

194. These issues are beyond the scope of this proceeding, which is limited to remedying the existing undue discrimination in the compensation of frequency regulation service in the organized wholesale electricity markets. This Final Rule is also not focused on any particular resource type, but rather is resource-neutral. The directives of this Final Rule will ensure that *all* eligible resources providing frequency regulation service within existing RTO or ISO frequency regulation markets are compensated at the just and reasonable rate.

195. We further emphasize that the directives of this Final Rule apply only to secondary frequency regulation in the organized wholesale electricity markets and not to primary frequency response. As noted in the NOPR, the Commission has separately released for public comment a staff study evaluating the use of frequency response metrics as a tool to assess the reliability impacts of varying resource mixes on the transmission grid.[260] However we disagree with commenters who argue that requiring the reforms directed herein to ensure just and reasonable rates will provide excessive compensation in the secondary frequency regulation markets. We decline to impose generic requirements in this Final Rule relating to compensation reforms for other critical ancillary services.

196. With respect to Starwood/Premium's request that the Commission address in this proceeding the storage-related issues raised in the Storage RFC the Commission notes that, on June 16, 2011, the Commission issued a Notice of

[252] MISO May 2, 2011 Comments at 3–5.

[253] Invenergy May 2, 2011 Comments at 3.

[254] IRC May 2, 2011 Comments at 4–5.

[255] NOPR, 134 FERC ¶ 61,124 at P 4–5.

[256] For example, Powerex argues that restricting units eligible to provide regulation service to units within the RTO or ISO market footprint undermines market liquidity and discourages the development of competitive regulation markets. Accordingly, Powerex requests that the Commission clarify that RTOs and ISOs cannot unduly restrict participation by external resources and must justify restrictions solely on reliability or deliverability concerns. Powerex May 2, 2011 Comments at 5–6. Occidental requests that the Commission revise the definition of demand response to state that an increase in load in response to dispatch is also considered demand response. Occidental May 2, 2011 Comments at 3–4.

[257] Alcoa, AWEA, Occidental and Steel Producers argue that the Commission should urge or require separate regulation up and regulation down markets in order to recognize the separate value of each service and to promote more efficient regulation response. Alcoa May 2, 2011 Comments at 7–8; AWEA May 2, 2011 Comments at 4–5; Occidental May 2, 2011 Comments at 1; Steel Producers May 2, 2011 Comments at 2.

[258] EEI and Detroit Edison seek a requirement that RTOs and ISOs develop pilot programs in consultation with NERC to evaluate the impact of non-traditional resources; Alcoa argues that NERC performance standards are designed based on traditional technologies and request that the Commission direct NERC to study the reduction in system requirements through integration of nontraditional resources outside the scope of this rulemaking; Duke states that it is unaware of any technical study or NERC standard or requirement that would indicate that a faster response to AGC is necessary for reliable system operations and that RTOs and ISOs are ultimately responsible for determining what resources are necessary to comply with the NERC reliability standards.

[259] Starwood/Premium recommends that the Commission consider adapting the NOPR proposal to include storage devices that are able to provide multiple services as discussed in the Commission's June 11, 2010 Notice of Request for Comments. *See Request for Comments Regarding Rates, Accounting and Financial Reporting for New Electric Storage Technologies,* Docket No. AD10–13–000 (2010) (Storage RFC).

[260] NOPR, 134 FERC ¶ 61,124 at n.610.

Inquiry that continues our examination of storage-related issues.[261] Because these issues are being addressed in another proceeding, we decline to address them here.

## III. Compliance Requirements and Summary of Commission Determinations and Findings

197. In this Final Rule the Commission finds that current methods for compensating resources for the provision of frequency regulation are unduly discriminatory. To remedy this undue discrimination, the Commission finds that it is just and reasonable to require all RTOs and ISOs to modify their tariffs to provide for a two-part payment to frequency regulation resources.

198. The first part of this payment will be a capacity, or option, payment for keeping a resource's capacity in reserve in the event that it is needed to provide real-time frequency regulation service. This payment must be a uniform payment to all cleared resources, and must be a payment that includes the marginal unit's opportunity costs. The RTO or ISO must calculate and include in its market-clearing process the cross-product opportunity costs of each resource offering its capacity. We will leave to the RTOs and ISOs the discretion of proposing to whom the responsibility falls of calculating any applicable inter-temporal opportunity costs. This capacity payment also must be based on competitive market-based bids for the provision of frequency regulation capacity submitted by resources.

199. The second part of the payment shall be a performance payment that reflects the amount of work each resource performs in real-time. This payment must reflect the accuracy with which each resource responds to the system operator's dispatch signal. The performance payment must be market-based (*i.e.,* based on resource bids that reflect the cost of providing the service). We leave to the RTOs and ISOs to propose such details as bidding parameters and other details that may need to vary by market and region.

200. Regarding accuracy, the Commission finds that it is appropriate to tie the measurement of a resource's accuracy to the system operator's AGC dispatch signal and not to ACE correction. Therefore, each RTO and ISO must propose a method for measuring a frequency regulation resource's accuracy with respect to the dispatch signal it is sent and reflecting that accuracy in the resource's payment. We do require that the same accuracy metric must be used for all resources providing frequency regulation service in an RTO or ISO.

201. The Commission recognizes that making these changes could require significant work on the part of the RTOs and ISOs. Therefore, the tariff changes needed to implement the compensation approach required in this Final Rule, including a uniform price for regulation capacity, and a performance payment for the provision of frequency regulation service, with such payment reflecting a resource's accuracy in following the AGC dispatch signal, must be filed within 120 days of the effective date of this Final Rule. We will allow further 180 days from that date for implementation.

## IV. Information Collection Statement

202. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

203. This Final Rule amends the Commission's regulations under Part 35 to require RTOs and ISOs to pay both a uniform clearing price for frequency regulation capacity to all cleared frequency regulation resources and a performance payment for the provision of frequency regulation service, with the latter payment reflecting a resource's accuracy of performance. To accomplish this, the Commission requires RTOs and ISOs to adopt tariff revisions reflecting these changes. In addition to making tariff changes, the Commission also expects that RTOs and ISOs will be required to modify existing software systems. The information provided for under Part 35 is identified as FERC–516.

204. Under section 3507(d) of the Paperwork Reduction Act of 1995,[262] the reporting requirements in this rulemaking will be submitted to OMB for review. In their notice of March 15, 2011, OMB took no action on the NOPR, instead deferring their approval until review of the Final Rule.

205. The Commission solicited comments on the need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. The Commission did not receive any specific comments regarding its burden estimates. The Public reporting burden for the requirements contained in the Final Rule is as follows:

| Data collection | Number of respondents[263] | Number of responses | Hours per response | Total hours in year one |
|---|---|---|---|---|
| FERC 516 | [1] | [2] | [3] | [1 × 2 × 3] |
| Conforming tariff changes made by RTOs/ISOs (18 CFR 35.28(g)(3)). One time burden. | 5 | 1 | 100 | 500. |
| Software changes made by RTOs/ISOs. One time burden[264] | 5 | 1 | 1000 | 5000. |
| Totals | | | | 5500 one time burden. |

[261] *Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technology,* 135 FERC ¶ 61,240 (2011).

[262] 44 U.S.C. 3507(d).

[263] SPP is not included in the respondents because they currently do not have a frequency regulation compensation mechanism in their tariff and independent of this proceeding they have indicated that they are already planning to implement such a mechanism. Therefore, it is expected that any additional burden on SPP due to this proceeding will be *de minimus.*

[264] This category was not included in the NOPR estimates. Since issuing the NOPR the Commission has determined that each RTO's and ISO's market software will need to be modified in order to comply with this final rule.

The additional one-time burden of 5,500 hours is being spread over the next three years for the purposes of submittal to the OMB, giving an average additional annual burden of 1833 hours (rounded) or 367 hours (rounded) per year per respondent.

*Cost to Comply:* The Commission has projected the cost of compliance to be $687,500.

Total Annual Hours for Collection in initial year (5500 hours) @ $125 an hour [average cost of attorney ($200 per hour), consultant ($150), technical ($125),[265] and administrative support ($25)] = $687,500.

*Title:* FERC–516, Electric Rate Schedules and Tariff Filings.

*Action:* Proposed Collection.

*OMB Control No.* 1902–0096.

*Respondents for this Rulemaking:* Businesses or other for profit and/or not-for-profit institutions.

*Frequency of Information:* As indicated in the table.

*Necessity of Information:* The Federal Energy Regulatory Commission is requiring ISOs and RTOs to change their tariffs to provide for compensation for frequency regulation service in a manner that remedies undue discrimination in the procurement of such service in the organized wholesale electricity markets, and ensure just and reasonable rates.

*Internal Review:* The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

206. Interested persons may obtain information on this information collection by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov*, phone: (202) 502–8663, or fax: (202) 273–0873.

207. Comments concerning this information collection can be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4718, fax: (202) 395–7285].

[265] The Commission has increased this estimate from $80/hour to $125/hour to account for the software changes that will be needed to be done by high level staff.

## V. Environmental Analysis

208. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[266] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this Final Rule under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale subject to the Commission's jurisdiction, plus the classification, practices, contracts, and regulations that affect rates, charges, classifications, and services.[222]

## VI. Regulatory Flexibility Act

209. The Regulatory Flexibility Act of 1980 (RFA)[267] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA) Office of Size Standards develops the numerical definition of a small business.[268] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[269] Only five ISOs and RTOs, not small entities, are impacted directly by this rule.

210. CAISO is a non-profit organization with over 54,000 megawatts of capacity and over 25,000 circuit miles of power lines. CAISO's annual total energy deliveries in 2009 were 230,754,000 MWh.

211. NYISO is a non-profit organization that oversees wholesale electricity markets, dispatches over 500 generators, and manages a nearly 11,000-mile network of high-voltage lines. NYISO's 2009 energy deliveries, including transmission and distribution losses and excluding station power was 680,767,000 MWh.

212. PJM comprises more than 600 members including power generators, transmission owners, electricity distributors, power marketers, and large industrial customers, serving 13 states and the District of Columbia. PJM's net energy for load in 2009 was 680,767,000 MWh.

213. MISO is a non-profit organization with over 145,000 megawatts of installed generation. MISO has over 57,000 miles of transmission lines and serves 13 states and one Canadian province. MISO's annual transmission billings for 2010 were 629,000,000 MWh.

214. ISO–NE is a regional transmission organization serving six states in New England. The system comprises more than 8,000 miles of high-voltage transmission lines and over 350 generators. In 2009, ISO–NE's net energy for load was 126,839,000 MWh.

215. Based on the above, the Commission certifies this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

## VII. Document Availability

216. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

217. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

218. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–(866) 208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

[266] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[267] 5 U.S.C. 601–12.

[268] 13 CFR 121.101.

[269] 13 CFR 121.201, Sector 22, Utilities & n.1.

## VIII. Effective Date and Congressional Notification

219. This Final Rule will become effective on December 30, 2011. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, that this rule is not a ''major rule'' as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

By the Commission. Commissioner Spitzer is not participating.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

In consideration of the foregoing, the Commission amends Part 35, Chapter I, Title 18 of the Code of Federal Regulations as follows:

## PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for Part 35 continues to read as follows:

**Authority:** 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 35.2 by adding a new paragraph (g) to read as follows:

### § 35.2 Definitions.

* * * * *

(g) *Frequency regulation.* The term *frequency regulation* as used in this part will mean the capability to inject or withdraw real power by resources capable of responding appropriately to a system operator's automatic generation control signal in order to correct for actual or expected Area Control Error needs.

■ 3. Amend § 35.28 by adding a new paragraph (g)(7) to read as follows:

### § 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(7) *Frequency regulation compensation in ancillary services markets.* Each Commission-approved independent system operator or regional transmission organization that has a tariff that provides for the compensation for frequency regulation service must provide such compensation based on the actual service provided, including a capacity payment that includes the marginal unit's opportunity costs and a payment for performance that reflects the quantity of frequency regulation service provided by a resource when the resource is accurately following the dispatch signal.

**Note:** The following appendix will not appear in the Code of Federal Regulations.

## Appendix

**List of Commenters**

A123 Systems, Inc. (A123)
Alcoa Inc. (Alcoa)
Alliance for Industrial Efficiency, Inc. (The Alliance)
American Wind Energy Association (AWEA)
Beacon Power Corporation (Beacon)
California Independent System Operator Corporation (CAISO)
California Energy Storage Alliance (CESA)
Coalition to Advance Renewable Energy Through Bulk Energy Storage (CAREBS)
California Public Utilities Commission (CPUC)
Dayton Power and Light Company (Dayton)
Detroit Edison Company (Detroit Edison)
Dominion Resources Services, Inc. (Dominion)
Duke Energy Corporation (Duke)
Environmental Defense Fund (EDF)
Edison Electric Institute (EEI)
Electricity Consumers Resource Council (ELCON)
Electric Storage Association (ESA)
Jack Ellis
ENBALA Power Networks (ENBALA)
EnerNOC, Inc. (EnerNOC)
Electric Power Supply Association (EPSA)
FirstEnergy Service Company (FirstEnergy)
Invenergy Wind Development LLC (Invenergy)
ISO/RTO Council (IRC)
ISO New England Inc. (ISO–NE)
Manitoba Hydro
Midwest Independent System Operator, Inc. (MISO)
Midwest Independent System Operator Transmission Owners (MISO TOs)
Morgan Stanley Capital Group Inc. (Morgan Stanley)
NaturEner USA, LLC (NaturEner)
Natural Gas Supply Association (NGSA)
New England Conference of Public Utilities Commissioners (NECPUC)
New England Power Pool (NEPOOL)
New York Independent System Operator, Inc. (NYISO)
New York Public Service Commission (NYPSC)
New York Transmission Owners (NY TOs)
Occidental Chemical Corporation (Occidental)
Organization of Midwest ISO States (OMS)
Pennsylvania Public Utility Commission (PaPUC)
Pacific Gas and Electric Company (PG&E)
PJM Interconnection, L.L.C. (PJM)
Powerex Corporation (Powerex)
Primus Power (Primus)
Project for a Sustainable FERC Energy Policy on Behalf of Public Interest Organizations (PIO)
Recycled Energy Development (RED)
Southern California Edison Company (SoCal Edison)
Starwood Energy Global Group, L.L.C and Premium Power Corporation (Starwood/Premium)
Steel Producers
SunEdison LLC (SunEdison)
Transmission Access Policy Study Group (TAPS)
VCharge
Viridity Energy, Inc. (Viridity)
Xtreme Power, Inc. (Xtreme Power)

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Part III

## Department of Energy

10 CFR Part 490

Alternative Fuel Transportation Program; Alternative Fueled Vehicle Credit Program (Subpart F) Modification and Other Amendments; Proposed Rule

**DEPARTMENT OF ENERGY**

**10 CFR Part 490**

**[Docket ID No. EERE–2011–OT–0066]**

**RIN 1904–AB81**

## Alternative Fuel Transportation Program; Alternative Fueled Vehicle Credit Program (Subpart F) Modification and Other Amendments

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** DOE today proposes a rule pursuant to the Energy Independence and Security Act of 2007 (EISA), that would revise the allocation of marketable credits under DOE's Alternative Fuel Transportation Program (AFTP or Program), by including EISA-specified electric drive vehicles and investments in qualified alternative fuel infrastructure, nonroad equipment, and relevant emerging technologies. DOE also is proposing modifications to the use of Program credits, revisions to the exemption process, clarifications of the Alternative Compliance option, and several technical and other amendments intended to make the Program regulations clearer.

**DATES:** Public comments on this proposed rulemaking must be received no later than December 30, 2011 to ensure consideration.

**ADDRESSES:** DOE has established a docket for this action under Docket ID No. EERE–2011–OT–0066. All documents in the docket are listed in the EDOCKET index and may be accessed at *http://www.regulations.gov,* under the aforementioned docket number. Submit comments, identified by the aforementioned docket number, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
2. *Email: regulatory_info@afdc.nrel.gov*.
3. *Mail or deliver:* (eight copies) U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2G, RIN 1904–AB81, 1000 Independence Avenue SW., Washington, DC 20585–0121. DOE is currently using Microsoft Word. Organizations are strongly encouraged to submit comments electronically, to facilitate timely receipt of comments and inclusion in the electronic docket.

Copies of this notice and written comments will be placed at the following Web site address: *http://www1.eere.energy.gov/vehiclesandfuels/epact/private/index.html*. Before taking final action on today's proposal, DOE will consider all comments and other relevant information received on or before the date specified above. All comments submitted will be made available in the electronic docket set up for this rulemaking. Therefore, no information desired to be kept confidential should be submitted to the docket. This docket will be available via the DOE EDOCKET through *http://www.regulations.gov,* which may be located using key words or the above noted docket number. For more information concerning public participation in this rulemaking, see the **SUPPLEMENTARY INFORMATION** section on ''Opportunity for Public Comment.''

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Dana V. O'Hara, Office of Energy Efficiency and Renewable Energy (EE–2G), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121; *Telephone:* (202) 586–9171; *Email: regulatory_info@afdc.nrel.gov;* or Mr. Ari Altman, Office of the General Counsel, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0121; *Telephone:* (202) 287–6307; *Email: Ari.Altman@hq.doe.gov*.

**SUPPLEMENTARY INFORMATION:**

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### I. Introduction

Titles III through V of the Energy Policy Act of 1992 (EPAct 1992, Pub. L. 102–486, as amended at 42 U.S.C. 13201 *et seq.*) focus on the replacement of petroleum transportation fuels with fuels such as alternative fuels and conventional/replacement fuel blends. The provisions in EPAct 1992 encourage the purchase and use of replacement fuels, requiring that certain fleets acquire alternative fueled vehicles (AFVs) as part of their annual light duty vehicle (LDV) acquisitions. Section 301(3) of EPAct 1992 (42 U.S.C. 13211(3)) defines the term ''alternative fueled vehicle'' as a ''dedicated [alternative fuel] or dual fueled vehicle,'' and sections 501 (42 U.S.C. 13251) and 507 (42 U.S.C. 13257) of the statute contain AFV-acquisition mandates for alternative fuel provider fleets and State fleets, respectively. These fleets may earn credits towards their light duty AFV-acquisition requirements in various ways, as provided by section 508 of EPAct 1992 (42 U.S.C. 13258) and the Program regulations at 10 CFR part 490.

Congress has amended the EPAct 1992 fleet program for State and alternative fuel provider (SFP) fleets several times. The amendments have allowed covered fleets to earn additional credits for the use of biodiesel in blends of 20 percent biodiesel or greater and have provided an alternative compliance option. Note that upon the creation of the ''Alternative Compliance'' option (see discussion in Part II.A), the original program based upon AFV acquisitions and biodiesel use became known as ''Standard Compliance.'' Each amendment has allowed the fleets to explore the viability of expanded use of AFVs and alternative fuels and thereby promote the use of replacement fuels.

For the purposes of EPAct 1992 and related programs, the terms ''alternative fuel'' and ''replacement fuel'' both are widely used, but are not interchangeable. While a more specific definition of ''alternative fuel'' is set forth below, in general, alternative fuels include a variety of non-petroleum transportation fuels, as provided in section 301(2) of EPAct 1992. Replacement fuel, as defined in section 301(14), refers to the alternative fuel *portion* of an alternative/petroleum fuel mix or a neat (*i.e.,* 100%) alternative fuel. For example, B20 (a 20 percent blend of biodiesel with 80 percent petroleum diesel) is not an alternative fuel, but the 20 percent that is non-petroleum is considered replacement fuel, while B100 (neat biodiesel) is both an alternative fuel and a replacement fuel.

The primary focus of today's proposal is section 133 of EISA, which amended section 508 of EPAct 1992. EISA section 133 provides definitions and directs DOE to allocate credits under section 508 for the acquisition by covered fleets of various types of electric drive vehicles, and for investments by covered fleets in qualified alternative fuel infrastructure, nonroad equipment, and emerging technologies related to those electric drive vehicles. As discussed in more detail below, some of the electric drive vehicles identified in section 133 already meet the EPAct 1992 definition of an AFV and therefore already are entitled to full credit under the AFTP, while others do not currently meet the AFV definition. In today's action, DOE is proposing credit allocations under the AFTP for the acquisition by covered fleets of those section 133-identified electric drive vehicles that do not already qualify as AFVs, and for several specific types of investments that covered fleets may make. These credit allocations would only impact SFP fleets operating under Standard Compliance.

DOE also is proposing today to modify several aspects of the existing AFTP. These modifications would: Enhance the timeliness of exemption requests; require covered fleets to use their own banked credits before requesting exemptions; mandate that fleets without sufficient AFV acquisitions, biodiesel fuel use credits, and banked credits to meet their compliance requirements include in their annual reports information about any efforts they made to acquire credits from other fleets; and revise the deadline for submitting Alternative Compliance waiver applications. Finally, DOE also is proposing a number of clarifications as well as several revisions that would make the AFTP regulations consistent with amendments to EPAct 1992.

## II. Background

### *A. General*

The overall objectives of the fleet programs and other efforts under Titles III–V of EPAct 1992 are to expand the use of alternative fuels and AFVs within specified fleets and to replace petroleum with replacement fuels to the ''maximum extent practicable.'' [1] The requirements of Titles III through V of EPAct 1992 focus on particular fleets, such as SFP fleets (which are the subjects of today's proposal) and Federal fleets,[2] as well as voluntary activities, such as those implemented under DOE's Clean Cities Program.[3] The mandated programs for centrally-fueled fleets seek to catalyze maximum use of replacement fuels, and, in particular, alternative fuels.

As indicated above, EPAct 1992 establishes AFV-acquisition requirements for SFP fleets, which DOE codified as the AFTP at 10 CFR 490.1 *et seq.*[4] Titles III, IV, and V of EPAct 1992 do not provide broad incentives for petroleum reduction or requirements for overall emissions reductions, but rather focus on requirements for certain centrally-fueled fleets to acquire AFVs.

EPAct 1992 requires that SFP fleets acquire AFVs as minimum percentages of their annual LDV acquisitions (now 90 percent for alternative fuel provider fleets and 75 percent for State fleets, in Sections 501(a) and 507(o), respectively). The types of vehicles that satisfy the SFP fleet acquisition mandates are determined primarily by the definitions of ''alternative fuel'' and ''alternative fueled vehicle'' in section 301 of the statute. The threshold that determines whether an SFP fleet is subject to these respective acquisition mandates turns on the size and location criteria set forth in the section 301 definitions of ''fleet'' and ''covered person.'' Generally, covered fleets under the AFTP are those State government entities and alternative fuel providers that own, operate, lease, or otherwise control 50 or more non-excluded LDVs, at least 20 of which are capable of being centrally fueled and are used primarily in a metropolitan statistical area (MSA) or consolidated MSA with a 1980 Census population of more than 250,000.

Consistent with sections 501(a)(5) and 507(i)(1) of EPAct 1992, the AFTP regulations at 10 CFR 490.204 and 490.308 provide a process through which State fleets and alternative fuel provider fleets, respectively, may request exemptions from the applicable AFV-acquisition requirements for a particular model year. All covered fleets may seek an exemption on the basis of lack of available AFVs or lack of available alternative fuels; State fleets also may seek an exemption on the basis of unreasonable financial hardship.

Under section 507(o)(2) of EPAct 1992 and its implementing regulation, 10 CFR 490.203, States may submit a Light Duty Alternative Fueled Vehicle Plan to DOE for approval, which serves as an additional compliance option. An approved plan relieves those State fleets that are included in the plan from otherwise having to meet the AFV-acquisition mandate on their own. While the plan must provide for voluntary acquisitions or conversions by State, local, and private fleet participants that, in the aggregate, equal or exceed the State's AFV-acquisition requirement, there is no limit to the number of State, local, and private fleets that may participate in the plan. Any such plan must include, among other information, a certification from the appropriate State official and a written statement of commitment from each plan participant.

Under the AFTP, covered fleets can earn, sell, or purchase AFV-acquisition

[1] 42 U.S.C. 13252(a).

[2] Under section 303 of EPAct 1992 (42 U.S.C. 13212), Federal fleets were required to acquire AFVs starting in Fiscal Year (FY) 1993, increasing their acquisitions to 75 percent of all covered acquisitions in FY 1999 and thereafter.

[3] Under section 505 of EPAct 1992 (42 U.S.C. 13255), DOE obtains voluntary commitments from fuel suppliers to make replacement fuels available, from fleets to acquire AFVs and use alternative fuels, and from vehicle manufacturers to make AFVs and related services available to the public. These commitments comprise the Clean Cities Program, which works to bring together all necessary parties in given geographic areas to further the use of alternative fuels.

[4] DOE promulgated the AFTP regulations on March 14, 1996. 61 FR 10622.

credits. Section 508 of EPAct 1992 enables fleets to earn bankable and tradable credits by acquiring AFVs prior to or in excess of requirements. DOE's implementing regulations for the credit program appear at subpart F of 10 CFR part 490.

In practice, SFP fleets typically generate surplus credits in one of two ways—either by acquiring in a particular model year more of their covered LDVs as AFVs (such as acquiring 100 percent as AFVs instead of the required 75 or 90 percent), or by acquiring AFVs in ''excluded vehicle'' classes (such as employee take-home vehicles or law enforcement vehicles).[5] As indicated, they are also able to generate credits by acquiring AFVs earlier than required.[6] Fleets may use the surplus credits generated in these ways in future model years to cover shortfalls (banking), or they may sell or trade the credits to other covered fleets.[7] For a fleet that has not met its AFV-acquisition requirement in a particular model year, purchasing or trading for credits is a viable means by which to attain AFTP compliance inasmuch as the fleet can obtain the necessary number of credits and thereby compensate for its failure to acquire the requisite number of AFVs.

The Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388) included an amendment to the EPAct 1992 Title V fleet AFV-acquisition requirement, allowing SFP fleets to use biodiesel blends (of at least 20 percent biodiesel, B20) as a partial alternative means of complying with their AFV-acquisition requirements (limited to meeting 50 percent of requirements, except for biodiesel fuel providers). In the Energy Policy Act of 2005 (EPAct 2005, Pub. L. 109–58), Congress again amended the Title V fleet program to provide an optional compliance path for covered fleets called ''Alternative Compliance.'' Under this option, an SFP fleet may apply for an Alternative Compliance waiver that, if granted by DOE, enables the fleet to implement various means of achieving petroleum reductions, including but not limited to the use of alternative fuels, the use of biodiesel blends without either the B20 threshold or the 50 percent cap that apply under Standard Compliance, fuel economy improvements, the purchase of hybrid and other advanced technology (higher efficiency) vehicles, idle time reductions, and a reduction in vehicle miles traveled, in lieu of complying solely through AFV acquisitions and/or biodiesel use (under Standard Compliance). The addition of this Alternative Compliance option provided additional flexibility to fleets exploring the use of alternative fuels, as well as certain fuel efficiency technologies (*e.g.,* hybrid vehicles, idle reduction) and trip reduction approaches. In fact, the Alternative Compliance option already allows fleets to explore many of the technologies that are the subject of today's proposed rule.

Today's proposal would implement EISA section 133, allocating to covered fleets operating under Standard Compliance credits under section 508 for the acquisition of various types of electric drive vehicles, and for investments in qualified alternative fuel infrastructure, nonroad equipment, and emerging technologies related to specific vehicle types. In developing this NOPR, DOE has been guided by the fact that EISA section 133 specifically amends section 508 of EPAct 1992 and requires DOE to revise the manner in which credits may be earned by covered fleets for purposes of achieving SFP fleet compliance. For this reason, DOE is proposing that credits be allocated to those electric drive vehicles identified in section 133 that do not already qualify as AFVs based upon a yardstick of petroleum displacement, rather than simply treating the vehicles as equivalent to AFVs. The section 133-identified vehicles that already qualify as AFVs are already entitled to full credit under the AFTP.

### *B. Current Status of Alternative Fuel Transportation Program*

Since Model Year (MY) 2000, the AFTP has been highly successful. Through MY 2009, covered SFP fleets acquired nearly 160,000 AFVs. Annually, these fleets typically are acquiring between 10,000 and 14,000 AFVs.

SFP fleets unable to acquire AFVs or without alternative fuel available for AFVs may file for exemptions from the AFV-acquisition requirements, in accordance with the provisions of EPAct 1992 sections 501(a)(5) and 507(i). Since MY 2000, DOE has received nearly 350 exemption requests, granting exemptions and thereby relieving the requesting fleets from having to acquire more than 9,600 AFVs.

Covered fleets have used and continue to use the credit program regularly. In the early stages of the AFTP, the primary users of credits were the fleets generating and banking them to provide additional compliance flexibility in future years. Since MY 1997, covered SFP fleets have applied more than 27,000 credits to meet AFV-acquisition requirements. Subsequently, while applying banked credits has remained a significant use of surplus credits, a number of fleets have been selling their credits, with approximately 1,000–1,500 credits now being exchanged each year, and more than 9,500 credits having been exchanged since MY 1999. Overall, covered fleets currently hold over 61,500 banked credits, enough credits for perhaps four or more years of operation of the entire AFTP.

### *C. Statutory Authority for Proposals Included in This NOPR*

#### 1. EISA

EISA section 133 amended section 508 of EPAct 1992 by providing definitions of specific electric drive vehicles. These electric drive vehicles include ''fuel cell electric vehicles,'' ''hybrid electric vehicles,'' ''medium- or heavy-duty electric vehicles,'' ''neighborhood electric vehicles,'' and ''plug-in electric drive vehicles.'' (42 U.S.C. 13258(a)) EISA section 133(3) further amended section 508 by directing DOE to allocate credit ''in an amount to be determined by [DOE]'' for the acquisition of these electric drive vehicles, as well as for ''investment in qualified alternative fuel infrastructure or nonroad equipment, as determined by [DOE].'' (42 U.S.C. 13258(b)(2)(A)) DOE is also directed to ''allocate more than 1, but not to exceed 5, credits for investment in an emerging technology relating to any'' of the enumerated electric drive vehicles ''to encourage'' petroleum and vehicle emissions reductions and technological advancement. (42 U.S.C. 13258(b)(2)(B))

Considered broadly, section 133 requires that DOE allocate some level of credit for additional vehicle types and various investments, further expanding the list of options that covered fleets may use in their efforts to comply with EPAct 1992's AFV-acquisition requirements. Importantly, section 133 does not define, nor require DOE to define, the specified vehicle types as AFVs—it merely calls for DOE to allocate some level of credit to these vehicle types.

DOE reiterates that EISA section 133 revised section 508 of EPAct 1992, which pertains to SFP fleets. Today's proposed rule therefore addresses SFP fleets only, and not Federal fleets.

The allocations that DOE is proposing today are intended to ensure consistency with the overall approach of the relevant provisions of EPAct 1992, which focus on the replacement of

[5] *See* 10 CFR 490.3.

[6] 10 CFR 490.502(b).

[7] *See* 10 CFR 490.504 and 10 CFR 490.506, respectively.

petroleum fuels through the use of replacement fuels to the maximum extent practicable.

It is critical to consider the AFTP's existing definitions in order to understand the proposed allocations. As discussed throughout this NOPR, if a given vehicle type already qualifies as an AFV, it is already eligible for full credit under the existing AFTP. If the vehicle is not an AFV, the focus shifts to whether the specific vehicle type is among the electric drive vehicles set forth in EISA section 133 and for which Congress directed DOE to determine a specific credit level. Similarly, only those investments that fit within the definitions provided in this NOPR would receive credit under the AFTP.

In addition to section 133, section 103(a) of EISA made changes to the Energy Policy and Conservation Act's (EPCA, codified at 49 U.S.C. 32901–32919) definitions of the terms ''automobile'' and ''dual fueled automobile.'' These definitions are included or referenced in subpart A of the AFTP regulations.[8] As part of the amended statutory definition of ''automobile,'' EISA section 103(a) introduced and defined a new term, ''work truck.'' DOE is proposing today to adopt in subpart A these definitions of ''automobile'' and ''work truck,'' to revise several of the existing regulatory definitions and provisions, and to delete those that DOE believes are no longer needed.

2. Additional Proposed Revisions

As indicated above, DOE also is proposing today various modifications to the existing AFTP that are unrelated to EISA. These proposed modifications, discussed more fully in Part V below, include: Establishing a timeframe for the submission of exemption requests; requiring covered fleets to use their own banked credits before requesting exemptions; mandating that fleets without sufficient AFV acquisitions, biodiesel fuel use credits, or banked credits to meet their compliance requirements include in their annual reports information about any efforts they have made to acquire credits from other fleets; and creating a single due date for the submission of Alternative Compliance waiver applications. Like the existing regulations in 10 CFR part 490, the statutory basis for these proposed modifications lies in Titles III–V of EPAct 1992, as amended.

In section 707 of EPAct 2005, Congress amended section 301(9)(E) of EPAct 1992 to make clear that the ''emergency motor vehicles'' exclusion from the term ''fleet'' includes ''vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages, as determined by the Secretary.''[9] DOE is proposing today to revise the regulatory exclusion at 10 CFR 490.3(e) so that it is consistent with this legislative amendment. DOE is also proposing to incorporate in the regulatory definition of ''alternative fuel'' language pertaining to liquid fuels domestically produced from natural gas, which Congress added to the section 301 definition in 2000.[10] Both of these proposed changes would merely implement the particular statutory language modifications that Congress made, and thus DOE considers these proposed changes to be non-controversial.

## III. Key Definitions

This section of the NOPR discusses the AFTP definitions, both existing and newly proposed, that are key to DOE's proposed approach to the allocation of credits under EISA section 133, as well as the existing definitions that DOE is proposing today to amend. The rulemaking process associated with today's NOPR is intended to codify the definitions set forth in EISA section 133 for purposes of the AFTP's credit program (Subpart F). As developed pursuant to EPAct 1992, as amended, compliance under the AFTP is determined primarily through the acquisition of AFVs.

### *A. Existing Definitions*

1. Alternative Fuel

The definition of ''alternative fuel'' for purposes of EPAct 1992 and its fleet programs is provided in section 301(2) of EPAct 1992,[11] and includes:

- Methanol, denatured ethanol, and other alcohols;
- Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels (or such other percentage, but not less than 70 percent, as determined by the Secretary, by rule);
- Natural gas, including liquid fuels domestically produced from natural gas;
- Liquefied petroleum gas;
- Hydrogen;
- Coal-derived liquid fuels;
- Fuels (other than alcohol) derived from biological materials;
- Electricity (including electricity from solar energy); and,
- Any other fuel the Secretary determines, by rule, is substantially not petroleum and would yield substantial energy security benefits and substantial environmental benefits.

The corresponding AFTP definition of ''alternative fuel'' appears at 10 CFR 490.2. The explicit inclusion of electricity as an alternative fuel is particularly relevant to today's proposal.

As indicated above, DOE is proposing to add to the AFTP definition the phrase ''including liquid fuels domestically produced from natural gas,'' which Congress added to the statutory definition in 2000.

2. Alternative Fueled Vehicle

As provided in section 301(3) of EPAct 1992, an alternative fueled vehicle ''means a dedicated vehicle or a dual fueled vehicle.'' Thus, vehicles acceptable for the AFTP (*i.e.,* vehicles that receive full credit under the AFTP) must either be ''dedicated vehicles,'' which are vehicles that operate solely on alternative fuel, or ''dual fueled vehicles,'' which have some capability for switching back and forth from alternative fuel to conventional fuel (such as a bi-fuel natural gas/gasoline vehicle) or otherwise can operate on a blend of alternative and conventional fuels (such as flexible fuel vehicles). Importantly, Congress has not added to or otherwise modified the definition of an AFV as it applies to SFP fleets since its enactment in 1992.[12]

The corresponding AFTP definition of an AFV appears at 10 CFR 490.2. When DOE promulgated this regulatory definition in 1996, it included language clarifying that flexible fuel vehicles (FFVs) are encompassed within the definition, and also provided a separate definition of the term ''flexible fuel vehicle.'' DOE explained that it took the latter definition from the Clean Fuel Fleet Program regulations that the U.S. Environmental Protection Agency (EPA) issued under the Clean Air Act.[13] The National Highway Traffic Safety Administration (NHTSA), the Federal agency responsible for setting and enforcing the Corporate Average Fuel Economy (CAFE) standards under EPCA, did not and still does not have a regulatory definition of ''flexible fuel vehicle.'' DOE has determined that the

[8] *See* 10 CFR 490.2.

[9] *See* Pub. L. 109–58, section 707.

[10] *See* Pub. L. 106–554 App. D, Div. B, Title I, section 122, as codified at 42 U.S.C. 13211(2).

[11] 42 U.S.C. 13211(2).

[12] Congress did, however, previously amend the definition of AFV in the context of Federal fleets, at section 2862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). *See* 147 153 Cong. Rec. S12355 (Oct. 1, 2007) (the ''purpose'' of section 2862 is ''[t]o allow additional types of vehicles to be used to meet minimum Federal fleet requirements''). The amended definition does not apply to the AFTP and SFP fleets regulated under it.

[13] 61 FR 10630–31.

reference to FFVs in the AFTP definition of ''alternative fueled vehicle'' and the separate definition of ''flexible fuel vehicle'' are unnecessary, principally because FFVs qualify as ''dual fueled automobiles'' under the EPCA definition of that term (codified at 49 U.S.C. 32901(a)(9)). As recently as September 2010, NHTSA confirmed that FFVs ''are considered 'dual fueled [automobiles]' under [the] EPCA'' meaning of that term.[14] Because they are dual fueled automobiles, FFVs are also AFVs. Hence, DOE proposes to streamline the AFTP definition of ''alternative fueled vehicle'' by deleting the parenthetical reference to FFVs. For the same reason, DOE also proposes to delete the definition of ''flexible fuel vehicle,'' as well as subsection (3) in the AFTP definition of ''dual fueled vehicle.''

3. Automobile

Because the AFTP definitions of ''dedicated vehicle'' and ''dual fueled vehicle,'' each of which is discussed in more detail below, incorporate by reference the term ''automobile,'' DOE saw fit in its 1996 final rule to include in 10 CFR 490.2 a definition of ''automobile.'' DOE noted that the AFTP definition was ''adapted from and * * * intended to have the same meaning as 'automobile' defined in'' 49 U.S.C. 32901(a)(3).[15]

EISA section 103(a) redefined the term ''automobile'' to include four-wheeled on-road vehicles rated at less than 10,000 pounds gross vehicle weight. To maintain consistency with the revised EPCA definition, DOE is proposing to make similar amendments to the AFTP definition of ''automobile.'' DOE stresses, though, that while the proposed definition in 10 CFR 490.2 would contain an express gross vehicle weight rating cutoff of less than 10,000 pounds, this revision would have no substantive effect on the AFTP. In other words, the AFTP would continue to be a light duty motor vehicle program, with a covered fleet's light duty AFV-acquisition requirement in a particular model year hinging on the total number of light duty motor vehicles the fleet acquired during that model year. The regulatory definition of ''light duty motor vehicle'' would be unchanged, *i.e.,* an LDV would continue to be a light duty truck or light duty vehicle with a gross vehicle weight rating of 8,500 pounds or less, in accordance with Section 301(11) of EPAct 1992 (42 U.S.C. Sec. 13211(11)).

Because EISA added a reference to ''work truck'' in the definition of ''automobile,'' the proposed AFTP definition of ''automobile'' will also include a reference to the term ''work truck.'' DOE is therefore also proposing to add a new definition of this term in the regulations, consistent with the EISA section 103(a) definition of ''work truck'' as a vehicle between 8,500 and 10,000 pounds gross vehicle weight that is not a medium-duty passenger vehicle. The addition of this definition would not represent a shift from the LDV focus of the AFTP.

4. Dedicated Vehicle

The AFTP regulations at 10 CFR 490.2 currently define the term ''dedicated vehicle'' to mean:

(1) An automobile that operates solely on alternative fuel; or

(2) A motor vehicle, other than an automobile, that operates solely on alternative fuel.[16]

For example, a pure (*e.g.,* battery) electric vehicle (EV) is considered a dedicated vehicle and hence an AFV, as defined above, because electricity, the only fuel on which the vehicle operates, is within the definition of alternative fuel. A hybrid electric vehicle (HEV) that has an engine that operates solely on alternative fuel (*e.g.,* compressed natural gas (CNG)) also would be considered a dedicated vehicle under the AFTP, and thus an AFV. DOE anticipates that such a vehicle may enter the marketplace in the not too distant future.

DOE is proposing to make one minor change to the existing definition of ''dedicated vehicle.'' DOE believes it is appropriate to address the future possibility that certain vehicles may operate exclusively on more than one alternative fuel. DOE proposes to do this by amending the definition so that it states ''operates solely on one or more alternative fuels.'' DOE believes this revision is non-controversial.

5. Dual Fueled Vehicle

The AFTP regulations at 10 CFR 490.2 currently define the term ''dual fueled vehicle'' to mean:

(1) An automobile that meets the criteria for a dual fueled automobile, as that term is defined in section 513(h)(1)(C) of the Motor Vehicle Information and Cost Savings Act, 49 U.S.C. 32901(a)(8); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel; or

(3) A flexible fuel vehicle.

As discussed in Part III.A.2 above, DOE is proposing to delete subsection (3) on the grounds that it is no longer necessary.

In promulgating the dual fueled vehicle definition in 1996, DOE neglected to point out that Congress had revised and recodified the Motor Vehicle Information and Cost Savings Act (MVICSA) ''without substantive change'' on July 5, 1994.[17] Nevertheless, DOE did cite to the correct U.S.C. provision containing the definition of ''dual fueled automobile,'' 49 U.S.C. 32901(a)(8). As a result of a change set forth in EISA section 103(a), this statutory definition now appears in 49 U.S.C. 32901(a)(9).

DOE is proposing to amend the AFTP definition of dual fueled vehicle in accordance with the above. The amended definition would read as follows:

(1) An automobile that meets the criteria for a dual fueled automobile as set forth in 49 U.S.C. 32901(a)(9), or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel.

DOE also takes this opportunity to note that it has always interpreted the definition of dual fueled vehicle in the context of NHTSA's minimum driving range criteria for dual fueled automobiles. Under those criteria, for a passenger automobile to be considered a dual fueled automobile, it must be able to drive at least 200 miles when operating on the alternative fuel; for a dual fueled electric passenger automobile, the automobile must be able to operate on a full EPA urban test cycle and a full EPA highway test cycle on electricity alone, which means it must meet all speed and acceleration requirements over a total of 17.7 miles.[18] Only motor vehicles that meet these minimum driving range criteria qualify as dual fueled vehicles and hence are considered AFVs under the current AFTP definition.

Although it has not been problematic to date, the dual fueled vehicle determination may become more complicated as plug-in hybrid electric vehicles (PHEV) are commercialized (see Part IV.B.2 below). Except in those

[14] 75 FR 58078, 58111 (Sept. 23, 2010); *See also* 75 FR 25324, 25665 (May 7, 2010); 76 FR 39478, 39499 (July 6, 2011).

[15] 61 FR 10622, 10630.

[16] In addition to ''automobile,'' as discussed in the text above, section 490.2 of the Program regulations also provides a definition of the term ''motor vehicle.'' *See* 10 CFR 490.2.

[17] *See* Pub. L. 103–272, §§ 1(a), 6(a).

[18] 49 CFR 538.5 and 538.6. The test cycles consist of 7.5 miles of urban driving and 10.2 miles of highway driving, with charging allowed prior to each test.

instances in which it is clear to DOE that a vehicle is equipped with an engine that can operate on both petroleum and liquid or gaseous alternative fuel, DOE would look to NHTSA, meaning that if NHTSA considers a particular automobile or motor vehicle to be dual fueled under EPCA (*i.e.,* for CAFE purposes), then DOE would treat the vehicle as a dual fueled vehicle and hence an AFV under the AFTP.

6. Electric Motor Vehicle and Electric-Hybrid Vehicle

In its 1996 final rule, DOE adopted in 10 CFR 490.2 the definitions of the terms ''electric motor vehicle'' and ''electric-hybrid vehicle'' located in section 601 of EPAct 1992 (42 U.S.C. 13271). This was necessitated by the fact that section 501(c) of EPAct 1992, which directed DOE to establish an option for electric utilities, referred specifically to ''electric motor vehicles.'' The electric utility option is contained in 10 CFR 490.307.

Because the electric utility option was time limited and the period for the option has long since passed, DOE is proposing to delete section 490.307 from the AFTP regulations and renumber the remaining provisions in Subpart D. Correspondingly, DOE is proposing to remove the ''electric motor vehicle'' and ''electric-hybrid vehicle'' definitions because they would be extraneous in the absence of the electric utility option. DOE, which believes these amendments would not have a major impact, solicits comments on them.

7. Section 133—Identified Vehicles That Already Qualify as AFVs

Of the electric drive vehicle types identified in EISA section 133, several already qualify as AFVs and, for that reason, already are entitled to one full credit under the AFTP. As discussed below, these include certain HEVs, PHEVs, and fuel cell electric vehicles (FCEVs), light duty battery electric vehicles, and medium- or heavy-duty battery electric vehicles. For such vehicles, there is no need for DOE to address the allocation of credit in this NOPR—if and when acquired by covered fleets, these vehicles already are entitled to one AFV-acquisition credit because the vehicles already qualify as AFVs (although in the case of medium- or heavy-duty vehicles, the covered fleet first must meet its light duty AFV-acquisition requirement).

An HEV or PHEV whose engine is capable of operating on alternative fuel (such as E85) is either a dual fueled vehicle (if the engine can operate on alternative fuel and on gasoline or diesel) or a dedicated vehicle (if the engine operates solely on alternative fuel), and, consequently, already an AFV. To date, though, DOE is aware of only a small number of flexible fuel HEVs (*e.g.,* Ford Escapes) that have been built for demonstration purposes. Likewise, a PHEV with a conventional gasoline engine would be a dual fueled vehicle and therefore already an AFV under the AFTP if it were to qualify as a dual fueled electric automobile under the applicable NHTSA criteria. DOE notes, though, that not all PHEVs are expected to meet the minimum driving range criteria for dual fueled automobiles under 49 U.S.C. 32901(a)(9).[19]

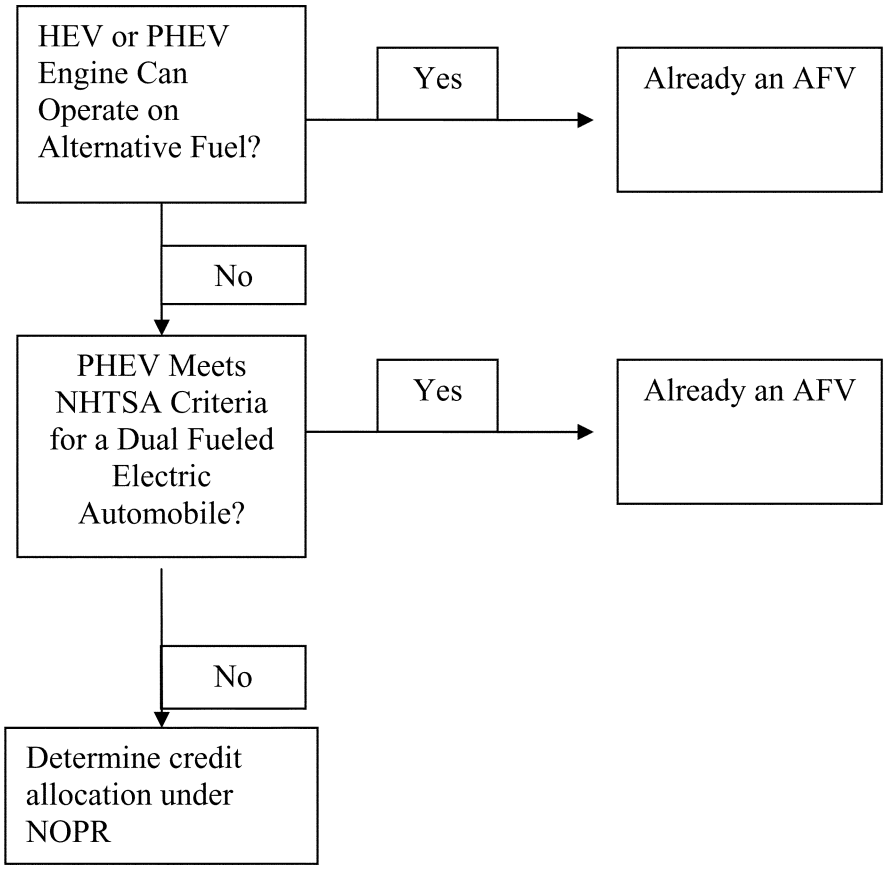
With respect to the HEVs currently on the market, DOE takes this opportunity to reiterate that it provides no credit under Standard Compliance because none of these vehicles qualify as AFVs. Equipped with gasoline-only engines, HEVs available to date ''obtain their electric power from their onboard conventional gasoline engine and energy captured through regenerative braking.'' [20] Because they cannot operate without gasoline, these vehicles are not dedicated vehicles. Nor do they qualify as dual fueled vehicles, either as that term is presently defined or as it would be redefined under this NOPR. Contrary to what is required by the word ''fueled,'' the electricity that can propel the vehicle at low speeds for short distances does not emanate from an off-board source (*e.g.,* the electric grid).

Figure 1 below depicts the HEVs and PHEVs that already qualify as AFVs and those HEVs and PHEVs for which credit would be allocated under this NOPR.

[19] *See* 75 FR 58078, 58104 (Sept. 23, 2010); 76 FR 39478, 39480, 39502–04 (July 6, 2011).

[20] *Id.* at 58087 n.45.

**Figure 1 – Determination of AFV Status for Hybrid Electric Vehicles (HEVs) and Plug-In Hybrid Electric Vehicles (PHEVs)**




FCEVs, as discussed more fully in Parts III.B.1 and IV.B.3 below, use a ''fuel cell,'' which typically is fueled by hydrogen, an alternative fuel, but which can also be fueled by a petroleum fuel (*e.g.,* gasoline or diesel). An FCEV that operates on alternative fuel is either a dedicated vehicle (if the FCEV's fuel cell is fueled solely by alternative fuel) or a dual fueled vehicle (if the FCEV's fuel cell can be fueled by alternative fuel and by gasoline or diesel fuel) and, consequently, already an AFV eligible for one credit under the AFTP. FCEVs that are not AFVs would be allocated credit under today's NOPR.

Battery electric vehicles are already considered AFVs under section 301 of EPAct 1992 by virtue of electricity's inclusion within the definition of alternative fuel. Hence, when acquired by covered fleets, they, too, are already eligible for full AFV-acquisition credit under the AFTP. Finally, medium- or heavy-duty battery electric vehicles already are entitled to one credit under the creditable action provisions of 10 CFR 490.502 because they, too, already qualify as AFVs.

In sum, the following qualify as AFVs: (1) HEVs and PHEVs with an engine that operates solely on alternative fuel or one that can operate on alternative fuel and on gasoline or diesel; (2) PHEVs that meet the NHTSA minimum driving range criteria and thus qualify as dual fueled electric automobiles; (3) FCEVs that operate solely on alternative fuel or on alternative fuel and on gasoline or diesel; (4) light duty battery electric vehicles; and (5) medium- or heavy-duty battery electric vehicles. As a result, these vehicles already are entitled to one credit under the AFTP, although in the case of medium- or heavy-duty AFVs, they are not entitled to credit until the fleet has met it light duty AFV-acquisition requirement.

*B. New Definitions: EISA Section 133 Vehicles and Actions*

DOE is proposing definitions of key terms for purposes of Subpart F of the AFTP regulations, in accordance with the definitions within EISA section 133, as described in the paragraphs that follow.

1. Fuel Cell Electric Vehicle

A ''fuel cell electric vehicle'' is defined for purposes of section 508 of EPAct 1992, as amended, as an ''on-road or non-road vehicle that uses a fuel cell (as defined in section 803 of the Spark M. Matsunaga Hydrogen Act of 2005 (42 U.S.C. 16152)).'' Section 803 of the Hydrogen Act of 2005 defines ''fuel cell'' as a ''device that directly converts the chemical energy of a fuel, which is supplied from an external source, and an oxidant into electricity by electrochemical processes occurring at separate electrodes in the device.'' Typically, FCEVs are actually fuel cell hybrid vehicles that include some form of electric storage medium (such as batteries) to allow for better matching of vehicle generation capabilities to performance demand. Most FCEVs currently under development are fueled by hydrogen, either in compressed or liquefied form, but some that have been developed use onboard reformers to allow fueling with other fuels (*e.g.,* petroleum fuels). DOE is proposing to adopt the definition of ''fuel cell electric

vehicle'' in Subpart F of the AFTP regulations, but substituting the defined term ''motor vehicle'' in place of the term ''on-road.'' [21]

2. Hybrid Electric Vehicle

EISA defines a ''hybrid electric vehicle'' for purposes of section 508 of EPAct 1992, as amended, as a ''new qualified hybrid motor vehicle (as defined in section 30B(d)(3) of the Internal Revenue Code of 1986).'' Section 30B(d)(3) of the Internal Revenue Code (IRC) (26 U.S.C. Sec. 30B(d)(3)) defines ''new qualified hybrid motor vehicle'' and sets specific conditions for purposes of meeting this definition, including that a motor vehicle be one that ''draws propulsion energy from onboard sources of stored energy which are both an internal combustion or heat engine using consumable fuel and a rechargeable energy storage system'' and has a maximum available power of a set minimum amount. In the case of a light duty vehicle, the vehicle also must be one that ''has received a certificate of conformity under the Clean Air Act and meets or exceeds the [applicable] equivalent qualifying California low emission vehicle standard under section 243(e)(2) of the Clean Air Act'' as well as ''the [applicable] emission standard [established by EPA] under section 202(i) of the Clean Air Act,'' among other conditions.[22] In the case of a vehicle with a gross vehicle weight rating of more than 8,500 pounds, the vehicle also must be one that ''has an internal combustion engine which has received a certificate of conformity under the Clean Air Act as meeting the emission standards set [by EPA for] diesel heavy duty engines or ottocycle heavy duty engines,'' among other conditions.[23]

DOE is proposing today to adopt the EISA definition of ''hybrid electric vehicle'' in Subpart F of the AFTP regulations.[24]

3. Medium- or Heavy-Duty Electric Vehicle

EISA defines a ''medium- or heavy-duty electric vehicle'' for purposes of section 508 of EPAct 1992, as amended, as ''an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight of more than 8,501 pounds.'' For the purposes of consistency with EPAct 1992 section 301(11), which defines a light duty motor vehicle as 8,500 pounds or less, DOE proposes to modify EISA's definition of medium- or heavy-duty electric vehicle to ''an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.'' [25]

4. Neighborhood Electric Vehicle

EISA defines a ''neighborhood electric vehicle'' for purposes of section 508 of EPAct 1992, as amended, as ''a 4-wheeled on-road or nonroad vehicle that—(A) has a top attainable speed in 1 mile of more than 20 mph and not more than 25 mph on a paved level surface; and (B) is propelled by an electric motor and [an] on-board, rechargeable energy storage system that is rechargeable using an off-board source of electricity.'' DOE is proposing today to adopt this statutory definition.

5. Plug-In Electric Drive Vehicle

EISA defines a ''plug-in electric drive vehicle'' for purposes of section 508 of EPAct 1992, as amended, as ''a vehicle that (A) draws motive power from a battery with a capacity of at least 4 kilowatt-hours; (B) can be recharged from an external source of electricity for motive power; and (C) is a light-, medium-, or heavy duty motor vehicle or nonroad vehicle (as those terms are defined in section 216 of the Clean Air Act (42 U.S.C. 7550)).'' Section 216 of the Clean Air Act defines the term ''motor vehicle'' to mean ''any self-propelled vehicle designed for transporting persons or property on a street or highway,'' and it defines ''nonroad vehicle'' as a vehicle that is ''powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.'' DOE is proposing today to adopt EISA's definition of plug-in electric drive vehicle.

There are two primary forms of plug-in electric drive vehicles—dedicated EVs (*e.g.,* battery electric vehicles) and PHEVs, assuming they have a minimum battery capacity of four kilowatt-hours.[26] For the purposes of this rulemaking, PHEVs are considered similar in many cases to today's available HEVs, but PHEVs include greater electric storage capacity (and thus more/larger batteries) than HEVs, possess the capability to recharge their electric storage system by ''plugging in'' to the grid, and often have some duration of electric-only operation. DOE considers a PHEV to be a dual fueled vehicle if it is able to complete the EPA urban and highway test cycles on electricity alone.

6. Alternative Fuel Infrastructure

EISA section 133 provides no definition of the term ''alternative fuel infrastructure,'' merely indicating that DOE should allocate credits for ''investment in qualified alternative fuel infrastructure * * * as determined by the Secretary.''

Section 179A(d) of the Internal Revenue Code (26 U.S.C. 179A(d)) defines a similar phrase, ''qualified clean-fuel vehicle refueling property,'' to mean a property that is:

(A) For the storage or dispensing of a clean-burning fuel into the fuel tank of a motor vehicle propelled by such fuel, but only if the storage or dispensing of the fuel is at the point where such fuel is delivered into the fuel tank of the motor vehicle, or

(B) for the recharging of motor vehicles propelled by electricity, but only if the property is located at the point where the motor vehicles are recharged.[27]

DOE proposes to base the definition of the term ''alternative fuel infrastructure'' on the Internal Revenue Code definition of ''qualified clean-fuel vehicle refueling property,'' clarifying the language, however, regarding the requirement that fueling take place where the infrastructure is located.

In short, ''alternative fuel infrastructure'' would mean one or more alterative fueling stations or one or more charging or battery exchange stations for EISA section 133-specified electric drive vehicles.

[21] DOE notes that this definition is not identical to the definition of ''fuel cell vehicle'' that EPA promulgated as part of its light duty vehicle greenhouse gas emission standards under the Clean Air Act. *See* 75 FR 25324, 25684 (May 7, 2010). DOE, however, is constrained by the statutory definition set forth in EISA section 133.

[22] *See generally* Internal Revenue Service, Notice 2006–9—Credit for New Qualified Alternative Motor Vehicles (Advanced Lean Burn Technology Motor Vehicles and Qualified Hybrid Motor Vehicles), available at *http://www.irs.gov/irb/2006-06_IRB/ar11.html.*

[23] *See generally* Internal Revenue Service, Notice 2007–23—Credit for New Qualified Heavy-Duty Hybrid Motor Vehicles, available at *http://www.irs.gov/irb/2007-23_IRB/ar08.html.*

[24] DOE notes that this definition is not identical to the HEV definition that EPA promulgated as part of its light duty vehicle greenhouse gas emission standards under the Clean Air Act. *See* 75 FR 25324, 25684 (May 7, 2010). DOE, however, is constrained by the statutory definition set forth in EISA section 133.

[25] In EISA section 133, Congress provided a definition of ''hybrid electric vehicle'' (see Part III.B.2 above), but not of the terms ''electric vehicle'' and ''plug-in hybrid electric vehicle,'' both of which appear in the definition of a ''medium- or heavy-duty electric vehicle.'' With respect to ''plug-in hybrid electric vehicle,'' DOE proposes that PHEVs may be considered a type of ''plug-in electric drive vehicle'' (see Part III.B. 5 below). As for the term ''electric vehicle,'' DOE would interpret this term to mean a vehicle that operates solely on electricity (*i.e.,* a battery electric vehicle).

[26] DOE expects that all PHEVs will have a battery capacity of at least four kilowatt-hours, because that is the minimum battery capacity needed for a vehicle to qualify for the $7,500 Federal tax credit for new qualified plug-in electric drive motor vehicles. *See* 26 U.S.C. 30D(d)(1)(F)(i).

[27] 26 U.S.C. 179A(d)(3).

7. Alternative Fuel Nonroad Equipment

Similarly, EISA section 133 provides no definition of the term ''alternative fuel nonroad equipment.'' Congress simply instructed DOE to allocate credits for ''investment in qualified alternative fuel * * * nonroad equipment, as determined by the Secretary.'' Therefore, DOE must determine the types of alternative fuel nonroad equipment that would qualify for Program credit within the context of section 133's overall objectives.

DOE proposes to consider as eligible for credit only alternative fuel nonroad equipment that is mobile, such as mobile cargo and material handling equipment (*e.g.,* forklifts) and mobile farm or construction equipment (*e.g.,* tractors, bulldozers, backhoes, front-end loaders, rollers/compactors). A fleet requesting credit would have to certify that the equipment is being operated on alternative fuel, within the constraints of best practices or seasonal fuel availability. DOE requests comments on this point. Consistent with the Program's focus on vehicle acquisitions, no stationary non-road equipment would qualify for credit.

8. Emerging Technology

EISA section 133 likewise provides no definition of the term ''emerging technology,'' although, as discussed in more detail in Part IV.C.3 of this NOPR, the statute explicitly requires that such technology ''relat[e] to'' at least one of the five vehicle types described earlier in the provision. Based on its experience in deploying advanced technologies, DOE proposes to interpret the term ''emerging technology'' to mean pre-production or pre-commercially-available vehicles of the five types described in section 133. DOE believes that once these vehicle technologies reach the point of being mass produced or commercially available and thus are beyond the stage of demonstration or initial data collection, the provision of any investment credit under section 508 of EPAct 1992 would be inappropriate inasmuch as acquisition credit would then be warranted (see Part IV.C.3 below). DOE requests comments from stakeholders on whether drawing a distinction between pre-production and commercially available in the context of the definition of ''emerging technology'' is sufficient and appropriate.

## IV. Proposed Allocation of Credit

### *A. General Basis for Allocations*

As described in Part I of this NOPR, the EPAct 1992 fleet programs use centrally-fueled fleets as launching pads for AFV technologies to encourage the growth of alternative fuel infrastructure. Through EISA section 133, Congress has expanded the range of vehicles that may earn AFV-acquisition credits under the Standard Compliance path of the AFTP. Congress has directed DOE, and DOE is today proposing, to allocate credit values for those section 133-specified vehicles that do not already qualify as AFVs.

EPAct 1992 Title V and the AFTP are designed to encourage the replacement of petroleum fuels with non-petroleum fuels, through the use of AFVs. In implementing the EPAct 1992 program for SFP fleets, DOE has maintained an approach that focuses primarily on the petroleum replacement capability of vehicles subject to the program. For these reasons, DOE is proposing to allocate only partial credit to those section 133-identified electric drive vehicles that do not already qualify as AFVs, such as HEVs with an internal combustion engine that operates solely on conventional petroleum fuels.

For those electric drive vehicles identified in section 133 that previously qualified as ''alternative fueled vehicles,'' based on their status as either dedicated vehicles or dual fueled vehicles, full AFV-acquisition credit is already warranted under the AFTP. No further discussion of these vehicles is needed.

DOE believes that non-AFVs should not receive as much credit as AFVs, but rather should receive only partial credit because they do not have as significant an effect on petroleum replacement as do AFVs. For example, consider an HEV that is not an AFV; even if the vehicle achieves twice the efficiency of a comparable vehicle, the vehicle itself is only reducing petroleum consumption by one half, whereas an AFV has the potential to decrease petroleum consumption in full if it is operated solely on alternative fuel. Further, fleets that seek credit for non-AFVs are encouraged to use the AFTP's Alternative Compliance option, which allows extensive use of various technologies including higher efficiency vehicles, all toward achieving compliance with the AFTP.

In today's notice, DOE also proposes to allocate credits for investments by covered fleets in qualified alternative fuel infrastructure (*e.g.,* fueling stations), alternative fuel nonroad equipment (*e.g.,* mobile construction or material/cargo handling equipment), and emerging technologies (*e.g.,* pre-production vehicles), with 1 credit to be earned for every $25,000 invested. Within each category, the number of investment credits would be capped at 5 credits in a single model year, although for alternative fuel infrastructure investments, the cap would be 10 credits in a single model year when the infrastructure at issue is publicly accessible rather than private. This higher cap for publicly-accessible infrastructure is being proposed to provide a somewhat greater incentive for those investments that DOE believes would make alternative fuel infrastructure more widely available. DOE maintains that this is a key to increasing petroleum substitution, in accordance with EPAct 1992's purposes (as implemented through Titles III through V). Congress, in EISA section 133, imposed a five-credit cap on investments in emerging technologies, and DOE believes for reasons of administrative consistency that a comparable credit cap should likewise be placed on the other types of creditable investments. Moreover, DOE is of the view that placing a cap on investments in alternative fuel infrastructure and nonroad equipment would help to limit the degree to which the AFTP's existing surplus of banked credits grows in the future (see Part V.B below).

DOE is proposing that for the purpose of calculating the number of credits earned, fleets should be allowed to aggregate dollar amounts spent in the areas of alternative fuel infrastructure, alternative fuel nonroad equipment, and emerging technology. DOE also proposes the following limitation: that such aggregation be allowed only to the extent that additional funds from a category for which the fleet has already earned the maximum number of credits may not be used to increase the number of credits earned in another category. For example, a fleet that spends $40,000 on alternative fuel nonroad equipment and $60,000 on emerging technology may aggregate the funds to total $100,000 and claim 2 credits for alternative fuel nonroad equipment and 2 credits for emerging technology. In another example demonstrating the proposed limitation, a fleet that spends $45,000 on alternative fuel nonroad equipment and $130,000 on emerging technology may tally 5 credits for emerging technology and 1 credit for nonroad equipment; the $5,000 spent on emerging technology beyond the cap of $125,000 cap applicable to emerging technology investment credits may not be used to increase the amount of funds and hence the number of credits earned overall by combining with the investment in the alternative fuel nonroad equipment category. In other words, there is a ceiling on the amount

of funds spent in one category that may be used to increase the number of credits earned in the second or third category. This limitation is necessary to ensure a cap on the number of credits that may be earned for funds spent in any one of the three categories. DOE considered not allowing aggregation of amounts spent. Because DOE is not allowing fractional credits for amounts lower than $25,000 spent in any one of the categories, DOE hopes that the proposed approach may be viewed as a reward for addressing the need for additional deployment in these categories. DOE welcomes comments on the proposed approach.

DOE is proposing that when fleets report to DOE the total credits they have earned in a model year (*i.e.,* the total of AFV-acquisition and relevant investment credits), fleets should total the credits, including all fractional credits, and then round that aggregate figure to the nearest whole number. This rounding approach is discussed further in Part VI.A below.

*B. Electric Drive Vehicles*

EISA specifies several types of vehicle technologies for which DOE must determine the amount of credit each is to be allocated under the AFTP credit program.

1. Hybrid Electric Vehicles (HEVs)

Currently available HEVs have a conventional gasoline engine and an electric motor that provides a boost or otherwise provides only some motive force. As indicated above, because they are neither dedicated vehicles nor dual fueled vehicles, they have not previously qualified for credit under the AFTP. Current HEVs simply offer higher efficiency than conventionally-fueled vehicles, as represented by mile per gallon (mpg) ratings.

Under the Alternative Compliance option, fleets can comply by using HEVs to help meet their petroleum reduction requirement. For more information on HEVs and Alternative Compliance, see *http://www1.eere.energy.gov/vehiclesandfuels/epact/pdfs/alt_compliance_guide.pdf* or the final rule for Alternative Compliance at 72 FR 12958 (March 20, 2007).

HEVs that are not AFVs because they lack an alternative fuel (*e.g.,* E85)-capable engine would receive ½ credit under today's proposed rule, rather than the full credit that dedicated and dual fueled vehicles already receive.[28] DOE's proposal to allocate ½ credit is based on the petroleum replacement potential of these vehicles, as well as their energy efficiency (*i.e.,* fuel economy), which effectively dictates their petroleum replacement potential.

DOE assumed the same annual usage (*i.e.,* miles driven per year) for an HEV and a conventional vehicle. For the vast majority of HEVs (other than PHEVs, as described below), the fuel economy improvement that each HEV model achieves versus a conventional vehicle model is limited. DOE examined the efficiency gains and believes that most HEVs generate efficiency gains that would suggest that DOE propose a lower credit value, on the order of ¼ credit or less in some instances. Some HEV models, in fact, achieve fuel economy barely greater than conventional internal combustion engine versions of the same model, while other HEV models actually achieve lower fuel economy than the most fuel efficient models in the same size class.

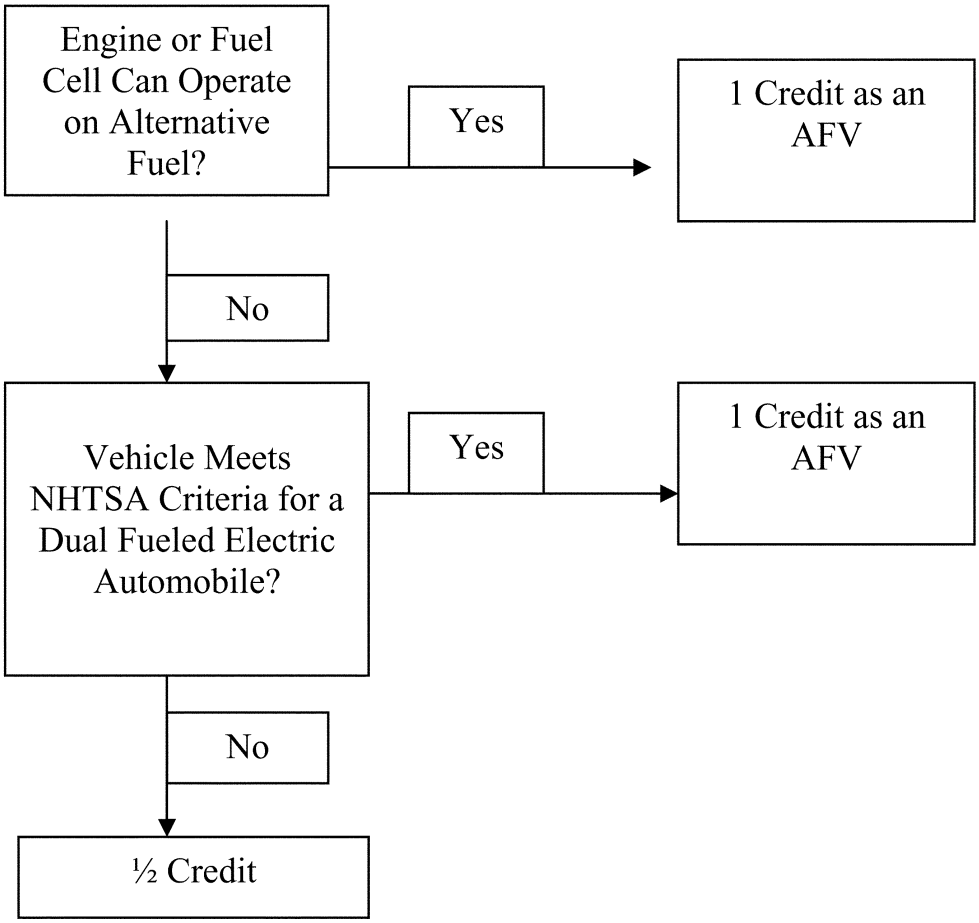
Still other HEVs, however, do achieve a considerably higher efficiency than the most fuel efficient conventional models in the same EPA size class. The most notable of these HEVs are the 2011 Toyota Prius, Mercury Milan Hybrid FWD, and Ford Fusion Hybrid FWD, which are the most fuel efficient midsize HEVs on the market. According to the 2011 Fuel Economy Guide (available at *http://www.fueleconomy.gov*), the Prius achieves 50 mpg ''combined'' (*i.e.,* city/highway) while the Mercury Milan and Ford Fusion Hybrids each achieve 39 mpg combined. These three models, which together average almost 43 mpg combined, use an average of 2.4 gallons combined (city/highway) to travel 100 miles. This compares to the average of 31 mpg combined, translating into an average 3.2 gallons combined to travel 100 miles, achieved by the top three conventional midsize automatic cars, the Hyundai Elantra (33 mpg combined), Nissan Versa (30 mpg combined), and Kia Forte Eco (30 mpg combined). In view of this approximately 39% fuel economy improvement and 25% fuel reduction, DOE has opted to allocate ½ credit to all HEVs.

DOE specifically considered proposing a higher credit value for those HEVs that do provide significant efficiency gains and lower values for those HEVs with comparatively smaller efficiency gains, with the increments of credits being 0 (0 to 25% efficiency gains when compared with the most efficient conventional vehicles in their size class), ¼ (25% to 50% efficiency gains), and ½ (over 50% efficiency gains). In the end, though, DOE believes that a single credit value for all HEVs would be most manageable from an administrative standpoint and represents an approximation of the petroleum reduction of the average hybrid electric vehicle. Although the petroleum displacement achieved by the most efficient midsize HEVs, when compared to the most efficient conventional midsize cars, suggests a credit value closer to ⅓, to provide an incentive for fleets to acquire HEVs, DOE believes ½ credit for all non-AFV HEVs is warranted. While certain vehicles may therefore earn credit out of proportion to their petroleum savings, ½ credit would still be appropriate given the AFTP's goal of having fleets serve both as launching pads for new technologies and as entities seeking to achieve petroleum consumption reductions. In addition, it also is anticipated that as hybrid technologies develop, the efficiency of these vehicles should increase.

Figure 2 below provides the credit allocation determination process for HEVs.

[28] Note that in order to give meaning to the EISA section 133 amendments, covered fleets would earn credits for light duty HEVs under this proposed rule even if they have not yet met their light duty AFV acquisition requirements. While each light duty HEV purchase would increase the fleet's acquisition requirements as a covered LDV purchase at a faster rate than it would offset such requirements, the rule would provide the concomitant benefit of providing immediately available credits. If the rule were to only allow the allocation of credits once the AFV acquisition requirements had been met, an HEV purchase would afford no compliance benefit.

**Figure 2. Credit Allocation Determination for HEVs, PHEVs, and FCEVs**




2. Plug-In Electric Drive Vehicles

Battery electric vehicles are already entitled to a full credit, as they qualify as dedicated vehicles and, hence, alternative fueled vehicles under EPAct 1992 section 301.

Because all PHEVs are expected to have at least a 4 kilowatt-hour battery, they would qualify as plug-in electric drive vehicles under section 133. Like HEVs, however, PHEVs are anticipated to operate on both electricity and either conventional petroleum fuel or alternative fuel. PHEVs typically have more electrical storage capacity onboard than HEVs, to allow for more significant operation on battery power alone. PHEVs differ from other HEVs, however, in that they are designed to operate in part on electric power obtained from off-board sources. For example, for a PHEV20 (20-mile electric-only range), if the operator's average daily use is 40 miles, half of the vehicle's operation could be supplied by electricity assuming no daytime charging. PHEVs may also hold special promise to enhance fuel efficiency gains over conventional vehicles and enable the use of renewable energy in either centralized or distributed power generating systems. Thus, PHEVs could contribute substantially both to reducing petroleum use and reducing the associated generation of greenhouse gases. DOE invites public comments on each of these points.

PHEVs that do not already qualify as AFVs, because they are not equipped with an engine that is capable of operating (or one that operates solely) on alternative fuel, nor able to meet the NHTSA criteria for a dual fueled electric automobile, would be treated under this proposed rule in the same manner as HEVs, meaning their acquisition by a covered fleet would result in ½ credit. In addition to commercially available PHEVs, several organizations currently perform conversions. To qualify for credit under the AFTP, any such conversion must be completed within four months of the vehicle's acquisition under 10 CFR 490.202(c) for states and 10 CFR 490.305(c) for alternative fuel providers.

DOE's rationale behind allocating to non-AFV PHEVs the same credit value that would be allocated to non-AFV HEVs, ½ credit, is that both sets of vehicles are non-AFVs and, further, efficiency gains offered by the former vehicles versus the latter vehicles are relatively small and do not justify disparate treatment. DOE invites comments from stakeholders on this equal treatment approach, and emphasizes that where a commenter believes that a non-AFV PHEV should be allocated more credit than a non-AFV HEV, the commenter should include in its comments a sufficiently detailed explanation, ideally supported by relevant data, articulating why a non-AFV PHEV deserves more credit than a non-AFV HEV.

Figure 2 in section 1 above depicts the credit allocation determination process for PHEVs.

3. Fuel Cell Electric Vehicles (FCEVs)

FCEVs with fuel cells that can be powered by hydrogen or some other alternative fuel already qualify as AFVs

and thus already are eligible for full credit under the AFTP. To DOE's knowledge, the majority of FCEVs under development are fueled by hydrogen, but DOE cannot dismiss the possibility of a non-alternative fuel-based FCEV one day reaching the market. As a result, DOE is required by EISA section 133 to establish a credit value for non-AFV FCEVs.

DOE proposes to treat FCEVs that are neither dedicated vehicles nor dual fueled vehicles in the same manner as non-AFV HEVs and PHEVs and allocate them ½ credit. This determination is based on the fact that current AFV FCEVs typically offer significant efficiency gains over conventional vehicles, but non-AFV FCEVs, while offering similar efficiency gains, would not displace as much petroleum as an AFV operating solely on alternative fuel. DOE solicits comments on this proposed allocation level, and advises stakeholders who believe that more than ½ credit is warranted to provide specific data in support of their position that FCEVs powered solely by non-alternative fuel (*e.g.,* gasoline or diesel fuel) deserve a higher credit value.

Figure 2 in section 1 above depicts the credit allocation determination process for FCEVs.

4. Neighborhood Electric Vehicles (NEVs)

Most commonly-available NEVs have been produced as a type of low-speed vehicle, limited to a top speed of between 20 and 25 mph. NEVs are typically used for driving short distances on low-speed streets or on campus-like sites (such as schools or power plants). NEVs functionally substitute for only some of the activities for which conventional vehicles are used, and in part serve as substitutes for walking or bicycling.[29] In many areas, NEVs are not able to be licensed for use on public roads. Even in the jurisdictions where they may be licensed, they typically are limited to streets with speed limits of 35 mph or less and can never be driven on highways. To date, the AFTP has treated NEVs, which do not fall under the Clean Air Act section 216(2) definition of ''motor vehicles'' as interpreted by EPA,[30] as ineligible for credit as AFVs.

In a 2001 study, DOE found that NEVs are driven an average of 3,410 miles per year.[31] This compares to the average annual use of light duty household vehicles in the U.S. in 2009 of 10,100 miles per year.[32] For light duty business fleet vehicles, however, average annual use in 2008 ranged from 22,968 to 28,020 miles.[33] Therefore, the use of NEVs substitutes for a small percentage of conventional vehicles' applications. While NEVs might serve well as substitutes for motor vehicles in some covered fleets, such as State college campus fleets, their potential for addressing the EPAct 1992 goal of petroleum fuel replacement is limited by their capabilities and reduced number of vehicles miles traveled.

A comparison of the data above on average annual miles driven by NEVs and average annual miles driven by business fleets suggests that a credit of no more than ⅛ may be warranted. DOE, however, is proposing to allocate ¼ (0.25) credit for each NEV acquired, in an effort to provide a general incentive for covered fleets to eliminate petroleum consumption through the acquisition of these vehicles notwithstanding their limited fuel replacement value. The ¼ credit level may appear small, but the actual resulting value to the acquiring fleet is larger than the ¼ allocated. This stems from the fact that NEVs are not considered motor vehicles under the AFTP and thus are not included within the covered LDV count used to set AFV-acquisition requirements; in other words, unlike the acquisition of a light duty AFV, the acquisition of an NEV does not increase the vehicle count that is the basis for calculating the AFV-acquisition requirements. Thus, the acquisition by a covered fleet of an NEV, rather than a light duty AFV, would provide an additional benefit to the fleet inasmuch as the acquisition of the light duty AFV would itself generate a requirement for the acquisition of 0.75 (State fleet) or 0.9 (alternative fuel provider fleet) of yet another light duty AFV, meaning the net credit result stemming from the acquisition of the initial light duty AFV would be either 0.25 (1 minus 0.75) or 0.1 (1 minus 0.9) of a credit. In the case of an NEV acquired by a covered fleet, the acquisition would result in a net surplus of ¼ credit.[34]

In addition, DOE believes that for administrative management reasons, the ¼ credit value is the smallest value that should be allocated under the AFTP.

5. Medium- or Heavy-Duty Electric Vehicles

a. General

Currently, medium- or heavy-duty electric vehicles are commercially available, though perhaps only in limited numbers outside of the transit bus sector. Conventional medium- or heavy-duty vehicles typically use several times the amount of fuel that conventional LDVs use. Thus, the deployment of higher efficiency or alternative fuel versions of such vehicles would be expected to have significant potential to reduce U.S. petroleum use.

Under the existing AFTP, the acquisition of a medium- or heavy-duty AFV yields one credit, but only after the fleet meets its light duty AFV-acquisition requirements. Medium- or heavy-duty vehicles are not covered vehicles under the AFTP, meaning that, unlike the acquisition of light duty AFVs, the acquisition of medium- or heavy-duty AFVs does not increase the vehicle count that is the basis for calculating the AFV-acquisition requirements. Thus, as with NEVs (see Part IV.B.4 above), under the existing AFTP the acquisition by a covered fleet of a medium- or heavy-duty AFV, rather than a light duty AFV, provides an additional benefit to the fleet inasmuch as the acquisition of the light duty AFV would itself generate a requirement for the acquisition of 0.75 (State fleet) or 0.9 (alternative fuel provider fleet) of yet another light duty AFV, thereby yielding a net credit result stemming from the acquisition of the initial light duty AFV of either 0.25 (1 minus 0.75) or 0.1 (1 minus 0.9) of a credit. In the case of medium- or heavy-duty AFVs, including battery electric vehicles, acquired by a fleet, the acquisition results in a net surplus of one full credit.

[29] A 2001 DOE study showed that, of the 348 fleet NEVs studied, only 18 NEVs had been acquired to replace previous on-road vehicles, though some of the other NEVs might also have been acquired in lieu of new on-road vehicles (*i.e.,* fleet expansion). The 348 NEVs were driven an average of 9 miles per day. *See* Idaho National Engineering and Environmental Laboratory, *Field Operations Program—Neighborhood Electric Vehicle Fleet Use* (July 2001) (*INEEL Study*), at 4, available at *http://avt.inel.gov/pdf/nev/nevstudy.pdf.*

[30] Section 301(13) of EPAct 1992 defines ''motor vehicle'' to have ''the meaning given such term under section 216(2) of the Clean Air Act (42 U.S.C. 7550(2)).'' In interpreting section 216(2), which states that a ''motor vehicle'' is ''any self-propelled vehicle designed for transporting persons or property on a street or highway,'' DOE defers to EPA, which has found that ''a vehicle shall be deemed not a motor vehicle and excluded from the operation of the Act [if the] vehicle cannot exceed a maximum speed of 25 miles per hour over level, paved surfaces * * *'' 40 CFR 85.1703(a). DOE has therefore historically chosen not to treat NEVs as motor vehicles.

[31] *Id.*

[32] *See* DOE, *Transportation Energy Data Book: Edition 29* (July 2010), at Table 8.9.

[33] *Id.* at Table 7.3.

[34] Under the existing AFTP, neither AFV-acquisition requirements nor AFV credits are addressed in amounts below one, but fleet aggregates implicitly involve fractional credits for individual acquisitions.

b. Hybrid Electric and Plug-In Hybrid Electric Vehicles

EISA section 133 calls for DOE to determine how to allocate credit to medium- or heavy-duty HEVs and PHEVs that do not already qualify for credits under the AFTP as AFVs. As indicated earlier, DOE proposes to define a ''medium- or heavy-duty electric vehicle'' to mean an ''electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.'' Medium- or heavy-duty battery electric vehicles, as dedicated vehicles, already qualify as AFVs and therefore already are eligible for one credit. Similarly, HEVs or PHEVs in excess of 8,500 pounds with an internal combustion engine that can operate (or that operates solely) on alternative fuel, already qualify as AFVs. For medium- or heavy-duty non-AFV HEVs and PHEVs, DOE considered the following options:

- Allocate one credit, accounting for the fact that conventional medium- or heavy-duty vehicles consume more fuel than do conventional LDVs and thus a greater potential impact results from the acquisition of a medium- or heavy-duty non-AFV HEV or PHEV; or
- Allocate ½ credit, accounting for the potentially greater impact (as compared to an LDV) that a medium- or heavy-duty non-AFV HEV or PHEV can have over a conventional medium- or heavy-duty vehicle, but also noting that despite the increased efficiency, such a medium- or heavy-duty non-AFV HEV or PHEV still is not an AFV.

DOE is proposing to allocate ½ credit for the acquisition of medium- or heavy-duty HEVs and PHEVs (as well as medium- or heavy-duty fuel cell electric vehicles) that do not otherwise qualify as AFVs. DOE requests comments on this proposed allocation, and reminds covered fleets that they would still be able to earn biodiesel fuel use credits by using biodiesel blends of B20 or greater in medium- or heavy-duty non-AFV HEVs or PHEVs with diesel engines (or in medium- or heavy-duty fuel cell electric vehicles with diesel-powered fuel cells). DOE also clarifies that ½ credit would be earned only for the acquisition of a medium- or heavy-duty non-AFV HEV or PHEV with an electric drivetrain, as opposed to those that use electric power only to run their onboard equipment while stationary at a site. Thus, a utility-type truck with a plug-in electric bucket system, but no electric drivetrain, would not be eligible for credit under the allocation system proposed today. At the same time, acquisition of such a vehicle may allow the fleet to reduce idling time, thus saving fuel. In such a case, the fleet could still receive credit for the vehicle by choosing to comply under Alternative Compliance, where petroleum use reductions stemming from idle reduction technologies may be counted toward a fleet's petroleum reduction requirement.

DOE also requests that commenters address whether the preferred approach of ½ credit should only be available for commercially-available/production vehicles and not for demonstration vehicles. DOE considers demonstration vehicles to be pre-production vehicles, which, as discussed in Part III.B.8 above, constitute ''emerging technology,'' credit for which is addressed in Part IV.C.3 of this NOPR. Fleets, however, would not be able to earn multiple credits for the same vehicle acquisition (*e.g.,* credit under one of the above acquisition approaches as well as credit for an emerging technology investment). Rather, a fleet would have to choose whether to earn credit for the acquisition itself, or for the investment in emerging technology.

Finally, DOE notes that, like medium- or heavy-duty AFVs, which receive credit only after the particular covered fleet has met its light duty AFV-acquisition requirement (10 CFR sections 490.502 and 490.503), acquired medium- or heavy-duty non-AFVs would not be entitled to ½ credit until the covered fleet has met its light duty AFV-acquisition mandate. DOE seeks to maintain a level playing field for all vehicles with a gross vehicle weight rating of more than 8,500 pounds, regardless of the drive or fuel type, and believes that because the light duty AFV precondition already applies to medium- or heavy-duty AFVs, it also should apply to medium- or heavy-duty non-AFVs that would receive ½ credit under this NOPR. A non-level playing field effectively would mean that covered fleets have an incentive to acquire medium- or heavy-duty non-AFVs over AFVs. To avoid this result, and to draw a clearer distinction between light duty versus medium- or heavy-duty vehicles, DOE proposes revisions to existing 10 CFR 490.502(a)–(b), 490.503(a)–(b), and 490.507(b). DOE invites comments on these modifications.

*C. Investments*

1. Alternative Fuel Infrastructure

To address EISA section 133's requirement that DOE allocate credits for investments in alternative fuel infrastructure, DOE chooses first to focus on EPAct 1992's original objectives in its replacement fuel programs. In general, the concept behind the EPAct 1992 fleet programs is to use the covered centrally-fueled fleets to catalyze both manufacturer AFV offerings and refueling infrastructure, paving the way for AFV use by other fleets and, ultimately, the general public. While the statutory requirements were set in terms of vehicle acquisitions, the EPAct section 502(a) goal of maximizing replacement fuel use also involves consideration of infrastructure availability. Thus, the development of an alternative fuel refueling infrastructure that ultimately serves as much of the population as possible is important to achieving the program goals.

As explained in Part III.B.6 of this NOPR, DOE interprets the phrase ''alternative fuel infrastructure'' to mean one or more alternative fueling or charging/battery exchange stations. In determining the allocation of credits for alternative fuel infrastructure investment, DOE is proposing that a covered fleet that installs a new alternative fueling or charging/battery exchange station would be eligible to receive one credit for every $25,000 invested toward developing that infrastructure. DOE believes that $25,000 per investment credit is an appropriate dollar figure inasmuch as the installation of an E85 pump and tank historically has cost roughly $25,000.[35] We also note that the average new LDV costs $25,000, as discussed in the next section, and as the investment credit proposal provides an alternative to acquiring light duty AFVs, the consistent $25,000 threshold is appropriate. DOE requests comments from stakeholders on the appropriateness of this dollar figure for purposes of determining the applicable investment credit.

DOE also is proposing to limit the number of credits that may be earned in a single model year to a maximum of 5 credits per fleet if the infrastructure is private, and a maximum of 10 credits per fleet if the infrastructure is publicly accessible. (Additionally, a fleet that installs both public and private infrastructure in a given model year would be limited to a maximum of 10 credits.) The difference is intended to reflect DOE's preference for alternative fuel infrastructure that can be accessed by the public, as such accessibility

[35] The average of the E85 stations listed on the ''Sample E85 Station Costs'' Web page of DOE's Alternative Fuels & Advanced Vehicles Data Center (*http://www.afdc.energy.gov/afdc/ethanol/cost.html*) is approximately $27,000. This figure has been rounded down slightly for administrative purposes.

would expand alternative fuel refueling options more broadly to other fleets and vehicles.

To be eligible for investment credit, the alternative fuel infrastructure would have to be installed and paid for by the fleet requesting credit, or at least paid for by that fleet. Infrastructure that is installed and paid for or simply paid for by entities or organizations not subject to the requirements of the AFTP would not be eligible for credits.

To receive infrastructure investment credit, DOE would need to know how much money was expended, the period or model year during which the investment was made, and on exactly what infrastructure the investment was spent. Covered fleets would have to apply to DOE through the credit activity reporting mechanism in subpart F of the AFTP regulations and clearly identify the alternative fuel type, specific location, date of initial operation, and level of accessibility of the station. Importantly, the station would have to begin operation during the model year for which credit is sought, and each fleet would be limited to one award of credits per site, per model year. For example, if a covered fleet's infrastructure investment spans more than one year, with the fleet having invested $12,500 in a new AFV fueling station during one model year and then an additional $12,500 in that station during the following model year, and with the new station becoming operational during that second year, the fleet would be entitled to 1 investment credit in the second model year. Should the fleet neglect to seek credit during that second model year for its $25,000 total investment but instead apply for the single credit in a later year, DOE would allocate no credit. Similarly, if the fleet applies for credit in its credit activity report for the first model year, DOE would reject the request on the grounds that the alternative fuel infrastructure did not become operational during that year.

Credits would be awarded for new fueling or charging stations, or for the expansion of existing stations if additional fueling or charging capability is being added (such as an additional dispensing unit at an existing station), in which case the additional capability would have to become operational during the model year for which credit is sought. Simply installing additional electrical outlets, however, would not qualify for investment credit.[36] Nor would credit be provided for maintenance of or improvements to existing equipment at an existing station. Fleets would have to certify the accuracy of the information provided.

For administrative management reasons, DOE is proposing to allocate only whole number values of credits for investments in alternative fuel infrastructure.

2. Alternative Fuel Nonroad Equipment

''Alternative fuel nonroad equipment'' eligible for investment credit allocation has been defined in Part III.B.7 of this NOPR to include only mobile equipment that operates on alternative fuel. Stationary equipment would not be eligible to receive credit. DOE anticipates that some stationary equipment may be eligible for credit as ''alternative fuel infrastructure,'' which would be defined to include charging or battery exchange stations. DOE's view is that credit for investment in such a station is better suited under the alternative fuel infrastructure mechanism as opposed to the alternative fuel nonroad equipment mechanism. For this reason, a fleet seeking credit for investment in a new or expanded charging or battery exchange station would be expected to proceed under the approach set forth for alternative fuel infrastructure. The fleet could not seek investment credit for the new or expanded charging or battery exchange station as alternative fuel nonroad equipment. Further, similar to the requirement for alternative fuel infrastructure, credit would only be provided for new mobile equipment, not maintenance of or improvements to existing mobile equipment.

DOE has preliminarily chosen to base the allocation of credit on the rough value represented by the average price of a new LDV sold in the United States in 2008. According to the latest edition of DOE's Transportation Energy Data Book, this average price was $23,186 (in 2009 dollars).[37] Converting this value to 2010 dollars (using the Department of Labor's CPI Inflation Calculator), the figure is approximately $25,000. DOE believes that the appropriate expenditure level for purposes of earning a credit for investment in alternative fuel nonroad equipment is this amount, or $25,000. DOE believes that this value is a sufficiently high value to demonstrate a significant investment in nonroad equipment rather than rewarding credit for actions a fleet otherwise planned to take. In addition, this amount is equivalent to the other investment-type credits under today's action, providing for some level of administrative consistency. Therefore, DOE is proposing to allocate 1 credit for every $25,000 invested in alternative fuel nonroad equipment. Credits would be applied in whole number values, with 1 credit allocated for each $25,000 threshold achieved, with a maximum of 5 credits earned per fleet in a single model year. To be eligible for consideration of credit, the investment would have to have been made by the requesting fleet. Investments made by organizations not subject to the requirements of the AFTP would not be eligible for credits.

Each fleet would have to apply for alternative fuel nonroad equipment credit through a credit activity report. To receive nonroad equipment investment credit, DOE would need to know how much money was expended, the period or model year during which the investment was made, and on exactly what mobile equipment the investment was spent. Consistent with the proposed definition of alternative fuel nonroad equipment, a fleet requesting credit would have to certify that the equipment is being operated on alternative fuel, within the constraints of best practices and seasonal fuel availability. DOE requests comments on this point.

DOE acknowledges that a covered fleet's investment in alternative fuel nonroad equipment may not necessarily coincide with the fleet's acquisition of the equipment. For consistency, however, DOE is proposing that a fleet would get credit for the year in which the nonroad equipment is put into operation.

For administrative management reasons, DOE is proposing to allocate only whole number values of credits for alternative fuel nonroad equipment investments. DOE specifically considered setting the level for earning credit at twice the proposed level, or 1 credit per $50,000 invested. DOE is therefore requesting comments upon the appropriate investment level for credit purposes.

3. Emerging Technology

As discussed in Part III.B.8 of this NOPR, availability of credits for investments in emerging technology would be based on the development status of the relevant vehicle technologies. In EISA section 133, Congress has instructed DOE to allocate credits for such emerging technology investments so as ''to encourage (i) a reduction in petroleum demand; (ii) technological advancement; and (iii) a reduction in vehicle emissions.'' In

[36] DOE would distinguish an electrical outlet from charging stations, such as those currently available (*See, e.g., http://www.afdc.energy.gov/afdc/vehicles/electric_charging_equipment.html*).

[37] *See* DOE, *Transportation Energy Data Book: Edition 30* (July 2011), at Table 10.12.

DOE's view, only by deploying the five vehicle technologies listed in section 133 (hybrid electric vehicles, plug-in electric drive vehicles, neighborhood electric vehicles, fuel cell electric vehicles, and medium- or heavy-duty electric vehicles) before widespread commercial availability (or production) can necessary data from actual users be generated, including data related to performance and operating costs. These types of data can be critical to determining whether a technology needs improvement and if so, how it should be improved to allow wider use. If data show that no improvement is needed, then such data could assist future potential users in deciding whether to select the technology.

Under the emerging technology investment credit allocation, DOE is proposing to allocate no additional credits for the acquisition of a pre-production version of any of the five vehicle types themselves, although DOE's position is that the pre-production vehicle constitutes an emerging technology. DOE is proposing that such pre-production vehicles would yield one credit by virtue of their acquisition (if they qualify as AFVs, or the appropriate level if they qualify as one of the five electric drive vehicles but not as an AFV) *or* they can yield emerging technology investment credits, but not both. In other words, fleets would not be able to earn duplicate credits for multiple reasons stemming from the same vehicle acquisition (*e.g.,* credit under one of the vehicle acquisition approaches as well as credit for an emerging technology investment).

DOE is proposing that investments in pre-production versions of the five vehicle types would earn 1 credit per $25,000 invested. DOE solicits comments from fleets and other stakeholders on this proposed level of credit allocation. As with investments in alternative fuel nonroad equipment, the $25,000 level is based on the average price of a new LDV sold in the United States in 2008. DOE also is proposing to limit the number of credits that may be earned in a single model year under this category of credits to a maximum of 5 credits per fleet.

Under this approach, as an example, a covered fleet spending $500,000 on the acquisition of 10 pre-production PHEVs (*i.e.,* $50,000 per PHEV) could obtain a total of 12 credits; 5 credits for the expenditure of at least $125,000 to acquire three of the vehicles and 7 credits for the acquisition of the other seven PHEVs. In the above example, if the subject vehicles instead were pre-production non-AFV PHEVs, then the fleet would receive the same 5 credits for the investment of the $125,000, plus another 3.5 credits (7 × ½ credit, subject to rounding rules when totaled) for the remaining seven vehicles.

DOE considered allocating emerging technology investment credit for additional fleet investments (*i.e.,* investments apart from the pre-production vehicle's acquisition) that are required to support incorporation of emerging technology versions of the enumerated electric drive vehicles into covered fleets, as well as for investments in components of the enumerated vehicles. For example, incorporating a given emerging technology electric drive vehicle into a fleet might require the fleet to acquire specialized maintenance equipment to address the new vehicle's needs. DOE solicits comments on this issue and encourages stakeholders, to the extent they believe credit should be allocated for investments in components and/or support equipment, to address in particular the manageability aspect of such an approach.

In summary, DOE is proposing to allocate one credit for every $25,000 investment in eligible emerging technologies, with a maximum of five credits to be earned per fleet per model year, consistent with other ''investment-type'' provisions under this proposed rule. DOE did consider whether to allow fleets to earn more than a maximum of five credits annually per technology, however, in an effort to limit the degree to which the system's credits surplus grows, DOE has chosen to allot a maximum of five credits per model year, per fleet, for this category of credits. Eligibility for such credit would only exist while the underlying vehicle technology is still considered ''emerging,'' in accordance with the definition provided in Part III.B.8 of this NOPR. Therefore, an investment that might be eligible for investment credit in one year might not be eligible the next year, if the underlying vehicle technology moves into commercial production. In addition, to be eligible for consideration of credit, the requesting fleet would have to have made the investment. Investments in emerging technologies by organizations not subject to the requirements of the AFTP would not be eligible for credits (*e.g.,* payments to industry groups or associations or for education outreach, lobbying, or other similar activities for which the fleet has little or no control over the activity).

DOE is proposing to allocate credits in whole number values, with credit allocated for each $25,000 threshold achieved. As with the other investment-related credits, DOE would not allot fractional credits for investments in emerging technology. Each fleet would have to apply to DOE to receive credit for emerging technology investments. The documentation the fleet provides would be critical to any allocation of credit DOE makes; therefore, fleets requesting credit under this provision should be prepared to supply sufficiently-detailed information from which DOE could verify the specific purposes of the subject investment, as well as the specific amount of the investment and that the investment has not been the subject of credit elsewhere under this program. Fleets would have to certify the accuracy of the information provided. DOE acknowledges that a covered fleet's investment in emerging technology may not necessarily coincide with the fleet's acquisition of the technology. For consistency, however, DOE is proposing that a fleet would get credit for the year in which the emerging technology is put into operation.

The amounts submitted for consideration for credit should not include amounts or activities that are credited elsewhere under the provisions related to acquisition of AFVs, electric drive vehicles, alternative fuel infrastructure, or alternative fuel nonroad equipment.

DOE solicits comments from fleets and other stakeholders on the proposed level of credit allocation ($25,000/credit).

**Summary Table of Credits**

PROPOSED CREDIT LEVELS UNDER STANDARD COMPLIANCE FOR ELECTRIC DRIVE VEHICLES NOT CLASSIFIED AS AFVS AND FOR OTHER ACTIONS

| Credit category | Credit allotment | Limitations/other |
|---|---|---|
| HEV | ½ credit. | |
| PHEV | ½ credit. | |
| FCEV | ½ credit. | |

PROPOSED CREDIT LEVELS UNDER STANDARD COMPLIANCE FOR ELECTRIC DRIVE VEHICLES NOT CLASSIFIED AS AFVS AND FOR OTHER ACTIONS—Continued

| Credit category | Credit allotment | Limitations/other |
|---|---|---|
| NEV | ¼ credit | Not included in covered LDV count. |
| Medium- or heavy-duty HEV/PHEV | ½ credit | Not included in covered LDV count. |
| Alternative Fuel Infrastructure | 1 credit per $25,000 invested* | Maximum of 5 credits if private infrastructure, 10 credits if publicly-accessible infrastructure; credit allocated in model year placed into operation. |
| Alternative Fuel Nonroad Equipment | 1 credit per $25,000 invested* | Maximum of 5 credits per fleet per model year. |
| Emerging Technology | 1 credit per $25,000 invested, or 1 credit per pre-production vehicle*. | Maximum of 5 credits if counting based on amount invested, per fleet per model year. |

* Aggregation of dollar amounts allowed (see Part IV.A above).

## V. Proposed Modifications to the Existing AFTP

Covered SFP fleets have been complying with the AFTP for almost fifteen years. Since its establishment in 1996, the AFTP has operated smoothly, with tremendous compliance rates. DOE has considered the successes of the AFTP and its applicable requirements in the context of seeking continued efficient and simple AFTP operation within a framework of limited resources. As a result, DOE has identified several areas in which it believes modifications to the existing AFTP can benefit AFTP stakeholders and increase Program efficiencies. DOE seeks comments from stakeholders on each of the proposals set forth below.

### *A. Timeliness of Exemption Request Submittals*

On occasion, DOE has received complete exemption requests before and also well past the model year for which the requests would apply. In other instances, DOE has received incomplete exemption requests and, following correspondence between DOE and the submitter, the latter has not provided necessary information to DOE in a timely fashion. The result in these instances is that a complete exemption request was not submitted to DOE until well past the relevant model year.

The existing AFTP does not provide specific time frames in which covered fleets must submit their exemption requests to DOE. The regulations, specifically 10 CFR 490.204 (State fleets) and 490.308 (alternative fuel provider fleets), currently specify neither the earliest date nor a deadline by which exemption requests must be submitted; in the case of States, section 490.204(b) specifically provides that requests for exemptions ''may be submitted at any time * * *.''

When an exemption request is submitted before the model year for which the exemption would apply, there is a distinct risk that the submitting fleet will not have in hand information sufficient to be able to commit to vehicle specifics in its request. Moreover, when an exemption request is submitted before the start of and even during a model year, the fleet's planned acquisitions often will change subsequent to the request's submission. For example, the requesting fleet may acquire a different number of LDVs, or a different makeup (*e.g.,* make and model) of LDVs, compared to what was indicated in the fleet's exemption request. Similarly, a fleet requesting exemptions before the close of a given model year on the basis that alternative fuel is unavailable may find that an appropriate alternative fuel station has opened after submission of its request. Such changes during the model year have resulted in fleets having to resubmit their exemption requests.

DOE believes that submitting an exemption request before the close of the subject model year (*i.e.,* before August 31) often leads to these situations. As required under 42 U.S.C. 13251(a)(5) and 13257(i), exemption requests must ''demonstrate[] to the satisfaction of the Secretary'' that certain factors apply. In establishing a start date for submissions, DOE hopes to encourage more accurate exemption requests, thus reducing the likelihood that fleets would have to revise and resubmit their requests.

Similarly, exemption requests and responses to DOE requests for clarification or additional information would be limited by a deadline under this NOPR. DOE believes this is appropriate given that a fleet should have an adequate level of certainty regarding the availability of alternative fuels and vehicles for the just-completed model year.

Based on the foregoing, DOE is proposing the following:

■ A covered fleet may submit an exemption request no earlier than September 1 following the subject model year, and the exemption request must be preceded by the fleet's annual report for that model year.

■ DOE must receive an exemption request no later than January 31 following the subject model year for which the exemption request would apply.

■ For submitted exemption requests on which DOE seeks clarification or additional information, the requesting fleet must respond to DOE within 30 days, or DOE would process the exemption request based solely upon the information it has.

Therefore, covered fleets would have a five-month period in which to seek exemptions from DOE. If a covered fleet were to submit an exemption request during the subject model year (*i.e.,* prior to the model year's close on August 31) and, therefore, prior to having submitted its annual report, DOE would inform the fleet's point of contact (POC) by electronic mail that the request was submitted too early and, for that reason, DOE would not consider it unless it were resubmitted after the fleet filed its required annual report. Should a covered fleet submit an exemption request after January 31 following the subject model year (*i.e.,* more than five months after the model year ended), DOE would notify the POC by electronic mail that because the exemption request was submitted too late, DOE will not provide a written determination under section 490.204 or section 490.308. Similarly, if a covered fleet does not respond to a request from DOE for additional information within a timely manner (*i.e.,* 30 days), DOE would process the fleet's exemption request based on the information DOE already has, which might not be sufficient to support the granting of the request either in whole or in part.

DOE has based this schedule upon the experience it has gained since the inception of the AFTP, and believes that five months is sufficient time for covered fleets to submit their exemption requests. To date, the vast majority of exemption requests have been submitted by fleets after the applicable model year has ended, and, in fact, after

the respective fleet's submission of its required annual report. Only a few isolated cases have occurred outside of the proposed five-month filing period. Thus, no hardship is anticipated by formalizing this schedule.

Moreover, requiring the prior submission of a fleet's annual report, which is due no later than December 31 following the model year (10 CFR Sec. 490.205 and 490.309), should limit the need for DOE to seek clarification or additional information from the requesting fleet. Even those fleets that file their annual report on the December 31 reporting deadline would still have one full month to prepare their exemption requests, although earlier submission of reports is still recommended.

*B. Program Credits and Exemption Requests*

Under the AFTP, covered fleets that go beyond compliance under the Standard Compliance method by acquiring more AFVs than they are required to acquire in a given model year may bank credits earned for these additional acquisitions. 10 CFR 490.503(a). These fleets may then draw upon these banked credits as they need them in future model years, or they may sell or trade these credits to other covered fleets that need credits for purposes of complying with their own Standard Compliance obligations. Thus, the purpose of the credit program is to provide flexibility to fleets. Since 1996, covered SFP fleets have generated a significant number of banked credits.

The credit banking system has matured greatly since its inception. Fleets have generated and accumulated more credits than they are using. As of the start of MY 2010, there were over 61,500 banked AFV-acquisition credits in the system. This number of credits is an amount sufficient to keep the AFTP operating without any fleets acquiring AFVs for at least an estimated four years. Clearly, as a group, covered fleets are not having trouble generating AFV-acquisition credits, and this proposed rule, once promulgated, would only increase the number of ways in which fleets can obtain credits under the AFTP.

Despite this surplus of credits, covered SFP fleets annually request exemptions from AFV-acquisition requirements. Since MY 2000, DOE has granted exemptions for over 9,600 AFVs, which were included in nearly 350 exemption requests. In many instances, covered fleets with banked credits request and receive exemptions.

DOE is not required to grant AFV-acquisition exemption requests unless certain demonstrations are made to its satisfaction. A request for exemptions should be a form of administrative relief of the last resort, in the event a fleet is unable to satisfy its AFV-acquisition requirements through the available compliance avenues, including AFV acquisitions, biodiesel use in medium- and heavy-duty vehicles, and obtaining banked credits from other fleets. Overall, DOE does not believe that exemptions further the replacement of petroleum fuels in accordance with EPAct 1992. Exemptions should therefore be viewed purely as administrative relief in the event a fleet cannot otherwise meet its AFV-acquisition requirements.

In order to address the surplus of credits and the use of the exemption process, DOE is proposing three revisions. First, DOE is proposing that covered fleets be required to use their own banked credits before requesting exemptions from DOE. With respect to any covered fleet whose annual report reveals an AFV-acquisition deficiency, under today's proposed rule, DOE would not need to receive a specific request from the fleet to apply banked credits towards the existing deficiency. With the proposed coordinated timeframes for submitting exemption requests and model year annual reports, DOE would be able to consider a fleet's available credits when a deficiency is identified in an annual report, and then consider exemption requests as necessary. Pursuant to 10 CFR 490.504, which would become section 490.505, DOE, in response to a fleet's request that its banked credits be counted as AFV acquisitions, would continue to apply the credits in such manner. In the absence of a request, though, DOE would automatically apply a deficient fleet's banked credits towards the credit shortfall. Proposed language to this effect is included in new section 490.505(b). In the case where a requesting fleet has some banked credits but not enough to negate the need for any exemptions, DOE would apply the fleet's banked credits first, reducing the number of exemptions sought.

Second, DOE is proposing to require that deficient fleets without a sufficient number of banked credits to resolve the deficiency provide information in their annual reports regarding any efforts they have made to purchase or trade for credits in the credit market.

Third, DOE is proposing in this rulemaking that exemption requests submitted by a fleet within 90 days of that fleet's sale of banked credits will not be granted.

This NOPR would expand the array of creditable actions available to fleets, thus making it easier for covered fleets to comply with their AFV-acquisition requirements and simultaneously expanding the compliance options that fleets must explore in advance of pursuing exemptions. DOE believes that going forward there will be fewer justifications for granting exemptions. To date, DOE has granted exemptions as a means to provide fleets flexibility when their efforts to comply have resulted in a shortfall of credits. Today DOE proposes steps that are designed to ensure that fleets use their existing credits for the purpose for which they were generated. DOE seeks comments from stakeholders on applying a fleet's credits prior to granting exemptions, requiring covered fleets to provide information regarding their attempts to purchase or trade for credits in their annual reports, and the restriction on banked credit sales 90 days prior to an exemption request.

In these ways, DOE seeks to limit the growth of the store of credits currently in the AFTP, and in so doing, ensure banked credits have value and further the goals of the AFTP. Reducing the store of credits and ensuring a demand for these credits would help to increase the value of credits and thereby make these credits relevant in a fleet's decision-making regarding how to comply with the AFV-acquisition requirements. A fleet lacking credits may have to consider whether purchasing a market-priced credit is a better financial option than participating in the AFTP's Alternative Compliance option. DOE believes this latter option can save the fleet financial resources by helping the fleet reduce its petroleum consumption. As an option of last resort, a State fleet may still request an exemption based on unreasonable financial hardship (10 CFR 490.204(a)(3)).

*C. Alternative Compliance*

As mentioned earlier, Congress created the Alternative Compliance option in 2005, and DOE promulgated its final rule establishing subpart I of 10 CFR part 490 on March 20, 2007. Covered fleets that wish to opt into Alternative Compliance are required to apply for a waiver. 10 CFR 490.805(b)(1) requires that a preliminary intent to apply for a waiver be registered by March 31 prior to the model year for which the waiver is sought. Under 10 CFR 490.805(b)(2), a fleet's complete waiver application is due no later than July 31 if the application is dependent on information regarding the availability of motor vehicle models to be released by auto manufacturers, while under 10 CFR 490.805(b)(3), the complete waiver

application is due by June 30 if it is not dependent on such information. DOE established these alternative due dates to alleviate difficulties associated with preparing an application in the face of new model year vehicle data, which manufacturers generally do not release until summer.

After several years of experience with Alternative Compliance, DOE has determined that it is appropriate to have a single deadline for complete waiver applications. Having one due date is expected to be less confusing to fleets. In addition, it has proven to be difficult for DOE to determine whether a fleet should have submitted its waiver application by the earlier submittal date. Ultimately, DOE encourages covered fleets to submit Alternative Compliance waiver applications and seeks to ensure that interested fleets have sufficient time to submit their applications. Therefore, DOE is proposing to delete the June 30 due date and establish a uniform application deadline of July 31. All waiver applications would be due no later than July 31 prior to the model year for which a waiver is sought. The deadline for filing a notice of intent, which is March 31 prior to the model year for which a waiver is sought, would be unaffected.

Based upon its implementation to date of the Alternative Compliance option, DOE also has realized that the existing regulatory provisions pertaining to the rollover of excess petroleum reductions achieved through Alternative Compliance in a previous model year could be clearer for fleets. Therefore, DOE is proposing revisions to the language in 10 CFR 490.804(c) to clarify the steps for requesting and applying rollover reductions to future model years for which a waiver is sought. Under proposed section 490.804(c)(2)(i), a fleet wishing to roll over for future use the excess petroleum reductions that it achieved in a particular model year would have to make a written request to DOE as part of the fleet's annual report for that year. Similarly, under proposed section 490.804(c)(2)(ii), if the fleet seeks to apply any of the excess petroleum reductions previously rolled over to a later model year for which an Alternative Compliance waiver was also granted, the fleet would have to include a written request as part of its annual report for that later model year.

Finally, DOE is proposing a modification to section 409.809 to address the situation in which DOE has revoked a fleet's Alternative Compliance waiver. The modification would clarify that such a fleet is precluded from requesting any exemptions under Standard Compliance for the model year of the revoked waiver. DOE previously has explained ''that it would not grant exemptions to a State under [section] 490.204 or to a covered person under [section] 490.308 if the State or covered person has been granted an alternative compliance waiver.'' [38] The proposed revision to section 490.809 would set forth in the regulations DOE's longstanding position that a fleet that has been granted a waiver for a particular model year is not eligible for any exemptions during that model year.

*D. Other Regulatory Revisions*

DOE also is proposing today several minor technical amendments that are designed to make the AFTP regulations internally consistent. These amendments, which DOE believes are non-controversial, clarify the definitions of ''capable of being centrally fueled'' and ''fleet'' as they appear in 10 CFR section 490.2, correct an error in 490.308(f), and standardize the use of the terms ''alternative fueled,'' ''dedicated'', and ''dual-fueled'' as they appear in the following provisions:

- 10 CFR 490.202(a);
- 10 CFR 490.205(b)(5)(iv);
- 10 CFR 490.305(a); and,
- 10 CFR 490.309(b)(5)(iv).

*E. Other Issues*

DOE also wishes to clarify that alternative fuel provider fleets will continue to receive credit under the AFTP for the acquisition of a light duty AFV irrespective of whether the appropriate alternative fuel is available in the area in which the vehicle is located or operated. 10 CFR 490.306, consistent with section 501(a)(4) of EPAct 1992, provides that acquired AFVs ''shall be operated solely on alternative fuels, except when these vehicles are operating in an area where the appropriate alternative fuel is unavailable.'' DOE has found that acquisition credits for AFVs, which serve to get vehicles on the road, are valuable inasmuch as they spur demand not only for the vehicles but, just as importantly, for the alternative fuel. If the alternative fuel becomes available, however, section 490.306 requires the fleet to use the fuel in the acquired AFV.

DOE reminds alternative fuel provider fleets that the operating requirement in 10 CFR 490.306 is a continuous one, and encourages fleets to review on a regular basis the availability of alternative fuels in their AFV operating areas, for example through DOE's Alternative Fueling Station Locator, which is available at *http://www.afdc.energy.gov/afdc/locator/stations/,* and to contact their local Clean Cities coalitions (see *http://www.afdc.energy.gov/cleancities/progs/coalition_locations.php*) for the latest information on alternative fuel availability.

Finally, in the context of this issue and exemption requests, DOE reiterates that today's NOPR would increase the number of creditable actions under the AFTP and, consequently, expand the range of compliance options available to all covered fleets. In particular, as discussed earlier, credit would be allocated for the acquisition by fleets of non-AFV HEVs, among other vehicles. With respect to such HEVs, DOE notes both that the vehicles and their fuel (*i.e.,* gasoline) are widely available throughout the country. For this reason, DOE intends to adopt an approach to the granting of exemptions that is similar to DOE's longstanding policy on biodiesel. Under that policy, unless a covered fleet seeking exemptions either indicates in its exemption request that it does not own or operate any or a sufficient number of medium- or heavy-duty diesel vehicles or demonstrates that biodiesel is unavailable to it, DOE limits the number of exemptions granted to no more than one-half of the fleet's AFV-acquisition requirements, inasmuch as biodiesel fuel use credits may account for up to 50% of those annual requirements (10 CFR Sec. 490.705(b)). Because non-AFV HEVs are widely available, DOE would therefore also expect a covered fleet seeking exemptions under these proposed regulations to demonstrate in its exemption request why it was unable to acquire such HEVs and therefore meet at least 50% of its AFV-acquisition requirements with such vehicles (based on the ½ credit allocated for each HEV).[39] DOE would limit the number of exemptions granted based on a shortfall of HEV purchases, unless the fleet shows that HEVs were not available in the light duty vehicle type needed by the fleet.

## VI. Proposed Compliance

*A. Credit Values*

The approach that DOE is proposing today allocates less than one credit to certain vehicle types, and whole number values of credits for investments in alternative fuel infrastructure, alternative fuel nonroad equipment, and relevant emerging

[38] 72 FR 12958, 12962 (Mar. 20, 2007); *See also* 71 FR 36034, 36036 (June 23, 2006).

[39] Note that a covered fleet could potentially meet 100% of its AFV-acquisition requirements through a combination of non-AFV HEV purchases and biodiesel fuel use credits. As noted earlier in this proposed rule, like biodiesel purchases, light duty HEV purchases would earn credits even if a fleet has not yet met its AFV acquisition requirements.

technologies. DOE also is proposing that when fleets report to DOE the total credits they have earned in a model year, they should total the credits, including all fractional credits earned for vehicle acquisitions, and round to the nearest whole number. In rounding to the nearest whole number, fractions greater than or equal to one half (0.5) should be rounded up and fractions less than one half should be rounded down. For example, DOE would approve 14 credits for a fleet that submits appropriate documentation supporting its acquisition of AFVs and non-AFVs that total 13½ or 13¾ credits. Similarly, DOE would approve 13 credits for a fleet that submits appropriate documentation supporting its acquisition of AFVs and non-AFVs that total 13¼ credits. This rounding approach to fractional credits is consistent with how fleets already round for purposes of calculating their AFV-acquisition requirements.

*B. Reporting*

As with the existing AFTP, fleet compliance reporting may be accomplished through the Internet. Over the past several years, approximately 75 percent of reporting fleets have consistently submitted their compliance information to DOE through the available Internet online reporting system. Reporting compliance information online serves several purposes. First, reporting is immediate. Second, filing the information online reduces the potential for the introduction of errors through entry and transcription of compliance information. Third, reporting online is less burdensome and a more efficient use of both fleet and DOE resources.

## VII. Opportunity for Public Comment

*A. Participation in Rulemaking*

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments with respect to the subjects and DOE proposals set forth in this notice. DOE encourages the maximum level of public participation possible in this proceeding. Individual consumers, representatives of consumer groups, manufacturers, associations, coalitions, alternative fuel providers, States or other government entities, and others are urged to submit written comments on the proposal. Whenever applicable, full supporting rationale, data and detailed analyses should also be submitted.

*B. Written Comment Procedures*

Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: ''Alternative Fuel Transportation Program: Alternative Fuel Transportation Program; Alternative Fueled Vehicle Credit Program (Subpart F) Modification,'' NOPR, RIN 1904–AB81, and must be received by the date specified at the beginning of this notice. In the event any person wishing to submit written comments cannot provide eight copies, alternative arrangements can be made in advance by calling Mr. Dana O'Hara at (202) 586–8063. Additionally, DOE would appreciate an electronic copy of the comments to the extent possible. Electronic copies should be emailed to *regulatory_info@afdc.nrel.gov.* DOE is currently using Microsoft Word.

Before taking final action on today's proposal, DOE will consider all comments and other relevant information received on or before the date specified at the beginning of this NOPR. All comments submitted will be made available in the electronic docket set up for this rulemaking. Therefore, no information desired to be kept confidential should be submitted to the docket. This docket will be available via the DOE EDOCKET through *http://www.regulations.gov,* which may be located using key words or the above noted docket number.

## VIII. Regulatory Review

*A. Review Under Executive Order 12866*

Today's proposed rule has been determined not to be a ''significant regulatory action'' under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB).

*B. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*) requires the 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. 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 rulemaking process. 68 FR 7990. These procedures and policies are available at *http://www.gc.doe.gov/documents/eo13272.pdf.*

DOE has reviewed today's proposed rule under the provisions of the RFA and the procedures and policies published on February 19, 2003. The requirements in 10 CFR part 490 apply only to alternative fuel providers and State government entities that own, operate, lease, or otherwise control 50 or more non-excluded LDVs, at least 20 of which are centrally fueled or capable of being centrally fueled and are used primarily in a metropolitan statistical area (MSA) or consolidated MSA with a 1980 Census population of more than 250,000. DOE has identified certain fleet operators that may qualify as small entities under RFA. Today's action, if finalized, however, would provide additional compliance options and amend the administrative process for demonstrating compliance, and therefore will not have a significant economic impact on a substantial number of small entities. DOE's certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

*C. Review Under the Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and the regulations implementing the PRA, 5 CFR 1320.1 *et seq.,* a ''person'' is not required to respond to a ''collection of information'' unless it displays a currently valid OMB control number. This proposed rule would contain a collection of information that is subject to review by OMB under the PRA. DOE plans to obtain documentation to support the allocation of credits through use of the AFTP's annual reporting form, DOE/FCVT/101, Standard Compliance Reporting Spreadsheet. OMB Control Number 1910–5101 is currently valid and assigned to the AFTP's annual report(s). As part of this proposed rule, DOE is proposing to collect additional information regarding investments in refueling infrastructure, alternative fuel non-road equipment, and emerging technology, as well as efforts made to procure credits on the credit market.

Proposed § 490.508 (''Credit activity reporting requirements'') contain information collection requirements. DOE has submitted this proposed

collection of information to the Office of Management and Budget for approval pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.* A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DOE estimates that all covered fleets may seek to earn credits for acquiring electric drive vehicles, but that fewer fleets will seek to earn credits for acquiring and deploying alternative fuel infrastructure, alternative fuel nonroad equipment, and emerging technology. DOE estimates that a State or covered person seeking credits for both acquiring electric drive vehicles and for acquiring and deploying alternative fuel infrastructure, alternative fuel nonroad equipment, and emerging technology would expend 1 additional hour to comply with the reporting requirements of EISA section 508. DOE estimates the total annual costs to a State or covered person that receives credits proposed under today's NOPR are negligible, particularly given that the covered fleet is already submitting an annual report to achieve compliance with Program requirements.

DOE estimates that approximately 10 to 30 fleets request exemptions each model year. Under today's proposed rule, these fleets would have to provide information in their annual reports regarding any efforts they have made to purchase or trade for credits in the credit market. DOE estimates that fleet in this instance would expend 1 additional hour to comply with this requirement. DOE estimates that the total annual costs to a state or covered person complying with this requirement for the purpose of requesting an exemption under the Program, as proposed under today's NOPR, are negligible, particularly given that the covered fleet may already have attempted to acquire credits from another covered fleet.

DOE invites public comment on: (1) Whether the proposed information collection requirements are necessary for the performance of DOE's functions, including whether the information will have practical utility; (2) the accuracy of DOE's estimates of the burden of the proposed information collection requirements; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection requirements on respondents. Comments should be addressed to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503. Persons submitting comments to OMB also are requested to send a copy to the contact person at the address given in the **ADDRESSES** section of this notice of proposed rulemaking. Interested persons may obtain a copy of the DOE's Paperwork Reduction Act Submission to OMB from the contact person named in this notice of proposed rulemaking.

*D. Review Under the National Environmental Policy Act*

DOE has determined that this proposed rule is covered under the Categorical Exclusion found in DOE's National Environmental Policy Act regulations at paragraph A5 of Appendix A to Subpart D, 10 CFR part 1021, which applies to any rulemaking amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. Under this proposed rule, covered fleets would be able to earn credits for the acquisition of specified electric drive vehicles and for investments in alternative fuel infrastructure, nonroad equipment, and relevant emerging technologies, activities for which they may not earn credits under the existing AFTP. The proposed rule has been structured to ensure that the petroleum reductions achieved by the AFTP in the future would be equivalent to those achieved in past years. Because the proposed rule would not change the environmental effect of compliance with 10 CFR part 490, neither an environmental assessment nor an environmental impact statement is required.

*E. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 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; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Federal 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 Federal agencies to review regulations in light of the applicable standards in sections 3(a) and 3(b) to determine whether those standards 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 proposed rule meets the relevant standards of Executive Order 12988.

*F. Review Under Executive Order 13132*

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no further action is required by Executive Order 13132.

*G. Review Under the Unfunded Mandates Reform Act of 1995*

DOE reviewed this proposed rule under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA; Pub. L. 104–4), which requires each Federal agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in the promulgation of a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires the agency to prepare a written statement assessing the resulting costs, benefits, and other effects of the rule on the national economy (2 U.S.C. 1532(a) and (b)). UMRA also requires a Federal agency to develop an effective process to permit meaningful and timely input by elected officers of State, local, and tribal governments on any proposal containing a ''significant Federal

intergovernmental mandate,'' and requires an agency to develop a plan for providing potentially affected small governments with notice and an opportunity for timely input prior to the establishment of any regulatory requirements that might significantly or uniquely affect small governments (2 U.S.C. 1533 and 1534). On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *http://www.gc.doe.gov*).

Today's proposed rule provides additional compliance options under 10 CFR Part 490 by expanding credits under the existing AFTP, and therefore contains neither an intergovernmental mandate nor a private sector mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no assessment or analysis is required under UMRA.

*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 proposed rule that may affect family well-being. This proposed rule 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 the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

*J. 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 OIRA a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, 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. The Statement of Energy Effects must discuss any adverse effects on energy supply, distribution, or use should the proposal be implemented, and reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

As discussed in section VIII.A above, this proposed rule has been determined not to be a ''significant regulatory action'' under Executive Order 12866. In addition, the proposal is not likely to have a significant adverse effect on the supply, distribution, or use of energy and, therefore, is not a significant energy action. Nor has OIRA designated this action as a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

**List of Subjects in 10 CFR Part 490**

Administrative practice and procedure, Energy conservation, Fuel economy, Gasoline, Motor vehicles, Natural gas, Penalties, Petroleum, Reporting and recordkeeping requirements.

Issued in Washington, DC, on October 5, 2011.

**Henry C. Kelly,**

*Acting Assistant Secretary, Energy Efficiency and Renewable Energy.*

For the reasons set forth in the preamble, the Department of Energy is proposing to amend Part 490 of Title 10, Chapter II of the Code of Federal Regulations as set forth below:

## PART 490—ALTERNATIVE FUEL TRANSPORTATION PROGRAM

1. The authority citation for Part 490 continues to read as follows:

**Authority:** 42 U.S.C. 7191 *et seq.;* 42 U.S.C. 13201, 13211, 13220, 13251 *et seq.*

2. Section 490.2 is amended by:

a. Adding '', including liquid fuels domestically produced from natural gas'' after the words ''natural gas'' in the definition of ''Alternative Fuel''.

b. Removing the definitions of ''Electric-hybrid Vehicle,'' ''Electric Motor Vehicle,'' and ''Flexible Fuel Vehicle''.

c. Revising the definitions of ''Alternative Fueled Vehicle,'' ''Automobile,'' ''Capable of Being Centrally Fueled,'' ''Dedicated Vehicle,'' ''Dual Fueled Vehicle,'' and ''Fleet''.

d. Adding the definition of ''Work Truck'' in alphabetical order.

The additions and revisions read as follows:

**§ 490.2 Definitions.**

* * * * *

*Alternative Fueled Vehicle* means a dedicated vehicle or a dual fueled vehicle, as those terms are defined in this section.

* * * * *

*Automobile* means a 4-wheeled vehicle that is propelled by conventional fuel, or by alternative fuel, manufactured primarily for use on public streets, roads, and highways and having a gross vehicle weight rating of less than 10,000 pounds, except:

(1) A vehicle operated only on a rail line;

(2) A vehicle manufactured in different stages by two or more original equipment manufacturers, if no intermediate or final-stage original equipment manufacturer of that vehicle manufactures more than 10,000 multi-stage vehicles per year; or

(3) A work truck, as that term is defined in this section.

*Capable of Being Centrally Fueled* means that a vehicle can be refueled at least 75 percent of the time at a location that is owned, operated, or controlled by the fleet or covered person, or is under contract with the fleet or covered person for refueling purposes.

*Dedicated Vehicle* means—

(1) An automobile that operates solely on one or more alternative fuels; or

(2) A motor vehicle, other than an automobile, that operates solely on one or more alternative fuels.

*Dual Fueled Vehicle* means—

(1) An automobile that meets the criteria for a dual fueled automobile as set forth in 49 U.S.C. 32901(a)(9); or

(2) A motor vehicle, other than an automobile, that is capable of operating on alternative fuel and on gasoline or diesel.

* * * * *

*Fleet* means a group of 20 or more light duty motor vehicles, excluding certain categories of vehicles as provided by § 490.3 of this part, used primarily in a metropolitan statistical area or consolidated metropolitan statistical area, as established by the Bureau of the Census as of December 31, 1992, with a 1980 Census population of more than 250,000 (listed in Appendix A to this Subpart), that are centrally

fueled or capable of being centrally fueled, and are owned, operated, leased, or otherwise controlled—

(1) By a person who owns, operates, leases, or otherwise controls 50 or more light duty motor vehicles within the United States and its possessions and territories;

(2) By any person who controls such person;

(3) By any person controlled by such person; or

(4) By any person under common control with such person.

* * * * *

*Work Truck* means a vehicle having a gross vehicle weight rating of more than 8,500 and less than or equal to 10,000 pounds that is not a medium-duty passenger vehicle as that term is defined in 40 CFR 86.1803–01.

3. Section 490.3, paragraph (e), is revised to read as follows:

**§ 490.3 Excluded vehicles.**

* * * * *

(e) Emergency motor vehicles including vehicles directly used in the emergency repair of transmission lines and in the restoration of electricity service following power outages;

* * * * *

## Subpart C—[Amended]

4. Section 490.202, paragraph (a), is revised to read as follows:

**§ 490.202 Acquisitions satisfying the mandate.**

* * * * *

(a) The purchase or lease of an Original Equipment Manufacturer light duty vehicle (regardless of the model year of manufacture) that is an alternative fueled vehicle and that was not previously under the control of the State or State agency;

* * * * *

5. Section 490.204 is amended by:

a. Revising paragraph (b);

b. Redesignating paragraphs (g) through (h) as paragraphs (h) through (i); and

c. Adding a new paragraph (g).

The revision and addition read as follows:

**§ 490.204 Process for granting exemptions.**

* * * * *

(b) Requests for exemption must be accompanied by supporting documentation, must be submitted no earlier than September 1 following the model year for which the exemption is sought and no later than January 31 following the model year for which the exemption is sought, and will only be considered following submission of the annual report under § 490.205 of this part. A fleet may not request exemptions within 90 days of selling any or all of its banked credits. Any such exemption request will be denied.

* * * * *

(g) If DOE, in response to a request for exemption, seeks clarification or additional information from the State, such clarification or additional information must be submitted to DOE in accordance with paragraph (f) of this section within 30 days of DOE's inquiry. In the event a State does not comply with this timeframe, DOE will proceed under paragraph (h) of this section based on the documentation provided to date.

* * * * *

6. Section 490.205 is amended by:

a. Revising paragraph (b)(5)(iv); and

b. Adding a new paragraph (b)(5)(vi).

The revision and addition read as follows:

**§ 490.205 Reporting requirements.**

* * * * *

(b) * * *

(5) * * *

(iv) Dedicated vehicle or dual fueled vehicle;

* * * * *

(vi) A description of all efforts made to acquire alternative fueled vehicle credits; and

* * * * *

## Subpart D—[Amended]

**§ 490.302 [Amended]**

7. Section 490.302 is amended by removing the reference ''section 490.308'' in paragraph (e) and adding in its place '' § 490.307.''

8. Section 490.305, paragraph (a), is revised to read as follows:

**§ 490.305 Acquisitions satisfying the mandate.**

(a) The purchase or lease of an Original Equipment Manufacturer light duty vehicle (regardless of the model year of manufacture) that is an alternative fueled vehicle and that was not previously under the control of the covered person;

* * * * *

**§ 490.307 [Removed]**

9. Section 490.307 is removed.

**§ 490.308 [Redesignated as § 490.307]**

10. Section 490.308 is redesignated as § 490.307 and newly redesignated § 490.307 is amended by:

a. Adding ''(1)'' after the letter ''(a)'' in paragraph (a);

b. Adding new paragraphs (a)(2), and (c)(4); and

c. Removing, in paragraph (f), the word ''State's'' and adding in its place, ''covered person's''.

The additions read as follows:

**§ 490.307 Process for granting exemptions.**

(a)(1) * * *

(2) Requests for exemption must be accompanied by supporting documentation, must be submitted no earlier than September 1 following the model year for which the exemption is sought and no later than January 31 following the model year for which the exemption is sought, and will only be considered following submission of the annual report under § 490.308 of this part. A fleet may not request exemptions within 90 days of selling any or all of its banked credits. Any such exemption request will be denied.

* * * * *

(c) * * *

(4) If DOE, in response to a request for exemption, seeks clarification or additional information from the covered person, such clarification or additional information must be submitted to DOE in accordance with paragraph (a)(1) of this section within 30 days of DOE's inquiry. In the event a covered person does not comply with this timeframe, DOE will proceed under paragraph (f) of this section based on the documentation provided to date.

* * * * *

**§ 490.309 [Redesignated as § 490.308]**

11. Section 490.309 is redesignated as § 490.308, and newly redesignated § 490.308 is amended by:

a. Removing ''or section 490.307,'' from paragraph (a); and

b. Revising paragraph (b)(5)(iv);

c. Adding a new paragraph (b)(5)(vi).

The revision and addition read as follows:

**§ 490.308 Annual reporting requirements.**

* * * * *

(b) * * *

(5) * * *

(iv) Dedicated vehicle or dual fueled vehicle;

* * * * *

(vi) A description of all efforts made to acquire alternative fueled vehicle credits; and

* * * * *

**§ 490.310 [Redesignated as § 490.309]**

12. Section 490.310 is redesignated as § 490.309.

## Subpart F—[Amended]

13. Section 490.500 is revised to read as follows:

**§ 490.500 Purpose and scope.**

This subpart implements the statutory requirements of section 508 of the Act, which provides for the allocation of credits to fleets or covered persons that:

(a) Acquire alternative fueled vehicles in excess of the number they are required to acquire under this part or obtain alternative fueled vehicles before the model year when they are required to do so under this part;

(b) Acquire certain other vehicles; or

(c) Invest in qualified alternative fuel infrastructure or non-road equipment or an emerging technology.

14. Section 490.501 is revised to read as follows:

**§ 490.501 Definitions.**

In addition to the definitions found in § 490.2 of this part, the following definitions apply to this subpart:

*Alternative Fuel Infrastructure* means property that is for:

(1) The storage and dispensing of an alternative fuel into the fuel tank of a motor vehicle propelled by such fuel; or

(2) The recharging of motor vehicles propelled by electricity.

*Alternative Fuel Non-road Equipment* means mobile, non-road equipment that operates on alternative fuel (including but not limited to forklifts, tractors, bulldozers, backhoes, front-end loaders, and rollers/compactors).

*Emerging Technology* means a pre-production or pre-commercially available version of a fuel cell electric vehicle, hybrid electric vehicle, medium- or heavy-duty electric vehicle, neighborhood electric vehicle, or plug-in electric drive vehicle, as such vehicles are defined in this section.

*Fuel Cell Electric Vehicle* means a motor vehicle or non-road vehicle that uses a fuel cell, as that term is defined in section 803 of the Spark M. Matsunaga Hydrogen Act of 2005 (42 U.S.C. 16152(1)).

*Hybrid Electric Vehicle* means a new qualified hybrid motor vehicle as defined in section 30B(d)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 30B(d)(3)).

*Medium- or Heavy-Duty Electric Vehicle* means an electric, hybrid electric, or plug-in hybrid electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.

*Medium- or Heavy-Duty Fuel Cell Electric Vehicle* means a fuel cell electric vehicle with a gross vehicle weight rating of more than 8,500 pounds.

*Neighborhood Electric Vehicle* means a 4-wheeled on-road or non-road vehicle that—

(1) Has a top attainable speed in 1 mile of more than 20 mph and not more than 25 mph on a paved level surface; and

(2) Is propelled by an electric motor and an on-board, rechargeable energy storage system that is rechargeable using an off-board source of electricity.

*Plug-in Electric Drive Vehicle* means a vehicle that—

(1) Draws motive power from a battery with a capacity of at least 4 kilowatt-hours;

(2) Can be recharged from an external source of electricity for motive power;

(3) Is a light-, medium-, or heavy-duty motor vehicle or non-road vehicle, as those terms are defined in section 216 of the Clean Air Act (42 U.S.C. 7550); and

(4) In the case of a plug-in hybrid electric vehicle, also includes an on-board method of charging the energy storage system and/or providing motive power.

15. Section 490.502 is revised to read as follows:

**§ 490.502 Applicability.**

This subpart applies to all fleets and covered persons that are required to acquire alternative fueled vehicles by this part.

16. Section 490.503 is revised to read as follows:

**§ 490.503 Creditable actions.**

A fleet or covered person becomes entitled to alternative fueled vehicle credits, at the allocation levels specified in § 490.504 of this part, by:

(a)(1) Acquiring light duty alternative fueled vehicles, including those in excluded categories under § 490.3 of this part, in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part;

(2) Acquiring alternative fueled vehicles, including those in excluded categories under § 490.3 of this part, with a gross vehicle weight rating of more than 8,500 pounds, in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part;

(3) Acquiring any of the following vehicles in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part:

(i) Medium- or heavy-duty fuel cell electric vehicles that are not alternative fueled vehicles; or

(ii) Medium- or heavy-duty electric vehicles that are not alternative fueled vehicles;

(b) Acquiring alternative fueled vehicles, including those in excluded categories under § 490.3 of this part and those with a gross vehicle weight rating of more than 8,500 pounds, in model years before the model year when that fleet or covered person is first required to acquire light duty alternative fueled vehicles under § 490.201 or § 490.302 of this part;

(c) Investing, in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part, at least $25,000 in an emerging technology or alternative fuel infrastructure or alternative fuel non-road equipment, provided that:

(1) The technology, infrastructure, or equipment is put into operation during the year in which the fleet has applied for credits;

(2) In the case of an emerging technology, the amount invested by the fleet or covered person is not the basis for credit under paragraphs (a), (b), or (d) of this section; and

(3) In the case of alternative fuel non-road equipment, the equipment is being operated on alternative fuel, within the constraints of best practices and seasonal fuel availability; or

(d) Acquiring, in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part, any of the following vehicles, including those in excluded categories under § 490.3 of this part:

(1) A hybrid electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle;

(2) A plug-in electric drive vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle;

(3) A fuel cell electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle; or

(4) A neighborhood electric vehicle.

(e) For purposes of this subpart, a fleet or covered person that acquired a motor vehicle on or after October 24, 1992, and converted it to an alternative fueled vehicle before April 15, 1996, shall be entitled to a credit for that vehicle notwithstanding the time limit on conversions established by §§ 490.202(a)(3) and 490.305(a)(3) of this part.

17. Section 490.504 is revised to read as follows:

**§ 490.504 Credit allocation.**

(a) Based on annual credit activity report information, as described in § 490.508 of this subpart, DOE shall allocate:

(1) One alternative fueled vehicle credit for each alternative fueled

vehicle, regardless of the vehicle's gross vehicle weight rating, that a fleet or covered person acquires in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part; and

(2) One-half of an alternative fueled vehicle credit for each medium- or heavy-duty fuel cell electric vehicle that is not an alternative fueled vehicle and each medium- or heavy-duty electric vehicle that is not an alternative fueled vehicle that a fleet or covered person acquires in excess of the number of light duty alternative fueled vehicles that the fleet or covered person is required to acquire in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part.

(b) If an alternative fueled vehicle, regardless of the vehicle's gross vehicle weight rating, is acquired by a fleet or covered person in a model year before the first model year that fleet or covered person is required to acquire light duty alternative fueled vehicles by this part, as reported in the annual credit activity report, DOE shall allocate one credit per alternative fueled vehicle for each year the alternative fueled vehicle is acquired before the model year when acquisition requirements apply.

(c) DOE shall allocate credits to fleets and covered persons under paragraph (b) of this section only for alternative fueled vehicles acquired on or after October 24, 1992.

(d) Based on annual credit activity report information, as described in § 490.508 of this subpart, DOE shall allocate alternative fueled vehicle credit in the amount set forth below for each of the following vehicles that a fleet or covered person acquires in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part:

(1) A hybrid electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle—½ credit;

(2) A plug-in electric drive vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle—½ credit;

(3) A fuel cell electric vehicle that is a light duty motor vehicle, but that is not an alternative fueled vehicle—½ credit; and

(4) A neighborhood electric vehicle—¼ credit.

(e) Based on annual credit activity report information, as described in § 490.508 of this subpart, DOE shall allocate one alternative fueled vehicle credit for every $25,000 that a fleet or covered person invests, in a model year when acquisition requirements apply under § 490.201 or § 490.302 of this part, in:

(1) Alternative fuel infrastructure that is:

(i) Publicly accessible, provided that the maximum number of credits under this paragraph shall not exceed ten for the model year and the alternative fuel infrastructure became operational in the same model year, and provided further that the total number of credits allocated under this paragraph (e)(1)(i) and paragraph (e)(1)(ii) of this section do not exceed ten in a given model year; or

(ii) Not publicly accessible, provided that the maximum number of credits under this paragraph shall not exceed five for the model year and the alternative fuel infrastructure became operational in the same model year, and provided further that the total number of credits allocated under this paragraph (e)(1)(ii) and paragraph (e)(1)(i) of this section do not exceed ten in a given model year;

(2) Alternative fuel non-road equipment, provided that the maximum number of credits under this paragraph (e) shall not exceed five for the model year, and provided further that the equipment is being operated on alternative fuel; and

(3) An emerging technology, provided that the maximum number of credits under this paragraph (e) shall not exceed five for the model year, and provided further that the amount for which credit is allocated under this paragraph has not been the basis for credit allocation under paragraphs (a), (b), or (d) of this section.

(f) A fleet or covered person may aggregate the amount of money invested in a model year on alternative fuel infrastructure, alternative fuel non-road equipment, and emerging technology such that funds from multiple categories may be used to achieve the $25,000 threshold for the purpose of earning an alternative fueled vehicle credit, so long as no funds are aggregated from a category for which the fleet has already been allocated the maximum number of credits allowed for that category, as set forth in paragraph (e) of this section.

18. Section 490.505 is revised to read as follows:

**§ 490.505 Use of alternative fueled vehicle credits.**

(a) At the request of a fleet or covered person in an annual report under this part, DOE shall treat each credit as the acquisition of an alternative fueled vehicle that the fleet or covered person is required to acquire under this part. Each credit shall count as the acquisition of one alternative fueled vehicle in the model year for which the fleet or covered person requests the credit to be applied.

(b) If an annual report shows that the fleet or covered person did not meet its acquisition requirements under § 490.201 or § 490.302 of this part, and the fleet or covered person has credits in its credit account under § 490.506, DOE will apply the number of credits needed from those available to offset the shortfall. Each credit shall count as the acquisition of one alternative fueled vehicle in the model year of the subject annual report.

19. Section 490.506 is revised to read as follows:

**§ 490.506 Credit accounts.**

(a) DOE shall establish a credit account for each fleet or covered person who obtains an alternative fueled vehicle credit.

(b) DOE shall send to each fleet and covered person an annual credit account balance statement after the receipt of its credit activity report under § 490.508.

20. Section 490.507 is revised to read as follows:

**§ 490.507 Alternative fueled vehicle credit transfers.**

(a) Any fleet or covered person that is required to acquire alternative fueled vehicles may transfer an alternative fueled vehicle credit to—

(1) A fleet that is required to acquire alternative fueled vehicles; or

(2) A covered person subject to the requirements of this part, if the transferor provides certification to the covered person that the credit represents a vehicle that operates solely on alternative fuel.

(b) Proof of credit transfer may be on a form provided by DOE, or otherwise in writing, and must include dated signatures of the transferor and transferee. The proof should be received by DOE within 30 days of the transfer date at the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–2G, 1000 Independence Avenue SW., Washington, DC 20585–0121, or such other address as DOE publishes in the **Federal Register**.

21. Section 490.508 is revised to read as follows:

**§ 490.508 Credit activity reporting requirements.**

(a) A covered person or fleet applying for allocation of alternative fueled vehicle credits must submit a credit activity report by the December 31 after the close of a model year to the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, EE–2G, 1000 Independence Avenue SW.,

Washington, DC 20585–0121, or such other address as DOE may publish in the **Federal Register**.

(b) This report must include the following information:

(1) Number of alternative fueled vehicle credits requested for:

(i) Light duty alternative fueled vehicles acquired in excess of the required acquisition number;

(ii) Alternative fueled vehicles with a gross vehicle weight rating of more than 8,500 pounds acquired in excess of the required acquisition number;

(iii) Medium- or heavy-duty fuel cell electric vehicles that are not alternative fueled vehicles, acquired in excess of the required acquisition number;

(iv) Medium- or heavy-duty electric vehicles that are not alternative fueled vehicles, acquired in excess of the required acquisition number;

(v) Light duty alternative fueled vehicles acquired in model years before the first model year the fleet or covered person is required to acquire light duty alternative fueled vehicles by this part;

(vi) Alternative fueled vehicles with a gross vehicle weight rating of more than 8,500 pounds acquired before the first model year the fleet or covered person is required to acquire light duty alternative fueled vehicles by this part;

(vii) The acquisition of light duty hybrid electric vehicles that are not alternative fueled vehicles;

(viii) The acquisition of light duty plug-in electric drive vehicles that are not alternative fueled vehicles;

(ix) The acquisition of light duty fuel cell electric vehicles that are not alternative fueled vehicles; and

(x) The acquisition of neighborhood electric vehicles.

(2) Number of alternative fueled vehicle credits, in whole number values, requested for each of the following:

(i) Investment in alternative fuel infrastructure;

(ii) Investment in alternative fuel non-road equipment; and

(iii) Investment in an emerging technology.

(3) For investment in alternative fuel infrastructure, supporting documentation and a written statement, certified by a responsible official of the fleet or covered person, indicating or providing:

(i) The model year or period in which the investment was made;

(ii) The amount of money invested by the fleet or covered person and to whom the money was provided;

(iii) The physical location(s) (address and zip code) and a detailed description of the alternative fuel infrastructure, including the name and address of the construction/installation company (where appropriate), whether the infrastructure is publicly accessible, and the type(s) of alternative fuel offered; and

(iv) The date on which the alternative fuel infrastructure became operational.

(4) For investment in alternative fuel non-road equipment, supporting documentation and a written statement, certified by a responsible official of the fleet or covered person, indicating or providing:

(i) The model year or period in which the investment was made;

(ii) The amount of money invested by the fleet or covered person and to whom the money was provided; and

(iii) A detailed description of the alternative fuel non-road equipment, including the name and address of the manufacturer, the type(s) of alternative fuel on which the equipment is capable of being operated, a certification that the equipment is being operated on that alternative fuel, and the date on which the fleet or covered person purchased the equipment and the date on which it was put into operation.

(5) For investment in an emerging technology, supporting documentation and a written statement, certified by a responsible official of the fleet or covered person, indicating or providing:

(i) The model year or period in which the investment was made;

(ii) The amount of money invested by the fleet or covered person and to whom the money was provided;

(iii) A certification that the emerging technology's acquisition is not included in paragraph (b)(1) of this section and the amount invested is not included in paragraph (b)(3)(ii) or (b)(4)(ii) of this section; and

(iv) A detailed description of the emerging technology, including the name and address of the manufacturer and the date on which the fleet or covered person purchased the emerging technology and the date on which it was put it into operation.

(6) The total number of alternative fueled vehicle credits requested by the fleet or covered person, calculated by adding the two subtotals under paragraphs (b)(1) and (b)(2) of this section and then rounding the aggregate figure to the nearest whole number; in rounding to the nearest whole number, any fraction equal to or greater than one half shall be rounded up and any fraction less than one half shall be rounded down.

(7) Purchases of alternative fueled vehicle credits:

(i) Credit source; and

(ii) Date of purchase;

(8) Sales of alternative fueled vehicle credits:

(i) Credit purchaser; and

(ii) Date of sale.

## Subpart I—[Amended]

22. Section 490.804, paragraph (c) is revised to read as follows:

### § 490.804 Eligible reductions in petroleum consumption.

* * * * *

(c) *Rollover of excess petroleum reductions.* (1) Upon approval by DOE, petroleum fuel use reductions achieved by a fleet in excess of the amount required for alternative compliance in a previous model year may be applied towards the fleet's petroleum fuel use reduction requirement under § 490.803(a) of this part in another model year for which a waiver is granted.

(2)(i) A fleet seeking to roll over for future use the petroleum fuel use reductions that it achieved in excess of the amount required for alternative compliance in a particular model year must make a written request to DOE as part of the fleet's annual report required under § 490.807 of this part for the model year in which the reductions were achieved.

(ii) A fleet seeking to apply, in a later model year for which a waiver was granted, any excess petroleum fuel use reductions rolled over pursuant to paragraph (c)(2)(i) of this section must make a written request to DOE as part of the fleet's annual report required for that model year under § 490.807 of this part. The written request must specify the amount of the rollover reductions (in GGE) the fleet wishes to have applied and the total balance of rollover reductions (in GGE) the fleet possesses.

(3) DOE will apply approved rollover reductions to a model year for which a waiver was granted but the fleet's required reduction in petroleum fuel use was not achieved only to the extent that additional reductions attributable to motor vehicles were not reasonably available.

* * * * *

23. Section 490.805 is amended by removing paragraph (b)(3) and revising paragraph (b)(2) to read as follows:

### § 490.805 Application for waiver.

* * * * *

(b) * * *

(2) A complete waiver application must be received by DOE no later than July 31 prior to the model year for which a waiver is sought.

* * * * *

24. Section 490.809 is revised to read as follows:

**§ 490.809 Violations.**

If a State or covered person that received a waiver under this subpart fails to comply with the petroleum motor fuel reduction or reporting requirements of this subpart, DOE will revoke the waiver and may impose on the State or covered person a penalty under subpart G of this part. A State or covered person whose waiver has been revoked by DOE is precluded from requesting an exemption under § 490.204 or § 490.307 of this part from the vehicle acquisition mandate for the model year of the revoked waiver.

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**H.R. 2832/P.L. 112–40**

To extend the Generalized System of Preferences, and for other purposes. (Oct. 21, 2011; 125 Stat. 401)

**H.R. 3080/P.L. 112–41**

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